



24 February 2010

Manager, MCE Secretariat,
Department of Resources, Energy and Tourism,
GPO Box 9839
Canberra ACT 2601

By Email: MCEMarketReform@ret.gov.au

Dear Sir/Madam

Re: Second Exposure Draft of the National Energy Customer Framework

The APA Group welcomes the opportunity to respond to the to the second exposure draft of the National Energy Customer Framework ("NECF2").

The APA Group is a major Australian gas transmission and distribution company with interests in almost 12,000 km of natural gas pipelines and over 2,800 km of gas distribution networks. APA also provides management and operation services to the gas distribution and transmission company Envestra and other energy infrastructure companies

APA is particularly concerned about changes in the regulatory regime which may increase the cost of gas distribution where there is no identified and quantified benefit. Any increase in liability exposure, credit risk, connection or regulatory compliance costs reduces the attractiveness of investment in gas distribution compared with other corporate options.

Particular points which APA seeks to highlight are as follows:

- **Liability** – APA recognises that NECF2 has provisions that limit liability in relation to individual customer connections. APA's concern is that there is no periodic limit in aggregate of the distributor's liability exposure.

APA believes that aggregate liability must be limited. It would be reasonable for the liability limit to vary with the size of the network. As a benchmark APA's Queensland network's Access Arrangement, which was approved by a regulator in 2006, provides a cap of \$100,000 in any one calendar year (APT Allgas Access Arrangement Terms and Conditions clause 14.3).

The regulatory system (inclusive of NECF2) should not expose a gas distributor to the risk of claims beyond the level of prudent insurance. A regulatory system which does so is problematic as the costs of managing this risk are not necessarily able to be recovered. Of particular concern is the fact that gas distribution businesses are not always in a position to assess or control all potential risks, for example gas distribution businesses cannot necessarily control

or manage the activities of third parties. To the extent that the regulatory system results in an increase in liability, APA's costs under Access Arrangements would need to increase by the relevant increase in external insurance costs or self insurance costs. Consequently, the costs of any new regulatory impositions will be borne by customers. This increase in costs will further make gas a less attractive energy option in an environment where the economics of new natural gas connections are already under pressure.

- **Credit Support** - APA recognises the progress made in NECF2 to detail credit support arrangements and thereby avoiding reliance on AER guidelines. However, the credit support provisions as currently proposed have major flaws. In particular the calculation of the distributor's maximum credit allowance by reference to total aggregate of all retailer charges rather than the individual retailer's annual charge is inappropriate. As drafted the more retailers that a distributor deals with the greater the total credit exposure. In addition the use of a 33.33% factor in determining the distributor's maximum credit allowance is arbitrary. Further, the provisions which determine "when no credit allowance will be extended to a retailer" inappropriately excludes statements of charges from distributor to retailer that are in dispute. As drafted the provisions set-up the situation for retailers in financial distress to dispute each statement and thereby circumvent the operation of the credit support requirements.
- **Negotiated Connections** - the introduction of negotiated connections will increase the aggregate cost of connections for distributors, and is therefore detrimental both for customers in general and the distributor. By extending the availability of negotiated connections to small customers NECF2 has escalated the scale of the potential for detrimental impact. For a distributor the greater the amount of negotiation time the greater the cost. Further the distributor has no certainty that a connection will result as gas is a discretionary fuel. As drafted the distributor is required to negotiate and in so doing incurs costs that may not result in a revenue generating connection. The distributor will seek to recover these costs within its access arrangement so the average cost to serve will rise whilst the potential customer who initiated the negotiation does not contribute to these costs.
- **AER Approval Connection Contract** – as drafted AER approval is required of a proposed standard connection contract. Whilst it is arguable that it is appropriate that the AER should assess whether the proposed standard connection contract complies with applicable requirements of the energy laws, greater definition is required of the proposed granting to AER of the discretion to judge whether the contract is fair and reasonable.
- **Operational Impacts** - APA has concerns regarding the NECF placing obligations on distributors without acknowledging the operating cost impact on existing processes.
- **Transitional Arrangements** – APA is particularly concerned as to what effect the NECF (as introduced in Law and Rules) will have on regulatory reviews underway or impending. Of specific concern to APA is the fact that APA's Queensland network is required to submit a revised Access Arrangement in late 2010. APA seeks clarity regarding transitional provisions so the consequences of

the NECF and the attendant transitional provisions can be incorporated into the revised access arrangement. Under this access arrangement APA will be seeking to recover any additional costs which will result from the NECF.

APA believes it is appropriate that there either be transitional provisions which allow for explicit pass-through of unknown cost impacts of the NECF, or alternatively, given that distributors such as APA will have to reshape their businesses significantly in response to the NECF, the NECF should have no effect at all until the next price review.

Further to the point above the transitional provisions should provide that there will be no effects on pre-existing access arrangements.

More generally, APA is also concerned that development of the NECF package without addressing all transitional arrangements will lead to duplication of regulation, and confusion and uncertainty in respect of compliance and operational matters. Thus transitional arrangements should be explicitly clarified.

- **Legislative Structure** - the legislative framework must recognise fundamental differences between gas and electricity markets and gas and electricity infrastructure. These differences have driven past COAG decisions to establish different regulatory and legislative frameworks. APA appreciates that the NECF2 recognises these differences in part and seeks that these differences be maintained in the ongoing development of NECF.
- **Explanatory Material Connections Framework paragraph A.3.7 and A.3.8** – APA notes that SCO flags it has policy objectives on capital asset reimbursement schemes and connection competition and contestability. Given the lack of developed detail on these points APA is concerned that detail on these matters may be not be introduced until late in the NECF timetable and as a consequence not receive adequate review and consultation.

APA believes that further work is required on the gas connection framework, the liability regime, the credit support provisions, negotiated connections and transitional arrangements. Given these issues and the outstanding matters identified in the Explanatory Materials Connections Framework APA believes continued consultation and development is required.

Please contact me on 02 9693 0053 if you wish to discuss this submission.

Yours faithfully



Peter Bolding
General Manager Regulatory & Strategy