28 June 2012

Sebastian Roberts
General Manager
2012 Victorian Gas Access Arrangement Review
Australian Energy Regulator

By email: VicGAAR@accc.gov.au

Dear Mr Roberts

**Victorian Gas Access Arrangement Review**

Origin Energy Retail Limited (Origin) welcomes the opportunity to respond to the Victorian Gas Access Arrangement Review.

Origin notes that the terms for both the Envestra networks are close to identical, as are the terms for the Multinet and SP Ausnet networks.

Envestra (Victoria, Albury)

*Access Arrangement Information*

Origin notes that, in addition to the $357 million mains replacement programme, augmentation and new customer connections account for around 30 percent of Envestra's proposed $774 million capital expenditure programme. Envestra notes that it made significant reductions in augmentation work during the current regulatory period[1] and also that in the future period Envestra intends that "augmentation works [will be] delayed where load growth or other parameters do not eventuate and it can be demonstrated that augmentation/investment can be prudently deferred without compromising reliability or safety".[2] Envestra underspent its previous augmentation budget by around 50 percent.

It would be helpful to understand at a high level how Envestra has assessed the impact of its past underspending on augmentation. Origin understands the objectives of augmentation spending to be an improvement in reliability on the network and a reduction in incidents of sub-optimal pressure. (Envestra notes that the mains replacement programme is also expected to address in part the problem of low pressure mains and growing peak demand.) Given the deferral of spending in the previous period a significant deterioration in reliability and service integrity should have been evident. While these indicators may be dealt with in the relevant confidential business plans, high

1 Envestra Access Arrangement information, p.21.
2 Envestra Access Arrangement information, p.115.



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level indicators would be beneficial for third parties looking to understand the justification for spending proposals.

Capital dedicated to new residential connections is significant at $170 million. In the current period Envestra spent $138 million on new residential connections, so this represents a 25 percent increase on the prior period (with all figures in 2011 dollars). Given the rate of growth in residential customers is shown to continue at a pace comparable to the current period, it would be helpful to understand the increase in unit rates that deliver this increased spending requirement (which may appear in confidential attachment 7.1).

The definition of ancillary and excluded services is not consistent across the three distributors and arguably some services are excluded when they should be defined as ancillary. Origin would propose that the definitions be made consistent and that all monopoly services other than standard haulage services be made ancillary.

*Terms and Conditions*

*General Comments*

As mentioned at the recent industry workshop Origin has participated over many years in the development of the National Energy Customer Framework NECF and its retail support provisions which manage the retailer and distributor relationship in a consistent manner for both gas and electricity.

Origin is of the view that the NECF provisions would largely ameliorate the need for Gas Access Arrangement Terms and Conditions. While it is disappointing to see that there will be some delay in the implementation of NECF in Victoria we are firmly of the view that the terms and conditions for all distributors in Victoria should be consistent using similar terminology, structure and content (Multinet and SP AusNet differ from Envestra). Moreover we would support a transition to NECF arrangements as soon as possible once they are legislated in Victoria rather than the perpetuation of the proposed terms continuing until the end of this access period. We urge the AER to ensure that suitable provisions are inserted to accommodate this outcome.

*Specific comments*

Where clause 12.3 permits Envestra to take whatever steps it considers necessary or desirable to ensure gas in the network meets specification we would propose that the word “reasonable” be added between “whatever” and “steps”, since the actions of Envestra under these circumstances could create significant commercial exposure for Network Users.

Under clause 12.1 Envestra is permitted to change the gas specification from time to time. In practice, Network Users will need notice of changes in the specification if they are to react to these effectively. We would propose that the Network User only be able to change the specification based on a material need, and further, that Envestra be obliged to meet the new specification only following “reasonable notice”. Network Users have obligations to third parties with respect to gas specification and so can have limited flexibility with respect to this.

Clause 17.3 outlines the order of curtailment Envestra will undertake. Origin is unclear as to why this clause is so specific in its level of detail, since AEMO has powers to direct

load shedding based on load curtailment tables. We would propose that it be amended to a more general clause similar to 6.1(a) in the SP Ausnet Victorian Terms and Conditions, in the interest of consistency across distributors.

In clause 21.5 we would propose the term "Tax Invoice" instead of "Statement of Charges" since this sits better with the requirements of GST legislation. Further, we would propose that the sentence "the Network User must pay the full amount specified in each statement of charges, without set-off, by the due date for payment", be modified to "the Network User must pay the full amount specified in each statement of charges by the due date for payment **without deduction or set-off unless required by law**", recognising that some deductions and set-offs can be required of recipients by law.

The cross-reference at clause 22.3 (that covers time limits) refers to clause 28.5 but should refer to clause 29.5.

Clause 26.1 requires the Network User to pay interest on unpaid amounts. This clause should be reciprocal for any amounts that the Network User is owed by Envestra. This would then be in line with the National Energy Customer Framework.

Clause 28.2(a) allows Envestra to terminate the agreement where the Network User fails to pay any amount on time in the manner required by the agreement. There is no provision for a breach notice or cure period. Origin believes this to be inequitable, since clause 28.2(b) provides Envestra sufficient protection in relation to non-payment. Origin would propose that these terms be made equitable.

Clause 28.5 absolves Envestra of any obligation to refund Network Users. This seems too broad, as it also excludes an instance where Envestra has overcharged the Network User. We would propose adding the words "except where Envestra has overcharged.

As we have argued in earlier submissions on gas access arrangements, we believe liability clauses should be reciprocal in rights and obligations unless there is a clear reason to depart from this basic principle. In this context, clauses 29 and 33 contain one-sided indemnities and limitations of liability. The following changes would address these imbalances:

- Clause 29.4 should require both parties to mitigate their loss, not just the Network User.
- Clause 29.5 contains a three month limitation period, where statutory limitation periods could apply, or at least a six month period in light of the two month billing cycle.
- Clauses 33.1 and 33.2(b) are general purpose indemnities for all breaches of contract and do not cover both parties equally. In our view such broad (one-sided) indemnities are unnecessary and could be deleted.
- Clause 33.5 similarly contains a very wide one sided indemnity in relation to curtailment and interruptions. This could be deleted or made reciprocal.
- In clause 33.6 the words "negligent or wrongful" should be deleted – any contribution of Envestra to the loss or liability should reduce the Network User's liability, not just where wrongful or negligent, or alternative the Network User's liabilities should be limited to exclude acts that are neither wrongful or negligent.

Clause 34 covering Insurance is not reciprocal. We note that the Multinet proposal enshrines the principle of reciprocity and would propose this as an alternative to the current Envestra clause, or else that the current clause be made reciprocal. Clause 34.2

is impractical as Network Users are likely to hold large insurance policies that cover multiple networks and other activities and so it may not be feasible to name one gas distribution network ahead of all others. Equally, clause 34.6 is impractical as the decision as to when a Network User will settle a claim with its own insurer is a matter for the board of that entity, rather than a network service provider. Origin considers it unlikely that Envestra would consider making a similar commitment to all Network Users and as such, this should be removed.

The confidentiality requirements in clause 36 should be reciprocal on both parties.

Clause 37.1 involves an Independent Expert in a dispute, whereas the Multinet/SP Ausnet terms involve the Chief Executive Officers (CEOs) of the two entities. We note that dispute resolution is covered under NECF and would propose that in the interim the CEOs be substituted for Independent Experts in the interests of reducing costs and consistency.

Clause 39.1 prevents the Network User from assigning the agreement except in limited (and undefined) circumstances, whereas 39.2 allows Envestra to assign the agreement. We would propose that these rights be made reciprocal. Equally, clause 39.3 discharges Envestra from its obligations under the agreement following assignment; this should also apply to the Network User.

In clause 43.2(c) we would like to make it explicit that payment of GST is required on taxable supply subject to the receipt of a valid tax invoice. This aligns with the requirements of relevant GST legislation. The words "Subject to the receipt of a valid tax invoice…" could be added to the beginning of this clause to make this explicit.

Origin notes that nowhere does Envestra make provision to pay the Network User for services provided, whereas this obligation exists in the Multinet/SP Ausnet terms (7.2). We would propose that a similar term be included in the Envestra terms.

*Multinet, SP Ausnet*

*Access Arrangement Information*

Origin notes that SP AusNet is projecting a continuing downward trend in residential per capita gas consumption based on a trend for new dwellings to have much lower gas demand than existing dwellings, despite the likelihood of increasing penetration of gas appliances.[3] Firstly, Origin questions the coherence between an increase in the average number of gas appliances in new homes and a declining use of gas. Secondly, Origin would question the sustainability of continued expansion programmes under circumstances where each new customer uses less gas than the last. The clear implication of this is significant growing in average per unit charges for all users. Origin encourages the regulator to consider proposed programmes for expansion of gas to new neighbourhoods in light of this as growing cross-subsidy is likely to have a negative impact on overall gas demand.

As outlined in relation to Envestra, above, Origin proposes a consistent definition of ancillary and excluded services, with all monopoly services other than the standard services defined as ancillary.

[3] SP Ausnet Access Arrangement Information, p.19

*Terms and Conditions*

*General comments*

As outlined above, in relation to Envestra, Origin supports the full operation of NECF and the standardisation of gas haulage terms.

*Specific comments*

Clause 2.1(b) appears to state that in some circumstances of inconsistency between the terms and conditions and a regulatory instrument the regulatory instrument may not necessarily prevail if the inconsistency arises as a result of greater detail in the terms and conditions. This clause appears unnecessary as to the extent of any inconsistency the regulatory instrument will prevail. We propose that it be removed.

Clause 4.4(c) limits the liability of the Service Provider for refusing service in conditions where the Network User has introduced gas that does not meet specifications. In reality, the actions of the Service Provider can also lead to gas that does not meet specifications being introduced into the network and so we would propose that these limitations on liability work reciprocally. The same applies to clause 4.7(c).

The word "good" in clause 4.8 ("good title to gas") is unnecessary and should be removed. This term also exists in the Envestra General Terms and Conditions.

Clause 6.2(a) states that a Network User may only request a disconnection where allowed to by applicable regulatory instruments, but this is unnecessary as it is contained in the definition of "Disconnection Request" in the Access Arrangement.

Clause 6.2(c) states that if the Service Provider has not made a reasonable attempt to disconnect the customer as requested then it will cease charging the Network User for services. Origin would like a less ambiguous term than "reasonable attempt", since the Network User will otherwise remain liable to the Service Provider despite the network provider being negligent. An alternative might be "is precluded from disconnecting the customer for reasons beyond its control".

Clause 6.2(f) allows the Service Provider to refuse to disconnect a customer if the regulatory instruments allow it to do so. This clause is superfluous as the regulatory instruments will take precedence. It should be removed.

Clause 6.5 requires the Network User to provide reasonable assistance to the Service Provider. This obligation should be reciprocal, as it is in the Envestra terms (32.2).

In clause 7.3(d) the clause should state that the supplier must issue an adjustment note to the recipient within 14 days upon first becoming aware of the adjustment, since this is a precursor to the supplier being able to recover the adjustment amount.

Clause 7.3(e) seeks to make the recipient liable for the supplier's failure to pay its own GST obligations. This is unreasonable and unnecessary, since obligations already exist on the recipient to pay GST as required to the supplier. This should be removed.

Clause 7.4(g) allows the Service Provider to issue charges in a later invoice if the metering data for the relevant period is unavailable at the time of invoicing. The clause doesn't state when the new invoice will be issued, merely that it will occur after the

data has become available. The Network User has an interest in timely invoices since otherwise it may lose the opportunity to bill a customer. As a result, we propose amending the clause so that the charges are invoiced no later than the second invoice after the data becomes available. This allows considerable flexibility for the Service Provider.

Clause 7.8(m) is a duplication of the National Gas Rules and so can be removed.

Clause 8.2(b) requires the Network User to provide each customer a privacy statement in a form as determined by the Network Service Provider. In practice, Network Users are likely to operate across many distributor areas and several states and it is not feasible to include differing privacy notices for different access providers. We are also unclear why the privacy notice needs to be specific to a particular gas distributor. Instead, we would propose that this clause be modified such that the User be required to provide its customers a reasonable privacy notice that permits the Service Provider and the User to exchange such personal information as is required and to discharge their obligations under privacy laws and the Regulatory Instruments.

Clause 9.1(a) is a duplication of the National Gas Rules and so can be removed.

Clause 9.1(j) prescribes the obligations of the Network User with respect to notifying its customers of curtailments or outages that occur as a result of problems upstream of the distribution network. This is not relevant to a haulage agreement and is unnecessary; as upstream outages and shortages of supply are managed via the Australian Energy Market Operator and Energy Safe Victoria across the whole industry. We would propose that this clause be removed.

Clause 9.2(d) should provide reciprocal indemnity. Also, the words “as required under a relevant Regulatory Instrument” should be removed as the Network User may legitimately require information from the Service Provider even where this is not prescribed under the relevant regulatory instruments.

Clause 13.5(c) seeks to make the Network User liable for a loss of revenue of the distributor and to abrogate limitations that exist in the *National Gas (Retail Support) Amendment Rules 2010*. Clause 508 of Division 3 of the National Gas (Retail Support) Amendment Rules state that a distributor cannot pursue a retailer for distribution charges from a shared customer if the retailer is precluded by the National Energy Retail Law or Rules from recovering these charges from the end customer. Origin supports the functioning of clause 508 and does not understand the arguments for a departure from this. Furthermore, clause 13.5(c) contradicts the exclusion of loss of revenue in clause 13.6(b)(1), which states that neither party can be liable for a loss of revenue of the other. Origin proposes that clause 13.5(c) be removed.

Clause 13.6(b)(7) appears to severely curtail the limitations on liability that appear in clauses 13.6(b)(1-5). We question the need for this clause and propose that it be removed.

In clause 13.6(b)(8) we propose to remove the reference “for example GST” since it is unnecessary and GST obligations are covered elsewhere.

Unaccounted for Gas

Origin is concerned with the proposals from all three distributors seeking significant increases in their respective benchmarks for Unaccounted for Gas (UAFG). Distributors now maintain there is no correlation between mains replacement (capital spent) on low pressure pipelines and a reduction in UAFG.

Multinet has made the comment on page 189 of their information paper that:

> *"although sections of the cast iron system are being replaced, the leakage from the cast iron assets that remain in service can be expected to increase in time" . .....In effect, any reduction in leakage from the replaced pipes is likely to be counter-balanced by increased leakage from the remaining pipes."*

Multinet's comments suggest that spending on mains replacement can have no impact on unaccounted for gas due to the rate of deterioration in remaining assets. This puts in doubt the conventional justification for mains spending which is to improve reliability.

The South Australia Regulator in March 2011 amended the gas distribution code UAFG target based on Envestra's mains replacement plan approved by the technical regulator to achieve a significant reduction in UAFG by 2016. This seems to contradict the arguments related to the impact of mains replacement on UAFG presented in Victoria in this review.

Envestra has also made reference to a bias in the heating value allocation in Victoria as a cause for UAFG increases. The study[4] undertaken by AEMO to assess this bias (even accounting for the different sources of gas) did not necessarily support this argument and hence industry has agreed to continue with the allocation of an average heating value across the state.

Moreover the results of recent years UAFG wash up processes undertaken for Origin with distributors in Victoria do not suggest a consistent case for an increase in the benchmark for all distributors in Victoria. Origin would be prepared to share these results to the AER on a confidential basis.

The UAFG benchmark for Non PTS systems has previously been set at 2 percent based on the assumption that these systems are relatively new. It is somewhat disturbing to see that SP AusNet is proposing a UAFG benchmark of 6.4 percent without any explanations for the significant benchmark variance or without a plan to reduce the losses in this system. Origin also sees little justification for an increase in the benchmark UAFG for the Multinet Non PTS systems from 2 to 3 percent as these systems are relatively new utilising the latest technology equipment and metering.

In summary Origin is concerned that the right incentives must be maintained on distributors to ensure they continually strive to achieve an acceptable UAFG benchmark. Retailers have no control over the operation or augmentation of these networks but are exposed to the UAFG costs up to the benchmark. A simple year on year adjustment to the UAFG rate may not deliver the right incentives that have been achieved in the past with an averaging approach.

Should you require further information on this submission please do not hesitate to contact me on 03 9652 5880.

[4] AEMO Analysis on GMI 031/09 Zonal Heating Value

Yours sincerely

[Signed]

Randall Brown
Energy Relationships Manager