7 January 2013

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 (Vic) Pty Limited (Origin) welcomes the opportunity to provide further feedback to the Victorian Gas Access Arrangement Review.

Mains replacement programme

Origin supports the AER's decision to base capital expenditure allowances for low pressure mains replacement on volumes achieved in the current period. Allowances in the current period have been significantly underspent on all three of the major networks.

We acknowledge the arguments put forward by the Distribution network service providers (DNSPs) that meeting targets in the previous period was impractical due to credit constraints during the global financial crisis. In recognition of this, we support the cost pass through arrangement proposed by the AER, whereby each DNSP can pass through the cost of further prudent mains replacement, beyond approved volumes, but only once approved volumes have been completed.

We believe this pass through arrangement promotes the interests of the consumer, with an appropriate balance between the need to maintain the network and to limit customers' exposure to inaccurate forecasts. We highlight that under current arrangements a material portion of approved capital expenditure is recovered in the five year period in which it is to be spent. This occurs even where the funds in question are not spent, because regulatory depreciation is built in to the price path. At the end of a regulatory period, where capital expenditure has been underspent, regulatory depreciation that has already been collected is not returned to the customer. This means the customer is exposed directly to the negative financial impact of an inaccurate forecast of capital works.

Unaccounted for gas

We note that responsibility for setting benchmarks for unaccounted for gas (UAFG) in the Victorian gas networks rests with the Victorian Essential Services Commission (ESC). We

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understand the Victorian Government has extended current benchmarks into 2013 until such time as the ESC can consult on appropriate levels for benchmarks in coming years. Origin provided its views on appropriate levels for UAFG benchmarks to the ESC's recent consultation. However, UAFG is also relevant to the DNSPs' spending proposals and so we address these matters in this submission.

As outlined in Origin's response to the DNSPs' initial proposals in June 2012, we think it is of some concern that the DNSPs have found that levels of unaccounted for gas have decoupled from spending on mains renewal. In particular Origin notes the finding of Multinet that there is "no empirical evidence to establish a link between the replacement of cast iron pipes and a decline in actual UAFG".[1] That there should be no link at all between spending on improving mains and measured gas losses brings into question the accuracy of measurement, the management of the network, and the effectiveness of the mains replacement programme. While it seems reasonable that leaking gas might not be the sole driver of measured gas losses it should be among the primary causes in our view, and so a causal link should be evident at some level.

Retailers are exposed to the UAFG costs up to the benchmark but are unable to act to address the problem of losses from the distribution network. As such, we believe it is important that the DNSPs continue to investigate the problem of gas losses with a view to developing a better understanding of causes and potential solutions. This may involve a closer examination of shortcomings in metering.

Price control mechanism

Origin supports the AER's decision to reject increases in the scope for rebalancing applied to DNSPs' gas tariffs. The increases proposed were significant (a fivefold increase in Envestra's case) and Origin does not understand the justification for this. We note that changes to this variable can have significant and unpredictable impacts on end prices, a risk that is faced primarily by the retailer (particularly given the short lead times between the notification of prices and when they apply).

Notice of price variations

The AER's Draft Decision included a requirement for Envestra, Multinet and SP Ausnet to submit their variations in tariffs 50 business days prior to when the tariffs apply. This is equivalent to arrangements on Envestra's South Australian and Queensland networks, and effectively allows retailers 20 business days to review the new tariffs and incorporate these in retail tariffs.

All three distributors have rejected the AER's Draft Decision in their revised proposals, preferring instead that they be required to submit tariffs 35 business days before the prices apply, providing retailers 15 business days to review tariffs. Envestra argue that under a requirement of 50 business days it must submit ahead of the September release of CPI figures, meaning it must then re-submit with updated CPI figures, creating an unnecessary administrative burden. Multinet argues further that a 50 business day requirement will create an unnecessary burden with respect to National Greenhouse and Energy Reporting (NGERS) obligations. Further arguments advanced by SP Ausnet include that a 50 day requirement is still too short for retailers to meet their retail price notification requirements ahead of a January 1 price change, so retailers will be required

[1] Multinet Gas Access Arrangement Review January 2013-December 2017 Access Arrangement Information, 30 March 2012, p.25

to notify retail prices based on draft network prices under a 50 day requirement as under a 35 day requirement (and hence a 50 day requirement offers no added benefit); and also that as an electricity and gas distributor it will be required to submit prices for both businesses at the same time.

From a retailer's perspective 20 business days (4 weeks) should be a minimum time allocated for retailers to analyse prices before the prices apply. We acknowledge that retailers in Victoria are currently allocated less than 4 weeks, but we believe current practice creates unacceptable risk for retailers. The NSW Independent Pricing and Regulatory Tribunal (IPART) has recognised that retailers are given insufficient time to respond to changes in network tariffs and is preparing a rule change that addresses the issue in the National Electricity Rules.[2] IPART has recognised that the problem also occurs in gas distribution; however under the Gas Rules the details of tariff variation notice periods are contained in the Access Arrangement of each entity and so must be addressed on a case-by-case basis. IPART intends to engage with the AER on this issue with respect to New South Wales gas distribution.

We concur with IPART and believe that consistency across the jurisdictions is desirable. To this end, we support the AER's decision to adopt a 50 business day requirement like Envestra currently meets in Queensland and South Australia. We question Envestra's assertion regarding the considerable administrative burden created by the requirement to re-submit with updated CPI figures, given that CPI is only one variable and not one that is subject to unpredictable variations. In relation to Multinet's concern with respect to NGERS reporting we note that Envestra did not raise this concern and is already reporting under a 50 day requirement in both South Australia and Queensland and so might have some insight about how these obligations can better be managed. In response to SP Ausnet's argument that retailers will be required to notify retail prices based on draft network tariffs, we note that in Victoria's deregulated environment retailers can delay their retail price increase to allow more time to examine network outcomes, but the longer the lag between the network price increase and the retail price increase the greater the revenue risk faced by retailers, and ultimately the higher the retail price increase required to recoup the network element. Lastly, in relation to SP Ausnet's concern that it will be required to notify on both gas and electricity prices at the same time we would highlight that dual-fuel retailers face the same requirement and this is a feature of a diversified business model.

Terms and conditions

Multinet, SP Ausnet[3]

Clauses 4.4(c), 4.7(c)

Origin accepts that clause 4.4(c) cannot operate reciprocally, since only the DNSP is capable of interrupting the delivery of gas through the distribution system.

However, Origin would highlight that while users are responsible for the quality of gas *injected* into the distribution system at receipt points, they are not the only party capable of introducing impurities into a distribution network. DNSPs can introduce impurities with the result that gas no longer meets the specification. Water is a primary example of an impurity that can be introduced by a DNSP. We wish to bring this point

[2] IPART, *IPART's proposed changes to National Electricity Rules and National Gas Rules Energy—Consultation Paper*, August 2012

[3] Multinet and SP Ausnet's terms are effectively equivalent.

generally to the attention of the AER in the context of regulating liabilities and responsibilities for impurities introduced into gas distribution systems. This fact also strengthens the case for an amendment to 4.4(c) whereby DNSPs must notify users when they become aware of impurities in the network; an amendment proposed by retailers, endorsed by the AER and subsequently adopted by Multinet.[4]

Origin also supports amendments to 4.7(c) such that users are only responsible for ensuring that gas introduced to their network on their behalf meets the specification, rather than gas introduced on behalf of other users. Equally, users should only need to meet the specification, and not other undefined criteria.

Clauses 7.3(d), 7.3(e), 8.2, 9.1(j), 13.3(b)(8)

In relation to the above clauses queried by Origin the AER has determined that these matters are best left to commercial negotiation between the parties. The AER reached a similar conclusion about a number of clauses queried by other retailers. We question whether this is a workable approach to the regulation of monopoly assets.

We understand that the AER is seeking to move to a more collaborative approach to the negotiation of terms and support greater collaboration in principle. We welcome in particular:

- the AER's finding that nothing in the rules precludes a distributor from negotiating terms with individual retailers that differ from the overall access arrangement. In Origin's experience distributors have at times asserted that the rules preclude negotiation of different terms, since this would create preferential access for one user, or would require retailer-specific rates.
- the workshops hosted by the AER that create an opportunity for retailers and distributors to reach agreement on terms and conditions where this is feasible.

Our in principle support for flexibility notwithstanding, we do not support an approach whereby the AER leaves significant terms (such as the details of terms for payment) up to negotiation between DNSPs and users where negotiation in the workshop has proven unsuccessful. If commercial negotiation was sufficient to resolve points of difference over haulage terms then the costly open access regime currently in place would be superfluous. On the contrary, the balance of interests between DNSPs and users is such that the DNSP can refuse an amendment and the user has no choice but to accept this. This leaves little scope for genuine negotiation. While a DNSP has from time to time conceded on minor points, it has little incentive to concede on any point of commercial significance, and perhaps cannot be expected to do so within the existing rules framework.

For these reasons, investigating differences of opinion between DNSPs and users about haulage terms and adjudicating on these remains a primary responsibility of the AER under the National Gas Law and Rules, in our view. Terms noted in the Draft Determination as left to commercial negotiation should be those where agreement has already been reached in the course of workshops.

Clause 13.5(c)

Origin notes the AER's comments that during discussions with Multinet, Multinet argued that there are circumstances where a retailer will be precluded from recovering revenue

[4] Multinet revision number

from its customers by the NERL or the NERR, where the retailer has not been negligent, but where the DNSP should still be permitted to recover this revenue from the retailer. Origin does not agree and cannot think of such circumstances. The example cited by Multinet (as reported in the AER's Draft Decision) was where a retailer chose not to bill a customer. Where a retailer chooses not to bill a customer the retailer is not thereby precluded from recovering that revenue under the NERL or the NERR (at least not until a considerable period of time has elapsed), so this is not one of these circumstances in Origin's view. We do not support amendments that would allow Multinet/SP Ausnet to recover revenue from retailers that retailers are precluded from recovering from their customers under the energy law and rules.

Clause 19.2

Origin supports the AER's amendment whereby the DNSP must seek approval from the network user before it changes the terms of the agreement over terms and conditions and acknowledges the amendment by Multinet/SP Ausnet in this respect.

Envestra

Clause 10.5

Retailers argued that Envestra should be required to provide the results of a meter test within a set timeframe, since meters are generally tested subject to a billing dispute and therefore have revenue implications. A period of 10 business days was proposed, rather than "as soon as practicable". The AER determined that "as soon as practicable" allowed for flexibility to prioritise activities, which would promote efficiency. In our view 10 business days provides adequate flexibility to prioritise activities. A task may not be considered 'practicable' if it is afforded less priority than all other tasks, and tasks that that are unnecessarily delayed do not encourage efficiency. We would recommend that the clause read "as soon as practicable and in any case within 10 business days."

Role of commercial negotiation

In reviewing retailers' comments on Envestra's proposed terms, the AER has determined that in broad variety of cases any differences are best resolved through commercial negotiation. Origin's concerns with this approach are outlined with respect to Multinet, above.

One pertinent example in relation to Envestra where this approach seems unsuitable is in relation to clause 33.6, covering indemnities. It has been Origin's experience that DNSPs frequently write liability clauses in their proposals that are one-sided and which would never be agreed through a normal commercial negotiation. This is not inherently unreasonable, since the NGL and NGR require DNSPs to propose their own terms and commercial interest dictates that they seek terms that best align with their interests. However, in this context, it is important that the regulator redress this imbalance where necessary. In relation to clause 33.6 the AER appears to recognise that some amendment may be helpful, but leaves the outcome this to commercial negotiation. This is inadequate, in our view, and we request the AER to reconsider adopting this approach in relation to terms that are of significant commercial interest to both parties.

Should you have any questions in relation to the above submission, please contact me on (03) 9652 5555 in the first instance.

Yours Sincerely

[SIGNED]

Steven Macmillan
Regulatory Manager