

29 October 2004

Mr Michael Walsh
Director, Gas Group
Regulatory Affairs Division
Australian Competition and Consumer Commission
GPO Box 3648
Sydney NSW 2001

Dear Mr Walsh

Draft Regulatory Reporting Guidelines for Gas Pipeline Service Providers

Thank you for the forum which the Commission convened on September 23, and for the opportunity to make further submissions in response to the Commission's Draft Regulatory Reporting Guidelines for Gas Pipeline Service Providers.

AGL has previously made a submission in response to the Draft Guidelines. That submission highlighted a number of issues which go to the question of the Commission's powers to make and impose guidelines in the form proposed:

- The Commission discusses its "Authority" for making guidelines in section 1.2 of the Draft Guidelines. Despite this, it is not clear whether the Commission intends them to be general accounting guidelines issued under Section 4.2(a) of the Code, or *guidance* for Service Providers in preparing their own guidelines which they *may choose to submit* to the Commission for approval under Section 4.2(b). As drafted, the document appears to be a hybrid of the two; a situation which is neither intended by or provided for in the Code. The document must be one of the other.
- There is no support anywhere in the Code, let alone in section 4, for the imposition of the additional reporting requirements envisaged by section 6 of the Draft Guidelines.

In its note on the proceedings of the forum held in September, the Commission requests comments on coordinating the Annual Regulatory Report envisaged by the Draft Guideline and the existing annual Ring Fencing Compliance report. Once again, this was a matter dealt with in AGL's previous submission. Moreover, given that the Code does not provide for annual reporting of regulatory accounts, the question of coordination does not arise.



Annual provision of accounts

AGL accepts that accounts must be kept under Sections 4.1(c) to (e). However, the only provision of the Code that deals with periodic ringfencing compliance reporting is Section 4.13 where the focus is on the form, adequacy and effectiveness of compliance systems and procedures. In AGL's view, there is no basis in Section 4.13, or elsewhere in Section 4, to require the annual provision of accounts which can be characterised as the "product" of compliance. Such a requirement would also be inconsistent with the scheme of the Code, and the underlying proposition of light-handed incentive regulation, which is to allow the service provider to manage its affairs between access arrangement reviews without regulatory intrusion.

Auditing and assurances

It is noted that the Queensland Competition Authority, in its Decision on General Accounting Guidelines for Gas Distribution Network Service Providers dated May 2003, has conceded that it cannot impose auditing and assurance requirements of the type now proposed in the Draft Guidelines.

Summary

Overall, the form and scope of reporting and assurances proposed in the Draft Guideline goes considerably beyond what the Commission itself has accepted in the past as fulfilling the requirements of the Code:

"[The Commission's existing pro forma] was designed to ensure that the information provided fulfils the reporting requirements of the Code without creating an unreasonable regulatory burden on Service Providers. For this reason service providers were required to base their 2003 compliance reports on the same pro forma document."

and:

"The approval and sign-off requirements [in the pro forma] meant that the board of directors of each company were accountable for the information provided in the report. They also provided the ACCC with sufficient confidence that the assessment by each Service Provider of the effect of the procedures in place has been carried out thoroughly."

It is unnecessary to make a special case of the account-keeping obligations in the context of ringfencing compliance reporting. If such treatment were necessary, there would be specific provision in the Code. The fact is, there is not.

There is also the question of the costs of complying with any guidelines that are issued. The Productivity Commission, in its Final Report on its Review of the Gas Access Regime has found that:

Regulators are currently seeking to have their powers under the Gas Access Regime extended so they can obtain information between access arrangement

reviews. This extension has the potential to add unnecessarily to service providers' compliance costs. (Finding 7.7, page 314)

Even if the Code did provide for the guidelines as drafted, it is AGL's view that it would be inappropriate for the Commission to proceed in the face of this finding, when the Productivity Commission's recommendations are being considered by the Ministerial Council on Energy.

There are clearly significant differences between the Commission and affected parties as to the extent of the Commission's powers under Section 4 of the Code to make and impose guidelines in the form proposed. It is of continuing concern to AGL that the Commission has not engaged in an open discussion on these threshold questions. The position expressed by the Commission at the forum in September simply reinforces that concern.

AGL calls on the Commission to undertake full consultation on these important matters before proceeding to issue guidelines.

If you wish to discuss any aspect of this or AGL's earlier submission, please contact Mr Chris Harvey on (02) 9921 2601.

Yours sincerely

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