



19 April 2017

Dr Michael Vertigan AC
Gas Market Reform Group
c/o Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Submitted via email: gas@environment.gov.au

Dear Dr Vertigan

Gas Pipeline Information Disclosure and Arbitration Framework – Implementation Options Paper

Origin Energy Limited (Origin) welcomes the opportunity to provide comments on the Gas Market Reform Group's (GMRG) Gas Pipeline Information Disclosure and Arbitration Framework Options Paper.

Origin is broadly supportive of the GMRG's package of preferred options, a key feature of which is the focus on underlying cost drivers rather than transportation charges specifically. As noted by the GMRG, the most appropriate basis for testing whether the price offered by a pipeline operator is reasonable is to have regard to the costs the pipeline incurs in providing the service. This approach should therefore improve the ability of prospective/existing pipeline users to assess and negotiate agreements on non-covered pipelines, while simultaneously avoiding the shortcomings of a more prescriptive regulatory approach.

But the success of these reforms will still be contingent on ensuring the cost information disclosed is appropriately targeted. Further, the arbitration framework must be sufficiently flexible to facilitate timely resolution of any access disputes, while also providing sufficient clarity around the assessment process such that it actually functions as a credible threat to regulation. It is within this context that Origin has provided further commentary on specific aspects of the preferred Options, as discussed below.

1. Information disclosure – Option 2

Financial reporting information

Option 2 would require the publication of a base level of information describing the services available with verified financial reports and underlying demand data for the previous year. While it would not be possible to use the financial information provided under this option to develop a detailed bottom-up cost of service analysis, it should provide shippers with the ability to undertake a high-level assessment of the cost-reflectivity of an offer. This approach would also avoid any confidentiality concerns that could arise in presenting information on existing contract prices, which would be of limited usefulness in any case given the differences in contracting terms.

To ensure financial information is presented at a sufficiently disaggregated level and on a consistent basis, Origin is supportive of developing a guideline that specifies: the information to be reported and in what format; the methodology used to determine specific measures (e.g. asset values); and any reporting principles to be employed.

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Exemption criteria

Origin is broadly supportive of providing reporting exemptions to: pipelines that do not provide third party access; and/or have a nameplate capacity below a given threshold. With respect to the latter, it is noted the GMRG has proposed a threshold of 10 TJ/day, which is lower than the existing 20 TJ/day reporting threshold for the east coast Bulletin Board. Origin does not have a specific view on the adequacy of the proposed new threshold, but it would be useful for the GMRG to clarify why a lower threshold is necessary in this instance.

2. Arbitration mechanism – Option 3

Binding arbitration

The earlier Examination Paper noted the decision of the arbitrator would be binding on both parties. Origin strongly supports the revised position presented by the GMRG, which would allow shippers to 'opt-out' of accessing the requested service. A shipper should not be forced into seeking access if the price or terms and conditions associated with the determination would cause financial distress or are simply too onerous to meet. Were this to occur, the risks associated with entering arbitration would likely see shippers avoid the process entirely, which would ultimately undermine its role as a credible threat to regulation.

Scope of disputes and threshold for consideration

Origin agrees there is merit in allowing access to arbitration for non-price related disputes. Given the costs involved, it is unlikely arbitration will be heavily relied upon to resolve disputes relating to non-price related factors (e.g. specific terms and conditions, curtailment arrangements, nomination cut-off times etc.). But this does not mean shippers should be precluded from accessing the arbitration mechanism if they consider it necessary.

To the extent there are concerns this would allow for vexatious and potentially immaterial issues to be taken to arbitration, the GMRG's proposed 'discretionary threshold' should allow for such disputes to be dismissed by the arbitrator. In order for such a threshold to be transparently applied and with some degree of predictability, it must be underpinned by some form of underlying guidance material. As discussed by the GMRG, this guidance should clarify how the materiality of disputed matters will be assessed, as well as whether the service requested by the shipper can actually be provided (e.g. is it technically feasible).

3. Pricing principles – Option 2b

Ensuring the arbitrator has regard to the actual costs a pipeline operator incurs (including a commercial return on capital) in providing a specified service is an appropriate basis for examining the cost-reflectivity of an offer. This overarching principle should ensure the full characteristics of the pipeline and risks involved in providing the service are accounted for. It is also consistent with the preferred information transparency provisions discussed above.

A key point of contention with administering such an approach will be determining an appropriate starting asset value for a pipeline. It is recognised that a prescriptive approach to determining asset valuations may not be consistent with the overall desire to deliver commercial, rather than regulated outcomes. But there may be merit in at least preparing a guideline on asset valuation techniques to both assist the arbitrator and provide some clarity to shippers/pipeline businesses as to what is likely to be considered. With this in mind, the guideline could potentially be used to provide a default case for asset valuations, though the arbitrator would have the discretion to consider alternative approaches that may be better suited to the circumstances of a particular pipeline.

If you wish to discuss any aspect of this submission further, please contact Shaun Cole at shaun.cole@originenergy.com.au or on 03 8665 7366.

Yours Sincerely,

A handwritten signature in blue ink, consisting of a series of connected loops and a vertical line at the end, resembling the name 'Steve Reid'.

Steve Reid
Manager Wholesale Regulatory Policy