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Mr John Pierce
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Australian Energy Market Commission
PO Box A2449
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Dear Commissioners,

Reference: GR0012

National Gas Amendment (Reference service and rebateable service definitions) Rule 2012

A: Introduction

EnergyAustralia welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC) Draft Rule Determination on the National Gas Amendment (reference service and rebateable service definitions) Rule 2012.

The AER proposed this rule change in late 2011 because it anticipated that APA GasNet would over recover on its pipeline costs by selling unused contract capacity through AMDQcc in the forthcoming APA GasNet access arrangement (AA) review. Under the current arrangements, revenue from the sale of AMDQcc would not be subsequently rebated to users of that contract service. In order to address this deficiency, the AER proposed a change to the definitions of the terms "reference service" and "rebateable service" in the National Gas Rules (NGR). In responding to this, the AEMC accepted the proposed change to the definition of "reference service" but rejected the definition of "rebateable service" in its draft rule.

Following legal advice provided by the AER, the AEMC has proposed an amendment to its draft rule in order and change the "rebateable service" definition in the NGR. The proposed amendment would allow the Australian Energy Regulator (AER) to "claw back" any revenue earned from AMDQcc where APA GasNet was over-recovering more than its efficient pipeline costs. For this reason, we support the AEMC's decision.

B: Key Issues

Legal uncertainty over whether the AER can approve an access arrangement that includes the current AMDQcc revenue rebating mechanism in the price control model

EnergyAustralia supports the proposed amendment to the draft rule after reviewing the legal advice provided to it by the AER.

The AER considers that it will not be possible for it to return to users revenue earned from AMDQcc in the next regulatory term unless the definition of a "rebateable service" is amended. It has submitted legal advice to the AEMC that suggests that the revenue derived through the sale of any AMDQcc bundled service cannot be rebated against the reference tariff because it is not a regulated service. This includes the revenue earned from AMDQcc via the "volume effect"[1] and the "price effect". [2] Hence, we support the proposed variation to the draft rule. It provides the AER with the discretion to rebate the revenue that APA GasNet earns from AMDQcc in the next regulatory period.

The AEMC determined that APA GasNet was rebating users for the "volume effect" of AMDQ in the current AA in its draft rule. APA GasNet told the AEMC that 80% of AMDQ cc total revenue was derived from the "volume effect" of AMDQ cc revenue. APA GasNet submitted evidence to the AEMC that proved that the revenue that it earned through the "volume effect" of AMDQcc was rebated to users of the DTS via the price control model. The remaining 20% of revenue was generated through the price effect. This smaller amount was retained by APA GasNet, providing an incentive for investment on the Victorian DTS.

Increase over the long term in the share of APA GasNet's revenue earned from unregulated AMDQ cc

EnergyAustralia supports the amendment to the draft rule because the proportion of total revenue earned by APA GasNet over the next AA is likely to increase.

The AER notes that the demand for AMDQcc will increase over time as more capacity is added to the Victorian DTS. This means that that the share of the total revenue from AMDQcc is likely to increase and become more significant over time. In fact, there is likely to be an increase over the long term in the share of APA GasNet's revenue earned from the AMDQcc in the future.

This amendment to the draft rule allows the AER to "claw back" this revenue which is likely to become more significant over time. As such, we support the proposed amendments to the draft rule because it gives the AER the discretion to recover these revenues.

[1] One form of over- recovery associated with AMDQcc bundled service occurs through the "volume effect" when APA GasNet is able to earn additional revenue for providing reference services on unused AMDQcc contracted capacity

[2] Another form of over-recovery associated with AMDQcc bundled service is the "price effect" which occurs when the price paid for AMDQ cc is above the reference tariff, and is the difference between these two prices

Forecast to be a significant increase in revenue due to "price effect" of AMDQcc for next period

EnergyAustralia supports the amendment to the draft rule because the proportion of total revenue from AMDQcc earned due to the "price effect" is likely to increase in the next AA.

The AER notes that the demand for AMDQcc will increase over time as more capacity is added to the Victorian DTS. This means that that the share of the total revenue from AMDQcc – is likely to increase and become more significant over time.

The revenue earned from the "price effect" will not be included in the price control model rebate mechanism in the next AA and will be retained by APA GasNet. It is estimated that the amount could be $27.5 million over the next AA period.

The amendment to the draft rule allows the AER to "claw back" revenue earned from AMDQcc via the "price effect" which is likely to become more significant over time. As such, we support the proposed amendments to the draft rule on the basis that it gives the AER the discretion to recover these revenues.

Inconsistent outcome between the Victorian DTS and other fully regulated pipelines

EnergyAustralia supports the change to the definition to rebateable service in its amendment to the draft rule on the basis that it has been quarantined to be applied to the Victorian DTS.

We agree with the AEMC that if the amendment as proposed is not implemented then it could possibly trigger the 'most favoured nation' clauses in bilateral contracts on other pipelines across Australia. The additional discretion provided to the AER could jeopardise the operation of and investment in the pipeline and increase risks for a service provider. This could lead to a fundamental change in the risk/reward relationship inherent in the contracts between shippers and service providers.

We agree with the AEMC that it has not been provided with sufficient evidence to support the argument that the rebateable service definition should be changed for regulated pipelines other than the Victorian DTS.

C: Further amendment to draft rule

EnergyAustralia proposes an additional amendment to the draft rule. The amendment would require APA GasNet to deposit all of the revenue that is over-recovered from AMDQcc in an investment fund.

The money from the investment fund would be used to help pay for transmission augmentations (i.e. netted off the capital cost) of proposed associated infrastructure[3]. Those parties who paid for AMDQcc would have ownership of the money invested in the fund. And, where money from the fund was used to finance new infrastructure, the parties with an ownership in the fund would receive the resulting AMDQccs pro rata for financing the infrastructure.

We understand that this idea is very much in its embryonic stages. However, it would allow the AER to use the revenue that was over-recovered from AMDQcc in the next regulatory period to be put to an efficient use. APA GasNet would not be allowed to keep it for the benefit of its shareholders. Instead, it would be placed in an investment fund that was used to help fund transmission augmentations.

We consider that this idea has merit especially given that the AEMC has argued that demand for AMDQcc service is likely to increase over time as more capacity is added to the Victorian DTS. In fact, the total revenue that APA GasNet is forecast to recover from AMDQcc will increase and become more significant over time. For example, it is estimated that the amount of revenue earned by APA GasNet due to the 'price effect' of AMDQcc could be $27.5 million over the next AA. Additionally, we are unclear about how much revenue is forecast to be earned in the future from AMDQcc estimated that the demand for AMDQcc service is likely due to the "volume effect" in the next AA. But, it is fair to say that it will be significant.

[3] i.e. Infrastructure that would result in creation of additional AMDQccs of that same type as resulted in the original over recovery

We would welcome feedback on the proposed variation to the draft rule. In this regard, we consider that this idea could be developed further through a potential rule change that might be submitted in the future. We would be happy to discuss our idea further with you in the future.

D: Conclusion

EnergyAustralia supports the proposed amendment to the draft rule on the basis it would allow the Australian Energy Regulator (AER) to "claw back" any revenue earned from AMDQcc where APA GasNet was over-recovering more than its efficient pipeline costs. Crucially, we support this position subject to the condition that our additional amendment is given further consideration.

We thank the AEMC for its consideration of the issues that we have raised in relation to this Rule change. For any questions regarding this submission, please contact Mr. Con Noutso - Regulatory Manager at EnergyAustralia on Tel: 03 8628 1240

Regards

Signed for email

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