



2 May 2006

Mr Sebastian Roberts  
General Manager  
Australian Energy Regulator  
GPO Box 560J  
Melbourne VIC 3001

Dear Mr Roberts

### **AER Scoping Paper for Gas and Electricity Distribution Regulatory Guidelines**

The Australian Pipeline Industry Association (APIA) welcomes the opportunity to comment on the Electricity and Gas Distribution – Guidelines, Scoping Paper, published by the AER. APIA is the peak industry representative body for the gas transmission pipeline industry in Australia.

While the Scoping Paper is not directly applicable to gas transmission, APIA wishes to comment on the issues outlined our members will be regulated by the AER under the new energy governance arrangements. As such, the AER's conclusions with regard to guidelines applicable to electricity and gas distribution could potentially set a precedent for gas transmission regulation.

At this stage, the nature of the new regulatory arrangements is unclear. This is particularly the case for the regulation of gas transmission pipelines, which will be subject to a new National Gas Law and National Gas Rules, which have yet to be developed. As noted in the Scoping Paper, the final form of these arrangements will depend upon the outcomes of a number of review processes, notably, the Expert Panel report, the AEMC's Draft Rule proposal in regard to the regulatory framework for electricity transmission and the MCE's response to the Productivity Commission's inquiry into the gas access regime.

APIA would like to comment on the following issues with regard to the matters raised in the Scoping Paper:

- pre-emption of the current reviews of the energy regulation framework;
- increasing regulatory burden; and
- alignment of gas and electricity regulation.

#### *Pre-emption of the current regulatory reviews*

In view of the lack of clarity and certainty surrounding the regulatory arrangements going forward, APIA is concerned that the AER's proposed process for developing Guidelines is pre-empting the outcome of the current review processes. While recognising the desire by the AER to be prepared for future regulatory reviews it must undertake, APIA is concerned that the AER's approach relies on making significant assumptions regarding the future regulatory framework. In particular, it anticipates the existence and scope of any guideline-making power that the AER may be given. This approach may require

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significant rewriting of the proposed guidelines at a later stage, particularly given that the scope of any guidelines is yet to be established.

APIA is concerned about the extent to which the AER is anticipating the nature of the future regulatory arrangements in undertaking this process. By establishing precedents prior to such fundamental issues as the need for, and scope of, any guidelines being determined, there is a risk that the AER is effectively adopting a 'rule making' role itself through the development of the guidelines. This is contrary to the principle of separation of the Rule-making and Rule-enforcing functions.

#### *Increasing regulatory burden*

The scope and content of any guidelines to be developed by the AER should be complementary to the scope and content of the Rules. As APIA noted in our submission to the AEMC on the Draft Rule Proposal, our concern is that the AEMC had adopted an overly prescriptive approach. APIA does not support such a prescriptive approach, as it significantly constrains the proposal that may be put forward by the regulated business.

However, if the degree of prescription proposed in the Draft Rule ultimately applies, APIA queries the need for additional detailed guidelines to be developed by the AER. This runs a considerable risk of excessive regulatory intervention.

These issues highlight the AER's difficulty in anticipating the need for Guidelines at this early stage and the dangers of acting pre-emptively.

#### *Alignment of gas and electricity*

APIA has raised its concerns in other forums about the impact on the gas transmission industry of the MCE's goal of having a consistent approach to electricity and gas regulation. In particular, APIA is concerned that the differences between the industries have not been adequately addressed, with the result that gas regulation is effectively being made to 'fit in' with electricity regulation in order to meet a timetable and at the risk of introducing unsuitable policy.

Therefore, APIA supports the AER's proposal to conduct a separate process for the development of guidelines for gas distribution. Guidelines designed to apply to gas transmission, if any, should be determined once the overarching legislation and Rules are established.

Yours sincerely



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Chief Executive