



20 December 2019

Lesley Dowling  
Gas & Governance Branch  
Energy Division  
Department of the Environment and Energy  
GPO Box 787  
Canberra ACT 2601

Submitted by email: [gas@environment.gov.au](mailto:gas@environment.gov.au)

Dear Ms Dowling

### **Measures to Improve Gas Pipeline Regulation – COAG Regulation Impact Statement**

Origin Energy Limited (Origin) welcomes the opportunity to provide comments on the COAG Energy Council's Options to Improve Gas Pipeline Regulation Impact Statement (Consultation RIS).

The regulatory framework for pipelines under the National Gas Law (NGL) and National Gas Rules (NGR) is a negotiate-arbitrate regime. Ensuring the framework provides market participants with sufficient information to negotiate pipeline access and an effective avenue for resolving disputes is therefore essential to the overall efficacy of the framework.

Origin recognises there is potential to improve aspects of the framework with a view to reducing its overall complexity. However, we have not identified any significant failings that would warrant fundamental changes, noting recent reforms (e.g. the implementation of Part 23 and pipeline capacity trading reforms) have generally strengthened the ability of shippers to negotiate access. We are also not supportive of progressing changes that would likely drive more regulated, rather than commercially negotiated outcomes. It is in this context that we have provided comments on aspects of the Consultation RIS below.

#### **1. Effectiveness of Part 23**

Origin is generally satisfied with the application of Part 23, which has improved the level of information transparency related to non-scheme pipelines and established a credible threat of regulation for the benefit of shippers and ultimately end-users. As noted above, we have not identified any material reporting deficiencies or aspects of the arbitration framework that impede our ability to negotiate access Part 23 pipelines at this time. Our comments are therefore limited to two of the specific changes being considered, as discussed below.

##### *1.1 Enhanced reporting of transportation prices*

Origin is not supportive of the enhanced price reporting options presented in the Consultation RIS that would potentially require pipeline service providers to report:

- actual prices paid by shippers for transportation services (including key terms and conditions); or
- in addition to the weighted average prices currently published, the minimum and maximum prices paid for each service.

Notwithstanding concerns raised by the Australian Competition and Consumer Commission (ACCC) around the relevance of weighted average price information, it is not clear there is a material information deficiency that needs to be addressed. The survey process undertaken by Oakley Greenwood (OGW) indicated shippers were generally satisfied with information disclosure requirements.<sup>1</sup> Of the 33 shippers surveyed (of which the majority were classified as 'small shippers')<sup>2</sup>, only two respondents suggested additional pricing information was needed.<sup>3</sup>

We also have significant concerns around the appropriateness of reporting such information. Disclosing actual prices paid by shippers (including key terms and conditions) would reveal commercially sensitive information and potentially undermine competitive market outcomes. These concerns are also relevant in the context of minimum and maximum price reporting, since it may be possible to infer the price paid under a particular transportation agreement if the minimum/maximum price reported changes and no (or a limited number) of other agreements have been struck over the reporting period. Given minimum/maximum prices are more likely to reflect non-standard agreements, the provision of such information could also create misleading price expectations for standard services. This could ultimately undermine incentives for services providers to offer such products in the future.

Consistent with the advice provided by the Gas Market Reform Group (GMRG) when Part 23 was originally established, Origin considers the most appropriate basis for testing whether the price offered by a pipeline operator is reasonable is to have regard to the costs the pipeline incurs in providing the services. A more effective approach to addressing the concerns identified by the ACCC would therefore be to consider opportunities to improve the consistency, reliability and accessibility of financial information reported under Part 23 where material issues have been identified.

### *1.2 Removal of the preliminary enquires process*

As noted in the Consultation RIS, the commercially oriented model adopted under Part 23 was established to facilitate more timely and effective commercial negotiations between shippers and service providers, rather than to deliver regulatory solutions. The framework is seemingly achieving this objective – most respondents to the OGW survey indicated they had negotiated access to a non-scheme pipeline outside of a formal Part 23 access request, with the fall-back position of being able to negotiate access under Part 23 assisting them in their informal negotiations.<sup>4</sup> Origin is therefore not supportive of removing the distinction between preliminary enquiries and formal access requests.

## **2. Determining when pipelines should be regulated**

Origin has not formed a firm view on the effectiveness of the current coverage test and the extent to which it may be leading to under/over regulation. However, in examining the test objectively, an anomaly with the existing approach is that it considers the impact of a pipeline's actions on related upstream or downstream markets, rather than the level of competition for pipeline services. Replacing the existing coverage test with the hybrid version proposed in the Consultation RIS would assist with addressing this issue, given it would require an explicit assessment of:

- whether the pipeline has substantial market power; and
- the extent to which regulation will or is likely to contribute to the achievement of the National Gas Objective (NGO).

---

<sup>1</sup> COAG Energy Council, 'Options to improve gas pipeline regulation – Consultation RIS', Table 5.1, pg. 37.

<sup>2</sup> Oakley Greenwood on behalf of the Department of Environment and Energy, 'Gas Shippers Survey' pg. 10.

<sup>3</sup> COAG Energy Council, 'Options to improve gas pipeline regulation – Consultation RIS', Table 5.1, pg. 37.

<sup>4</sup> Ibid.

This test could then be used to determine whether a pipeline not providing third party access should be required to do so, or a greenfield exemption should be granted. With respect to governance of the test, Origin is generally supportive of retaining functional separation between the energy market regulator and the body undertaking the test (e.g. the National Competition Council), as per the current framework.

### **3. Forms of regulation and movement between the alternative forms**

Origin has not identified any significant concerns with the application of the three different forms of regulation under the existing framework (i.e. 'full regulation', 'light regulation' and 'Part 23'). However, we recognise the light and Part 23 forms of regulation are broadly similar apart from some additional safeguards (e.g. ring-fencing requirements). To the extent the complexity of the framework is regarded as a material issue, an appropriate solution would therefore be to retain the existing full form of regulation and consolidate the light and Part 23 forms into one 'lighter handed regulation' category, as proposed under Options 2 and 3 of the Consultation RIS.

In considering which form of regulation should be applied under such a framework, Origin generally agrees it would be appropriate to apply the existing form of the regulation test. As a guiding principle though, there should be a preference for applying the lighter handed form of regulation as a first step unless circumstances clearly warrant the application of full regulation from the outset. Such an approach will limit the potential for over-regulation and ensure incentives to offer innovative pipelines services are retained, which is essential given changing gas market dynamics on the east coast. The potential risk of under regulation could then be mitigated by monitoring the outcomes of access negotiations, with referrals made for a form of regulation test if the regulator reasonably believes market power is being exercised.

This approach is also relevant in the context of determining how any changes to the regulatory framework should be applied to existing pipelines, noting a revised coverage test could theoretically result in higher levels of regulation being applied to some pipelines. In Origin's view, it would not be appropriate to simply shift existing pipelines into a higher form of regulation if there has not been a demonstrated market failure.

### **4. Information disclosure**

As discussed above, Origin has not identified any material information deficiencies across the broader regulatory framework. However, we generally agree there should be a graduation of reporting requirements as the strength of regulation increases. Addressing any material information gaps identified under the full form of regulation relative to Part 23 (e.g. providing a description of non-reference services) is therefore appropriate.

Origin is generally supportive of continuing to provide exemptions from the requirement to publish financial information to single shipper pipelines and small pipelines with average annual daily injections below 10 TJ/day (calculated over the preceding 24 months). Notwithstanding this, it would likely be appropriate to require all pipelines providing third party access to report the following basic set of information, consistent with Option 3 presented in the Consultation RIS:

- pipeline information (e.g. nameplate rating, technical/physical characteristics);
- pipeline service information (e.g. description of services offered);
- standing terms for each service offered by the pipeline (i.e. the standard terms and conditions, standing price and method used to calculate standing prices);
- weighted average prices paid for services (noting exemptions should be available if there are fewer than three shippers on a pipeline); and

- service availability information (e.g. outlook for uncontracted primary capacity, information about matters expected to affect capacity in the following 12 months).

## **5. Negotiation frameworks and dispute resolution mechanisms**

### *5.1 Negotiation framework*

Origin supports the commercially oriented negotiate-arbitrate model currently applied under Part 23. If it is determined there are benefits in implementing a single negotiation framework that applies to both the full and lighter handed forms of regulation, it is important the new framework retains consistency with that model. This includes maintaining the preliminary enquiry process, as discussed above.

### *5.2 Dispute resolution framework*

Origin agrees that where a new lighter handed form of regulation is created, the dispute resolution mechanism should be based on the existing Part 23 model. With respect to full regulation, we are also supportive of amending the existing framework to allow shippers to 'opt-out' of accessing the requested service following an arbitration decision. A shipper should not be forced into seeking access if the price or terms and conditions associated with the determination would cause financial distress, or are simply too onerous to meet. Were this to occur, the risks associated with entering arbitration would likely see shippers avoid the process entirely, which would ultimately undermine its role as a credible threat to regulation.

If you wish to discuss any aspect of this submission further, please contact Shaun Cole at [shaun.cole@originenergy.com.au](mailto:shaun.cole@originenergy.com.au) or on 03 8665 7366.

Yours Sincerely,



Keith Robertson  
General Manager, Regulatory Policy