



Response to AER Draft

**“Access Arrangement Guideline”**

**(September 2008)**

12 December 2008

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## 1 INTRODUCTION

The Australian Energy Regulator (AER) has developed a draft Access Arrangement guideline to assist service providers and other interested parties in the context of the AER's assessment of the Access Arrangement proposals for gas pipelines under the National Gas Law (NGL) and National Gas Rules (NGR).

Envestra welcomes the opportunity to respond to the AER's draft guideline and this document contains those responses.

## 2 GENERAL COMMENTS

Envestra is hopeful that the AER will conduct Access Arrangement reviews in the spirit of increased efficiency to lower the costs of regulation for the benefit of businesses and consumers. It is certainly hoped that the new regulatory regime will not be overly burdensome on businesses and will deliver more balanced outcomes than the old State based regimes.

Despite its stated intentions, the guideline does not seem to explain exactly how the AER will approach the task of assessing and approving Access Arrangement proposals. In particular the Draft Guideline should clarify the status of the guideline and whether it is purely an aid (as stated in the guideline) or whether the AER intends to give the guideline considerable weight.

There are a number of areas of the Guideline which Envestra may agree or disagree with depending upon how the AER carries out its functions in practice and how it applies its discretions and powers as the opportunities arise. Therefore Envestra believes that some aspects of the Guideline can only be judged in the context of actual implementation and experience.

## 3 SPECIFIC COMMENTS

### 3.1 Information Requirements (section 4)

#### 3.1.1 General (section 4.1.3)

The Draft Guideline states;

*"In circumstances where parties wish to rely on material from, for example, websites, consultants' or experts' reports, the AER's or other regulators' papers, a court or tribunal decision, they should include a copy of the relevant documentation and information with their submission.... Even if the document has been provided in a previous submission for the same or different regulatory process, the entire document should be submitted"*  
(page 31)

Envestra believes that this is unnecessary and creates additional administration work for Service Providers. Envestra believes that a reference in a standard academic format and a weblink, if the document is electronically available, is sufficient.

The AER's proposal is likely to result in absurd and inefficient outcomes. For example, Access Arrangements will most certainly refer to previous Access Arrangements, previous Access Arrangement Information, the NGL, the NGR, market rules, the previous Gas Code, previous AER decisions relating to other assets etc. To require service providers to provide such documents is unlikely to be efficient or useful, particularly as many of these documents are on the AER's own website.

If the AER wants a full copy of a document one should be available from the Service Provider upon request. If the reference is to a document previously provided to the AER then a reference to the date it was previously provided should be sufficient.

### 3.1.2 Confidential Information (section 4.1.4)

The statement that the AER will only accept a claim of confidentiality where the information is 'truly confidential' is unhelpful as are the statements that all information that is not marked as confidential will be treated as public information and that confidential information that is not released to third parties may be given less weight. These statements are not supported by the rules (r 43(2)) and fail to give recognition to relevant sections of the NGL (ss 329 and 263)

Envestra also objects to the proposal that the AER give confidential information less weight where it has not been provided to third parties. There may be very good reason why the information has not been provided, such as the third party not being prepared to enter into reasonable arrangements to protect the confidential information from unauthorised use or further disclosure, and this should not have any impact on the weight given to the information.

It is inevitable that Access Arrangement submissions on occasion will include confidential information. The AER must develop an approach to protect the confidentiality of the information whilst providing appropriate weight to confidential information in making its decision.

### 3.2 Extensions and Expansions Requirements (section 5.4.1.5)

Section 5.4.1.5 of the Guideline underpins Rule 104(3), which effectively relieves a service provider of any obligation to extend the network unless the service provider agrees (also a feature of the previous Third Party Access Code). However, as the AER may be aware, jurisdictional regulatory instruments, such as the Victorian Gas Distribution System Code, may place obligations on service providers that circumvent the Rules. For instance, clause 3.1 of the Victorian Gas Distribution System Code obliges service providers to connect customers.

Envestra seeks guidance from the AER as to how such inconsistencies will be treated in the interim.

### 3.3 The Building Block Approach to Determining Total Revenue (section 5.4.2.3)

#### 3.3.1 Broad Categories of Asset Classes (page 55)

The Draft Guideline states that;

*"Based on previous experience the broad categories of asset classes used includes: land; buildings; pipelines; compressors; regulators; meters; communication (SCADA); and other (including motor vehicles and IT)." (page 55)*

Envestra is concerned that these "broad categories of asset classes" are transmission focussed and do not reflect the broad categories of asset classes that have been used previously by regulators when undertaking gas distribution reviews.

If adopted, this will create problems for Envestra, and most probably other gas distribution businesses, when providing historic and forecast information as these categories are not those under which information is collected.

### 3.4 Reference Tariff Variations (section 6)

#### 3.4.1 Cost Pass Through (section 6.1.3)

Envestra recommends the following changes to section 6.1.3 of the Draft Guideline (comments in brackets).

Second Paragraph

*"The nature of events relevant for a cost pass through tariff variation needs to be included in the access arrangement proposal. The cost pass through component of the tariff variation mechanism in an access arrangement proposal needs to:*

- *specify the defined events*
- *provide for a symmetrical mechanism so that both increases and decreases in tariffs are contemplated associated with additional costs incurred or reduced costs incurred arising from a defined event"*

[Starting reference tariffs cannot be known ahead of time. They will only be known at the time of the application for a cost pass through. In any event, this is covered by the requirements set out in 6.1.4.1 of the guideline]

*Last bullet point on page 73*

*"include details about the proposed form of notification to fulfil requirements under r. 97(4) to allow the AER oversight or approval of the proposed tariff variation. This oversight or approval function will generally require a decision by the AER to approve or not approve a proposed cost pass through. The AER suggests that a key requirement in fulfilling r. 97(4) is to notify the AER whether a cost pass through event has occurred. Another means of meeting this obligation is to outline the timing of that notification. The AER considers that this should be provided at least 50 business days before a tariff is proposed to change because of a cost pass through event. Further details are provided in section 6.4.1 below, and"*

[An obligation to report periodically that no pass through event has occurred is administratively inefficient and heavy-handed. Given the infrequency of such events, there should only be a requirement to notify when an event occurs. Such a requirement is superfluous, since it is stating the obvious]

### 3.5 Cost Pass Through Notifications

Envestra also recommends deleting section 6.1.4.2 (replicated below). The proposed obligation is an administrative obligation that would be superfluous, as it requires a distributor to notify by way of a pass through notification that no pass through is being sought. This appears perplexing and unnecessary.

#### ***6.1.4.2 When a tariff variation is not sought***

*Two instances may arise in relation to a cost pass through component of the tariff variation mechanism which may not result in a tariff variation. This is when the cost pass through event is not material and a variation is not sought or when a cost pass through event does not occur in the relevant year of an access arrangement period.*

*In these circumstances a cost pass through notification can be fairly simple, noting that an event has not occurred, or an event has occurred but the effect on tariffs is immaterial and no pass through is sought. The timeframe for notifications in which no tariff variation is sought from a pass through event can be aligned to the shorter timeframes for the notifications of other tariff variations (that is, 30 days instead of 50 days).*

### 3.6 Review of Decisions (section 7)

The AER does not control or dictate merits reviews therefore Envestra does not believe that they should be included in this Guideline. In section 1.1, the Draft Guideline is described as addressing 'issues relevant to the AER's economic regulatory function relating to Access Arrangements and section 1.2 describes the role of the Draft Guideline is 'to provide information ... about the content of Access Arrangements and Access Arrangement proposals and the AER's decision making processes relating to Access Arrangements under the NGL and NGR.'

Clearly the processes and scope of merits reviews fall outside of these areas and to include them in this Guideline is unnecessary and a matter for the review body alone.