

19 May 2022

James Tyrrell
Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2000

Dear James

EMO0042 Review into extending the regulatory frameworks to hydrogen and renewable gases

AusNet appreciates the opportunity to respond to the Australian Energy Market Commission (**AEMC**) Draft report on extending the regulatory frameworks, specifically the recommended changes to National Gas Rules (**NGR**) to incorporate hydrogen and renewable gases. AusNet owns and operates the gas distribution network in Western Victoria which currently carries natural gas only, but we recognize that the gas market may undergo a significant transition to renewable gases or gas blends over the coming decades and we support this review preparing the regulatory framework for this transition.

Broadly speaking, AusNet supports the extension of the NGR to renewable gases and the AEMC's draft approach to extend the current regulatory arrangements to covered gases. At this stage, we consider it is appropriate for economic regulation to be extended to covered gases when and if they are introduced to our natural gas pipelines. We consider it is essential that the approach that is ultimately adopted continues to ensure safe and reliable gas markets, while not inhibiting the uptake and transition to renewable gases as developments occur.

We generally support the AER's proposed changes to the NGR to allow it greater discretion and flexibility in relation to ring fencing provisions. We support the adoption of high-level criteria, similar to those applied for electricity distribution, for gas to allow the AER to provide exemptions which are not limited by the current scope. We also support the ability for the AER to grant class exemptions to improve administrative efficiency.

However, we have concerns that applying certain conditions to ring fencing exemptions will impede investment certainty and potentially create barriers for renewable gas market development, including expiration dates or – of particular concern – requiring networks to divest assets at the end of a trial. Furthermore, allowing the AER to make significant variations to granted exemptions will lead to higher risk and uncertainty for investment and may inhibit uptake. Therefore, we consider the AER's powers to make or vary an exemption should be subject to an express requirement that the change be reasonable and made only when necessary to better serve the long run interests of consumers. Further detail on the AER's proposed ring fencing changes is provided in Attachment 1.

We support the proposed market transparency changes to include renewable gases. We also support, in principle, the reporting requirements for service providers to ensure that there is adequate information about the covered gas being distributed. However, we submit that reporting requirements should only be introduced to the extent necessary to ensure appropriate investment occurs and safety standards are maintained, in order to avoid unduly onerous reporting requirements. As outlined in our previous submission, we support publishing a curtailment methodology.

While we support the draft changes, we note that the gas market faces uncertainty about the pace of change and whether the NGR will remain fit for purpose in the long term. This will need to be monitored and managed by the AEMC and stakeholders as a transition occurs.

If you have any questions regarding this submission, please contact Eliza Cochrane by email on eliza.cochrane@ausnetservices.com.au.

Your sincerely,

A handwritten signature in black ink, appearing to read 'Tom Hallam', with a stylized flourish at the end.

Tom Hallam
GM Regulation
AusNet Services

Attachment 1: AusNet's response to the 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?**

We support the AER's suggestion to amend the NGR to provide it with greater discretion by replacing the current rules with a high-level approach which will allow flexibility to accommodate changes in the competition landscape for the gas market.

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.**

We agree with the AER that the current criteria are limiting and support providing further clarity in the NGR to give the AER greater discretion and flexibility. An approach similar to the Electricity Distribution Ring Fencing Guideline would achieve this e.g. broadening the criteria whereby the AER has regard to the NGO, renewable gas market development, requirement for trials or research.

3. **If changes are to be made to the exemption framework, what are the likely costs, benefits and risks?**

It is appropriate for the AER to have more discretion to grant exemptions as is appropriate for prevailing market conditions (which change through time). The framework that applies to electricity distribution provides an appropriate model for the exemption framework. The benefits of making changes include allowing service providers to carry out trials which are essential to explore and enable a transition to renewable gases; such trials may lead to positive market developments and efficient outcomes for gas customers. As noted in our covering letter, it is important for consistency and certainty that the AER's exercise of this discretion be guided by a set of consistent principles.

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?**

We consider it appropriate for the exemption framework to apply generally as flexibility in the NGR enables it to remain fit for purpose under changing market conditions. The AER can use its discretion to assess ring fencing exemptions on a service-by-service basis, which are expected to include trials of renewable gases in the near term. Exemptions for delivering services involving natural gas which may serve the long term interests of consumers should not be prohibited; the AER should be able to make an assessment and grant exemptions as appropriate.

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?**

We support class exemptions as an efficient regulatory approach, and therefore the NGR should allow the AER to grant class exemptions if they believe it will lead to the same outcomes with significantly less administrative burden as applying exemptions on a case-by-case basis.

2. **If class exemptions are permitted:**
 - a. **what are the likely costs, benefits and risks?**

We consider the efficiency benefits outweigh the risks. If the AER perceives a level of risk in relation to a particular service, it could begin to grant class exemptions where there is sufficient evidence that the exemption is appropriate. The AER could also address additional risks in the criteria it sets to qualify for the exemption so it does not apply too broadly or to parties it is not intended to cover.

b. in what circumstances could class exemptions be relevant?

Class exemptions could be appropriate where several distribution pipeline service providers want to carry out similar activities (i.e. deliver blending services or other areas of renewable gas supply chain for trials) in similar timeframes.

c. how do you think the risks with class exemptions should be addressed?

As set out above, the AER can apply conditions to its class exemptions which will exclude some providers on the basis that their circumstance contradicts a condition.

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?

In principle, we support the AER's ability to impose conditions on exemptions from minimum ring fencing requirements. However, we caution against the application of conditions which have negative market outcomes or may limit investment certainty for service providers as this may inhibit investment required to carry out necessary trials to explore the uptake of renewable gases. Similarly, variations to exemption conditions may be appropriate but should be limited to circumstances where the AER has identified an administrative or other minor error or only when substantial evidence provides a reason for variation. Frequent or substantial variations would cause market and investment uncertainty and be administratively burdensome, so should only be applied when necessary.

The AER has specified some examples of conditions which could be imposed and although we support discretion in the rules, we note that further consideration will need to be given by the AER to determine appropriate conditions. We consider a scope or volumetric limit is reasonable but note it may not be appropriate to have a static limit, and conditions may need to be reviewed as the market evolves. However, conditions which limit investment certainty such as static time limit or a requirement to divest assets at the end of the trial may not be appropriate. While we understand the intent of this condition and understand it may be reasonable theoretically, we believe in practice the risks it poses substantially outweigh the benefits of applying a divestment requirement. We agree the condition to make findings publicly available is reasonable but only where it would lead to a market benefit which exceeds the administrative burden. We note it would be reasonable for more detailed trial findings to be shared amongst service providers, and other market participants. We note the AER can reference its electricity framework to assist it in determining which conditions are appropriate for comparable projects in gas.

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?

The NGR should not require the regulator to specify expiration or review dates. However, we support the regulator having the discretion to make an exemption conditional (which may include an expiration or review date) if it considers it necessary, having regard to evolving market conditions and the need to maximise investment certainty. However, any such conditions should be objectively justifiable, rather than an arbitrary timeframe. Additionally, the AER should consider if the compliance costs associated with review dates exceed the perceived market benefits.

- b. require the service provider to notify the regulator without delay if conditions change such that it no longer qualifies for an exemption?**

We consider it is reasonable to notify the regulator as soon as the service provider becomes aware of a condition change. The regulator should have the ability to amend or revoke the exemption as appropriate in response to this change.

- c. clarify the ability of the regulator to revoke an exemption from the minimum ring fencing requirements?**

The rules should specify the conditions under which the regulator is able to revoke an exemption. This increased clarity will promote investment certainty and is consistent with good regulatory practice.

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?**

The regulator should not be required to employ the expedited consultation procedure. We consider some flexibility to assess market and consumer risk when determining the level of consultation required is appropriate.

- 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?**

The regulator should have discretion to determine appropriate consultation for revocation or major variations. We acknowledge that for minor variations it is more efficient to have little or no consultation compared to changes to a class exemption which would require a more extensive consultation process as it will have wider impacts. The rules consultation procedure in clause 8.9 of the National Electricity Rules may provide an appropriate model framework.

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?**

We do not consider the NGR needs to list specific matters and this can be under the regulator's discretion.

- 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?**

Exemptions should be granted if they will not adversely impact customers or market outcomes, and where possible, will support development of a renewable gas market. For example, exemptions from minimum ring fencing requirements for distributor to carry out blending facilities would support necessary trials occurring which enable market development.

- 3. What consultative procedure do you think the regulator should employ when:**

- a. making a ring fencing order?**
- b. granting individual exemptions from the ring fencing order?**

The consultative procedure chosen should have regard to specific circumstances of each exemption. For example, the first service provider to apply for an exemption may require a more detailed process than the next service provider applying for an identical exemption. We consider reasonable time should be given to allow the AER to gather sufficient information required to make exemptions or a ring fencing order that is in the best interest of customers and achieves desired market outcomes.

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?**

We support the current approach being maintained as we consider it effective whereas a change to ex ante approval would increase administrative cost to service providers and their associates, and if introduced, approvals would need to be made within a short timeframe as to not have negative impacts on commercial negotiations.

- 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?**

No comment

- 4. 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?**

No comment

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?**

We suggest the onus of demonstrating compliance with the NGL remain with the AER. The AER has the power to request documents and information from service providers which allows the AER to make enquiries where it is concerned about the competitive impacts of an associate contract. In a practical sense, this means the service provider is subject to a de facto onus to demonstrate compliance.

- 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?**

No comment

- 3. If the change is made, should the regulator be able to seek additional information from the service provider if required?**

No comment

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?**

We do not consider it necessary that the time limit be extended.

- 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?**

We consider a stop the clock provision should not be necessary to facilitate appropriate decision making and are concerned that it may lead to delays which negatively impact commercial negotiations.

- 3. Should the decision-making process include public consultation? If so, what would be appropriate?**

We see little benefit from a public consultation process as the AER should have sufficient information to make decisions and a lengthy consultation process may delay commercial negotiations. Confidential aspects of these agreements should not be made available to the public, therefore public consultation will be less effective.

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?**

We consider the rule as drafted is sufficient.

- 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?**

No comment