



Mr John Pierce
Mr Neville Henderson
Dr Brian Spalding
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Dear Commissioners,

Reference: GRC0012

A: Introduction

TRUenergy welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC) "Consultation Paper" that considers the National Gas Amendment (reference service and rebateable service definitions) Rule 2011.

The Australian Energy Regulator (AER) Rule proposal sets out to change the definitions to the terms "reference service" and "rebateable service" in the National Gas Rules (NGR). Principally, the Rule proposal aims to ensure that users of the transmission system only pay for the efficient costs of using that system. The proposed changes to the NGR will provide the AER with the discretion to treat AMDQ cc as a "rebateable service". By doing this, the AER can act to ensure that users of the Declared Transmission System (DTS) do not effectively pay for transportation pipeline services twice in the 2013-2017 access arrangement (AA) period.

The AER Rule proposal makes it clear that APA has already contracted AMDQ cc with a significant part of the market for the 2013-17 AA period. Were the AEMC to reject this proposal and prevent the AER from having the discretion to treat AMDQ cc as a "rebateable service" in the next AA period, then users of the DTS may end up paying for transportation pipeline services twice without being rebated. The situation that has currently occurred on the DTS during this current AA period would be repeated, which we consider to be unacceptable.

TRUenergy submits that the relevant aspect of the National Gas Objective (NGO) to be "efficient pricing" of gas services for this Rule change request. We consider that paying for transportation pipeline services twice without being rebated will result in APA over-recovering its regulated revenue on the DTS. We submit that this outcome is inconsistent with the National Gas Objective (NGO). As a result, we support this Rule proposal.

B: TRUenergy response to Key questions

TRUenergy submits the following responses to the questions raised in the Consultation Paper prepared by the AEMC staffers on this Rule proposal.

1. Do you agree that the problem identified by the Proponent has the potential to limit the regulator's ability to set an efficient tariff? If so, why?

TRUenergy agrees that the problem identified by the Proponent has the potential to limit the AER's ability to set an efficient tariff.

We consider that clause 76 of the NGR determines the total annual revenue that a monopoly service provider can earn in any calendar year. Under this clause, a monopoly service provider is entitled to earn a regulated revenue amount which is determined by the AER under the building block methodology. The building block revenue is then converted into tariffs which are then recovered by different customer classes who use the DTS.

A monopoly service provider recovers its "building block" revenue from the following key components under clause 76 of the NGR that include:

- A return on the projected capital base for the year
- Depreciation on the projected capital base of any year.
- If applicable- the estimated cost of corporate income tax for the year
- Increments or decrements for the resulting from the operation of the incentive mechanism to encourage gains in efficiency
- A forecast of operating expenditure for the year

We believe that when users pay for transportation pipeline services twice by purchasing AMDQ cc without being rebated that this permits APA to recover revenue in excess of the efficient level designated under the building block methodology in clause 76 of the NGR. Inevitably, this results in in-efficient tariff pricing outcomes which are contrary to the NGO.

We support this Rule proposal on the basis that it will give the AER the discretion to treat AMDQ cc as a "rebateable service". The AER is then given the power to prevent users from effectively paying for transportation pipeline services twice without being rebated. As a result of this, APA will not be able to recover any revenue in excess of the building block revenue designated under clause 76 of the NGR. Consequently, tariffs will be set at efficient levels.

2. Is the Rule change proposal likely to effectively address the problem identified by the proponent?

TRUenergy agrees that the Rule proposal is likely to address the problem identified by the proponent.

The Rule change proposal amends some key definitions in the NGR that gives the AER the discretion to treat AMDQ cc as a "rebateable service". This will prevent users from effectively paying for transportation pipeline services twice without being rebated.

We consider that the Rule change proposal will address the problem identified by the AER achieve in two ways.

- a) The changes to the definition of a "reference service" will give the AER the discretion on whether to treat AMDQ cc as a "rebateable service". Currently, AMDQ cc would be treated as a reference service under the NGR. Hence, under the current arrangements, the AER would not have the option to treat AMDQ cc as a "rebateable service".

- b) Removing the requirement that the market for a rebateable service be substantially different to the market for reference services will ensure that the AER can treat AMDQ cc as a rebateable service.

Overall, we consider that the Rule proposal will address the problem identified. Therefore, we support the Rule proposal.

3. Is the Rule change proposal likely to contribute to the achievement of the NGO, particularly in respect of promoting efficient investment in and use of pipeline services? If so, on what basis?

TRUenergy submits this Rule change proposal is likely to contribute to the NGO.

We believe that the relevant aspect of the National Gas Objective (NGO) to be “efficient pricing” of gas services for this Rule change request.

The AER considers that paying for transportation pipeline services twice without being rebated will impact on its ability to set an “efficient” tariff. The proposed Rule change provides the AER with the discretion to treat AMDQ cc as a “rebateable service” and would prevent users from effectively paying for transportation pipeline services twice. On the whole, this will ensure that APA does not recover revenue in excess of the efficient level designated under the building block methodology in clause 76 of the NGR and will lead to more efficient tariff outcomes.

We consider that this outcome to be consistent with the NGO.

4. Is there a more preferable Rule that is likely to better contribute to the achievement of the NGO, particularly in respect of promoting efficient investment in and use of pipeline services?

TRUenergy submits there is a more preferable Rule change that is likely to contribute to the achievement of the NGO.

We consider that the proposed Rule change be amended to:

- Provide a rebate in full¹ where users have effectively paid for transportation pipeline services twice
- Return the full rebate to users who have paid for AMDQ cc on a pro-rata basis.

Proposal for a full rebate

TRUenergy considers that this Rule proposal should provide for users of the DTS that have paid for AMDQ cc to be refunded in full – dollar for dollar – where the AER is required to exercise its discretion to regulate AMDQ cc as a “rebateable service” in the next AA. Unfortunately, this Rule proposal does not deal with the question of what proportion of every dollar of AMDQ cc that is clawed back by the AER where it exercises its discretion to regulate AMDQ cc as a “rebateable service” in the next AA.

We submit that APA receives a distinct benefit when users of the transportation system commit to buy AMDQ cc instead of buying transmission pipeline services through a reference tariff. We consider by purchasing transmission pipeline services through AMDQ cc - which in effect amounts to a take or pay contract – that we reduce the throughput risk that APA are currently exposed to by being regulated under an average revenue yield. In addition to the benefit discussed above APA may also derive a benefit where, on a peak day, a market participant injects a quantity in excess of the SWP AMDQ Credits it holds. In this case APA would receive further revenue equivalent to each participant’s excess injections multiplied by the

¹ Users would receive a rebate dollar for dollar for any payments of AMDQ cc when the AER exercises its discretion to regulate AMDQ cc as a “rebateable service” and recovers any revenue from this in the next AA.

peak injection charge. In return for providing this benefit, we suggest that our request for a rebate in full is reasonable.

Whilst we have not yet considered the necessary adjustments to the NGR to ensure that users of the DTS who pay for AMDQ cc are fully rebated for every dollar that the AER recovers as a “rebateable service” from AMDQ cc, we would like to see this happen. Were the AEMC to agree to this suggestion, it would guarantee that APA never recovers monopoly rents in excess of the “efficient cost” of providing the regulated service under the building block methodology in clause 76 of the NGR.

We consider that this preferred Rule proposal would be consistent with the National Gas Objective (NGO) which we suggest to be to be “efficient pricing” of gas services for this Rule change request.

Proposal for full rebate to be returned to users of the DTS who have paid for AMDQ cc on a pro-rata basis

TRUenergy considers that this Rule proposal should provide for users of the DTS that have paid for AMDQ cc to be refunded in full based on their pro rata share of the AMDQ cc where the AER has exercised its discretion to regulate AMDQ cc as a “rebateable service” in the next AA.

We believe that it is important for the Rule proposal to outline how those rebateable funds will be returned to the market if the AER decides to regulate them as a “rebateable service” in the next AA. In this regard, we consider that the most effective way to deal with this issue is to return those funds to those users that have paid for AMDQ cc on a pro-rata basis.

We request that the AEMC consider the hypothetical example of a pipeline with a capacity to ship 300TJ of gas per day. In this example, Origin, AGL & TRUenergy have all paid for 50 TJ per day of AMDQ cc to get access to the pipeline. The remaining 150 TJ per day would be available to users of the pipeline through a reference tariff. If the AER decided that it was necessary to regulate AMDQ cc as a “rebateable service” because APA was over-recovering on its regulated revenue on this pipeline, then we consider that all three parties should get a rebate which is equal to one third of any revenue that the AER claws back on that pipeline.

We consider that this outcome would be consistent with the National Gas Objective (NGO) which we consider to be to be “efficient pricing” of gas services for this Rule change request.

5. Is the proposed wording of the Rule change expressed clearly enough to give the sufficient meaning as to what constitutes a reference service and a rebateable service?

TRUenergy considers the Rule change is expressed clearly enough to give sufficient meaning as to what constitutes a “reference service” and a “rebateable service”.

In this regard, we do not offer any suggestions that might improve the wording of the proposed Rule changes.

Overall, we consider the rule change as drafted achieves its goal.

6. Are there other consequences of the Rule change (intentional or unintentional) that have not been identified by the Proponent?

TRUenergy considers that there may be some unintentional consequences of this Rule change that have not been identified by the Proponent.

We understand that by making the changes to the definitions of key terms like the “reference services” and “rebateable services” in the NGR that this rule change may have wider implications. However, having considered this issue carefully, we have failed to isolate any particular negative impacts that this Rule change might have. So whilst this Rule may have some wider unintentional implications, we have been

unable to find any clear facts to ascertain what these are. In other words, our fears are just speculation. On this basis, we see no real reason why this Rule change should not go ahead.

7. Is the level of regulatory discretion that the Rule change proposal provides for appropriate?

TRUenergy considers that the level of regulatory discretion that this Rule change proposal provides is appropriate.

We believe that providing too much regulatory discretion in any Rule change proposal may not be appropriate under "normal circumstances". However, we are yet to discover any seriously negative implications to the level of regulatory discretion awarded to the AER in this Rule change.

We consider that the level of regulatory discretion awarded to the as part of this Rule proposal would be specifically aimed at limiting APA from charging for transportation pipeline services twice. In this regard, we consider that this power will prevent APA from charging for transportation pipeline services twice in the subsequent AA. Therefore, in this case, we are comfortable with the level of regulatory discretion in this proposal.

8. How may the Rule change impact on regulated pipelines other than those identified in the Rule change request?

TRUenergy operates in the wholesale and retail gas markets in eastern Australia. Currently, we do not own or operate a gas transmission pipeline.

On this basis, we are probably not best placed to answer this question.

C: Conclusion

TRUenergy supports the AER Rule proposal sets out to change the definitions to the terms "reference service" and "rebateable service" in the National Gas Rules (NGR).

The Rule proposal aims to ensure that users of the DTS only pay for the efficient costs of using that system.

The AER's proposed changes to these definitions in the NGR give the AER the discretion to treat AMDQ cc as a "rebateable service". By doing this, the AER can act to ensure that users of the DTS do not effectively pay for transportation pipeline services twice in the 2013-2017 AA period.

We submit that the relevant aspect of the National Gas Objective (NGO) to be "efficient pricing" of gas services for this Rule change request. We consider that paying for transportation pipeline services twice without being rebated means APA will over recover its regulated revenue under clause 76 of the NGR. We submit that this outcome is inconsistent with the NGO. As a result, we support the Rule proposal that has been submitted by the AER.

We thank the AEMC for its consideration of the issues that we have raised in relation to this Rule change. For any questions regarding this submission, please contact Mr. Con Noutso - Regulatory Manager at TRUenergy on Tel: 03 8628 1240

Regards



Con Noutso
Regulatory Manager
TRUenergy