



3 November 2011

John Pierce
Chairman
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Dear Mr Pierce

GRC0012 - Reference Service and Rebateable Service Definitions

Origin Energy (Origin) welcomes the opportunity to comment on the Australian Energy Regulator's (AER's) Rule Change proposal in relation to the definitions of reference service and rebateable service.

We understand the intent of this Rule change is to address a particular issue that the AER anticipates arising in APA Group's (APA's) upcoming 2013-17 Access Arrangement for the Victorian Transmission System. Specifically, the AER is concerned that APA is currently able to earn additional revenues above its regulated return from the provision of both forward haul reference services and Authorised Maximum Daily Quantity Credit Certificates (AMDQ CC) on the same pipeline. By amending the reference service and rebateable service definitions, the AER would have the discretion to treat AMDQ CC as a rebateable service in APA's upcoming Access Arrangement.

Support principle of proposed change

Origin supports the principle that the users of a regulated service should only pay for the efficient costs of using that service. Regulated asset owners should be limited in their ability to recover more than their regulated return for providing a regulated service. This principle promotes the National Gas Objective by allowing for the efficient pricing of gas services in the long-term interests of consumers. As a result, we support effectively removing any sort of double recovery of the capital costs of a regulated pipeline.

Review potential unintended consequences

While Origin supports the principle of the Rule change, there are some key issues and implications for the AEMC to consider in assessing the solution proposed by the AER. We are conscious that the proposed solution may have unintended consequences for participants and the market as a whole, which could reduce its perceived benefits. These challenges are not in themselves a reason not to make the proposed Rule, rather they are issues to address when determining whether there may be a preferred Rule that more efficiently delivers the desired outcome.

Controlled regulatory discretion

Origin notes that the Rule change proposal seeks to increase the level of discretion bestowed to the AER in its assessment of Access Arrangements. While we consider some discretion may be appropriate, regulatory certainty and transparency are important for both regulated asset owners and other market participants. Unbounded discretion, like that proposed in the Rule change, can lead to uncertain and unpredictable outcomes. It is essential that any Rule change places appropriate limits around the level of discretion to ensure that market participants have certainty and clarity around the AER's decision-making criteria for reference and rebateable services.

Unintended applications

Linked to the level of AER discretion is the issue of unintended applications of the proposed Rule. This Rule change is intended to address the specific issue of AMDQ CC. We note, however, that the proposed change could have wider consequences for other



reference and rebateable services such as backhaul, park-and-learn and interruptible services. It is essential that the AEMC assess the full range of potential consequences of the proposed change beyond the intended scope to ensure no unintended applications arise. As an example, a Rule change that created a stream of rebates could substantially increase the operational complexity and processing for shippers and retailers, reducing the original benefits of the proposed solution. It is important to be clear on what services the AER is able to make decisions on to reduce regulatory creep.

Maintain commercial value of AMDQ CC

In curtailing the ability to earn revenues in excess of their regulated returns, the AEMC needs to avoid also consequently muting the incentives for asset owners to provide AMDQ CC and invest in future capacity expansions. Holders of AMDQ CC are afforded certain preferential rights when a network is constrained. As a result, they are willing to pay a premium for AMDQ CC as they see value in the risk mitigation measure provided by this preferential priority. AMDQ CC is a crucial commercial instrument as this premium paid by market participants gives a signal of the cost of network capacity constraints, which signals to asset owners of the need to invest in capacity expansions. The challenge is to find the balance between maintaining the regulated asset owner's incentives to provide AMDQ CC or augment its pipeline but in a way that constrains them from charging an excessive and uncompetitive premium.

Improved transparent processes

Scrutinising the regulatory treatment of AMDQ CC tariffs at this time represents an opportunity to examine the regulatory framework for AMDQ CC more broadly. The current process for allocating AMDQ CC is through an auction process administered by APA. Origin supports the allocation of AMDQ CC through an auction as the process provides a market mechanism that reflects the value of AMDQ CC to shippers.

However, there is a lack of transparency and detail around the current auction process. For example, there are no prescribed details about the timeframes for when an auction should be held or for how long the tender process should run. For the recent AMDQ CC auction for the South West Pipeline, little time was given to shippers to undertake necessary internal analyses and gain the relevant approvals once notice was given of the start of the tender process: prospective shippers had ten working days to lodge bids for existing certificates and once existing certificates were allocated, they had a further five working days to lodge an expression of interest for new certificates for the proposed expansion. Providing market participants with greater certainty around the auction process can improve the quality of the auction, resulting in more efficient outcomes.

We propose that the National Gas Rules require APA to develop and publish an auction process guideline, which could be reviewed by the AER or consulted on with industry prior to publication. In the National Electricity Market, the National Electricity Rules (NER clause 3.18.3) require AEMO to publish Auction Rules for running its Settlement Residue Auction. The NER set out the minimum requirements for the Auction Rules. Any revisions to Auction Rules are subject to public consultation (Rules Consultation Process NER rule 8.9). In lieu of public consultation, the AER could review and approve an auction guideline prepared by APA. We are happy to assist the AEMC in its consideration of this proposal.

Should you have any questions or would like to discuss this submission further, please contact Hannah Heath (Manager, Regulatory Policy) on (02) 8345 5500.

Regards,

A handwritten signature in blue ink, appearing to read "Phil Moody", written in a cursive style.

Phil Moody
Group Manager - Change, Analysis & Risk Services
Energy Risk Management