



5 November 2008

Mr Mike Buckley
General Manager
Network Regulation North Branch
Australian Energy Regulator
AERInquiry@aer.gov.au

Dear Mr Buckley

DISCUSSION PAPER ON DRAFT GUIDELINE

Origin Energy is one of Australasia's largest gas and electricity retailers, supplying energy to more than 3 million customers in Australia and the Pacific. Origin has diverse product and service offerings that include natural gas, LP Gas and electricity products and services. Origin provides natural gas to customers in Victoria, New South Wales, South Australia and Queensland. Natural gas for the retailing operation is sourced under long-term contracts from other producers and from gas resources owned by Origin. The diversity of supply gives Origin the ability to procure gas for customers competitively and maintain reliable supply.

A key to maintaining diversity of supply is to continue to utilise gas transportation services through transmission and distribution pipelines within a number of Australian jurisdictions. Origin seeks to maintain good relationships with service providers yet it is a commercial reality that disputes arise, particularly with the growing demand and changing market conditions for the supply of natural gas across Australia.

Origin welcomes the opportunity to provide comment to the Australian Energy Regulator (AER) on the Draft Access Dispute Guideline for the resolution of gas disputes between service providers and users or prospective users.

The Draft Access Dispute Guideline (Guideline) is procedural in nature and provides guidance for parties to an access dispute about what to expect from the process and the AER. As outlined in the discussion paper, the objective of introducing a new Guideline is to provide better certainty for parties to access disputes after the introduction of the National Gas Law (NGL) and National Gas Rules (NGR), and for the AER to commit to procedural aspects for parties to rely upon. It is understood the Guideline replaces the ACCC's Draft Access Dispute Guideline for gas¹ and does not alter the regulatory burden for service providers, users or prospective users except as mandated in NGL and NGR.

Origin acknowledges the AER is seeking comment on the content and form of the Guideline this submission makes general comments around some of the issues raised in the Discussion Paper.

Origin believes that commercially driven outcomes are the most beneficial for competitive markets and perhaps for this reason there has been no dispute raised for access issues to date. Given the apparent inexperience of the AER in conducting access disputes, it is important to allow for some flexibility in timeframes and process whilst conducting the resolution of access

¹ Previously consulted on by the ACCC in 2004.



disputes. Furthermore, supplementary review or enhancement of the guidelines should be considered once some disputes have tested the process.

Parties to the dispute

In most instances, a dispute will be notified after the parties' discussions have halted, generally after a reasonable period of negotiation. Hence, the addition of new parties may jeopardise an expeditious resolution of the matter, complicate issues or potentially expose confidential information of the original parties. The AER should be cautious in allowing additional parties to join a dispute and hence, only a narrow interpretation of "sufficient interest" should be employed. The proposed timeframe of 5 business days for interested parties to apply may avoid delays and may assist in circumventing unwarranted requests.

Origin supports the making of a general confidentiality order as a means of assuring the private nature of the dispute throughout the process as well as encouraging open discussions between the parties and the AER. However, there are circumstances where a party may wish to further protect its confidential information and prevent disclosure to the other party. In such cases, Origin takes the view the AER must take a pragmatic approach to prevent disclosure unless it will have clear and undeniable benefits to the dispute process. Origin has concerns with the AER applying tests utilised by the courts with respect to confidential information and believes the AER is best placed to take guidance from the parties subject to the dispute.

Final Determination

Origin accepts the timeframes throughout the dispute process are indicative only and subject to modification on a case-by-case basis. Origin agrees with implementing a flexible approach to the conduct of these matters in particular the final determination timeframes. In most instances, parties resorting to a dispute resolution determination will consider a timely but considered determination as crucial. Accordingly, although the 6 month timeframe from the date of notification appears lengthy, Origin envisages the AER will accept submissions regarding the critical issues for resolution and attempt to accommodate the expectations of all parties.

Publication of final determination

Origin strongly recommends the AER consider the views of the parties with regard to objections to a final determination becoming public information. The retail gas market in particular is a competitive market and the disclosure of information could compromise the position of service providers or users. It is recognised the AER must balance the expectations of the parties and provide information to better inform the market as well as facilitating early resolution of future disputes. However, an inflexible approach may deter parties seeking to take part in a dispute resolution process conducted through the AER.

If you wish to discuss, please contact Madonna Mead on (07) 3867 0617.

Yours sincerely

A handwritten signature in black ink, appearing to read "P. Whish-Wilson". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Patrick Whish-Wilson
Energy Regulation Manager