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Mr Mike Buckley  
General Manager  
Network Regulation North Branch  
Australian Energy Regulator  
SYDNEY

Dear Mr Buckley

### **Draft Annual Reporting Guideline**

Multinet Gas Pty Ltd (Multinet) has reviewed the Draft Annual Compliance Guideline (the Draft Guideline) and accompanying Discussion Paper (the Paper) published by the AER in July. In summary, Multinet accepts that reporting is an important tool for the AER in performing its compliance monitoring function, however Multinet is concerned that the proposed scheme is disproportionate in its scope and detail for a business such as Multinet which has no associated retail business and is demonstrably "ringfenced".

The AER should consider lighter-handed alternatives that are more in keeping with current industry structures and that take account of the relatively low risks and exposures now associated with ringfencing and related obligations. In particular, Multinet notes that the Essential Services Commission (ESC) has never required Victorian distribution businesses to report formally on ringfencing performance under the Gas Code. Multinet has managed compliance with ringfencing obligations (along with the hundreds of other obligations that apply to it) effectively, despite the lack of a formal reporting requirement. More importantly, there is no evidence that users and prospective users have been dissatisfied with Multinet's performance where ringfencing is concerned. As far as Multinet is aware, the same can be said of the other Victorian distribution businesses as well as gas transmission businesses and distributors in other jurisdictions.

All reporting comes at a cost. Not only are there direct costs in assembling and reviewing the required information but there are opportunity costs especially where executive managements and boards are involved. Those costs are likely to be significant when aggregated over all the businesses that would be subject to the proposed reporting requirements and need to be considered when designing the reporting regime.

There are at least two lighter-handed approaches that could be considered. One would be to report annually on an exception basis i.e. an assurance that full compliance has been achieved with details of any exceptions. This is the form that the ESC and IPART in NSW have adopted for their licence compliance reporting regimes. The other, which Multinet favours, would be for the AER to monitor compliance by making periodic enquiries of service providers in relation to their compliance with a small number of specific obligations. The AER

already uses this approach to monitor compliance with certain obligations under the National Electricity Rules.

A lighter-handed approach would also be consistent with industry performance and experience over the last 10 years of access regulation under the Gas Pipelines Access Law and Gas Code:

- The industry's ringfencing compliance performance throughout the 10 years has been good.
- Despite users' and prospective users' initial concerns, ringfencing has not been a significant issue for users or prospective users since access was bedded down. That is the case for both distribution and transmission.
- In the mid 1990s, many gas distributors were vertically integrated and prospective users were especially concerned about how they would be treated by those service providers that had associated retail businesses. Today, ActewAGL Distribution is the only business within the AER's jurisdiction that has an associated retailer.
- Ringfencing reporting requirements under the Gas Code have ranged from the highly prescriptive regime established by the ACCC for transmission service providers to no formal requirement in the case of the ESC. As noted previously, there is no evidence that users and prospective users are dissatisfied or have any particular concerns with service providers' ringfencing performance in those jurisdictions (including Victoria) with lighter-handed approaches.

### **Comments on the proposed reporting scheme**

Should the AER decide to proceed in the manner proposed in the Draft Guideline, Multinet has a number of specific comments:

- Multinet is able to report on a June year, however, reporting by 31 July would be an additional burden on the business at a particularly busy time given that Multinet operates on a June financial year. The AER should consider extending the time for reporting to 31 August. Multinet notes that the licence compliance reporting regimes established by the ESC, IPART in NSW, and ESCOSA in South Australia, all provide for reporting on a June year by 31 August.
- In Multinet's view the related business question (question 2.1) is best dealt with by a straightforward assurance that the service provider has not carried on a related business during the reporting period (assuming that is the case). It is not clear that provision of an organisation chart as proposed can add to such an assurance.
- The requirement to list all associates (question 2.2(a)) goes further than the ACCC's requirement to list only associates with "any involvement in natural gas". In fact, given the scope of s140 of the NGL, it should only be necessary to list those associates (if any) that take part in a related business. Having said that, Multinet questions the value of providing details of associates at all given the nature of the assurances required by questions 2.2(b) and (c).
- Multinet acknowledges that it is open to the AER to require that reports "be verified by way of statutory declaration ..." (NGL, s55(d)). However, in Multinet's view, there is no case for invoking that power in the present case. Multinet is not aware of any comparable corporate reporting obligation where a statutory declaration is required. An assurance signed by the CEO should suffice. Even if that view is not accepted, the ACCC established a form of assurance for ringfencing reporting which involved signing by the CEO and a Director with approval of the service provider's board. That form has apparently been adequate for the ACCC's purposes.

Multinet also notes that the NGL contains sanctions for providing false or misleading information in response to an information instrument (NGL, s60). The potential penalties for making a false statutory declaration are much more severe. Accordingly, statutory declarations should be reserved for cases where there is a real incentive to produce false or inaccurate information, and where the consequences of doing so are material.

- Multinet notes the proposed requirement to provide copies of the financial statements “most recently submitted” to ASIC (question 2.3(e)). The quoted phrase is important because financial statements may be submitted to ASIC as late as October in the case of Multinet. Available financial statements lodged with ASIC will inevitably relate to a different period than the compliance report.
- The proposed requirement in relation to associate contracts (question 2.5) is inefficient. Service providers will already have provided the AER with details of new and varied associate contracts in compliance with NGR s33, and the AER will have details of any application for approval of an associate contract. It should be sufficient to ask the question “have details and copies of all new and varied associate contracts been provided to the AER within 5 business days? If not, please provide details.”
- The purpose of Attachment 3 to the preliminary regulatory information order is unclear: it is not mentioned in the Draft Guideline or in the preliminary order.
- More generally, some of the information that is to be reported under the proposal:
  - can be readily tested by the AER itself (e.g. to determine whether access arrangements and terms and conditions are available on service providers’ websites);  
or
  - will already be known to the AER and in some cases will have originated with the AER. Items in this category include:
    - additional ringfencing obligations and exemptions
    - details of associate contracts and associate contract approvals
    - access determinations and
    - approvals of access arrangements that include provision for bundling.

Multinet questions the value and efficiency of reporting such information especially if it is to be done under a sworn statement. If the AER’s objective is to obtain confirmation that the service provider is aware of applicable obligations, it would be more efficient for it to issue periodic questionnaires for response by the service provider’s senior management.

Should you wish to discuss this submission, please contact Andrew Schille on (03) 8544 9432.

Yours sincerely



Hugh Gleeson  
**Chief Executive Officer**