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Mr John Mackay

Australian Energy Market Commission

PO Box A2449

Sydney South NSW 1235

4 February 2019

Dear John,

GRC0048 National gas amendment (regulation of covered pipelines) rule 2019

AGL Energy (AGL) welcomes the opportunity to comment on the Australian Energy Market Commission (AEMC) Draft rule determination (draft rule) on amendments to the National Gas Rules (Rules) for the regulation of covered pipelines.

AGL broadly supports the proposed amendments and they offer promise that the respective negotiating position of asset owners and users will be better balanced once implemented. There are some areas where we think the draft rule could go further, particularly the treatment of extensions, standardising terms and conditions of access, and a clawback mechanism where approved capital expenditure is not spent based on that approval. These views and others are outlined below.

Extensions and expansions

As noted in our submissions to the AEMC's Review into the scope of economic regulation applied to covered pipelines (Review), the Rules are presently weighted in favour of asset owners, giving them discretion to treat an extension or expansion as part of a covered pipeline. Accordingly, AGL supports reducing the ability for service providers to exercise market power by removing this discretion, as the draft rule does in respect of expansions.

Additionally, we appreciate the AEMC's finding that the pipeline and the extension may have different degrees of market power, but we still consider that a service provider's discretion should also be limited for the treatment of extensions.

The draft rule provides that in the case of full regulation, a new extension may be included in an access arrangement if sought by the service provider, or if a successful coverage application is made. In AGL's view, the default position should be that the extension is covered by the access arrangement, unless the regulator determines that coverage is not required.

It is more appropriate for the regulator to consider whether there are sufficient constraints on a service provider's ability to exercise market power. Further, considering the treatment of an extension at the access arrangement stage appears more efficient than going through a coverage application process after the fact.

Reference services

AGL supports the new draft rule 47A, which outlines how pipeline services are to be described, details the factors to be considered in determining whether a pipeline service is a reference service, and improves the access arrangement review process by specifying a reference service proposal process and placing greater emphasis on timely stakeholder consultation. We agree that these amendments are likely to aid the regulator in setting more efficient reference tariffs.

Access arrangements

A key concern when dealing with a monopoly asset owner is the limited ability to negotiate. Under the Rules, this issue has been exacerbated by insufficient regulatory focus on the non-tariff terms and conditions of access arrangements, resulting in risks being disproportionately borne by users.

AGL supports the draft rule to explicitly direct regulators to have regard to risk sharing arrangements in an access arrangement. We anticipate this will go some way to redressing the imbalance between asset owners and users. In addition, AGL considers that some standardisation of non-tariff terms and conditions and a reference tariff setting mechanism will reduce regulatory costs over time.

The draft rule proposes to extend the access arrangement revision period from 15 to 30 days to afford service providers more time to consult with stakeholders and the regulator when responding to the regulator's draft decision. AGL supports this proposal, as part of a series of measures in the draft rule that are intended to facilitate greater stakeholder engagement throughout the access arrangement assessment process.

Finally, AGL supports the proposal to remove the limited and no discretion regulatory framework. It is our view that the current framework, which limits the regulator's discretion in some cases, severely restricts the regulator's ability to respond to changing market conditions and prevents the establishment of a standardised approach to economic regulation across the sector.

Determining efficient costs

AGL agrees with the AEMC's assertion that determining efficient costs is necessary to setting efficient reference tariffs. Proposed capital expenditure forms a significant part of these costs and can be subject to gaming. Where capital expenditure is approved for a specific project, but the service provider either does not go ahead with the project, or substitutes a lower cost solution, a clawback mechanism should apply, to ensure the aims of the National Gas Objective are met. Absent such a mechanism, it is difficult to see how costs can truly be efficient and if costs are not efficient, neither are the reference tariffs they inform. Just as users should not have to pay for services they do not use, they should not have to fund projects that may not go ahead, or not cost as much as first anticipated.

Negotiation

We support the proposed improvements to the dispute resolution process in the draft rule that clarify the arbitration trigger. Nevertheless, AGL maintains that the need for arbitration will be reduced where the range of services that pipelines provide are at a reasonable cost, and the terms and conditions of access are fair to both asset owners and users. AGL is hopefully that the package of reforms set out in the draft rule, if implemented, will drive the necessary fairer outcomes.

If you have any queries about this submission, please contact Liz Gharghori on (03) 8633 6723 or lgharghori@agl.com.au.

Yours sincerely,

Chris Streets

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