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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 Retail in response to the Gas Pipeline Information Disclosure and Arbitration Framework- Implementation Options Paper dated March 2017 (Options Paper).

Tas Gas Retail is a small shipper and natural gas retailer for Tasmania and a natural gas retailer for a number of disparate regional Victorian towns which are not directly connected to the Victorian transmission system.

Tas Gas Retail has experienced an imbalance in bargaining power with a monopoly pipeline operator who has used its market power to influence price and terms. As such we welcome the introduction of the information disclosure and arbitration framework and the opportunity to comment on the Options Paper.

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.

On the whole, Tas Gas Retail is largely supportive of the preliminary views proposed by the Gas Market Reform Group. The exception to the preliminary views is in regards to the information disclosure option, where we are seeking a greater level of information be provided by pipeline operators. Further, we would like to see transitional arrangements which allow the proposed framework to take effect as soon as possible.

Our summary views are at Appendix 1. If you have any queries in relation to this submission, please contact me on 03 6336 9332.

Yours sincerely



Kate Daley
Manager

APPENDIX 1

Tas Gas Retail's responses are indicated in the grey boxes.

a. Information disclosure

Options

(1) Are there any other information disclosure options that you think should be considered? If so, what is the option and why do you think it should be considered?

- Tas Gas Retail Pty Ltd (TGR's) preferred information disclosure Option is Option 3.
- The five Options presented are considered to be sufficient.

(2) Do you agree with the base level of information that pipeline operators would be required to provide if Option 1 was to be implemented, or is there other information you think should be disclosed to enable shippers to make an informed decision about whether to seek access?

- Price and non-price conditions should include pipeline operator's commitment that they will not engage in price discrimination unless that discrimination is conducive to efficient service provision per the requirement under light regulation.
- If expansion or augmentation is requested and is to be recovered from one or more shippers, the pipeline should be required to provide its assessment and method of costing.

(3) Do you think there is value in requiring pipeline operators to provide shippers with information that could assist with their assessment of the reasonableness of the prices offered?

(a) If not, why not?

(b) If so:

(i) Do you think that cost and other financial information should be reported?

- Yes. TGR supports the intent of Dr Vertigan's '*Examination of the Current Test for the Regulation of Gas Pipelines*', where shippers should be able to access information and the methodology used to determine prices for different services including costs incurred to enable the assessment of the reasonableness of the prices and terms offered.
- Detail on costings and methodology for individual services will be important, particularly as shippers become more reliant on a suite of pipeline services to manage profile swing, no longer provided by wholesale gas producers.

- If not, why not?

- If so, do you think it is sufficient for shippers to be able to access the pipeline's financial reports and a breakdown of demand information, or is more detailed cost, demand and financial information required?

(ii) Do you think the prices actually payable by shippers should be reported?

- If not, why not?

- If so, do you think the anonymity of shippers needs to be protected, or do you think all prices should be disclosed?
 - If you think anonymity needs to be protected, please explain why and how you think prices could be aggregated?
 - Given the differences in terms and conditions that can affect price in the underlying contracts, do you have any concerns about aggregating prices?

- TGR has no concerns about the price it pays for shipping services being public record. The information disclosure would provide benefit to gas users and the public regarding transparency of components that make up gas charges and therefore has the potential to increase retail competition for the benefit of end consumers. Transparency of prices being paid would demonstrate whether a pipeline operator is providing non-discriminatory pricing (per comments under point 2).
- It has not been our experience with the Tasmanian Gas Pipeline or Eastern Gas Pipeline that terms and conditions vary to the extent that it has a significant impact on price. In the event generally, that shippers experience variation in price dependent on terms and conditions, we would support the provision of a price range or an average price being provided. Either a price range or average price will facilitate discussion between shippers and pipeline operators as to what terms and conditions influence price.

- (iii) Is there any other information that pipeline operators could be required to disclose?

Implementation issues

- (4) Do you think that an exemption mechanism should be incorporated into the information disclosure requirements?
 - (a) If not, why not?
 - (b) If so:
 - (i) Do you agree that it would be appropriate to provide for an exemption from all the disclosure requirements if the pipeline is not providing third party access; or is a single shipper pipeline?
 - (ii) Do you think an exemption from the cost, demand and financial information reporting requirements should be granted to pipelines that are smaller than the minimum reporting threshold? If so:
 - Do you think the exemption should be absolute, or should it just mean that the pipeline operator doesn't have to provide information unless it is requested to do so?
 - Do you agree with the 10 TJ/day reporting threshold, or do you think a different threshold would be more appropriate?
 - (iii) Do you think there are any other exemptions that should be provided for, such as in relation to:
 - non-scheme distribution pipelines?
 - pipelines subject to a 15-year no-coverage determination?

(c) If an exemption mechanism is to be adopted, do you think the AER is the most appropriate body to oversee the mechanism, or is there another option?

- TGR supports an exemption mechanism.
- We agree that it would be appropriate to provide exemptions from all disclosure requirements if there is no third party access or where there is a single shipper pipeline.
- TGR considers that pipeline operators with utilisation of 10TJs/day should be automatically exempt.
- TGR considers that all non-scheme distribution pipelines should be automatically exempt.
- Pipelines with utilisation above 10TJs/day that are subject to a 15-year no coverage determination should not be exempt.
- TGR agrees that the AER is the most appropriate body to oversee the exemption mechanism.

(5) Do you agree that the new information disclosure requirements should be classified as a civil penalty provision in the NGR? If not, why not?

- We agree that the new information disclosure requirements should be classified as a civil penalty provision in the National Gas Rules.

(6) Do you think there would be any value in also classifying the information disclosure requirements as a conduct provision in the NGR?¹ If so, why?

- A conduct provision in the NGR would provide additional incentive to pipeline operators to comply with the information disclosure framework. However, in the first instance TGR would support a civil penalty provision only on the basis that future framework reviews enable consideration of adding a conduct provision.

(7) Do you think there would be value in including a reporting standard in the information disclosure requirements in the NGR?

(a) If not, why not?

(b) If so, what form do you think it should take?

- Yes, guidance will assist all parties to understand the information disclosure standards expected.
- Pipeline operators should publish a statement of compliance that is signed off at director level.
- The form should be derived by independent expert/s in this area.

(8) Do you agree that the information to be published by pipeline operators should be published on their website?

(a) If not, why not?

¹ A conduct provision allows persons other than the AER that suffer loss or damage as a result of the conduct of another person that was done in breach of a conduct provision to recover the amount of the loss or damage by action against that person in court.

(b) Are there any other issues that the GMRG should consider in relation to the manner and form in which information should be published?

- TGR would support information being available on individual pipeline operator's websites.
- TGR would support a centralised approach however, this would require additional resources. In this instance, the costs and benefits need to be assessed. TGR is not in a position to make such an assessment.

(9) Do you agree that the AER should prepare a guideline on how financial reports or detailed cost information is to be prepared? If not, why not?

- Yes, there should be a guideline prescribed for how information should be presented and the nature of explanatory notes. Conformity will enable shippers to develop a single process for evaluating offers rather than having to change the type of analysis for inconsistent reporting and or change of reporting formats.
- A prescribed guideline will assist pipeline operators to meet their reporting obligations and avoid penalties for non-compliance.
- The form should be derived by independent expert/s in this area.

(10) Do you have an alternative view on the frequency with which information should be published by pipeline operators from that set out in section **Error! Reference source not found.**?

- No. TGR supports the expectations outlined in section 3.4.6.3.

(11) Do you think a confidentiality mechanism should be included in the information disclosure requirement?

(a) If not, why not?

(b) If so, do you think:

- (i) the AER is the appropriate body to oversee any confidentiality claims?
- (ii) any specific provisions need to be included in the NGR to guide the AER's assessment of the confidentiality claim?

- TGR has no concerns about the price it pays for shipping services being public record. The information disclosure would provide benefit to gas users and the public regarding transparency of components that make up gas charges and therefore has the potential to increase retail competition for the benefit of end consumers. Transparency of prices being paid would demonstrate whether a pipeline operator is providing non-discriminatory pricing (per comments under point 2).
- TGR considers that there could be an exemption process for price disclosure if a shipper could demonstrate that such a disclosure was not aligned with the National Gas Objective.
- TGR is supportive of the AER being the oversight body to oversee confidentiality claims.

(12) If a shipper's access application reasonably requires further investigation by the pipeline operator, do you think a pipeline operator should be able to recover the direct costs of this investigation work? If not, why not?

- Yes, only if the application is regard to expansion or augmentation. In this circumstance the pipeline operator should provide the shipper with an estimate of costs and how those costs were arrived which the shipper needs to agree before the work commences.

(13) Are there any other circumstances in which a pipeline operator should be able to recover the costs it incurs in providing information?

- No, it is assumed that the cost of compliance will be built into the pipeline operators operating costs and passed through to shippers on the basis of proportionate use.

Preliminary view on options

(14) Do you agree with the GRMG's preliminary view that Option 2 should be implemented? If not, please explain why this is the case and if there is another option that you think would be more appropriate?

- TGR's preference is Option 3.
- Detail on costings and methodology for individual services will be important, particularly as shippers become more reliant on a suite of pipeline services to manage profile swing, no longer provided by wholesale gas producers.

(15) What costs are pipeline operators likely to incur complying with this option?

- It is assumed that pipeline operators would have this information available in order to calculate the price of each type of service offered. Initially it is expected that there would be some compliance costs in terms of presenting the information in the prescribed format.
- Audit costs may increase.

(16) Do you think that the benefits of implementing this option will exceed the costs?

- TGR considers that the benefits do outweigh the costs in terms of getting the best delivered price for customers. Shippers need to be able to access information that enables them to determine how to deliver natural gas at the best possible price to customers whilst still making adequate returns.

(17) Do you agree with the GMRG's preliminary view on how the implementation issues should be dealt with (see **Error! Reference source not found.**)? If not, please explain why.

- Table 6.3 considers the implementation issues of Option 2, whereas TGR's preferred position is Option 3. Therefore the implementation framework will need to consider the additional level of information disclosure under Option 3.
- TGR would be supportive of a staged implementation approach. For example, from the first reporting period (1 January 2018) information under Option 2 is required and by 1 January 2019, full disclosure (under Option 3) is required.

b. Arbitration mechanism

Proposed approaches

(18) Do you agree with the GMRG's proposed approach to dealing with the following matters as set out in sections **Error! Reference source not found.** and **Error! Reference source not found.**:

(a) access proposals?

- TGR is concerned that if it needs to follow a pipeline operator's access request and negotiation framework that it opens up the door for pipeline operators to use timeframes to 'game' the system. For example, at present the Tasmanian Gas Pipeline's access application process gives it three months to respond to any request. This period of time is unacceptable for routine requests for access.
- The concern is that if pipeline operators can dictate the access and negotiation framework, they are able to create barriers to shippers accessing arbitration to resolve commercial disputes in a timely manner.
- TGR would like the framework to stipulate reasonable timeframes for an access application and negotiation framework that a pipeline operator must adhere to. For example, an access application for published services should be responded to within two weeks and from the commencement of a dispute process under the pipeline operator's negotiation framework that it has a time limit of two months.

(b) protecting existing contractual rights?

- Agreed with the exception of amendments to gas transportation agreements or new gas transportation agreements made after May 2017 where pipeline operators used their market power to force price and terms that would not have occurred should the framework been available. Refer to transition arrangements.

(c) safeguards to avoid distorting investment?

- Agreed

(d) the role of the AER?

- Agreed

(e) selection of the arbitrator?

- Agreed

(f) the binding nature of the access determination?

- Agreed

(g) the costs of the arbitration?

- Agreed

(h) the termination of arbitration by the arbitrator and/or access seeker?

- Agreed

(i) the process for correcting errors?

- Agreed

(19) If not:

(a) What concerns do you have with the proposed approach/s?

(b) Are there other approaches that you think would be more appropriate? If so, please explain why this is the case.

(20) Do you agree with the GMRG's proposal to allow shippers and pipeline operators to be able to access arbitration in the event of a dispute in relation to services that require the use of existing capacity or require further augmentation of the pipeline (excluding extensions)?

- Yes

(b) If not, what services do you believe should be eligible to go to arbitration and why?

(21) Do you think an exemption mechanism should be incorporated into the arbitration mechanism?

- TGR agrees that pipeline operators who do not provide third party access should be automatically exempt.

- TGR is not opposed to other exemption options from the framework such as non-scheme distribution networks.

(a) If not, why not?

(b) If so, do you agree that it would be appropriate to provide for an exemption to non-scheme pipelines that are not providing third party access? If not, why not?

(c) Are there other exemptions that should be included, such as in relation to:

(i) non-scheme distribution pipelines?

(ii) pipelines subject to a 15-year no-coverage determination?

(22) If an exemption mechanism is to be adopted, do you think the AER is the most appropriate body to oversee the mechanism, or is there another option?

- Yes

(23) If an exemption is adopted, what process should be in place under the Rules to obtain an exemption? For example, should parties be required to apply to the AER for an exemption?

- If the only exemption available is for pipeline operators who do not provide third party access then they should be automatically exempted.
- If other exemption options are provided, pipeline operators should apply for exemption status through the AER.

(24) Are there other important design components that have not been identified in this paper? If so:

- (a) What design component/s have been overlooked?
- (b) What approach would you recommend the GMRG take in addressing these design issues?

Arbitration options

(25) Of the options that have been identified, which options do you think provide the most credible threat on intervention? Why?

- Option 3 – Conventional arbitration that reflects elements of commercial and regulatory arbitration.

(26) Which option do you think appropriately balances the following and why:

- providing for a commercially-focused arbitration framework;
- avoiding unnecessary interference with investment and innovation; and
- affording adequate protections to small shippers to effectively use arbitration in the event of a dispute.

(27) Are there any additional and more preferable options for the implementation of the arbitration mechanism not identified in this paper? If so:

- (a) What design components would make up this option or options?
- (b) What are the advantages and disadvantages of this option?
- (c) Why is this option preferable to the five options identified?

Preliminary view on options

(28) Do you agree with the preliminary view on the form the arbitration mechanism should take?

- TGR supports Option 3: Conventional Arbitration with enhanced procedural protections and partial transparency.

- (a) If not, is there another arbitration option that you think would be more appropriate? If so, please explain why this is the case?

a. Arbitration principles

(29) Do you think the pricing principles should:

- (a) provide the arbitrator with broad discretion to determine whether a pipeline operator's offer is reasonable? If so, why?

- Yes the arbitrator should have broad discretion as each circumstance/situation will be different.

(b) specify the test the arbitrator is to use when assessing whether a pipeline operator's offer is reasonable?

(i) If not, why not?

(ii) If so, do you think the test should be based on:

- the prices payable for comparable pipeline services? If so, please explain why and also set out how you think the limitations set out in sections **Error! Reference source not found.** and **Error! Reference source not found.** would be overcome.
- the costs incurred in the provision of services? If so, do you think the costs should be measured using the hypothetical new entrant standard, or the actual cost standard?

(c) provide the arbitrator with additional guidance on how to apply the relevant test, or should the arbitrator have discretion to determine how the test is to be applied?

(i) If you think more guidance is required, please explain why and specify what additional guidance should be included in the pricing principles.

(ii) If you don't think further guidance should be included in the pricing principles, do you think there would be value in getting the AER to prepare any guidelines on how the actual cost of providing the service could be measured by the arbitrator (including asset valuation techniques that could be used)?

- TGR is concerned that specified tests for arbitrators may prohibit reasonable outcomes in unique or uncommon situations such as change in market circumstance such as declining market or where an asset was originally built oversized and as such is underutilised.
- To address the above situations TGR would like a guideline on the valuation of assets that more closely reflects a true economic valuation. This may, for example, be achieved by providing additional guidance on how the optimisation adjustment is to be calculated in a Depreciated Optimised Replacement Cost (DORC) valuation or moving to a methodology more closely aligned with the requirements around the valuation of assets for accounting purposes, that is an asset impairment test.

(d) include separate principles to deal with derivative and ancillary services?

(i) If not, why not?

(ii) If so, do you think the test should be based on the approach set out in section **Error! Reference source not found.**?

(30) Are there any other pricing principles that you think should be included in the NGR that haven't been considered?

(31) Do you think the pricing principles should be supplemented with other principles?

(a) If not, why not?

- (b) If so, do you think the principles set out at the end of section **Error! Reference source not found.** are appropriate, or do you think further refinements are required?

- The principles as stated have no reference to market circumstance. In the instance of a declining market it is unclear which principles have precedent. Rising gas and electricity prices may cause a change in circumstance in markets (particularly regional) that may lead to declining markets for pipeline owners. It is important for the principles to cater for such circumstance so that investments are not protected at the expense of customers (eg. in a declining market rather than taking an impairment, a pipeline operator seeks to recover the same amount of revenue from a declining customer base).
- It is suggested that principle iv could be expanded to state “the interests of all persons who have rights to use the service (including any downstream customers) who have made legitimate investments on the basis of reasonable price and access.”
- It is intended that the above suggested amendment would give parties equal weighting. For example, in the event of a declining market it would be reasonable approach for the investor to take an impairment and the user to bear an increase in price.

- (32) Do you agree with the GMRG’s preliminary view that the pricing principles should be based on actual cost of service provision (including a commercial rate of return) supplemented by a broad set of other principles (i.e. Option 2b)?

- TGR supports Option 2b.

- (a) If not, are there other options that you think would be more appropriate? If so, please explain why this is the case.
- (b) Should a supplementary factor be included in the pricing principles that allows an arbitrator to consider the prices struck in foundation contracts for comparable services in those cases where a pipeline has recently been constructed and there was competition for the development of the pipeline?
- (i) If so, how would the limitations set out in Box 5.1 be overcome?

b. Transitional issues

- (33) Do you agree with the GMRG’s preference to accelerate the development of the financial guidelines with the assistance of a suitable consulting firm and in consultation with the AER?

- Yes

- (a) If not, why not?

- (34) Do you think the time lines proposed in Table 6.5 (see section 6.5) are realistic?

- The timeframes are necessary, particularly the ability to access the arbitration framework as soon as possible. Access is needed to provide a credible threat to pipeline operators who are negotiating gas transportation agreements in 2017.
- 80% of Tasmania's market requires new transportation agreements prior to the end of 2017 (not including the Tamar Valley Power Station). As outlined in the ACCC's east coast gas inquiry there is evidence of pipeline operators exerting monopoly power to influence price and terms². The Tasmanian Gas Pipeline is currently refusing to provide price and access to small shippers for delivery points out of contract in August 2017 and December 2017 while it negotiates an agreement with a larger shipper. There are no reasonable remedies available to shippers to mitigate this behaviour.
- The issues facing the Tasmanian gas market are complex for the investing pipeline owner, shippers and natural gas consumers. With its monopoly position, the pipeline operator is driving outcomes that suit its own commercial purpose at the expense of Tasmanian consumers.
- The Tasmanian Gas Pipeline's behaviour is impeding gas retailers' ability to provide quotes for gas supply which is limiting the ability of industrial customers to estimate their future gas requirements. This is delaying the acquisition of gas from the market at a time where the pricing is volatile and escalating. As a result, most Tasmanian gas users are exposed to higher delivered gas prices than they would otherwise been if information on gas transportation pricing and access had been available.
- The Tasmanian Gas pipeline is currently using customers who are out of contract in August 2017 as leverage to secure a gas transportation agreement on its terms with a state government owned enterprise. Despite requests for access more than six months ago, no price or terms have been forthcoming. While TGR could apply to the ACCC for denial of access, it has no recourse if the pipeline operator responds with monopoly pricing.
- It is for this reason, that TGR would like the arbitration framework to apply retrospectively to monopoly pricing, terms and conditions that pipeline operators have forced on the cusp of the framework coming into effect. The threat of arbitration applying retrospectively to these circumstances may incentivise pipeline owners to behave appropriately.

(a) If not, why not?

(b) What timeframes do you believe are appropriate in relation to:

- (i) pipeline operators publishing the base level information required by shippers on their website?
- (ii) the development of a guideline on the preparation of financial reports?
- (iii) pipeline operators publishing financial reports?

² Australian Competition and Consumer Commission, 2016, 'Inquiry into the east coast gas market', p.110

- TGR recommends that the arbitration framework be available to shippers from 1 August 2017 and that shippers who contend that a pipeline operator has inappropriately used their market power for pricing and terms and conditions for new gas transportation agreement or an amendment to an existing gas transportation agreement from May 2017 be able to access arbitration for a retrospective decision.
- TGR recommends that the transitional arrangements allow shippers to apply for arbitration where it is demonstrated that they have complied with a shipper's access framework. Where there are no clear negotiation frameworks available with the pipeline operator, it is recommended that shippers be able to apply to access transitional arbitration on the basis of demonstrated negotiations or attempts to negotiate made in good faith.
- TGR recommends that where a gas transportation agreement can not be reached before the expiry of an existing transportation agreement that shippers are able to apply for a determination regarding the continuance of services at historic rates until a new gas transportation agreement is entered into. With relevant prices being backdated to the commencement date. It is proposed that the AER could oversee the transitional arrangements, granting access approval for arbitration and setting out the terms for supply and price continuance.
- During transitional arrangements TGR supports that the arbitrator should have the power to obtain additional information if they do not have sufficient information available to make a determination. Any information acquired by the arbitrator should be provided in confidence to all affected parties to the dispute.