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Dr Michael Vertigan  
Independent Chair  
Gas Market Reform Group  
Level 6, 201 Elizabeth Street  
SYDNEY NSW 2001

[www.aer.gov.au](http://www.aer.gov.au)

Dear Dr Vertigan

## **Re: Gas Pipeline Information Disclosure and Arbitration Framework**

The GMRG released for public comment the Initial Draft National Gas Rules (Draft Rules), and an accompanying Explanatory Note (30 June 2017).

The Draft Rules seek comment on two alternatives for rule 569(2)(a) and request feedback from stakeholders on the alternatives.

Option 1 provides limited guidance to the arbitrator on how to determine the starting asset value of a non-scheme pipeline.

Option 2 requires the arbitrator to employ the same asset valuation principles that would apply to scheme pipelines, as outlined in rule 77 of the NGR.

I think it is important that the AER put on the public record our support for Option 2.

In our submission of April 2017 we observed that given the capital intensive nature of pipelines, the reporting of asset values will be a critical input into the estimation of price.<sup>1</sup> We also noted that a lack of guidance on asset valuation had the potential to limit the ability of the framework to achieve its stated objectives. Our concerns have been picked up by stakeholder comments, which have been set out in the Explanatory Note:

- negotiating parties and the arbitrator will have to spend resources on considering a range of alternative asset valuation techniques, which stakeholders have noted may affect the cost-effectiveness, timeliness and efficiency of the negotiation and arbitration process;
- the uncertainty that it would create for service providers and their financiers, which one pipeline operator noted could affect future investment in non-scheme pipelines; and

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<sup>1</sup> <https://www.aer.gov.au/system/files/AER%20Submission%20to%20Gas%20Market%20Reform%20Group%20-%20Information%20Disclosure%20and%20Arbitration%20Framework%20-%2013%20April%202017.pdf>

- the uncertainty that it would create for shippers, which could affect their investment in upstream and downstream facilities and the efficient utilisation of gas.

Option 2 addresses our concerns around the risks of asset revaluations and potential for changes to asset valuation methodology. We also accept there is a strong case based on consistency for providing that the asset value of non-scheme pipelines be determined in the same way as scheme pipelines. Providing this certainty in the determination of asset valuation may address some of the concerns raised by stakeholders set out above.

However, uncertainty remains because non-scheme pipelines commissioned before November 1997 need to determine an opening asset value in conjunction with the Gas Code. The Gas Code lists 11 factors which should be considered in establishing the value of the asset. Pipeline owners and arbitrators applying these factors will have discretion, and hence this will not provide the complete certainty that stakeholders are seeking.

The GMRG has also asked for consideration and comment on whether the obligation to provide access negotiation information when requested during negotiations should be classified as a civil penalty provision or a conduct provision. We are of the view that this particular provision should be both. Further, r 560 (access offer) should also be both. The rationale for these suggested changes is that it would allow the AER to take action but would also give rights to other parties who are directly affected by any non-compliance. It is important for other parties to have this option to seek declarations and associated remedial orders (and, potentially, compensation for loss or damage) as part of ensuring that all parties are able to make effective use of the negotiation framework, and in ensuring that there are appropriate incentives for all parties to comply with the negotiation framework.

Please consider this letter a public submission.

Should you wish to discuss further please do not hesitate in contacting me.

Yours sincerely



Paula Conboy  
Chair  
AER

Sent by email on: 20.07.2017