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APA submission responding to draft *National Gas Amendment (Regulation of covered pipelines) Rule 2019*

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APA Group (APA), a major owner and operator of gas pipelines across Australia, will be affected by the changes to the National Gas Rules (NGR) which are intended to be implemented by *Draft National Gas Amendment (Regulation of covered pipelines) Rule 2019*. APA appreciates the opportunity, now provided by the Australian Energy Market Commission (AEMC), to comment on the rule changes.

Revenue equalisation

Rule 92(3) is to be amended to clarify that, when there is an interval of delay, the equalisation of net present values is to result in a service provider being no better off, or no worse off, as a result of the delay.

Application of rule 92(3) to the Goldfields Gas Pipeline has resulted in a proposed increase in the reference tariff of about 26%. This increase is not driven by an increase in costs, but by the unwinding of the adjustment for the previous interval of delay. If there had been no interval of delay, the proposed tariff would have been around 6% lower than the reference tariff which would have applied during the previous access arrangement period.

For pipeline customers who prefer relative stability in the tariffs they pay, avoidance of instability caused by delays is likely to be important.

To avoid the large changes in reference tariffs brought about solely by intervals of delay, rule 13, which imposes an absolute limit on the time for a decision on a full access arrangement proposal, should not be removed.

In 2008, rule 13 was included in version 1 of the NGR because of concerns by policymakers, and others, that regulatory decision making was taking too long. Its removal is now "packaged" with the introduction of new rule 47A. However, the two rules are largely unrelated, and no reason has been given for the removal of rule 13.

New rule 47A effectively extends the time for decision making on access arrangement revisions, by bringing forward a part of the process to a prior review of reference services. That, and the promulgation of the binding rate of return instrument, should dramatically reduce the time required for decisions on access arrangement revision proposals.

Rule 13 should not now be removed. It should be retained and strengthened so that it has effect.

Requests for access

Negotiations between a prospective user and a pipeline service provider do not usually commence, in the way assumed in rule 112(1), with a formal request for access. A prospective user will typically make a series of preliminary inquiries in which its requirements for gas transportation are progressively "firmed up". (This firming up of requirements will also be influenced by the user's options for gas supply, and by development of the user's own operations using gas.)

When a prospective user is a new user, these preliminary inquiries proceed over an extended period, which may be as long as several years.

Rule 112 is not particularly accommodative of this preliminary exploration of options over an extended period. The amendments will make it even less so.

Amended rule 112 will establish a date for the initiation of arbitration. But it will do so by largely ignoring the process through which access negotiations actually proceed. The risk is that neither the prospective shipper, nor the service provider, will be satisfied with the outcome delivered by the amended rule. Arbitration will not be the credible threat intended, but will become the norm as the only way in which the parties, locked in by the amended rules, can move forward.

Rules 559 to 561, which apply to non-scheme pipelines, provide a more flexible model for access requests, albeit one which still provides specific points at which arbitration can be initiated.

Rule 559(2) recognises preliminary inquiries, and effectively distinguishes these from an access request (for which written notice must be provided in accordance with rule 559(3))). Rules 559(4) and 559(5) establish time periods for response to an access request similar to those in new rule 112(3). Rules 559(6) and 559(7) provide greater flexibility in the matter of investigations than new rule 112(6). Rule 559(8), which permits amendment of the details of an access request, provides flexibility for further "firming up" even after a formal access request has been submitted.

Rule 560(2) provides additional flexibility by allowing the service provider and the prospective user to agree the time by which the service provider must make an access offer in response to an access request. The rule also sets reasonable defaults in the event of no time being agreed. Options exploration during the process of securing access is recognised in rule 561, which explicitly allows the prospective user to request access negotiations (rule 561(1)), and to conclude those negotiations at any time (rule 561(7)).

The intended amendments to rule 112 should not be made. If rule 112 is to be amended, the amendments should follow the model of rules 559 to 561 of Part 23 of the NGR.

Proposed minor drafting changes

Schedule 1, [44], Rule 72: new rule 75B addresses the categories of information to be included in the financial models which may be prepared in accordance with new rule 75A; it does not the address the information produced when a model is used. New rule 72(3) would be clarified by deleting the words "be provided in accordance with the requirements of rule 75B" and replacing them with "include, where relevant, information derived using the models prepared and published by the AER under rule 75A."

Schedule 1, [45], Rule 73: rule 73(3) is a requirement for consistency in calculations using financial information. That requirement for consistency should extend to any financial model prepared and

published by the AER under rule 75A. No amendment to subrule 73(3) is necessary. Indeed, the amendment suggests that the consistency requirement of rule 73(3) might not apply in the context of financial models prepared and published by the AER.

Schedule 1, [48], Rule 77(2): new clause c1(ii) should refer to "capital expenditure on the extension since construction of the extension" (and not to "capital expenditure since construction of the extension"). Similarly, new clause c1(iii) should refer to "depreciation of the extension since the date the extension was commissioned" (and not to "depreciation since the date the extension was commissioned").

Schedule 1, [49], Rule 77(3): changes to wording, similar to those proposed above for new clause c1 of rule 77(2) should be adopted in rule 77(3)(b1).

Schedule 1, [66], Rule 100: new rule 100(2) will require that, when deciding whether the non-tariff terms and conditions of an access arrangement are appropriate, the AER "must have regard to the risk sharing arrangements implicit in the reference tariff". This seems to "place the cart before the horse". The risk sharing effected by the access arrangement will, to a greater or lesser extent, determine the capital and operating costs forecast to be incurred by the service provider. These costs are then to be taken into account in the setting of reference tariffs. When deciding on the non-tariff terms and conditions, the AER should have regard to the risk sharing arrangements "implicit in the access arrangement".

Schedule 1, [75], Rule 112: clause (a) of subrule 112(3) should be reworded: "within 5 business days after the access request date, acknowledge receipt of the request." The service provider's response to the request then follows in accordance with the remainder of rule 112.

APA would be pleased to elaborate on the views in this submission.

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