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18 September 2009

Mr Geoff Houen
Gas Market Development
National Energy Market Branch
Department of Resources, Energy and Tourism
GPO Box 1564
CANBERRA ACT 2601

By email to: MCEMarketReform@ret.gov.au

Dear Mr Houen,

Gas Connections Framework

EnergyAustralia appreciates the opportunity to make a submission to the Ministerial Council on Energy (MCE) Standing Committee of Officials (SCO) on the draft policy positions for *the National Framework for the Connection of Retail Customers to Natural Gas Distribution Networks* (the Gas Connections Framework). We note that these policy positions are in draft form and have not been considered by the MCE.

As an electricity distribution network services provider, we consider that SCO's draft policy positions for the Gas Connections Framework may indicate the intended policy direction for the Electricity Connections Framework. Our interest is in ensuring that the policy directions for the Gas and Electricity Connection Frameworks take into consideration the practical differences that have emerged in these two sectors.

We are pleased to note that SCO's draft policy paper appears to have responded to several concerns raised by EnergyAustralia and the Energy Network Association in recent submissions and representations. To assist greater understanding of the MCE's policy intentions, we would appreciate further articulation of the areas of commonality and difference between the electricity and gas sectors and the way these matters have been considered in the design of the respective connection frameworks. This information would help guide the industry in understanding the MCE's policy intentions and help guide Rule developments in the future.

The comments made in this submission are, for the most part, confined to clarifying our position on the Electricity Connections Framework. Our response to the draft policy paper focuses on areas of practical

differences between the electricity and gas that should be reflected in the design of the respective connection frameworks (in as far as the SCO may be considering similar issues for electricity), as well as, reiterating our concerns about the proposed role of the AER in approving connection services. Our comments on the draft policy positions are set out in more detail in Attachment A.

We appreciate the consultation process being undertaken by SCO and the Network Policy Working Group on the Gas Connections Framework. We trust that stakeholders will be provided with the opportunity to provide further comments on policy developments for the Gas and Electricity Connections Frameworks prior to the release of the Second Exposure Draft of the National Energy Customer Framework and Exposure Drafts for the Electricity and Gas Connection Frameworks.

If there are any aspects of this submission that you wish to discuss, please do not hesitate to contact Ms. Catherine O'Neill on 02 9269 4171.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Trevor Armstrong', with a long horizontal flourish extending to the right.

Trevor Armstrong
Executive General Manager
System Planning and Regulation

Attachment A: EnergyAustralia's comments on SCO's draft policy paper on the Gas Connections Framework

The comments made in this submission are, for the most part, confined to clarifying our position on the Electricity Connections Framework. In particular, we have focused on matters where there are practical differences between the gas and electricity sectors that need to be considered in developing the Gas and Electricity Connection Frameworks. The key areas of interest to us include the objectives that have been articulated; the types of connection services; the approval role for the Australian Energy Regulator (AER); and contractual arrangements. Our comments are set out below.

1. Objectives of the Gas Connections Framework

EnergyAustralia appreciates the clear articulation of the policy objectives set out in the draft policy paper. In particular, the objective of having "commonality" between gas and electricity connection frameworks allows for similarities but, conversely, recognises that there may be practicable differences between electricity and gas.

In our view, the different arrangements for access to the gas and electricity networks has resulted in different practices in these sectors and this needs to be taken into account in developing the Gas and Electricity Frameworks. For instance, we consider that the negotiation between parties around the provision of services plays a more prominent role in gas than in electricity distribution. This difference has implications for the definition and implementation of negotiated services to be applied for the respective frameworks. Our concerns are discussed in section 2 of this Attachment.

The objective of harmonising the jurisdictional arrangements "to the extent practicable" is sensible. EnergyAustralia considers that there are a number of practical differences between jurisdictions, the most obvious being the network services contestability arrangements in NSW. These jurisdictional differences need to be accommodated within the connection frameworks.

The objectives that are set out for Gas Connections Framework would be appropriate for the Electricity Connections Framework. We believe that under these objectives the NSW network services contestability regime can be more readily accommodated, as can the different access arrangements for gas and electricity.

From a policy perspective, EnergyAustralia requests that the areas of commonality (and key areas of difference) be clearly articulated by the MCE SCO in its final policy documents. Clear articulation of policy is important to assist the gas and electricity industries to understand better the reasons behind certain policy decisions. Clear articulation of the policy will provide guidance to rule-makers in considering any rule change proposal requested in the future.

2. Connection services

SCO is proposing that three connection services will be available to customers under the Gas Connections Framework:

- Basic Connection: intended to apply to the majority of small customers and enable a simple application and connection procedure.
- Additional Standardised Connection: for customers with connection requirements not covered by a Basic Connection.
- Negotiated Connection: for customers who have specific requirements that must be negotiated with their distributor.

If similar definitions are applied to electricity, the majority of the connections made within EnergyAustralia's distribution network will fall under the Basic Connection and Additional Standardised Connection services. We note that under the National Gas Rules, gas distributors (service providers) are required to submit access arrangements that specify the reference services and the relevant reference tariffs for approval by the Australian Energy Regulator (AER). We note that a prospective user may request a scheme pipeline service provider to provide a pipeline service for the prospective user and that there is scope for negotiation of the service provider's proposal.¹ This is a different approach to the access arrangements for electricity distribution networks.

Under the National Electricity Rules, the AER classifies distribution services to determine the forms of regulatory control for these services and to make distribution determinations for these services. The AER may classify a distribution service to be provided by a distribution network service provider as a direct control service or a negotiated distribution service. The National Electricity Rules set out the arrangements for negotiated distribution services.

We consider that for electricity, the classification of services for economic regulation purposes under chapter 6 of the National Electricity Rules is different to classification of services for contractual purposes, as is being proposed by SCO. It is therefore important that the terms used in each of these contexts do not create ambiguity and confusion.

Purpose for the classification of services for electricity distribution networks

The AER's classification of electricity services under chapter 6 of the National Electricity Rules relates to economic regulation to determine revenue or pricing. Under the transitional Chapter 6 Rules for economic regulation which apply in NSW until 2014, customer funded connections in NSW are classed as an "unregulated" distribution service. This means that the services must be provided in accordance with IPART's Excluded Services Rule 2004-1 which applies pricing principles and information disclosure requirements.

Under the contestability arrangements in NSW, all of the connection services are customer funded connections. In EnergyAustralia's area, these services are provided almost exclusively by an Accredited Service Provider and are funded directly by the customer without any involvement by EnergyAustralia. EnergyAustralia's involvement in connection is limited to providing certain design and inspection services known as "monopoly services". The prices charged for these monopoly services are regulated separately by the AER under the distribution determination.

The ownership of customer funded connection assets is transferred to the distribution network service provider and forms part of the standard control service provided to customers when construction of the

¹ Clause 12(5), National Gas Rules.

asset has been completed. The electricity distributor therefore becomes responsible for the operation and maintenance of the asset and these costs need to be recouped via regulated tariffs. The costs of establishing the asset have been met by the customer and are not recouped.² The electricity distributor does not earn a return on the capital value of the customer funded connection asset.

In our view, upon the transfer of ownership, the connection service provided by that asset needs to be reclassified as a direct control service but given a zero value in the regulatory asset base. Contractually, however, the service would be a Basic connection or an Additional Standardised Connection service. For electricity distribution, classification of services for economic regulation purposes will be separate to the classification for contractual purposes.

Negotiated services

The definition of negotiated connection is potentially an area of difference between electricity and gas. It is an issue for which we are seeking careful consideration by the SCO, especially as it relates to the contestability arrangements in NSW.

In SCO's policy paper on electricity connections,³ the basis for determining classification of connection services is essentially whether a connection is simple to connect (basic) or not (negotiated). This is very different from the considerations of whether a service is classified, for economic regulation, as a direct control service or negotiated service which is based on the form of regulation factors under Section 2F of the National Electricity Law. We have always maintained that there may be services that could be subject to negotiation with customers – but that such services should be administered under Chapter 6 of the National Electricity Rules. We do not believe that it is appropriate for a electricity connection service to be classified as negotiated based on whether the customer and distributor need to discuss technical matters – as originally proposed by the NPWG in the policy response paper for electricity connections. Rather, in electricity, whether a service is negotiated is based on economic factors. This is an area where the gas and electricity connection frameworks may well require different approaches.

We consider that SCO's proposed approach for electricity is ambiguous because the so-called negotiated connection service in our view would be a direct control service. We believe that SCO's proposal for electricity has potential to cause ambiguity over service definitions. EnergyAustralia is seeking clarification of these issues by the SCO.

3. Basic and Additional Standardised Connection Services Approved by the AER

SCO is proposing that the AER have a role in approving the distributors' proposed definitions of "Basic Connection" and "Additional Standardised Connection" for services. Distributors will be required to define and submit each of their Basic and Additional Standardised Connection services. For each connection service, distributors will be required to include a schedule that specifies what is to be provided to the customer, timeframes for various stages to complete the connection and any charges to be paid by the customer. The distributor will submit the proposed service to the AER for approval.

The AER will approve each connection service, including timeframes and charges, on the basis that they provide a reasonable level of service, having regard to the National Gas Objective, the distributor's historical practices and the geographical nature of their network.

² Refer to Clause 6.21.2 of the National Electricity Rules

³ MCE SCO Policy response paper, A National Framework for Electricity Distribution Networks, June 2008

This proposed criteria is an improvement to the approach set out by SCO for electricity connections, but even so, still creates a great deal of uncertainty. The criteria are very broad and it is not clear how the AER will apply such criteria.

EnergyAustralia considers that such a “propose-respond” approach for the approval of connection services, in particular for electricity, is not appropriate, or necessary. In NSW currently, there is no need for the regulatory approval of the scope of an electricity connection service because the service is defined in general terms, leaving the technical specifics of the connection to be determined between the customer and the electricity distributor. Furthermore, the technical specifications are confined within the technical, safety and reliability requirements set out in the National Electricity Rules and jurisdictional instruments.

Under the contestability arrangements a customer pays an accredited service provider for connection and puts in place the type of connection required, subject to meeting the technical requirements of the distributors. The customer pays the distributor for monopoly services that are regulated by the AER. Once the connection is in place and operational, the distributor provides an ongoing connection service to the customer through that connection.

In NSW electricity, timeframes for the provision of services are to a large extent within the control of the customer and their Accredited Service Provider. Our supplementary submission⁴ to the MCE SCO on the electricity connections framework sets out timeframes that take into account the arrangements under the contestability framework in NSW. These can be set without the need for regulatory approval – noting also that the SCO has proposed timeframes for some aspects of the connection process.

We question the need for the AER to have an approval role for services, given that technical matters are largely determined between the customer and distributor (within the confines of legislative requirements); prices for contestable works are commercially determined; and monopoly services provided by distributors are regulated. Timeframes can be set out and published without the need for regulatory approval. In our view, there is no scope or need for an additional layer of regulation to require the “connection service” to be approved.

One of the unintended consequences of the SCO’s proposal will be greater regulatory uncertainty for distributors and less flexibility for customers. A particular concern is that SCO has not articulated the aim or regulatory purpose of such a proposal or the issue it seeks to address. At this stage we are of the view that no regulatory purpose will be served by such heavy handed regulation of the electricity connection service in NSW.

If the policy intention is for the AER to have some oversight of the scope of connection services offered by distributors, then it is more appropriate for the AER to have a compliance and monitoring role.

4. Contractual Arrangements

SCO has proposed that the connection timeframes proposed by a distributor in the relevant connection schedule will commence once all customer works or necessary third party approvals are in place. These

⁴ EnergyAustralia supplementary submission to MCE Standing Committee of Officials, National Framework for Electricity Distribution – Connection Procedures, April 2009.

timeframes would be subject to the best endeavours of the business and can be changed by the distributor or customer when certain circumstances prevent them being met, or if both parties agree to a different timeframe.

EnergyAustralia wishes to point out that, under the NSW electricity network contestability arrangements, the connection contract will need to apply before all the third party approvals may have been received. In some cases, the monopoly design work undertaken by the distributor may affect the approval requirements. The location of substations and kiosks may change design work which may affect the approval process. Therefore we believe that there needs to be scope in the connections framework to accommodate this need for flexibility without having to seek agreement from the customer.

For the Electricity Connections Framework, EnergyAustralia supports the draft policy position requiring the customer to submit the connection application. This is necessary under the contestability arrangements in NSW as the customer needs to ensure that an authorised Accredited Service Provider carries out their contestable work; that the facilities for the connection of their electrical installation are provided to EnergyAustralia; and that these facilities meet the Service and Installation Rules of NSW. The contract with the customer sets out the conditions upon which EnergyAustralia will agree to accept transfer of the works from the customer upon completion. This contractual relationship with the customer is important under the NSW contestability arrangements and supports maintaining the reliability and safety of the distribution network.