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Dear Adrian

NSW Gas Network Code Review - Energy Networks Association response

The Energy Networks Association (ENA) welcomes the Review of the NSW Gas Network Code and the opportunity to provide a response to its findings and recommendations. ENA particularly welcomes the recognition by the NSW Government of the potential to rely on national regulation rather than duplicate or even contradict national regulation by retaining superseded state-based legislation. The network sector supports the removal of unnecessary regulation which ultimately assists the networks to bring down costs to consumers. The ENA believes that the NSW Gas Network Code (the Code) is no longer required and adds to the complexity and costs of complying with regulations. ENA supports the termination of the Code.

Background

The Energy Networks Association is the national industry association representing the businesses operating Australia's electricity transmission and distribution and gas distribution networks. Member businesses provide energy to virtually every household and business in Australia. ENA members own assets valued at over \$100 billion in energy network infrastructure.

Reduce costs to customers by harmonising regulation

Gas as an energy commodity in NSW is facing a number of challenges including concerns over supply and rising gas wholesale prices. In August 2014 the Australian Energy Market Commission (AEMC) released a review of energy retail markets that stated:

The AEMC has made a number of recommendations to all governments. Of relevance to New South Wales, we recommended the Government: harmonise regulations across jurisdictions to reduce costs...¹.

The Code was introduced to support the introduction of retail competition into NSW by providing a process for equitable treatment of retailers by network operators. Thirteen years on, the AEMC reported that:

¹ AEMC NSW energy retail market information sheet, August 2014

'In the retail gas market, competition is providing choices for the majority of small customers in New South Wales-'

The AEMC also noted that;

'... 70 per cent of gas customers have chosen a market offer, rather than a standing offer with regulated terms and conditions.'

and that;

'... 17 per cent of gas customers changed their retailer in search of a better deal. Others found a better deal with their existing retailer.'

ENA considers that there is sufficient retail competition for gas customers in NSW, that the objectives of the Code have been met and that there is little value in retaining the Code when the provisions of the Code are now covered by the National Energy Retail Law (NERL) and rules (NERR) and elements of consumer law.

Furthermore, the retention of the Code at such a time would maintain a compliance cost to this fuel option for no value to the NSW customer and when there is a commercial imperative for network operators to reduce their costs.

Is the code still required?

Both small and large gas networks have an incentive to increase uptake of gas in NSW.

As noted in the consultation document, the relationship between the customer, retailer and network has moved from 'linear' to 'triangular' with networks being focused on the connection process and in relation to safety and technical matters. However, whilst the original connection may be undertaken by network staff, the ongoing relationship with the customer is predominantly through the retailer. It makes economic sense for the network to develop an effective working relationship with the party that mostly impacts the interface with the customer.

The value of this relationship is significant in small and large networks alike, as every customer contributes revenue that assists in building the economies of scale to meet the largely fixed costs of network operation. This is particularly important given declining gas consumption and loss of customers to other fuels. As a result, network operators have a significant commercial incentive to win and retain customers. If the relationship between the network and a retailer becomes dysfunctional, the retailer may be able to retain the customer by offering a different fuel type, thus the retailer is able to retain the customer whilst the customer is lost to the network. This gives network operators significant commercial incentive to operate effectively with the retailers – precisely what the Code was designed to ensure.

The Consultation paper also lists several alternatives that a retailer may use should the relationship with the gas network operator deteriorate, including nominating for a network to be covered under the NERL where this is not already the case. It is also possible for any party to request that an unregulated gas network be regulated, and if this were to happen, then the NERL and NERR would also apply. Furthermore the relationship between networks, retailers and customers is covered under the Australian Consumer Law.

ENA notes the comparison between the Code and other legislative requirements currently covering the relationship between the retailer and networks. While a limited number of the elements of the Code are not duplicated in the national framework, ENA suggests that abolishing the Code entirely and monitoring the relationship between retailers and networks will encourage more effective outcomes than retaining some small elements of the Code.

ENA position

As noted in the Consultation paper, the Code has now largely been superseded by elements of the NERL and NERR, and Australian Consumer Law.

ENA strongly supports the termination of the Code to remove duplication and lower the costs of compliance for networks which ultimately are passed on to consumers. The ENA does not believe the termination of the Code needs to necessarily be accompanied by the application of NERL and NERR. It is not clear that this would be required or proportionate. The evidence is that network operators have operated responsibly and reasonably in respect of customer and retailer relationships. ENA therefore suggests that, following removal of the Code, the NSW Government should only provide a regulatory solution if it is clear that there is a failure in the market, which would be evident by disputes between market participants.

Yours sincerely



John Bradley
Chief Executive Officer