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14 May 2013

Mr John Pierce  
Chairman  
Australian Energy Market Commission  
PO Box A2449  
SYDNEY SOUTH NSW 1235

Dear Mr Pierce

**AER submission to the AEMC's draft determination on the National Gas Amendment (Pipeline operator cost recovery processes) Rule 2013**

The AER welcomes the opportunity to comment on the AEMC's draft determination in relation to the AER's rule change proposal. We appreciate the AEMC's efforts in progressing consideration of our rule change proposal.

We are pleased that the draft rule provides the AER with the decision making role for cost invoices instead of its current role of providing advice to AEMO. This improves the clarity of roles and provides for a more appropriate allocation of relevant functions to the AER in its role as economic regulator. We are also pleased that the AEMC has clarified the definition of MOS allocation service costs in line with the AER's proposal. This will help clarify what costs are recoverable.

***Efficiency test***

We maintain that an efficiency based test in the rules is preferable to the reasonableness based test proposed in the AEMC's draft. Although the difference between the tests in the context of these relatively small cost claims is unlikely to be significant, we believe that the efficiency test is appropriate and better reflects the national gas objective. We outlined the reasons for this in our original proposal. However, if the test is to be one of reasonableness, the AER notes that in practice it would still give consideration to whether costs have been incurred efficiently by a prudent operator as this will be a relevant factor in assessing reasonableness.

***Requirement to consider all invoices***

The AER is also concerned that the preferable rule proposed by the AEMC requires *all* invoices to be subject to an AER decision. This means that the AER Board will be required

to assess every tax invoice provided by businesses regardless of the amount specified in that invoice, or whether the invoice is in dispute. We note that while the AEMC's preferred rules 198(3)(h) and 425 (3) (h) provide the AER with discretion to have regard to the costs of undertaking an assessment of an invoice outweighing the public benefit, the proposed rules still requires the AER to approve or reject all invoices.

We propose that invoices for any amount less than \$50,000 be deemed to be approved by the AER after 30 business days, unless the AER has informed AEMO otherwise (or the AER has informed AEMO that a clock-stopper<sup>1</sup> is in place and that the 30 business days should be extended). This change would mean AER staff would not need to table for Board decision small cost invoices such as the \$17,000 and \$33,000 MOS cost invoices submitted for the 2011–12 financial year.

We consider this change will allow for more flexible resource allocation when amounts claimed are small and not in dispute. That is, the AER will be able to allocate more resources to other projects such as network business revenue determinations. This change will facilitate the AER allocating resources in a way which best contributes to meeting the national gas objective.

### *Timing*

The AER also remains concerned about timing considerations. Whereas our rule change requested an increase in the time limit for the assessment of invoices from 15 business days to 60 days (plus an optional 30 extra days), the AEMC's draft proposes a period of 30 business days. We are concerned that the 30 days timeframe proposed by the AEMC may not be sufficient for conducting a proper assessment in all circumstances.

To allow for a robust and comprehensive assessment of Bulletin Board and MOS allocation service costs, including facilitating the AER seeking additional information from pipeline operators if required, we propose that, at a minimum, a "clock stopper" provision apply to clauses 198(3) and 425(3).

In those circumstances where the AER decides to undertake an assessment of the costs specified in an invoice, it is likely that the AER will seek further information from the business claiming the costs. In the absence of a "clock stopper" provision, it is unlikely that the AER will be able to do more than a cursory assessment of any further evidence provide by the business. Given the timing constraints, it will also be very difficult for the AER to determine its own figure under rule 425(3A), or 198(3)(A), should the AER decide to reject an amount specified in a tax invoice. This is because under the requirements of procedural fairness, the AER would expect to consult with the relevant business on what the AER considers to be a reasonable figure, prior to publishing the reasons for its determination.

A "clock stopper" provision will allow the AER to properly assess claimed Bulletin Board and MOS allocation service costs. The additional assessment time will allow the AER to ensure that shippers pay reasonable costs. This meets the national gas objective in ensuring the long term interests of consumers is met with respect to price. A clock stopper provision

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<sup>1</sup> See discussion of proposed clocker-stopper in next section.

will also provide an extra incentive for the businesses to provide suitable evidence to support its claimed costs at the time of submitting their claims.

Additional time gained through a “clock stopper” provision will be a significant factor in ensuring the AER has the required time to consult with business and conduct a proper assessment (particularly in circumstances where the AER is not accepting costs). We believe this additional time will have very little (if any) effect on pipeline operators and their billing cycles, since the costs involved are relatively small compared to overall business revenue.

In our view the clock stopper provision could operate in the same way as rule 11 of the National Gas Rules. Under that rule, the AER can decide that any period taken by a person to provide information relevant to the decision, can be disregarded for the purpose of calculating elapsed time when the rules fix a time limit for making a particular decision.

Should you have any questions or queries regarding the attached proposal, please contact Jeremy Llewellyn on (03) 9290 1428.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Reeves', written in a cursive style.

Andrew Reeves  
Chairman