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Dear Dr Vertigan

INITIAL DRAFT RULES

Shell Australia Pty Limited (Shell) welcomes the opportunity to comment on the Gas Pipeline information Disclosure and Arbitration Framework Initial Draft Rules (the Draft Rules) that gives legal effect to the new commercial arbitration framework for transmission and distribution pipelines. As previously mentioned in earlier submissions, we are supportive of the reform at a policy level and consider, if structured appropriately, it will act as a creditable threat against arbitration and incentivise pipelines, through commercial negotiations, to offer transportation pricing structures that are more reflective of competitive outcomes.

With respect to the Draft Rules, we primarily suggest several changes that would remove any ambiguity around the intended operation of the Draft Rules relating to "Access Negotiation Information" (Rule 562) and the Exemptions Categories (Rule 585). We also comment on asset value methodology. In summary:

- Rule 562 should be clarified to ensure that shippers are not required to disclose commercially sensitive information throughout the access negotiation process.
- Category 1 exemptions under Rule 585 should also reference Division 3.
- We prefer the original GRMG approach to providing the arbitrator some discretion around the choice of asset valuation methodology, however, greater guidance in past recoveries of capital is necessary.

Further detail on each of these issues is provided below:

Access Negotiation Information - According to the Explanatory Note for Stakeholder Consultation (the Explanatory Note), the intent of Rule 562 is that a prospective users seeking access may require greater detail than that provided under the general information disclosure provisions (Division 2) in order to determine the reasonableness of an offer made in response to a particular request. The Explanatory Note is also clear that the type of information expected to be disclosed through the process, primarily relates to information reasonably expected to be provided by a pipeline. (We also note under the Draft Rules that prospective users are required to disclosure information during the access negotiation process that they intend to rely on in the event the matter goes to arbitration, which appears reasonable.)

That being said, the wording in paragraph 562 (5) refers to "a party" and this could suggest that there is an expectation prospective shippers may also be subject to information requests by pipelines throughout the negotiation process. We understand this was part of the alternative proposal put forward by APA Group and included to enable pipelines to seek information to determine a shipper's "ability to pay", which would then inform the price boundaries subject to the arbitration. Consistent with the intent of the Information Disclosure and Arbitration Framework, we understand this is not the approach taken by Gas Market Reform Group (GMRG). That being said, there is some ambiguity in the Draft Rules and we recommend this is clarified by ensuring it is clear which party is required to provide the relevant information through the negotiation process.

Exemptions - Based on the Explanatory Note, we understand that a non-scheme pipeline that is not providing third party access should be exempt from the Information Disclosure requirements (Division 2) and the Arbitration Framework including the requirements relating to Access Requests and Negotiations (Division 3) and Arbitration of Access Disputes (Division 4) The Explanatory Note states that Division 6, which outlines the exemption provisions, allows for non-scheme pipeline operators to apply to the Australian Energy Regulatory (AER) for an exemption from the Information Disclosure and Arbitration Framework in its entirety.

Based on our understanding of the application of the Draft Rules, such pipelines would still be required to meet the requirements under the Access Request and Negotiation provisions contained in Division 3. It is clear that this Division should not apply to non-scheme pipelines that do not provide third party access. Division 3 sets the requirements to develop a User Access Guide and provides a framework for responding to requests and providing offers to potential shippers. This is likely a drafting oversight and can be corrected by referencing Division 3 along with Division 4 in paragraph 585 (1) (a) and inserting the words "request or". The Drafting would be as follows (with the insertions underlined):

Category 1 – an exemption excluding any access request and / or dispute in relation to a pipeline services on a non-scheme pipeline from the operation of Division 3 and Division 4;

Asset Valuation Methodology - We prefer some discretion is provided to the arbitrator, which is consistent with the original approach outlined by the GRMG. If adopting this approach, however, greater guidance around past recoveries of capital is necessary. While we appreciate on-going capital investment will continue to maintain the operation of the pipeline, once the capital recovery of the initial investment has been achieved, we would expect there to be some fall in pipeline tariffs. Consistent with this view we do not support the "alternative drafting" on asset valuation methodology outlined in the Explanatory Note (which reflects the arrangements applying to covered pipelines), given its treatment of capital recovery. In our view asset value should not be solely based on depreciated value. Furthermore, it is possible these requirements could change following the Part 8 to 12 review and it would seem inappropriate to embed such requirements in the arbitration framework for non-scheme pipelines.

We would welcome the opportunity to discuss the matters raised in this submission and please do not hesitate to contact Ms Erin Bledsoe 0409 877 116 if you have questions.

Yours sincerely



Tom Summers
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