

24 May 2022

Chair
Energy Senior Officials
Department of Industry, Science, Energy and Resources
GPO Box 2013
CANBERRA ACT 2601

Lodged online via renewablegas@industry.gov.au

Dear Sir/Madam

Re: Hydrogen blends and renewable gases reforms

Thank you for the opportunity to provide feedback on the Draft Bill and refined approach to accommodate hydrogen blends and renewable gases in the national gas regulatory framework.

Overall, ATCO supports the refined approach to identifying gases that are within the scope of the national framework, as it provides a nationally consistent base level approach. ATCO acknowledges that the Officials have considered the feedback from stakeholders in the last round of consultation to develop this refined approach.

ATCO appreciates the difficulty that Officials have in balancing the introduction of regulation that will provide investment certainty without stifling industry development in a future that is yet to be determined. In this respect, there are some aspects of the Draft Bill that ATCO consider need further refinement:

- **Treatment of blend processing** - The need for blending is driven by gas quality requirements and not a commercial imperative. The rationale to separate blending into in-pipeline blending and blend processing services is unclear. At this stage of industry development, there is no need to regulate blending and therefore distinguishing between different methods of blending is not necessary.
- **Ring fencing for blending** - The imposition of ring fencing restrictions to exclude pipeline service providers and producers from owning and operating blending assets will impact on the development of competitive blending services. At this early stage of industry development, limiting participation from potential players already invested in the industry will only reduce competition.
- **Small quantities of renewable gas production permitted** – Pipeline service providers are at the forefront of demonstrating the use of renewable gases in distribution networks and removing the ability for networks to produce renewable gas will present challenges to industry development. The availability of renewable gases has not progressed to the level of natural gas. There is a need for networks to produce renewable gases in order to test and trial their use by controlling quality economically prior to wide spread introduction.

- **Transitional provisions for existing assets** – ATCO has made a number of investments in hydrogen to demonstrate its production value and use. These business activities will no longer be allowed to be carried out by the pipeline service provider under proposed reforms. In order to prevent significant business restructuring, it is considered that grandfathering or transitional arrangements for these assets be introduced.

This submission is made by ATCO as an active participant in the development of industry and with interests in both production and distribution of covered gases. Feedback has been provided from an overall perspective of ATCO's business interests, as well as, identifying specific impacts on ATCO's business as a pipeline service provider (ATCO Gas Australia).

ATCO commends the progress that has been made to date in the review process and we look forward to seeing this momentum maintained with the delivery of a final package of regulation to the Energy Ministers in the near future.

If you have any questions or would like to discuss any of the comments made in this submission, please contact myself or Hugh Smith, General Manager Regulation and AA6 Lead on 0459 894 397.

Yours sincerely



J.D. Patrick Creaghan
Country Chair
ATCO Australia

Attachment B: Officials' Consultation Paper – Stakeholder feedback template

Submission from ATCO

The template below has been developed to enable stakeholders to provide feedback on

- the refined approach to extending the national framework to covered gases (see Chapter 3 of the consultation paper); and
- the amendments to the NGL, NERL and National Regulations that are required to give effect to the refined approach (see **Attachment A** for the draft Bill and Chapters 4-5 of the consultation paper for a guide to these changes.

Officials strongly encourage stakeholders to use this template, so that it can have due regard to the views expressed by stakeholders on each issue. If you wish to provide additional feedback outside the template, wherever possible please reference the relevant question to which your feedback relates. It's

Feedback on the refined approach (see Chapter 3)

No.	Questions	Feedback
Related to:	Proposed approach to specifying the gases and blends within scope of national gas regulatory framework	n/a
1	What are your views on the refined approach to identifying the gases and blends that could fall within the scope of the national framework (see section 3.1)?	ATCO supports the refined approach to identifying gases that are within the scope of the national framework, as it provides a nationally consistent base level approach.
Related to:	Proposed extension of the NGL and National Gas Regulations	n/a
2	What are your views on the refined approach to extending the NGL to covered gases (see section 3.3)? Where appropriate, please comment in relation to the subheadings below.	

<p>2.1</p>	<p>What are your views on the proposed extension of the pipeline access regime to all pipelines transporting covered gases (i.e. natural gas, biomethane, synthetic methane, hydrogen and blends of these gases) and the impacts it may have on smaller players or new entrants? In responding to this question please consider:</p> <ul style="list-style-type: none"> ▪ the proposal to extend to the regime in this way from the commencement of the reforms; ▪ the potential impact on industry development, including where it may support the development a competitive and cost-efficient hydrogen and renewable gas industry, or may create barriers; ▪ the proposed changes to the pipeline ring-fencing arrangements; and ▪ the proposed power to exempt remote pipelines. 	<p>ATCO generally supports the extension of the pipeline access regime to all pipeline transporting covered gases, as it provides investment certainty and a known operating environment for decarbonising pipelines. The amendment of National Gas Objective (NGO) to reference covered gases, instead of only natural gas, provides pipeline service providers with the opportunity to expand their focus and begin the transition to less carbon intensive gases. Incorporating additional guidance in the NGO to assess the environmental impact of transported gases may assist in this transition. This approach was adopted by the WA Government in amending the Electricity Networks Access Code objective to include reference to <i>“the environmental consequences of energy supply and consumption, including reducing greenhouse gas emissions, considering land use and biodiversity impacts, and encouraging energy efficiency and demand management”</i>.</p> <p>ATCO does not consider the extension of the regime will have any impact on the entry of new or small players to the pipeline services market. Pipelines may be needed to transport covered gases to customers or multiple users, for example within industrial precincts and there should be room for both scheme pipelines and non-scheme pipelines to operate. There are potential impacts on industry development for hydrogen and renewable gases that should be considered, particularly with respect to treatment of blend processing.</p> <p>The rationale to separate blending into in-pipeline blending (which can be provided by pipeline service providers) and blend processing services (which cannot be provided by pipeline service providers – or producers) is unclear. At this stage of industry development, there is no need to regulate blending and therefore distinguishing between different methods of blending is not necessary. The need for blending is driven by gas quality requirements and not a commercial imperative. Blending is a transition service that will only be needed in the interim as we move to higher blend levels and 100% renewable gas pipelines.</p> <p>Competition does not currently exist in blending and the service is generally provided by the pipeline service provider in the interests of gas quality. For example, in ATCO’s distribution network in WA there are very limited locations and times that direct injection and in-stream blending services could occur. This is due to the network’s flow, volume and throughput, which will require some method of blending to maintain a consistent blended gas.</p> <p>Additionally, ATCO considers that an exemption from ring fencing should apply to pipeline service providers for the production of small quantities of renewable gas.</p>
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No.	Questions	Feedback
		<p>The availability of renewable gases has not progressed to the level of natural gas. There is a need for networks to produce renewable gases in order to test and trial their use by controlling quality economically prior to wide spread introduction. Cost efficiencies can be achieved by locating production close to pipelines to minimise transportation costs and maintain the industry’s momentum in moving towards a less carbon intensive future.</p>
2.2	<p>What are your views on the proposed new light-handed access regime for blend processing facilities?</p>	<p>The future use of blend processing and its potential commerciality is still yet to be determined. Introduction of a light handed access regime for blend processing facilities appears pre-mature when it is unclear that the assets will be monopoly assets. This outlook may change as the blending market develops, however in the meantime the investment certainty offered by the option of incorporating these facilities as part of covered pipelines will encourage the provision of blend processing.</p> <p>Further, it is not entirely clear why it is considered necessary to impose ring fencing obligations on blend processing service providers, given that the operation of blend processing facilities is described in the Consultation Paper as a “potentially contestable activity”. We discuss this further below regarding Chapter 5A.</p> <p>The imposition of ring fencing restrictions to exclude pipeline service providers and producers from owning and operating blending assets we consider will adversely impact on the development of a competitive blending services. At this early stage of industry development, limiting participation from potential players already invested in the industry will only reduce competition. The new regime will create barriers to market entry by forcing existing players to establish a separate entity to utilise a blend processing facility. This blend processing entity will unlikely be commercial at this early stage of industry development and this will not be assisted by the cost and regulatory burden of complying with the ring-fencing provisions.</p>
2.3	<p>When developing the refined approach, a number of steps have been taken to minimise regulatory costs and risks for industry participants and new entrants. Do you think any additional steps are required? If so, please explain what they are and why they are required.</p>	<p>The costs and administration associated with the establishment of a separate entity and ring fencing to undertake blend processing seem unnecessary when the market for these services is yet to be established.</p>

No.	Questions	Feedback
2.4	<p>Do you agree with the AEMC's recommendations (see section 3.2) that the NGL be amended to:</p> <ul style="list-style-type: none"> ▪ enable rules to be made so that AEMO can collect information for the purposes of the VGPR and capacity modelling from facilities that do not otherwise participate directly in the DWGM? ▪ limit the potential for the unintended application of the GSOO provisions in the NGL? <p>If you disagree with either of these recommendations, please explain why.</p>	
2.5	<p>Do you agree with the AER's recommendations (see section 3.2) that the NGL be amended to:</p> <ul style="list-style-type: none"> ▪ accord the regulator the power to impose additional ring fencing requirements on a class of service providers or associates through a ring-fencing order? ▪ allow conditions to be imposed on minimum ring-fencing exemptions issued under the NGR? <p>If you disagree with either of these recommendations, please explain why.</p>	<p>It appears that these recommendations provide unconstrained power to the AER to impose additional ring fencing obligations on service provider, class of service providers or associate. ATCO considers there should be a limitation to the AER's power and clarity on how this power can be utilised.</p>

<p>2.6</p>	<p>Are any transitional arrangements required in the NGL to accommodate the extension to covered gases? If so, explain what they are and why they are required.</p>	<p>ATCO considers that transitional or grandfathering arrangements are required to deal with existing investments.</p> <p>ATCO's business as a pipeline service provider, ATCO Gas Australia (AGA) has a number of existing investments and projects relating to hydrogen production, blending and refuelling of hydrogen vehicles. AGA has been producing renewable hydrogen by electrolysis from its Clean Energy Innovation Hub (the Hub) since 2019. Hydrogen produced from the Hub has been used in its local operating depot at Jandakot, WA and this year will also be blended into a section of the natural gas distribution network in WA and for vehicles through a refuelling station. These projects are demonstration scale and have been well supported by both State and Federal Governments.</p> <p>AGA, as a pipeline service provider, is currently permitted to undertake these activities, as they do not constitute a 'related business' for the purposes of s 139 of the NGL. The current definition of a related business is confined to the production, purchase or sale of 'natural gas' or processable gas. However, under refined approach the proposed changes to the ring fencing rules (particularly the changes to the NGL definition of 'related business'), AGA will be prohibited from engaging in blend processing and the production, purchase or sale of hydrogen (as well as other primary or processable gases). These activities will have to exist outside ATCO's business as a pipeline service provider ie. an ATCO entity other than AGA.</p> <p>The draft bill does not include any transitional or grandfathering provisions to deal with existing hydrogen production / blending / sale activities which covered pipeline service providers may already be engaged in.</p> <p>In the absence of transitional or grandfathering provisions, AGA would be prohibited from engaging in any hydrogen production, blending or sale activities on and from the day that the legislative changes take effect. AGA would need to cease these activities (or transfer them to another entity within the ATCO group) prior to commencement of the new ring fencing regime.</p> <p>Small scale production of renewable gases by pipeline service providers for testing and trial purposes is needed as the availability of renewable gases has not progressed to the level of natural gas. There is a need for networks to produce renewable gases in order to test and trial their use prior to wide spread introduction.</p>
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No.	Questions	Feedback
		<p>It would seem unnecessary and inappropriate to immediately prohibit pipeline service providers from engaging in innovative hydrogen-related business activities. Pipeline service providers have not only been allowed to engage in these activities under the current ring fencing rules – businesses such as AGA have been actively encouraged to pursue these projects. AGA has received government funding and other support to develop the Hub, blending project and refuelling station. In providing this support, it has not been seen as necessary to impose ring fencing controls – particularly given the nascent and small-scale nature of these projects. It would be highly disruptive to the development of these projects if AGA now needed to cease or significantly restructure how they operate.</p> <p>A relatively simple means of addressing this issue would be to include savings provisions for related business activities that were permitted under the old ring fencing regime and which a service provider was already carrying on at the commencement date (or some earlier date). Under this approach, service providers would be permitted to carry on these activities in their current form following commencement of the new ring fencing regime. If service providers wanted to expand or augment these activities after commencement of the new regime, this would need to fit within requirements for an exemption or separate waiver. An exemption from ring fencing should apply to enable the production of small quantities of renewable gases for testing and trial purposes (as discussed in 2.1).</p> <p>Alternatively, application of the new ring fencing rules could be delayed to allow sufficient time for service providers to either restructure existing projects and/or obtain waivers from the new ring fencing rules for these existing projects. For this option to be effective, the waiver rules would need to be amended to give the relevant regulators greater flexibility around how and when they are able to grant waivers. It would be important that the regulators have sufficient flexibility to ensure that waivers for existing projects can be granted relatively quickly – either through a streamlined process or by deeming certain existing activities to be automatically eligible for a waiver.</p> <p>ATCO would be happy to propose some drafting for transitional or grandfathering provisions.</p>
Related to:	Proposed extension of the NERL and National Energy Retail Regulations	n/a

No.	Questions	Feedback
3.0	What are your views on the refined approach to extending the NERL to covered gases (see section 3.3)? Where appropriate, please comment in relation to the questions below.	
3.1	What are your views on the approach to identifying NGEs and defining prescribed covered gases?	
3.2	What are your views on the separate authorisation and exemption of natural gas and NGEs (as one group) and prescribed covered gases (as separate products)?	
3.3	Are any transitional arrangements required in the NERL to accommodate the extension to covered gases? If so, explain what they are and why they are required.	

Feedback on proposed changes to the National Gas Law (see Attachment A and Chapter 4)

Section of Draft Bill	Feedback
Chapter 5A	<p>ATCO makes two main observations regarding the proposed new ring fencing rules for blend processing service providers (Part 3 of Chapter 5A of the Bill):</p> <ol style="list-style-type: none">1. It is not entirely clear why it is considered necessary to impose ring fencing obligations on blend processing service providers, given that the operation of blend processing facilities is described in the Consultation Paper as a “potentially contestable activity”.2. Putting aside issue 1, and assuming the intent is to apply an equivalent ring fencing regime to blend processing facilities and covered pipelines (on the basis that both are potentially non-contestable / essential services), the proposed drafting does not achieve this intent. The proposed drafting would impose much more onerous obligations on blend processing service providers – effectively requiring them to operate as standalone businesses. <p>These issues are outlined further below.</p> <ol style="list-style-type: none">1. Policy intent behind the proposed changes is not clear <p>The Bill proposes to insert a new Chapter 5A, setting out third-party access obligations for non-pipeline facilities, including blend processing facilities. Part 3 of Chapter 5A sets out ring fencing obligations that would apply to blend processing service providers.</p> <p>It is not entirely clear from the Consultation Paper why it is considered necessary to impose ring fencing obligations on blend processing service providers. Given the immaturity of the market for blend processing, the introduction of these provisions appears pre-mature.</p> <p>Ordinarily, ring fencing controls would be applied within businesses that supply both monopoly services and contestable services. The notional ring fence is established around the monopoly part of the business, while contestable services are allowed to be supplied outside</p>

the ring fence. One of the main purposes of ring fencing is to ensure that, in supplying monopoly services, the business does not discriminate between related and unrelated providers of contestable services who may rely on the monopoly services as inputs.

Where a business only supplies contestable services, there is no need for ring fencing controls. A ring fence is only required where a business supplies both monopoly and contestable services, and therefore has the ability and incentive to engage in anti-competitive discrimination.

It is for this reason that, currently, ring fencing rules only apply to covered pipeline service providers. Covered pipeline service providers typically face little or no competition for the supply of pipeline services. This monopoly activity is therefore ring fenced from other contestable activities that an associated entity may wish to engage in (e.g. production or sale of gas).

It is less clear why ring fencing controls would need to be applied to blend processing service providers.

The operation of blend processing facilities is described in the Consultation Paper as a “potentially contestable activity”.¹ If that is the case, it would make sense that pipeline service providers (but not their associates – the proposed amendments currently extend to prohibiting associates of pipeline service providers from providing blend processing services) would be prohibited from providing blend processing services – just as they are prohibited from engaging in other contestable activities, such as the production or sale of gas. However it would not make sense to separately ring fence the provision of blend processing services from other contestable activities.

We note that this appears to be the AER’s understanding of the policy intent behind the proposed changes to the ring fencing rules. The AER’s advice states the policy intent in the following terms:²

...that pipeline service providers are to be ring-fenced from their associates involved in producing natural gas equivalents and blending activities.

The AER appears to see blending as a potentially contestable activity (like production) which should sit outside the ring fence – i.e. an activity which covered pipeline service providers (but not their associates) should be prohibited from engaging in. The AER does not appear to contemplate a separate ring fence around blending activities.

2. If the intent is to apply an equivalent ring fencing regime to blend processing facilities and covered pipelines, the proposed drafting does not achieve this intent

While describing blend processing as a “potentially contestable activity”, the Consultation Paper states an intention to apply equivalent ring fencing rules to this activity as currently apply to covered pipelines.

The Consultation Paper states that blend processing service providers will be required to:³

comply with equivalent ring-fencing and associate contract arrangements to those that apply to pipelines, which are intended to prevent vertically integrated service providers from adversely affecting competition in contestable parts of the market

Section of Draft Bill	Feedback
	<p>Regarding existing arrangements for covered pipelines, the Consultation Paper notes:⁴</p> <p><i>Amongst other things, the ring-fencing arrangements prohibit service providers from carrying on a related business in a contestable part of the market (unless they obtain an exemption under the NGR). They do not, however, prohibit an associate of the service provider doing so. If an associate does operate in these parts of the market, any contracts they have with the service provider to use a pipeline service must comply with the associate contract provisions in the NGL. These provisions prohibit contracts that have an anti-competitive effect, or are inconsistent with the competitive parity rule.</i></p> <p>Consistent with these existing arrangements, the Consultation Paper states that the ring-fencing arrangements for blend processing facilities are intended to:⁵</p> <p><i>...prohibit the service providers of... [blend processing] facilities (but not an associate of the service provider) from carrying on the contestable activities of producing a primary gas or purchasing or selling any covered gas (unless an exemption is obtained under the NGR)</i></p> <p>This intent is confirmed by case study 1C in Box 3.5. In this case study, the blend processing facility service provider would be required to:⁶</p> <p><i>...comply with the ring-fencing and associate contract arrangements, which would prohibit the service provider (but not an associate of the service provider) from carrying on a related business of producing primary gases or processable gas, purchasing or selling covered gas or processable gas and providing pipeline services (unless it obtains a ring-fencing exemption under the NGR).</i></p> <p>This stated intent is not reflected in the drafting of Part 3 of Chapter 5A – particularly the proposed sections 203 and 204. Instead, under the proposed drafting, a blend processing service provider <u>and its associates</u> would be prohibited from carrying on a related business of producing primary gases or processable gas, purchasing or selling covered gas or processable gas and providing pipeline services.</p> <p>Under proposed section 204, a “party” must not carry on a business of providing pipeline services, producing primary gases or processable gas, or purchasing / selling covered gas or processable gas. Under section 203, the “parties” that would be prohibited from engaging in these activities include all associates of a blend processing service provider (as well as the blend processing service provider itself).</p> <p>Thus, the Bill would effectively require blend processing to be conducted as a standalone business – without any associated businesses conducting pipeline, production, purchase or gas sale activities. This is a very different form of ring fencing to that which currently applies to</p>

¹ Consultation Paper, pp x, 14.

² AER advice, p 1.

³ Consultation Paper, p x.

⁴ Consultation Paper, p 11.

⁵ Consultation Paper, p viii.

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Section of Draft Bill	Feedback
	covered pipeline service providers. Indeed, it would not really be ring fencing at all – instead, the Bill would require complete structural separation of blend processing from any related businesses.
Section 203 and 204	<p>As set out above, proposed sections 203 and 204 do not achieve the intent of applying an equivalent ring fencing regime to covered pipelines and blend processing facilities.</p> <p>Under proposed section 204, a “party” must not carry on a business of providing pipeline services, producing primary gases or processable gas, or purchasing / selling covered gas or processable gas. Under section 203, the “parties” that would be prohibited from engaging in these activities include all associates of a blend processing service provider (as well as the blend processing service provider itself).</p> <p>As set out above, we assume that this is not the intention and therefore the drafting needs to be revised.</p>

[insert extra rows if necessary]

Feedback on proposed changes to the National Gas Regulations

Section of Draft Variation Regulations	Feedback

Section of Draft Variation Regulations	Feedback

[insert extra rows if necessary]

