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Queensland Competition Authority  
GPO Box 2257  
Brisbane  
Qld 4001

By email: [gas.submissions@qca.org.au](mailto:gas.submissions@qca.org.au)

**Re: Draft Decision : Revised Access Arrangements for Gas Distribution  
Networks : Envestra**

TRUenergy welcomes the the opportunity to comment on the above mentioned draft decision paper. In addition to addressing the specific issues raised by QCA in the consultation paper, TRUenergy wishes to offer comment regarding other proposed Terms and Conditions that form part of the proposed Access Arrangements that are not explicitly mentioned in the consultation paper.

**Our credentials:**

TRUenergy, together with its parent CLP, has over \$4.5 billion in Australian assets and is Asia's largest private sector investor in generation with over 17,000 MW in operation and under construction. TRUenergy is Australia's 5th largest, and Victoria's 2nd largest, energy Retailer, employing over 1500 people and with more than one million residential and business gas and electricity customers in Victoria, South Australia, New South Wales, Queensland and the ACT.

TRUenergys also owns and operates a diverse range of generation and natural gas processing assets across Australia including:

- The 1480MW Yallourn coal-fired power station and associated mine in Victoria.
- The 1280MW Torrens Island gas-fired power station in South Australia (Australias largest gas-fired power station).
- The Iona gas processing and storage facility near Port Campbell in Victoria
- A permit to develop a 400MW combined cycle gas turbine energy facility near Wollongong in NSW.
- A one third share in the strategically important Melbourne to Adelaide SEAgas pipeline

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## **Comments regarding specific issues raised in the consultation paper.**

### **Amendment 4.1**

*In order for Envestra's access arrangement to be approved, Envestra must replace the words in sections 5.5(c), 9.8(c), 10.7(c), 21.4(c) and 21.5(c) of the terms and conditions " on whatever basis Envestra considers reasonable ..." with "... on a reasonable basis ..."*

TRUenergy agrees with QCA that Envestra's original proposed wording in sections 5.5(c), 9.8(c), 10.7(c), 21.4(c) and 21.5(c) is problematic. In an FRC environment, TRUenergy believes that it is important that discretionary powers of the ilk described in sections 5.5(c), 9.8(c), 10.7(c), 21.4(c) and 21.5(c) of the terms and conditions are restricted as suggested in the draft determination.

### **Amendment 4.2**

*In order for Envestra's access arrangement to be approved, Envestra must amend section 19 of its terms and conditions to the effect that network charges will be invoiced in arrears.*

TRUenergy agrees with QCA's draft determination. It is normal custom and practice in other markets for network charges to be paid in arrears.

### **Amendment 4.3**

*In order for Envestra's access arrangement to be approved, Envestra must amend its terms and conditions to include a requirement on the network operator to maintain the quality of gas injected into the network in accordance with the relevant legislation.*

TRUenergy agrees with QCA's draft determination. Consistent gas quality standards across both Envestra's and Allgas's networks is necessary and the network operator should be obligated to maintain this standard.

### **Amendment 4.4**

*In order for Envestra's access arrangement to be approved, Envestra must adjust its invoicing policy so that:*

- *it is required to provide sufficient information to allow reconciliation of DUOS charges at an individual customer level;*
- *it is required to provide a valid tax invoice to the network user; and*
- *both Envestra and users have the same timeframe to rectify undercharging, and that this should be the same timeframe as adopted by Allgas.*

TRUenergy agrees with QCA's draft determination. The draft determination is consistent with normal custom and practice in other markets.

#### Amendment 4.5

*In order for Envestra's access arrangement to be approved, Envestra must amend clause 5.6 of the terms and conditions to the effect that Envestra will not undertake to deliver a quantity of gas from the network if it is apparent that, under 'normal conditions', there will be insufficient capacity in the network to meet the anticipated demand for gas at any user delivery point.*

TRUenergy agrees with QCA's draft determination. Restricting Envestra's sale of pipeline capacity as recommended by QCA, would appear to be a sensible and prudent prohibition on the service provider.

#### Amendment 4.6

*In order for Envestra's access arrangement to be approved, Envestra must include a clause in section 16 of its terms and conditions that:*

- *provides customers with the right to request an explanation from Envestra as to why they have been placed in a particular category; and*
- *requires Envestra to seek the views of network users in establishing its order of priority for curtailment.*

TRUenergy agrees with QCA's draft determination. TRUenergy's experience in other contestible gas markets has been that information disclosure is imperative at times of curtailment. We also agree that it is important that networks are informed of the end user's views when establishing curtailment priority.

#### Amendment 4.7

*In order for Envestra's access arrangement to be approved, Envestra must:*

- *remove "... Interest not paid in the month in which it accrues will be capitalised and will itself bear interest in accordance with this clause."*
- *provide the Authority with sufficient information for it to determine Envestra's cost of funds in the event of failure to pay and hence the appropriate interest rate to be included in clause 23.1;*
- *amend the wording in clause 23.2 to "...any amounts due or owing by Envestra under the Agreement to the network user against..."; and*
- *remove the words "or under any Related Haulage Agreement" from clause 23.3*

TRUenergy agrees with QCA's draft determination. It is TRUenergy's view that the suggested changes to Envestra's access arrangement more closely reflects normal commercial practice.

#### Amendment 4.8

*In order for Envestra's access arrangement to be approved, Envestra must amend clause 22.2 of its terms and conditions so that it recognises that this clause operates subject to clause 20A(a) is an exemption to the operation of this clause.*

TRUenergy agrees with QCA's draft determination.

#### Amendment 4.9

*In order for Envestra's access arrangement to be approved, Envestra must amend the force majeure provisions in its terms and conditions so that they apply equally to both Envestra and any party that has obligations to Envestra.*

TRUenergy agrees with QCA's draft determination. Recognition of mutual force majeure provisions (in the same manner as the Allgas proposal) is a fair basis for commercial operations.

#### Amendment 6.1

*In order for Envestra's access arrangement to be approved, Envestra must amend its trading policy to include words to the effect that:*

- *Envestra will reply to any request from a user for Envestra's consent to a transfer (other than a bare transfer) or for a change in receipt point or delivery point, within 10 business days of receiving the request accompanied by information which is reasonably necessary to enable Envestra to consider the request; and*
- *If, at the time the request is made, the user informs Envestra that due to hardship the user requires an urgent reply to its request, Envestra will use reasonable endeavours to respond to the request within two business days of receiving the request.*

TRUenergy agrees with QCA's draft determination. We agree that in its current form the proposal by Envestra does not meet the Code requirements (because it is silent on non-bare transfer. QCA's suggestions appear to provide a fair basis for redressing this deficiency

#### Amendment 8.1

*In order for Envestra's access arrangement to be approved, Envestra must revise its extensions/expansions policy to the effect of the following.*

1. *A significant extension means an extension to one or more delivery points, where the anticipated quantity of gas delivered exceeds 10 TJs per year and the anticipated capital expenditure for the extension exceeds \$1 million.*
2. *An extension which is directly connected to an existing covered pipeline will not be treated as part of the covered pipeline through the operation of the extensions/expansion policy if:*
  - (a) *the extension is a significant extension (or where Envestra can demonstrate the extension represents a special case); and*
  - (b) *Envestra obtains the Authority's written approval to exclude the extension from the covered pipeline.*
3. *In the case of a significant extension which is directly connected to an existing covered pipeline, and for which written consent has been provided by the Authority to treat the extension as an excluded extension, the Authority will determine what portion of the revenue generated from that extension will be offset against the total revenue calculation in respect of the covered pipeline in recognition of the use of common or joint assets that form part of the covered pipeline.*

TRUenergy agrees with QCA's draft determination.

## **Comments regarding proposed Terms and Conditions not included in the consultation paper.**

Whilst acknowledging that these elements may be out of scope of the current consultation, TRUenergy asks the Authority to consider these comments when drafting the final decision.

### **Liability and limitation of liability.**

The limitation of liability in the Envestra proposed terms should be removed so that it is consistent with Envestra's standard terms and conditions in Victoria and South Australia. The limit of \$100,000 currently proposed by Envestra is clearly unreasonable. The Envestra proposed terms should require the Distributor to indemnify the retailer against any damage that is caused to the property (and/or personal injury of an employee or agent) of the retailer or a customer of the retailer as the result of a negligent act by the Distributor in connection with the provision of network services or the operation or maintenance of the network. This would be consistent with Envestra's standard terms and conditions in South Australia.

### **Customer information/privacy/confidentiality.**

TRUenergy queries why the distributor would require access to information on producers. (See Upstream Contract Information below.)

The proposed terms for Envestra oblige the retailer to procure the assistance of customers and producers when required. Subject to our comment in the previous paragraph, this obligation should be limited to the use of "reasonable endeavours" to procure assistance, which would be consistent with Envestra's standard terms and conditions in Victoria.

### **Upstream contract information.**

TRUenergy currently has no upstream supply or transportation contracts in Queensland. Further, the development of the Queensland gas retail market is only just commencing. Accordingly, it is difficult for TRUenergy to comment at this stage on the proposed terms and conditions. However TRUenergy offers the following preliminary comments:

- TRUenergy objects to the proposed obligation to provide details of upstream gas contract arrangements in the Envestra (clause 28) terms, as the proposed obligation is highly unusual and may include confidential information.
- The provision for Envestra to terminate the agreement on 7 days' notice if the network ceases to be a covered pipeline (clause 24.2) creates a risk for the retailer in respect of any upstream contracts with take or pay requirements, if a replacement contract is not entered into and the risk of such termination is not passed through (eg as a force majeure event) under that upstream contract.
- The force majeure clause currently proposed by Envestra gives no relief to the retailer as it is limited to events outside Envestra's control.

**Review and amendment.**

Given the nascent state of market rules in Queensland, it is appropriate for the proposed terms to expressly include a requirement similar to Envestra's Victorian terms for the parties to review and negotiate in good faith amendments in the event of regulatory change.

**Metering.**

The proposed terms for Envestra require the retailer to indemnify the DB against all loss or damage which Envestra incurs in maintaining or replacing the metering equipment as a result of the actions of the retailer. This is inconsistent with Envestra's terms in Victoria and South Australia and the terms proposed by Allgas. Retailers should not have any need to interfere with metering equipment and therefore the indemnity is inappropriate.

**Planned Maintenance.**

TRUenergy is satisfied provided that a reasonable notice period is provided and consistent between both distributors.

**Termination and suspension.**

The proposed terms permit Envestra to terminate on 7 days notice if the distribution network ceases to be a Covered Pipeline for the purposes of the Code, whereas Allgas has no similar termination provision. This provision places the retailer at risk of significant changes to its tariff structure if the pipeline ceases to be covered under the Code. Accordingly, TRUenergy questions the validity of such a provision in an open market.

**Customer relationship.**

The proposed terms for Envestra should include a provision for the distributor to indemnify the retailer for claims by customers relating to quality of, or interruptions to, the supply of gas. This would be consistent with Envestra's standard terms and conditions in Victoria.

If you require additional information or clarification regarding any of the above please do not hesitate to contact me by telephone on 03 8628 1233 or email [bruce.page@truenergy.com.au](mailto:bruce.page@truenergy.com.au).

Yours sincerely,

Bruce Page  
Regulatory Manager