

2 August 2012

The Commissioners
Australian Energy Market Commission
Via website: www.aemc.gov.au

DRAFT RULE DETERMINATION ERC0136/GRC0013: Optimisation of the Regulatory Asset Base and the Continued Use of Fully Depreciated Assets

Dear Commissioners

The Australian Pipeline Industry Association (APIA) welcomes the opportunity to provide comment on the Commission's Draft Rule Determination on the Major Energy User's (MEU) rule change proposal concerning optimisation of the regulatory asset base and the continued use of fully depreciated assets.

APIA supports the Commission's draft rule decision not to make a rule at this time. It is apparent, particularly for the National Gas Rules (NGR), that mechanisms already exist to address the concerns raised by the MEU rule change proposal. This makes clear that the MEU's proposal is unwarranted and would not further promote the objectives of the regime.

APIA would like to make comment on some aspects of the Commission's decision.

1. In the summary of the draft rule determination the Commission states:

'However, the Commission does not consider that the MEU has adequately established that the specific problems raised in its rule change requests warrant the solution it has proposed.'

APIA considers a more fundamental point to be made is that the MEU has not adequately established that the specific problems raised in its rule change requests exist. This is recognised in the Commission's reasoning in sections 3 and 4 of the draft rule determination where the Commission encourages stakeholders to:

'..provide any evidence – whether qualitative or quantitative - of the existence of these problems.'

There remains an absence of qualitative or quantitative evidence of the existence of the MEU concerns submitted for the Commission's consideration during this process and, in the case of APIA's submission at least, evidence provided the problems do not exist.

2. In regards to the Commission's draft rule determination for gas, on page 9 the Commission states:

'In short the Commission does not consider that these rules would contribute to the NGO for the following reasons:

- *they could increase risk for service providers and thus provide disincentives for future efficient investment;*
- *they would likely increase the complexity and costs of the regulatory process, reducing the efficiency of the process;*
- *the NGR already include mechanisms which could be used to address the MEU's concerns; and*
- *they would require the regulator to take a too detailed role in approving a service provider's projects and plans.'*

APIA agrees with the Commission's reasoning. However, APIA would like to stress the magnitude of the complexity the MEU's proposals would introduce to the regulatory process, and therefore the additional cost, is substantial. It is also APIA's view that the MEU's proposals would significantly increase the potential for regulatory error, with flow-on impacts on the burden on the merits review body.

Further, the proposed mechanisms of re-optimisation of pipelines are highly problematic and introduce an unwarranted level of intrusion into service provider's businesses. Additionally, the proposal would add to the workload of the regulator and service providers by multiples of those currently required.

The demands of the proposed re-optimisation process itself should not be underestimated. Asset base optimisation requires sophisticated engineering analysis to make sensible determinations. The expertise required is not currently available to regulators and it is simply not possible for a regulator to maintain or engage the experts that would be required.

3. On page 10 of the Commission's draft rule determination for gas the Commission states:

'while there may be some benefits in terms of overall utilisation of networks (Principle 6), the proposed rules are likely to have negative impact on incentives for investment (Principles 2 and 5);'

The Commission has recognised the NGR has mechanisms to address the problems raised by the MEU if they occur. As this is the case, APIA does not see any way in which the MEU's rule change proposal could provide benefits in terms of overall utilisation of networks and the Commission's reasoning should reflect this.

APIA supports the Commission's conclusion that the MEU proposal would have a negative impact on incentives for future investment in infrastructure. Furthermore, as the Commission has noted in its draft determination, efficient investment is a cornerstone of the NGO and is achieved through an incentive-based approach. The MEU proposal is not

consistent with this core tenant of the NGL and would place future investment in infrastructure at risk, introduce unnecessary cost and magnify the regulatory task for both service providers and regulators.

APIA is happy to discuss these matters further with the Commission if it would be useful. Please contact me on (02) 6273 0577 or at sdavies@apia.asn.au.

Yours sincerely



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