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13th April 2017

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C/- Australian Energy Market Commission
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To whom it may concern

Gas Pipeline Information Disclosure and Arbitration Framework- Implementation Options Paper

This submission is provided by Tas Gas Networks in response to the Gas Pipeline Information Disclosure and Arbitration Framework- Implementation Options Paper dated March 2017 (**Options Paper**).

Tas Gas Networks has an interest in two gas distribution networks which are relevant to this submission:

- 1 **Tasmanian Natural Gas Distribution Network** - Tas Gas Networks owns and operates the gas distribution network in Tasmania and holds the distribution licence.
- 2 **Victorian Regional Natural Gas Distribution Network** - Enwave Regional Networks (a wholly-owned subsidiary of Tas Gas Networks) owns and operates a distribution system comprising 11 discrete reticulated gas networks, currently under construction, in regional Victorian towns. Enwave Regional Networks holds the distribution licence in respect of these networks.

The specific circumstances of each of these networks is set out below. I have also set out some overarching submissions in relation to the application of the information disclosure and arbitration framework more generally.

Objective of the new framework

In the Options Paper it is noted that the overarching objective of the new information disclosure and arbitration framework is to facilitate timely and effective commercial negotiations between shippers and the operators of non-scheme pipelines by:

- reducing the imbalance in bargaining power that shippers can face; and
- posing a constraint on the exercise of market power by pipeline operators.

The Options Paper canvasses different types of information to be provided to shippers and the introduction of a binding arbitration mechanism available to parties using non-scheme pipelines as a “back stop” if commercial agreement cannot be reached. It is said that the framework is expected to:

- support timely and effective commercial negotiations between shippers and pipeline operators;
- provide a credible threat of intervention if a dispute arises; and
- preserve the incentives for investment and innovation in the provision of pipeline services by adopting a commercially orientated disclosure and arbitration framework.

Tas Gas Networks’ overarching submission is that the profile of its two gas distribution networks are such that the cost of compliance with the information requirements and the arbitration process considered in the Options Paper will outweigh the possible benefits. We do not presently hold information in the form contemplated by the Options Paper and there would be significant work required to extrapolate and prepare information so that it can be displayed on our website. The cost of the arbitration process itself could also be extremely significant to a business the size of Tas Gas Networks.

It is our submission that, having regard to the small size of our distribution networks, the small number of customers, the low level of demand for gas and limited number of shippers, the concerns identified in the Vertigan report are unlikely to arise in respect of our networks. Further, imposing the costs of the information disclosure and arbitration framework on our small networks will disproportionately increase the cost of the provision of our distribution network services, in a market where demand for gas is already declining. As gas is a fuel of choice, it may also affect our ability to compete with alternate fuel suppliers which are not required to publish information of the sort contemplated in the Options Paper.

The Tas Gas Networks distribution pipelines discussed below should be specifically exempt from the operation of the information disclosure and arbitration framework to be introduced into the National Gas Law and National Gas Rules.

Alternatively, or in addition to any specific exemption, Tas Gas Networks submits that there should be an automatic exemption for gas pipelines which meet certain criteria as well as a mechanism by which gas pipelines can apply to the AER to seek an exemption from the operation of the proposed information and arbitration regime. Further submissions on the exemption framework are set out below.

Tasmanian Natural Gas Distribution Network

The characteristics of our distribution system in Tasmania can be summarised as follows:

1. Tas Gas Networks is the sole distributor of natural gas in Tasmania;
2. natural gas in Tasmania has a very small percentage penetration in the market, approximately 5% of the total market and only 20% of the total number of premises passed by the pipeline. As a consequence natural gas is a relatively minor fuel in the energy mix and is the fuel of choice by Tasmanian customers;
3. we have approximately 13,000 customers (end-users) in total, 12,930 of which are residential or small commercial customers consuming, in aggregate, less than 1TJ per day;
4. whilst the total daily usage on the network exceeds 10 TJ, if our largest industrial is excluded the daily usage is reduced by approximately one third;
5. there are three shippers of gas that buy gas in Victoria on the wholesale market and have it shipped to Tasmania via our distribution network, being Tas Gas Retail, Aurora Energy and one large Industrial customer. There are no other shippers buying gas out of the Victorian wholesale market;
6. there are approximately 50 large network users (consuming more than 10TJ per annum) with whom we have negotiated gas distribution supply agreements for the use of our network directly;
7. TGN has a non-discriminatory pricing policy with both the retailers;
8. the large Industrial customer, who is many times larger than TGN and has countervailing marketing power, negotiated its own extension to the distribution network on commercially acceptable terms; and
9. Each Industrial customer has its own gas distribution supply agreement with a specific dispute resolution provision which to date has never been triggered by any party. This dispute resolution clause is set out in Appendix B of the Options Paper.

What the above summary shows is that:

- a) There are a very small number of customers comparative to other networks and few shippers or prospective shippers in the market that are likely to seek access;
- b) The majority of our end-users' consumption, in aggregate, is very low at less than 1TJ per day and demand for gas is limited;

- c) The large network users and shippers are able to negotiate with equal or greater market power than TGN; and
- d) In these circumstances the material cost of preparing and providing the information contemplated in the Options Paper on our website and the introduction of the arbitration framework would outweigh any potential benefit, as well as potentially impacting on ability to compete with alternative fuels, the providers of which are not subject to such requirements.

Victorian Regional Natural Gas Distribution Network

The structure of the Enwave Regional Networks distribution system is unique and can be summarised as follows:

1. Enwave distributes natural gas to 11 towns in Victoria using a model whereby we transport compressed gas in trucks from Bendigo to the regional towns, where the gas is then injected into a local distribution network servicing each town;
2. there is one retailer/shipper and one distributor and they are related body corporates;
3. the network is still in the process of construction and, while we are committed to ensuring the network passes 12,500 homes in the 11 towns, the forecast connections in the early years are very low;
4. The total consumption of our customers on these networks is expected to be under 10TJ per day, at least in the short to medium term; and
5. There are no other potential retailers or shippers who are likely to seek access, but we note our distribution licence includes a requirement to provide third party access on fair and reasonable terms if requested to do so.

The unique characteristics of this network, the low consumption and low likelihood of any third party access seekers means there is no reasonable prospect that a benefit of the information disclosure and arbitration framework would outweigh the cost of compliance.

We note that the very low consumption of gas on this network below 10 terajoules a day means that it would fall under the preferred exemption mechanism discussed in the Options Paper in respect of the disclosure requirements. But even if that threshold was not maintained, it is Tas Gas Networks' submission that this network should be specifically excluded given the circumstances described above.

The exemption framework

Tas Gas Network's primary submission is that its two distribution gas networks should be specifically exempt in the Rules from the information disclosure and arbitration framework.

In addition to any specific exemption, or as an alternative, we make the following submissions in respect of the inclusion of an exemption framework in the Rules:

1. The Vertigan report and the concerns raised by stakeholders about market power being exercised to the detriment of consumers and efficient market outcomes were raised in relation to transmission rather than distribution pipelines;
2. The draft amendment Bill which will introduce the information disclosure and arbitration framework for non-scheme pipelines includes a provision which allows some pipelines, parts of pipelines or pipeline services to be excluded (section 216C). There is an acknowledgement that for some pipelines, it will not be appropriate for the new regime to apply;
3. As explained above, for small gas distribution pipelines such as ours, the cost of compliance with the information disclosure requirements and of an arbitration process will outweigh the likelihood of benefits arising. Further, the characteristics, including market share, customer numbers and consumption on smaller pipelines, mean that the concerns the new provisions are intended to address (imbalance of market power, etc) are unlikely to arise. Given the significant impact of the regime on smaller pipelines, we suggest an exemption framework which includes two components:
4. automatic exemption for pipelines with certain characteristics; and
5. a clear and transparent process under which application can be made to the AER for an exemption in relation to pipelines which are not automatically exempted;
6. In respect of the automatic exemption, it is our submission that the GMRG's preferred exemption criteria from information disclosure, including the 10TJ per day threshold, does not adequately address the impact of the reforms on smaller pipelines. We suggest that there are other relevant measures that can be used to automatically exempt pipelines on the basis the costs will outweigh the benefit of the scheme, including:
7. the percentage penetration of the relevant market and the percentage of connected premises overall;
8. the number of customers; and
9. the demographic of customers and the mix of customer base. For example, a pipeline with mostly small retail customers could be automatically exempt;

10. In relation to a process under which a pipeline can apply for exemption:
11. The Rules should set out a clear and transparent process for seeking exemption and include matters to be taken into account, such as the costs and benefits of the application of the scheme to the particular pipeline. There should also be a timeframe for a decision on the exemption;
12. The AER seems well placed to decide such applications, provided clear criteria are set out to make the process as efficient and transparent as possible, including a timeframe for decisions to be made;
13. It is acknowledged that a review of any exemption is appropriate if circumstances change materially or after a specified period of time, say 2 years; and
14. Finally, it is our submission that the exemptions should apply to both the information disclosure requirements and the arbitration framework. In the alternative, the exemption should apply to the information disclosure requirements, with the ability for the arbitrator or the AER to decide an arbitration should not proceed in certain circumstances.

Summary

In summary, Tas Gas Networks' submission is that:

1. both of Tas Gas Networks distribution networks identified above should be the subject of a specific exemption in the National Gas Rules due to their small size and the cost and minimal benefit of compliance with the framework contemplated in the Options Paper;
2. alternatively, or in addition to any specific exemption in the Rules for our distribution networks, there should be an exemption framework provided for in the Rules which:
 - a. automatically exempts pipelines from the proposed information disclosure and arbitration framework if certain criteria are met;
 - b. provides for a process by which a pipeline can apply to the AER to seek exemption. The Rules should set out a clear and transparent process for seeking exemption and include matters to be taken into account by the AER, such as the costs and benefits of the application of the scheme. There should also be a timeframe for a decision by the AER on the exemption;
 - c. allows for a review of the exemption if circumstances change materially or after a specified period of time, say 2 years; and
 - d. the exemptions should apply to both the information disclosure requirements and the arbitration framework; and

3. if the information disclosure requirements are to apply to our networks, our submission is that the information required under Option 1 should be the maximum amount of disclosure required by us (and possibly other small distribution pipelines) given the costs of compliance and circumstances identified in this submission.

Given the limited time we have had to prepare this submission, Tas Gas Networks may seek to provide supplementary submissions on these important issues in due course. We will also seek to participate in further consultation on the information disclosure at arbitration framework.

If you have any queries please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to be 'SH' or similar initials, written in a cursive style.

Simon Himson

CEO

Tas Gas Networks

