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Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2000

By electronic lodgment: www.aemc.gov.au

Review into extending the regulatory framework to hydrogen and renewable gases – draft report (EM00042)

Alinta Energy welcomes the opportunity to respond to the Australian Energy Market Commission's draft report on its review into extending the National Gas Rules and National Energy Retail Rules to hydrogen and renewable gases.

Alinta Energy, as an active investor in energy markets across Australia with an owned and contracted generation portfolio of over 3,300MW and more than one million electricity and gas customers, has a strong interest in the outcome of the review and the regulation of hydrogen and renewable gases.

Alinta Energy appreciates that while the existing regulatory framework is largely fit for purpose for the emerging renewable gas sector, some changes are required to provide certainty to proponents and service providers, competitors and consumers. As such, we are generally supportive of the Commission's recommendations set out in its draft report and the advice provided by the Australian Energy Regulator in its identification of gaps that the NGR and NERR may contain.

Noting this, we consider that care needs to be taken when designing the minimum ring-fencing obligations to ensure that they remain fit for purpose and the cost of compliance with the relevant requirement for the service provider and its associates would not outweigh the public benefit resulting from compliance.

Recommendations relating to the Short-Term Trading Market will add a range of obligations to natural gas equivalent proponents. However, we support the Commission's emphasis on consistency and streamlining arrangements for NGE and renewable gases with those that currently apply to natural gas.

While the consultation and work relating to extending the existing gas law and rules is focused on hydrogen and renewable gases, we understand any changes to the existing framework will apply to all covered gases, including natural gas. The regulatory burden on peripheral non-scheme and exempt assets supplying natural gas should be minimised to the extent possible. The review is aimed at managing the uncertainty associated with the development of the renewable gases sector, while simultaneously supporting trials. This objective should not increase the regulatory costs to the conventional gas industry.

We respond to the issues raised in the review consultation paper in Attachments A and B below and welcome further discussion and engagement with the Commission. Please contact David Calder (David.Calder@alintaenergy.com.au) in the first instance

Yours sincerely

Jacinda Papps
Manager, National Wholesale Regulation

Attachment A: Draft Recommendations

Chapter	Section	Sub-topic	Draft recommendation	Comments
3. Economic regulation of pipelines	3.1 Access to pipelines by suppliers of covered gases	Interconnection Rules	**(1) Clarify the right to connect a pipeline and connection cost recovery for service providers** Amend the interconnection rules in the NGR to: • also state that a person will only have a right to connect a facility to a pipeline where the connection is consistent with the safe and reliable supply of gas to end-users • enable a service provider (where it has developed an interconnection or part of an interconnection), to recover as part of its interconnection fee the costs of metering and monitoring the quality of the gas injected by the connecting facility that are directly attributable to the interconnection.	Support.
		Information to facilitate connections	**(2) Introduce a register of covered gas supplier pipeline connections** Amend the prescribed transparency information provisions in the NGR to introduce a requirement that service providers publish a register of covered gas supply facilities connected to the pipeline including the location of those facilities.	We support this draft recommendation as it involves relatively low cost and will support investment decisions and transparency.
		Curtailment	**(3) Require service providers to publish a supplier related curtailment methodology.** Amend the user access guide provisions in the NGR to require all service providers to publish a supplier related curtailment methodology as part of their user access guide. **(4) Require scheme pipeline service providers to include a supplier related curtailment methodology in their access arrangement** Amend the access arrangement provisions in the NGR to require scheme pipeline service providers to include a supplier related curtailment methodology as part of an access arrangement.	We do not think publication is necessary where single non-scheme pipelines have a single user or no more than two users where curtailment is managed contractually and no further third-party access is likely to emerge.
	3.2 Information on the type of gas a pipeline is transporting or is proposing to transport		**(5) Introduce reporting obligations on the gas a pipeline can transport and any proposed changes to this.** Amend the NGR to:	Support.

Chapter	Section	Sub-topic	Draft recommendation	Comments
			1. Require service providers to publish the following information in their user access guides: a. the type of gas a pipeline (or part of a pipeline) is licensed to transport b. any limits on blending that may apply to the pipeline (or part of a pipeline) c. the following if the service provider intends to conduct a trial, or to transition the pipeline (or part of a pipeline) to another gas: i. the type of gas the service provider intends to trial or transition to ii. when the trial or transition is expected to occur iii. if the trial or transition will apply to the whole pipeline, or a part of the pipeline iv. whether approval for the trial or transition has been obtained from the jurisdictional technical regulator and, in the case of a transition, if the transition has been mandated by a jurisdiction. 2. Require scheme pipeline service providers to include: a. the information referred to in (a) and (b) above in their access arrangement b. the information referred to in (c) above in their access arrangement 3. Specify the information referred to in (a)-(c) above as information to be included in the gas pipeline register.	
	3.3 Regulatory treatment of government mandated transitions to transporting another covered gas		**(6) Require arbitrators to consider regulatory obligations and requirements in non-scheme pipeline access disputes** Amend the arbitration pricing principles applying to non-scheme pipelines in new Part 12 of the NGR to require arbitrators to consider any regulatory obligations or requirements when arbitrating non-scheme pipeline access disputes.	Support.
	3.5 Regulatory treatment of government grants		**(7) Require government grants and concessional finance to be treated as capital contributions.** Amend rule 82 of the NGR to:	Support.

Chapter	Section	Sub-topic	Draft recommendation	Comments
	and concessional finance		• require the regulator to treat government grants in the same manner as user contributions under this rule • provide the regulator with some discretion to treat concessional finance in the same manner as user capital contributions and government grants under this rule.	
4. Ring fencing framework			See responses to consultation questions in Attachment B.	
5. Market transparency mechanisms	5.1 Extending the transparency mechanisms to other covered gases		The five transparency mechanisms are to be extended to constituent gases	Generally support – impact of MTM and STTM arrangements may present some burden on NGE proponents.
	5.2 Amendments to the GSOO		**(8) Extend the GSOO to other covered gases** Amend Part 15D of the NGR to extend its application to other covered gases by: • specifying the gases to be covered by the GSOO (i.e. all covered gases) • excluding remote BB facilities from the scope of the GSOO • replacing the term 'natural gas industry' with 'covered gas industry' in the GSOO survey rules to align with the extended changes to the NGL • amending the GSOO content rules and associated definitions to: o extend their application to the facilities (other than remote BB facilities) involved in the supply of covered gases so that the GSOO includes information for the following, comparable to the information included for natural gas: ▪ primary gas production ▪ transmission pipelines carrying an other covered gas ▪ storage facilities for other covered gases o require the GSOO to include the following information on blend processing facilities: ▪ blend production forecasts	Support. However, we note the information requirements, while likely in the long-term interests of consumers and a competitive market for covered gases, will impose a material reporting burden in the early stages of the renewable gas industry development.

Chapter	Section	Sub-topic	Draft recommendation	Comments
			▪ annual and peak day capacity of, and constraints on, blend processing facilities ▪ committed and proposed, new or expanded blend processing facilities o allow, but not require, the GSOO to include information on the feedstock used to create primary gases (excluding natural gas) such as biomethane suppliers of other covered gases and the factors that may affect the availability of that feedstock.	
			(9) Clarify that information from the GSOO survey can be used for the VGPR and vice versa Amend Parts 15D and 19 of the NGR to allow AEMO to use information for either purpose by: • amending the use and disclosure of GSOO survey information rule in Part 15D to allow AEMO to use any information it obtains through this survey for the purposes of the VGPR • including a comparable use and disclosure of VGPR information rule in Part 19 to allow AEMO to use any information it obtains for the VGPR for the purposes of the GSOO.	We support this in principle, on the basis that if a participant discloses information as part of the GSOO, this doesn't then have to be duplicated for the VGPR and vice versa; it is for AEMO to determine which information it wishes to use.
	5.3 Amendments to the VGPR		**(10) Enable AEMO to collect VGPR information from parties not registered in the DWGM** Amend Part 19 and Part 15B of the NGR to allow AEMO to collect information for the VGPR from persons that are not DWGM registered participants and require any information that AEMO intends to collect using this new power to be set out in the wholesale market procedures.	Support.
			(11) Extend the VGPR to other covered gases Amend Part 19 and 15B of the NGR to extend the VGPR to other covered gases by: • specifying the gases to be captured by Part 19 of the NGR (i.e. natural gas, processable gas and other covered gases) • to the extent not already achieved by the expanded definition of 'gas', amending rule 323 and associated definitions in rule 200 to:	Support.

Chapter	Section	Sub-topic	Draft recommendation	Comments
			○ extend their application to the facilities involved in the supply of other covered gases ○ require AEMO to take into account committed projects for new or additional blend processing facilities under rule 323(4) • to the extent not already achieved by the expanded definition of 'gas', amending rule 324 or associated definitions in rule 200 to require the following to provide information to AEMO for the VGPR comparable to the information provided for natural gas or processable gas from the following: ○ producers of an other covered gas ○ pipeline service providers for a pipeline carrying an other covered gas ○ storage facility operators for other covered gases • blend processing facility operators to provide AEMO with information on: ○ annual forecasts for the next five years and monthly forecasts for the next year ○ blend processing capacity ○ forecasts of the availability of equipment, details of any constraints and maintenance ○ blend processing facility projects (including expansions) • amending Part 15B to allow wholesale market procedures to deal with the provision of information for planning reviews under rule 323 including the specification of the persons, or classes of persons, who may be required to provide information.	
	5.4 Amendments to the Bulletin Board		**(12) Extend the bulletin board to other covered gases** Amend Part 18 to: • Replace the term 'Natural Gas Services Bulletin Board' with 'Gas Bulletin Board' and align this part with the extended scope of the Gas Bulletin Board under the NGL by replacing the terms 'natural gas services', 'natural gas industry' and 'natural gas industry facilities' with 'covered gas services', 'covered gas industry' and 'covered gas industry facilities'	Support.

Chapter	Section	Sub-topic	Draft recommendation	Comments
			• Extend the application of Part 18 to other covered gases by defining 'gas' to mean any covered gas and using the term 'gas' in place of 'natural gas'. This will result in reporting of information comparable to the information reported for natural gas on: o primary gas production o transmission pipelines carrying other covered gases o storage facilities for any covered gas o stand-alone compression facilities providing compression for other covered gases o large facilities using other covered gas o transactions relating to other covered gas • Accommodate blend processing facilities with a nameplate rating of 10 TJ/day or more by: o including these facilities as a new type of BB facility in rule 141 and excluding them from the definition of 'production facility' in rule 141 o recognising blend processing facilities in the definitions of 'daily capacity', 'reporting threshold' and 'nameplate rating' in rule 141 o amending Division 5 to set out the new reporting obligations that will apply to blend processing facilities which will include information on: ▪ the nameplate rating and facility information ▪ the daily quantity of gas withdrawn from a pipeline and injected into a pipeline ▪ short term capacity outlook and material intra-day changes ▪ medium term capacity outlook ▪ nominations and forecast use of facilities ▪ facility development projects ▪ the outlook for uncontracted capacity and shippers with firm capacity • Accommodate gas distribution pipelines with a nameplate rating of 10 TJ/day or more by:	

Chapter	Section	Sub-topic	Draft recommendation	Comments
			○ including these pipelines as a new type of BB facility in rule 141 ○ recognising distribution pipelines in the definitions of 'daily capacity', 'reporting threshold' and 'nameplate rating' • Amending Division 5 to set out the reporting obligations that will apply to BB distribution pipelines and BB transmission pipelines that carry a gas blend, which will include reporting on: ○ any blending cap that applies to the pipeline and the lowest, highest and average blending achieved in the last month ○ the number of times any covered gas supplier has been curtailed in the last month ○ the nameplate rating and receipt and/or delivery points at which facilities that inject into the pipeline are connected • Amend Part 15B to allow AEMO to provide guidance on the determination of nameplate ratings through the BB Procedures.	
	5.5 Amendments to the AER's gas reporting function		**(13) Extend the AER's gas price reporting function to other covered gases.** Amend Part 17 of the NGR to enable the AER to publish information on the prices and nonprice terms and conditions for other covered gases under gas supply agreements and gas swap agreements.	Support.
	5.6 Amendments to the non-pipeline infrastructure access reporting obligations		**(14) Extend the non-pipeline infrastructure access reporting obligations to other covered gases** Amend Part 18A of the NGR to extend its application to other covered gases by: • requiring storage and compression facilities involved in the supply of other covered gases to report the same information as their natural gas counterparts • requiring facility operators to identify the type of gas the facility is used to supply	Support.

Chapter	Section	Sub-topic	Draft recommendation	Comments
			• making drafting changes to update 'natural gas industry facility' and 'natural gas service' with 'facility' or 'covered gas industry facility' and 'covered gas services' where applicable.	
			(15) Extend the non-pipeline infrastructure access reporting obligations to blend processing facilities Amend Part 18A to extend its application to blend processing facilities by: • changing the name of Part 18A to 'Non-pipeline infrastructure access terms and prices' to reflect its broader application • amending the definition of a Part 18A facility to include a blend processing facility • amend the definition of user to include a person who is a party to a contract with a service provider for the provision of a blend processing service • amending the actual prices payable information rule to: o recognise blend processing services as an example of the type of service a facility may provide o recognise the manner in which contracted quantities will be measured for blend processing facilities (i.e. as injection and withdrawal capacities, expressed as a maximum daily quantity)	Support.
6. Short term trading market	6.1 Registration and facility categories	Registration categories	**(16) Extend the STTM shipper registration category to injections from blend processing facilities** Amend the NGR to extend the definition of STTM Shipper in rule 135ABA to include a person that: • is a party to a contract with a blend processing facility operator for the delivery of gas to an STTM hub from a blend processing facility that is directly connected to that STTM hub (rule 135ABA(1)(a)(ii)), or • is a blend processing facility operator who supplies gas on its own behalf to an STTM hub from its blend processing facility that is directly connected to that STTM hub (rule 135ABA(1)(a)(iv)).	Support.
		Facility categories	**(17) Create a single injection facility category** Amend the NGR to:	

Chapter	Section	Sub-topic	Draft recommendation	Comments
			• introduce the definition of 'STTM injection facility' as a facility at which gas is injected directly from that facility into an STTM distribution system at a custody transfer point included in a hub, and includes an associated pipeline connecting that facility directly to the hub • remove the definitions of 'STTM production facility' and 'STTM storage facility' • replace all instances of 'STTM production facility' and 'STTM storage facility' with 'STTM injection facility'	
	6.2 Settlement and reporting obligations for distribution connected facilities	Facility operator obligations	**(18) Modify the obligation for facility operators to provide expected capacity information** Amend the NGR in order to modify rule 414 by: • specifying that a facility operator is not required to notify AEMO of expected capacity in respect of the following three gas days if there is no 'material difference' between the quantity of gas which the facility operator expects that the facility will be able to deliver to the relevant hub and the substitute information that would be generated, in accordance with the STTM Procedures, by AEMO in the event that the facility operator does not provide this data. • defining 'material difference' as the magnitude of difference exceeding the greater of A and B, where: a. A is 600 GJ; and b. B is the lesser of 5% of the nameplate rating of the STTM facility (determined in accordance with Part 18) and 10 TJ.	Support.
		Facility aggregation	**(19) Allow for facility aggregation and submission of offers by aggregated facility** Amend the NGR to: • introduce a new rule that: o allows a facility operator to apply to AEMO to aggregate any of its STTM injection facilities o requires AEMO to approve applications for aggregation if the applicant is the facility operator for all relevant STTM injection facilities, these have a common allocation agent, and any requirements for	Support.

Chapter	Section	Sub-topic	Draft recommendation	Comments
			aggregation in the STTM Procedures have been fulfilled o requires AEMO to evaluate applications for aggregation and reply within 20 business days of receipt of the application o allows the facility operator to end the aggregation. • introduce a new rule that: o specifies that for the purposes of Part 20, a reference to an STTM injection facility is taken to be a reference to two or more aggregated STTM injection facilities o the capacity of an STTM injection facility aggregated is not to be taken into account for the purpose of determining capacity charges or capacity payments. • amend rule 377(3) to require AEMO to identify which facilities have been aggregated in the list of STTM facilities and STTM distribution systems it maintains.	
	6.3 Establishment of custody transfer points		**(20) Streamline the process for establishing new CTPS** Amend the NGR to: • specify in rule 135EA(4) that the STTM Procedures may deal with the arrangements for determining proposals for CTPs to be included in or removed from a hub • introduce a new rule in Part 20 that requires AEMO to specify the CTPs comprised in each hub in a register maintained by AEMO under the STTM Procedures. The CTP for a facility from which gas is injected into an STTM distribution system must be included in the relevant hub. The STTM Procedures must set out the arrangements for AEMO to determine changes to CTPs for a hub, which must: o specify the time frame and process for AEMO to consider and determine a proposal, which must include notice to the relevant STTM distributor and must allow 20 business days for the STTM distributor to respond o require AEMO to publish notice of its determination on the proposal.	No comment.

Chapter	Section	Sub-topic	Draft recommendation	Comments
			• amend rules 371, 372 and 372A to refer to the CTP register instead of the STTM Procedures • amend rule 372A to specify that additional CTPs not connected to one of the STTM distribution systems specified in that rule can only be added with the consent of the STTM facility operator and the service provider of the STTM pipeline at the CTP.	

	6.5 Gas quality specification and responsibility for gas quality	Gas quality specification	**(21) Allow distributors to agree to an alternative gas quality specification at a CTP**
			Amend the NGR to:
			• introduce the definition of 'standard gas quality specification' for a hub to reflect the current definition of 'gas quality specification'
			• introduce a new rule that:
			  o allows the relevant distributor (at the request of a facility operator of an STTM injection facility connected at a CTP) to enter into a written agreement that:
			  ▪ (a) provides for the injection at a CTP of gas that does not comply with the standard gas quality specification; and
			  ▪ (b) sets out the quality standard with which that gas must comply.
			• specifies that such an agreement must include the distributor, operator proposing to inject the gas, and each STTM Shipper proposing to supply gas to the CTP
			• states that a distributor must not approve such an agreement unless it is satisfied that the injection of gas is consistent with any applicable pipeline safety duty or pipeline service standard (each as defined in the NGL)
			• allows the distributor to revoke the agreement if it is breached, or the distributor is satisfied that the injection of the gas is no longer consistent with any applicable pipeline safety duty or pipeline service standard
			• modify the definition of 'gas quality specification' to:
			  o clarify that this relates to a CTP
				Support.

Chapter	Section	Sub-topic	Draft recommendation	Comments
			○ means the standard gas quality specification or the alternative gas quality standard approved by the distributor in accordance with the above new rule. • modify rule 418(3) such that shippers must ensure that gas supplied to a CTP (rather than a hub) complies with the gas quality specification for that CTP	
		Responsibility for gas quality		Where a shipper (and/or retailer) has no contract in place with a natural gas equivalent provider, it is assumed they have no responsibility for the blended gas in a pipeline.
8. Regulated retail markets	8.1 Registration categories		**(22) Expand existing registration categories in regulated retail markets** Amend the NGR definition of 'self-contracting user' for the NSW-ACT (rule 135AB(1)(C)), South Australia (rule 135AB(3)(D)) and Queensland (rule 135AB(2)(C)) regulated retail markets to include blend processing facilities. Amend the NGR definition of 'market participant other' for the Victorian regulated retail market (rule 135AB(4)(D)) to include blend processing facilities	Support.
	8.2 Metering and heating values			A watching brief on the impact on heating values and measurement as a result of NGE injections should be maintained.
	8.3 Settlement and balancing			We agree that any changes to balancing and settlement (if required) should be dealt with in procedures and monitored by AEMO.
	8.4 Cost of gas and competition concerns			We support the Commission's view that market competition and arrangements with NGE producers should address the cost and economics of renewable gases.
9. Consumer protections	9.1 Notice of transition to a NGE		**(23) Require distributors and retailers to provide noticed of a transition to a NGE**	While we support the provision of information as set out in new rule 147E, there is a role for all stakeholders in the

Chapter	Section	Sub-topic	Draft recommendation	Comments

			Introduce a new Part 8B 'transition to natural gas equivalents' in the NERR which includes:
			
			New rule 147C which requires distributors to notify retailers and AEMO in writing of a transition to a NGE. The notice must:
			• be in simple and concise language
			• include:
			  o the date of transition to the NGE
			  o the type of NGE that they are licensed to transport and any limits on blending that may apply
			  o the potential impact of the supply of the NGE on the quantity of gas consumed by customers and heating values compared to the supply of natural gas. In the case of a NGE which is a gas blend, the potential impact may be expressed as a range, but must include the impact at the highest permitted blend limit.
			• otherwise be provided in the form and manner required by the guidelines made by the AER under new rule 147F (if any).
			
			New rule 147D which requires a distributor:
			• prior to issuing a transition notice, to consult with retailers and AEMO in relation to the transition date to be specified in a notice under new rule 147C
			• in specifying a transition date in a notice under new rule 147C, have regard to:
			  o any submissions received from retailers and AEMO during consultation
			  o the obligations on a retailer to notify customers of the transition
			  o the reasonable requirements of retailers and AEMO to review their systems and processes to ensure compliance with the national energy legislation following the transition.
				industry to educate and address issues that small customers may identify.

Chapter	Section	Sub-topic	Draft recommendation	Comments

			New rule 147E which would require retailers to notify their small customers in writing of a transition to a NGE. The notice must:
			• be in simple and concise language
			• be provided no later than 5 business days before the transition date specified in the notice from the distributor
			• include:
			  o the transition date
			  o a copy of the notice from the distributor or a link to the notice on the distributor's or retailer's website and details of how the customer may request a copy of the notice
			  o contact details of the retailer and/or distributor
			  o any other information relevant to the customer's understanding of how the transition may impact the customer
			• otherwise be provided in the form and manner required by the guidelines made by the AER under new rule 147F (if any).
			
			New rule 147F that:
			• empowers (but not requires) the AER to make guidelines in relation to the form and content of the transition notices required under new rules 147C or 147E (transition notice guidelines)
			• requires the AER to make any transition notice guidelines in accordance with the retail consultation procedure.	

			(24) Require retailers to specify in customer retail contracts if a NGE is being sold Amend clause 3.3 of the model terms and conditions for standard retail contracts in schedule 1 of the NERR to introduce a requirement for a retailer to specify, as a required alteration, whether gas sold by the retailer includes a NGE. Amend Part 2 Division 7 of the NERR by introducing a rule requiring market retail contracts for the sale of gas to specify whether gas sold by the retailer includes a NGE.	Alinta Energy supports this draft recommendation where a retailer is selling a NGE to its customers.

Chapter	Section	Sub-topic	Draft recommendation	Comments
			Amend Schedule 3 of the NERR by inserting a new savings and transitional rule specifying that the new rule in Part 2 Division 7 applies only to market retail contracts that are entered into or varied after the commencement of the rule.	
	9.2 Notice of price changes because of a transition to a NGE			We support the Commission's view that no changes are required to the NERR in relation to covered gas pricing to retail consumers.
	9.3 Arrangements for billing on transition to a NGE		**(25) Include NGE transition information in historical billing information** Amend rule 28 of the NERR to introduce a requirement that retailers include the date of a transition to a NGE (if any) in historical billing information provided to a gas customer.	Alinta Energy supports the Commission's assessment that issuing a bill on the date of transition would be costly and offer little benefit to consumers.

Attachment B: Ring-fencing consultation questions

Question 1: Exemption criteria for minimum ring fencing requirements

1. Should the NGR continue to set out the limited circumstances in which exemptions from the minimum ring fencing requirements can be granted, or be amended to provide the regulator with greater discretion under high level criteria?
2. If the current approach is to be maintained, are the exemption criteria in rules 31(3)-(4) fit for purpose, or can they be improved? Please set out the changes you think need to be made and why.
3. If changes are to be made to the exemption framework, what are the likely costs, benefits and risks?
4. If changes are to be made to the exemption framework should they apply generally (for all covered gases including natural gas), or be limited to trials of hydrogen and renewable gases?

The call for flexibility by service providers in the approach to ring-fencing by the AER to support trials of renewable gas projects that may be undertaken by related entities, while understandable, needs to be approached with caution and transparently understood. If greater discretion is to be granted to the regulator in assessing exemptions from ring-fencing under the NGR, the reasoning behind the exemption, its scope and any sunsetting of the exemption granted need to be consulted on with stakeholders and published.

While the existing exemption criteria in rules 31(3)-(4) of the NGR sufficiently address the principles of ring-fencing to prevent impacts on competition and consumers arising from vertical integration and preventing third party access, Alinta Energy is concerned that the exemption criteria for the prohibition on carrying on a related business (as set out in clause 34(3)(c) of the NGR) requires a service provider to establish overly rigorous controls. We note that clause 34(3)(c) specifically requires "internal controls within the service provider's business that substantially replicate, in the AER's opinion, the effect that would be achieved if the related business were divested to a separate entity and dealings between the service provider and the entity were subject to the controls applicable to associate contracts". However, giving effect to this clause would essentially require full ring-fencing.

Alinta Energy holds significant concerns about the contradictory nature of this obligation, which would not work when viewed in conjunction with clause 34(3)(b) of the NGR. This clause allows an exemption on the basis that the "cost of compliance with the relevant requirement for the service provider and its associates would outweigh the public benefit resulting from compliance".

While it may be necessary to grant greater discretion to the AER to exempt activities to support renewable gas trials, the scale and scope of activities that begin as trials, but in the long term become a material part of a service provider's business requires balancing the viability of initial trials against the long-term industry structure that may emerge.

Changing the existing framework should not be undertaken solely to ensure trials of renewable gas blending are viable. The evolution of the industry structure, separation of regulated and unregulated sources of revenue, competition and access and benefits to consumers need to be carefully considered. Alinta Energy does not support material changes to existing ring-fencing provisions in the NGR unless the exemptions are immaterial to the operation of the market and have no impact on competition.

Changes to the exemption framework should apply generally (including to natural gas) where an exemption has no impact on the competitiveness of the market or fair third-party access to

pipelines and services. For example, Alinta Energy is the single owner and operator of an approximately 150-kilometre gas pipeline in Queensland between Condamine and Braemar, which is being used for the supply of the Braemar 1 power station (of which Alinta is also the owner and operator). The requirement to meet clause 34(3)(c) of the NGR in order to achieve an exemption to the minimum ring-fencing requirements will be onerous, costly and is unlikely to provide any public benefit.

Alinta Energy considers that any pipeline holding a Category 2 exemption under the new information disclosure obligations contemplated in the Gas Pipeline reforms (i.e., a single user pipeline) should not be required to meet the requirements under clause 34(3)(c) of the NGR. This is on the basis that doing so would not adequately balance the cost of compliance against the net public benefits derived from compliance with the requirement.

Question 2: Class exemptions for minimum ring fencing requirements

1. Should the regulator continue to assess exemptions from the minimum ring fencing requirements on a case-by-case basis, or should it be able to issue class exemptions?
2. If class exemptions are permitted,

(a) what are the likely costs, benefits and risks?
(b) in what circumstances could class exemptions be relevant?
(c) how do you think the risks with class exemptions should be addressed?

The development of the renewable gases industry is at a very early stage. While class exemptions may reduce the burden of assessing exemptions from ring fencing, this burden is unproven and the risks inherent with class exemptions given the uncertainty of how the renewable gases market will evolve means individual assessments of exemptions should continue until a case for change can be made.

Question 3: Conditions on exemptions from minimum ring fencing requirements

1. Should the regulator have the ability to impose conditions on an exemption from the minimum ring fencing requirements and also be able to vary the conditions?
2. Should the ring fencing exemption arrangements be amended to:

(a) require the regulator to specify an expiration date or a review date for a ring fencing exemption decision?
(b) require the service provider to notify the regulator without delay if conditions change such that it no longer qualifies for an exemption?
(c) clarify the ability of the regulator to revoke an exemption from the minimum ring fencing requirements?

The AER should have the ability to impose conditions on exemptions from the minimum ring-fencing requirements and be able to vary the conditions. We agree the inability of the AER to set conditions at present is a gap in the NGR ring-fencing approach.

The ring-fencing provisions should:

- Be amended to allow the regulator to specify expiration and review dates for it granting an exemption;
- Oblige service providers to notify the AER of changes in conditions that may obviate the need for an exemption; and
- Make clear the AER can revoke exemptions from the minimum ring-fencing requirements if necessary.

Each of these conditions will provide greater certainty for service providers, their associates, competitors and consumers.

Question 4: Consultation process for varying or revoking minimum ring fencing exemptions

1. Should the regulator be required to employ the expedited consultative procedure for variations to, or revocations from, a minimum ring fencing exemption, or have greater discretion in the consultation it carries out?
2. If more flexibility is to be provided, should the regulator have a high or limited degree of discretion to determine the appropriate level of consultation?

Varying or revoking an exemption from ring-fencing requirements may not be trivial to the market. It is unclear how the benefit of limiting consultation or not considering impacted stakeholder views is in the best interests of consumers or a competitive market. Transparent and public processes should apply in the development of the renewable gases industry. Discretion on reducing the breadth of consultation by the regulator should be limited unless a variation or revocation is of an immaterial nature and impact.

Question 5: Class decisions on additional ring fencing requirements

1. Should the NGR specify any additional matters (in addition to those set out in the draft Bill) that the regulator would be required to consider when making a ring fencing order? If so, what are those matters and why are they required?
2. What matters do you think the regulator should consider when deciding whether to grant individual service providers or associates an exemption from a ring fencing order?
3. What consultative procedure do you think the regulator should employ when:

(a) a. making a ring fencing order?
(b) granting individual exemptions from the ring fencing order?

As discussed above, providing class exemptions at this early stage of the development of the renewable gases sector in relation to exemptions from ring-fencing requirements would not be appropriate. The AER's advice that associates may change over time applies equally in the case of retail and distribution authorisations for gas and electricity. It is unclear why the identification of associates and related entities should not be required.[1]

An expedited consultation process should not be the default in making a ring-fencing order or granting an exemption. It is important that there is transparency and the opportunity for stakeholders to engage with the AER when it is making such decisions.

[1] AEMC (2022), Review into extending the regulatory framework to hydrogen and renewable gases – Draft Report, page 40.

Question 6: Approval of associate contracts

1. Should the current approach of approving associate contracts be retained or amended to require approval prior to (ex ante) entering into a contract? Why?
2. If an ex ante approval framework is introduced, should service providers be required to obtain approval of:

(a) all associate contracts and variations
(b) only those associate contracts and variations that do not involve the supply of a reference service at the reference tariff, or
(c) only those associate contracts and variations identified by the regulator?

3. If the regulator is given the ability to identify the associate contracts that will or will not be subject to an ex ante approval process:

(a) what types of contracts or variations are more likely to contravene the associate contract provisions in the NGL and should therefore be subject to the process?
(b) should the rules guide the regulator in exercising that discretion?

The onus of demonstrating that an associate contract will not have the effect of lessening competition or be inconsistent with the competitive parity rule should rest with the contracting parties rather than the regulator. At the same time, any *ex-ante* approval should be limited to associate contracts that are likely to materially impact competition and supply in the market for renewable gases.

The value of an *ex-ante* approval process may strengthen confidence of stakeholders (including the AER) that associate contracts support access and competitive outcomes. We believe requiring approval of all associate contracts and variations would be administratively burdensome. A middle-ground approach (as noted by the Commission) between what applied under the Gas Code relative to the NGR today may be an appropriate mechanism to provide assurance that associate contracts satisfy the conditions of rule 32(2) of the NGR. Service providers and associates should be motivated (through proportionate regulatory consequences) to volunteer relevant and material information about their arrangements with the AER based on clearly understood principles. Over time, the AER will gain insight into the types of associate contracts that are material and those that are not.

Question 7: Onus of demonstrating an associate contract complies with the NGL

1. Should the current onus on the regulator be maintained or should service providers be required to demonstrate, to the regulator's reasonable satisfaction, that an associate contract or variation does not contravene the anti-competitive effect and competitive parity rule provisions in the NGL? Why?
2. If the change is made, should service providers be required to include any information that it seeks to rely on in its application, including material that demonstrates that the contract or variation does not contravene the anti-competitive effect and competitive parity rules?
3. If the change is made, should the regulator be able to seek additional information from the service provider if required?

The parties seeking to be exempt from ring-fencing requirements should have the onus to demonstrate to the AER that an associate contract or variation does not contravene the competitive objectives of the NGL. The information asymmetry confronting the regulator, particularly in the case of a nascent industry. This can be resolved through the AER's suggested solution, including having the power to seek additional information from the service provider.

Question 8: Time and consultation process for associate contracts decisions

1. Should the 20 business day time limit for decisions on associate contracts be extended? If so, what should it be?
2. Should a 'stop-the-clock' provision be available to the regulator in this process? If so, should there be any limit on the extent to which the decision-making time limit can be extended?
3. Should the decision-making process include public consultation? If so, what would be appropriate?

A 'stop-the-clock' provision would benefit the quality of the AER's analysis and decisions in assessing associate contracts. The AER should have the ability to conduct a public consultation on matters contained in an associate contract at its discretion. The existing 20 business day time limit may not be appropriate for the development of new facilities and services as the market for renewable gases emerges.

Question 9: Clarifying the competitive parity rule

1. Should greater guidance on the competitive parity rule be included in the NGR, or is the current definition sufficient? Why?
2. If the change is made, should the new rule be based on the obligation to not discriminate provisions in the Ring-fencing guideline (electricity distribution) 2021, or is there an alternative approach to provide greater guidance?

Additional guidance on the competitive parity rule of the type suggested by the AER (derived from the *Ring-Fencing Guideline* for electricity distributors would be an appropriate means of improving the clarity of the competitive parity rule and its application to associate contracts.