9 May 2023

Submission: Pipeline Information Disclosure reforms

The Australian Pipelines and Gas Association (APGA) represents the owners, operators, designers, constructors and service providers of Australia's pipeline infrastructure, connecting natural and renewable gas production to demand centres in cities and other locations across Australia. Offering a wide range of services to gas users, retailers and producers, APGA members ensure the safe and reliable delivery of 28 per cent of the end-use energy consumed in Australia and are at the forefront of Australia's renewable gas industry, helping achieve net-zero as quickly and affordably as possible.

APGA welcomes the opportunity to provide comments on the Australian Energy Regulator's proposed Pipeline Information Disclosure reforms.

APGA appreciates that these reforms are a requirement of the new Part 10 of the National Gas Rules (NGR) and are intended to improve transparency and bargaining power for gas pipeline users. Nevertheless, APGA has concerns about how the proposed approach would impact market participants within the existing competitive gas infrastructure market in ways that are not necessarily dictated by the new Part 10 of the NGR.

As detailed in the remainder of this submission, the consequence of these approaches are twofold:

1. They introduce a very real risk of misleading market participants on pipeline service tariff pricing; and
2. They increase the burden of reporting requirements which will ultimately translate to costs for the energy consumer, including through obligation duplication.

Proposed information disclosure may mislead market participants

Inconsistent with how tariffs are actually set

The AER's proposal is fundamentally inconsistent with how tariffs are actually set in a workably competitive market, including asset costs and valuation, the costs of services, and how these components both contribute to the quantum of a tariff. This may lead to a substantial mismatch between consumer expectation of tariffs and what they ultimately pay, which is detrimental to the consumer and misleading to the market in general.

There are a number of incorrect assumptions about how asset costs are calculated. For example, the AER's proposal to exclude decommissioning costs would mean excluding data which contributes to the lifetime cost of the asset in its entirety, which forms the basis of tariffs charged. It is possible that these assumptions are driven by a "cost plus" perspective of how tariffs *should* be devised, however, this is not how tariffs are set in the pipeline industry which typically operates as a contract carriage market.

Section 3.3.4 – Forecast expansion costs
A new requirement under Part 10 is that entities must publish the cost of any extension to, or expansion of the capacity of, a pipeline, and information on the inputs used to calculate this value. It is not clear where a proposed requirement for reporting of 'planned' projects has arisen from, as APGA is unaware of Part 10 or previous consultation materials on this reform package containing references to forward-looking information in this area.

It is unclear exactly at what point the AER intends that this information be reported, however for the purposes of *planned* projects, our members are concerned that they may be required to report ahead of public announcements of Final Investment Decisions (FIDs). Pipeline operators may have many 'planned' expansions or augmentations for their assets, but very few of those reach FID. For publicly-traded businesses this could be particularly problematic, where the scope for 'planned' expansions could deliver financial information to markets well in advance of any FID being made.

If the purpose of this provision is assumed to be to allow AER to assess compliance with provisions prohibiting the cross-subsidisation of assets through expansion, information on estimated expansion costs as at the time of FIDs should be sufficient and should be made clear in the framework. Information about projects which have not reached FID will not be useful for this purpose, is likely to be confusing to report to users and would therefore be very unlikely to pose a net benefit given the significant additional reporting burden it would pose on pipeline operators.

It is also not clear why the publication of this information would be necessary for users who may be seeking to negotiate access to capacity which is created via an expansion in light of the range of other measures contained in the Pipeline Regulation reform package. Part 11 of the NGR contains extensive obligations for pipeline operators and protections for access seekers when negotiating for access, including requirements and an information standard for the sharing by the pipeline operator of information which the access seeker may request. Should an access seeker not be satisfied with negotiations under Part 11, they may invoke the dispute resolution mechanisms set out in Part 12, which would also likely involve an assessment of the costs of the expansion project in question.

Finally, it should be noted that where expansion projects overrun their cost estimates, non-scheme pipeline operators generally can't seek to recoup these additional costs from customers, as the tariffs paid by users are generally agreed with customers prior to these works and a pipeline operator would need (and would generally be unlikely to achieve) the agreement of the customer to vary that contract.

Section 3.4 and 3.5 – Cost allocation of services
Part 10 of the NGR requires pipeline operators to publish details of the pipeline services offered including the historical demand for these services, actual prices payable, and costs and profits associated with each pipeline service. Broadly, pipeline operators provide two categories of services: firm transport, and firm storage, with the cost of the latter is based on and proportionate with the former. Services underneath those categories are typically add-ons, rather than additional services.

APGA suggests that the cost allocation requirements set out in the Guideline be limited in this respect, and should not be more granular than delineating between transport and storage services (and Reference Services where applicable).

Section 4.2.3 – Decommissioning costs

In the Consultation Paper, the AER acknowledges that there is a high degree of uncertainty around the scope, costs, and timing of decommissioning, which makes it difficult to provide estimates. Industry concurs that estimating the future costs of decommissioning can be subject to significant uncertainty.

Factors which can influence estimates for decommissioning different include but are not limited to land use, landholder agreements/occupation rights which may expire or contain particular conditions, licence conditions, and remediation requirements, including new or additional requirements relative to when the pipeline was commissioned. These costs are unavoidable.

All these factors which go in to decommissioning costs may vary from the initial estimate, and which must be considered in cost recovery of the asset. As such it is not appropriate to disallow these costs from being included in the RCM calculation, as proposed by the AER. Obviously, this option maximises consistency and certainty in estimates (that being, zero), however this will result in asset values not fully reflecting the costs service providers should recover, and is therefore inconsistent with the cost recovery principles set out in the Law and Rules.

Section 4.2.4 – Improving information on tax liability

The issues paper states: *"Our preferred approach is for service providers to publish actual taxes paid and use these values when calculating recovered capital values through time. This should provide users with <u>more meaningful information</u> compared with using benchmark tax liabilities."*

Some businesses which are part of broader corporate groups do not incur tax liabilities at an individual pipeline level. In particular, any business which lodges tax returns on a tax consolidated basis is unable to allocate actual taxes paid to individual assets in any non-arbitrary way.

For these businesses, actual tax liabilities will reflect the overall operations of the business. In these cases, the actual tax liability incurred by each pipeline is reflective of total the interest paid at the group level in relation to both tangible and intangible assets. The guideline currently ignores intangible assets when determining RCM value but incorporates the reduction in tax costs arising from these assets, which is inconsistent. Allocation of actual tax information does not provide "more meaningful information", unless the RCM value accounts for intangible assets. To ensure consistency, either the tax paid needs to be estimated using benchmark tax liabilities instead of allocation of group level tax cost, or the RCM needs to account for intangible assets if actual group tax needs to be allocated.

Burden of ever-increasing reporting requirements upon the energy consumer

APGA has been vocal about the increasing burden of information compliance and reporting obligations on industry. This is especially the case where additional information reporting requirements duplicate existing requirements or where the information is of little consumer or regulatory benefit. The reforms proposed in the Consultation Paper introduce new and extended reporting obligations, much of which duplicates other reporting requirements while creating considerable additional burden.

There is considerable overlap with information provided in RINs for scheme pipelines and the information requested by the AER through these guidelines. For scheme pipeline RINs, operators must report audited financial statements; the audited asset value and depreciation information is then discarded for the purpose of reporting regulatory accounting values, making the initial audited figure reporting potentially redundant. This additional reporting is not cost-free, and to the extent that more information is not always better, can be misleading to consumers and to the market in general.

We noted in our submission to the AER Gas Wholesale Market Monitoring and Reporting consultation process that the cost of compliance with information disclosure processes. Many of these requests duplicate information and can be in the millions of dollars to comply with annually.[1] This cost ultimately puts upward pressure on energy prices. Governments and regulators have an obligation to minimise cost of compliance ultimately borne by consumers; instead, expanding the scope of the information gathering powers of the AER in the way proposed will significantly increase industry costs, costs which will be passed on to customers.

In the last twelve months, no fewer than four additional reporting obligation reforms have been imposed on our members. These include the Pipeline Information Disclosure reforms; the Gas Wholesale Market Monitoring and Reporting framework; the East Coast Gas System reforms; and the Mandatory Gas Code of Conduct. We note that some of these new reforms did not undergo thorough analysis under a Regulatory Impact Statement process. These are in addition to existing reporting requirements including to the ACCC for the Gas Inquiry 2017-30, gas market activity for the Gas Bulletin Board, derivatives from the Australian Financial Markets Association, retailer reliability obligations for the AER, over the counter gas contracts for ASIC, and other bespoke information orders.

In the best interests of energy consumers, AGPA recommends a gas industry-wide review of reporting requirements in the interests of consolidation of reporting requirements be undertaken after the current round of reforms (including the East Coast Gas System reforms) are complete, including analysis of the benefit of consolidation through a Regulatory Impact Statement process.

[1] APGA, 2023, *Gas Wholesale Market Monitoring and Reporting reform*, https://www.apga.org.au/sites/default/files/uploaded-content/field_f_content_file/230504_apga_submission_-_aer_gas_wholesale_mmr.pdf

Section 5.2.2 – Basis of Preparation templates

The Consultation Paper identifies that Basis of Preparation reports can be inconsistent and report different information between operators, limiting the ability of consumers to undertake meaningful comparisons. In some cases the AER identifies there may be errors in this reporting. To address this, the AER recommends creating a template for Basis of Preparation to reduce the possibility of errors in reporting which could mislead consumers.

APGA appreciates that errors in reporting should be reduced, however note that the identified inconsistencies arise when the data reported is typically bespoke. Stakeholders are concerned that a strict template may result in the reporting of inconsequential or arbitrary data, which itself can be misleading.

APGA recommends that rather than creating a complete template, the AER consider a template outline, which identifies the minimum required information without prescribing how the information is to be reported.

Section 5.3.3 – Information reporting display

It is unclear if the AER's proposed approach – that operators "publish all information (or hyperlinks where necessary) on a single webpage that is accessible from the service provider's home page" – means that all of an operator's facilities are displayed on a single page, or that all of each facility's information is displayed on its own page. Displaying information for different pipelines on the same page makes little sense, given there is likely to be little crossover of interest for viewers, for example, of an interstate non-scheme transmission pipeline and a small (scheme) distribution network owned by the same operator.

Operators publish information on their own websites, and APGA also maintains a database of pipeline information for users of gas transmission pipelines[2]. This is designed as a single page for each pipeline, which links to the required reporting for each pipeline. This initiative may be an example for the AER to consider in designing its information reporting display requirements.

To discuss any of the above feedback further, please contact me on +61 422 057 856 or jmccollum@apga.org.au.

Yours Sincerely,

JORDAN MCCOLLUM
National Policy Manager
Australian Pipelines and Gas Association

[2] APGA, 2023, *Pipeline information for users*, available at https://www.apga.org.au/pipeline-information-users