

The IT Operating Expenditure of the Access Arrangement for the Mid-West and South-West Gas Distribution System, KPMG November 2014

Appendix 6.4

27 November 2014

Response to the ERA's Draft Decision on required
amendments to the Access Arrangement for the Mid-
West and South-West Gas Distribution System





ATCO Gas Australia Pty Ltd

The IT Operating Expenditure of the Access Arrangement for the Mid- West and South-West Gas Distribution System

21 November 2014

November 2014
This report contains 26 pages

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Inherent Limitations

This report has been prepared as outlined in the Purpose Section. The services provided in connection with this engagement comprise an advisory engagement, which is not subject to assurance or other standards issued by the Australian Auditing and Assurance Standards Board and, consequently no opinions or conclusions intended to convey assurance have been expressed.

KPMG have indicated within this report the sources of the information provided. We have not sought to independently verify those sources unless otherwise noted within the report.

The findings in this report have been formed on the above basis.

Third Party Reliance

This report has been prepared at the request of Johnson Winter & Slattery in accordance with the terms of KPMG's letter of instruction dated 4 November 2014. This report is solely for the purpose set out in the Purpose Section and is not to be used for any other purpose. Neither KPMG nor any member or employee of KPMG undertakes responsibility arising in any way from reliance placed by a third party on this report for any other purpose. Any reliance placed is that party's sole responsibility.

1 Introduction

1.1 Purpose

The purpose of this report is to address the requirements of a letter of instruction provided to the Expert by Johnson Winter & Slattery on 14 November 2014 and set out in Appendix A.

1.2 The Expert

The Expert is:

Ted Surette
Partner, National Sector Leader, Power and Utilities
KPMG
10 Shelley Street
Sydney NSW 2000

Ted Surette's relevant training, qualifications and experience are set out in his CV attached at Appendix C.

1.3 The Expert's opinions and reasons

The Expert's opinions are based wholly on the specialised knowledge set out in Appendix A of this report and the other information and findings set out in this report.

1.3.1 As to whether there are particular business drivers that would increase ATCO Gas' ongoing IT services operating expenditure?

ATCO Gas Australia has considered the business drivers that would increase its planned IT operating activities for the AA4 period and therefore the planned IT services operating expenditure forecasts. In the Expert's opinion, the business drivers considered by ATCO Gas Australia are consistent with those considered by other network businesses. As such, the scale of impact on increases to IT Opex, from the business drivers are summarised below:

Business Drivers	Scale of impact on IT Opex increase	Comments
Increases in demand for IT services due to increase in user numbers.	Moderate impact, as the rate of increase in end users is moderate at 15% over the 5.5 years of the AA4 period is consistent with its planned rate of growth in workforce.	Moderate rate of increase in Managed Services Fee is expected from this driver. This is consistent with the moderate rate of increase forecasted for user numbers.

Business Drivers	Scale of impact on IT Opex increase	Comments
Increases in demand for IT services due to increase and change in network operations.	Moderate impact expected from increase in customers at 2.1% p.a., moderate growth in network operations due to network expansions.	Moderate rate of increase in Managed Services Fee is expected from this driver. This is consistent with the small rate of increase forecasted for customer numbers.
Replacement of ageing, near end-of-life infrastructure.	Moderate impact as the replacement of infrastructure is factored into the Managed Services Fee within the new Wipro service agreement.	Moderate rate of increase in Managed Services Fee is expected from this driver. This is consistent with ATCO Gas Australia's reason that infrastructure replacement were delayed by previous management.
IT Opex increases as a result of IT Capex projects.	High impact as ATCO Gas Australia's proposed IT Capex projects are likely to increase IT operating activities.	High rate of increase in Managed Services Fee is expected from this driver. The type of IT Capex projects proposed by ATCO Gas Australia will generally increase IT operating activities in: <ul style="list-style-type: none"> • IT systems supports; • Number of system connection points; • Number of supported client devices; • Volume of data to be accessed from integrated system; and • IT data volume and transactions due to system complexity.

In the Expert's opinion, the IT Capex projects proposed by ATCO Gas Australia are consistent with the types of IT Capex projects proposed by a prudent network business.

ATCO Gas Australia has estimated an increase of its IT operating expenditure as a result of IT Capex projects at \$0.93 million, \$Real June 2014, at 3.4% of its proposed \$27.4m IT Capex.

In the Expert’s opinion, ATCO Gas Australia’s proposed IT Opex increase, corresponding to its IT Capex forecasts is low, when compared to other utilities’ proposed increases, particularly on the type of proposed IT Capex projects.

Accordingly, the business drivers and the rate of increases proposed for Managed Services, are consistent with the criteria of NGR 91(1), as the proposed business drivers for increases are reasonable, based on a commercial and industry based Master Services Agreement.

1.3.2 How such business drivers should be factored into forecasts of IT services operating expenditure?

ATCO has factored the increases from the business drivers listed in section 1.3.1, within its planned IT expenditure forecasts for the AA4 period. In the Expert’s opinion, the business drivers, have been factored reasonably into the IT Opex and the approach taken is consistent with the approach of a prudent network business.

Business Drivers	Factored into forecast	Comments
Increases in demand for IT services due to increase in user numbers	Increases factored into the Wipro Master Services Agreement.	Increases have been reasonably covered with the new services agreement. Additionally, the new services agreement is consistent with commercial and industry practices.
Increases in demand for IT services due to increase in customer numbers	Increases factored into the Wipro Master Services Agreement.	Increases have been reasonably covered within the Wipro Master Services Agreement. Additionally, the Master Services Agreement is consistent with commercial and industry practices.

Business Drivers	Factored into forecast	Comments
Replacement of aged end-of-life infrastructure	Increases factored into the Wipro Master Services Agreement.	Increases have been reasonably covered within the Wipro Master Services Agreement. Additionally, the Master Services Agreement is consistent with commercial and industry practices.
IT Opex increase as a result of IT Capex projects	Increases were estimated from a top down approach as an overall IT Opex increase and in the affected areas of Management Services.	The Expert considers the estimated IT Opex low for the types of IT Capex projects proposed, when compared to other network businesses. Additionally, the Expert note that analysis on IT Opex impact was not evident within some of the business cases reviewed. IT Opex forecasts estimates may be confirmed from a bottom-up estimation approach as part of the IT Capex business case.

ATCO Gas Australia has reasonably factored the business drivers into the IT services operating expenditures, in an approach consistent with the criteria of NGR 91(1) based on the new IT commercial and industry Master Services Agreement with Wipro.

In the Expert opinion, IT services operating expenditure as a result of IT Capex may be confirmed from a bottom-up estimation approach in line with the IT operating requirements of the IT Capex investments in a business case.

1.4 Federal Court of Australia Practice Note CM7

The Expert has read, understood and complied with Federal Court of Australia Practice Note CM7 in forming the opinions set out in this report.

2 Background

2.1 The Access Arrangement Periods

The third access arrangement period (AA3) started on 1 January 2010 and ended on 30 June 2014, over a period of 4.5 years.

The fourth access arrangement period (AA4) started on 1 July 2014 and will end on 31 December 2019, over a period of 5.5 years.

The AA4 period is effectively of 22.4% longer in duration than the previous AA3 period. The longer regulatory period should be factored when comparing the proposed IT Opex increase from AA3 to AA4 and when drawing conclusion on IT Opex efficiency.

2.2 IT Opex for AA3

ATCO Gas Australia's IT services were provided based on a related party service agreement with ATCO I-Tek Australia over the AA3 period. The agreement was structured based on a fee for usage and service volume.

The breakdown of ATCO Gas Australia's IT Opex over the AA3 period is as follow:

IT Operating Expenditure	\$Real million (Jun 2014)
Usage Fee (cost of shared infrastructure)	\$8.7
IT Services Fee	\$20.1
Licence Fee	\$6.5
Total	\$35.3

Over the AA3 period, IT Opex was higher than the approved forecast of \$30.1m, representing an overspend of \$5.2m (17%).

ATCO Gas Australia indicated that the drivers for the IT Opex overspend were:

- Change in ownership led to change in apportionment of fees;
- New and replacement IT systems deployed; and
- Increase system usage in supporting business and regulatory reporting requirements.

2.3 The ATCO Gas Australia IT Operating Expenditure for AA4

2.3.1 The March 2014 Submission

In March 2014, ATCO Gas Australia submitted the planned IT Opex forecasts for the AA4 period based on the related party services agreement with ATCO I-Tek Australia. Within the submission, ATCO Gas Australia indicated the service agreement will expire on 31st December 2014 and its intention to review the IT services agreement.

The proposed IT Opex forecasts for AA4 are were follows:

IT Opex based on I-Tek Services Classifications	\$Real million (June 2014)
Usage Fee	\$20.1
IT Service Fee	\$33.5
Licence Fee	\$13.5
Total IT Opex	\$67.1

2.3.2 The August 2014 Revision

ATCO Gas Australia extensively reviewed the options for its future IT delivery model, including the evaluation of a number of options related to future IT and technology services.

In April 2014, Wipro was selected as the new IT service provider, following an extensive selection process that involved market testing, market tendering, detailed analysis, due diligence and a final negotiation of a Master Services Agreement.

The Wipro Master Services Agreement, effective from 1 January 2015, will be a service based agreement, consistent with commercial and industry IT service delivery models.

Following the confirmation of the Master Service Agreement with Wipro, ATCO Gas Australia provided a revision of its IT Opex forecasts to the ERA, based on the scope and managed services fee structure of the new Master Service Agreement. The revision was a reduction of \$8.5m (12%) from the IT Opex previously submitted in March 2014.

In the revision, the classification of the IT Opex was adjusted in line with the new Wipro Master Services Agreement, with the former service fee classifications of Usage fee and IT Service Fee replaced with the new Managed Services Fee.

The Managed Services Fee is the largest service classification of the IT Opex at 75.3%.

March 2014 Submission		August 2014 Revision	
I-Tek Services Classification	\$ Real million (June 2014)	Wipro Services Classification	\$Real million (June 2014)
Licence Fee	\$13.5m	Licence Fee	\$14.3m
-	-	Usage Fee (Jul to Dec 2014)	\$0.2m
Usage Fee	\$20.1m	Managed Services Fee (presented as Service Fee)	\$44.1m
IT Service Fee	\$33.5m		
Total IT Opex submitted in March 2014	\$67.1m	Total IT Opex revised in August 2014	\$58.6m

2.3.3 The October 2014 ERA Draft Decision

In its draft decision, the ERA significantly reduced the revised IT Service Fee from \$44.1m to \$30.0m and slightly reduced the Licence Fee to \$13.5m, referencing EMC^a's analysis on the reductions; however, the following should be noted:

- EMC^a's analysis was finalised in June 2014 and its analysis was based on the IT Opex forecasted from the former I-Tek IT service agreement;
- ATCO Gas Australia's revised IT Opex of \$58.6m, is lower than EMC^a's recommended technical review of \$59.7m;
- The IT services classifications, expenditures and scope of IT services analysed by EMC^a are not of the equivalent scope and fee structure as the proposed Managed Services for the AA4 period, as a result of the Wipro Master Services Agreement.
- Based on the references within the Draft Decision, it appears that ERA has not acknowledged the change in the classification of services from the former I-Tek services agreement to the new Wipro Master Services Agreement.

2.4 The Increase of IT Opex from AA3 to AA4

ATCO Gas Australia is proposing an increase of its IT Opex from \$35.3m to \$58.6m, an increase of \$23.3m from AA3 to AA4.

The proposed IT Opex and the breakdown over the AA3 and AA4 periods is presented in the table below:

\$ million real at 30 June 2014	AA3 period					AA4 period				
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Usage Fee (cost of shared infrastructure)	NA	2.1	2.0	1.7	1.1	-	-	-	-	-
IT Services Fee	NA	3.0	4.9	5.3	6.3	-	-	-	-	-
Managed Services	-	-	-	-	-	8.2	8.3	8.3	8.0	7.8
IT Licence fees	NA	4.1	1.6	1.8	2.3	2.5	2.6	2.6	2.7	2.8
Annual IT operating costs	NA	6.5	8.5	8.8	9.7	10.7	10.9	10.9	10.7	10.6
IT Operating costs for the AA period	\$35.3m					\$58.6m				

The AA3 period covered 1 January 2010 to 30 June 2014, over a period of 4.5 years, while the AA4 period will cover 1 July 2014 to 31 December 2019, over a period of 5.5 years. The AA4 period is effectively 22.4% longer in duration, than the AA3 period.

The Managed Services Fee is the highest component of the IT Opex proposed for AA4, the breakdown of the Managed Services Fee over the AA4 period, according to ATCO Gas Australia analysis is as follows:

Managed Services	\$million real at 30 June 2014	Percentage
Applications managed services	15.3	34.6%
Distributed server services	17.2	38.9%
Data – LAN / WAN	1.0	2.2%
Data Storage Services	4.6	10.5%
Voice and Video Services	1.7	3.9%
End User Computing Services	4.2	9.6%
User Connectivity Services	0.1	0.3%
Total	44.1	

ATCO Gas Australia has indicated the forecasts for each of the areas of the Managed Services Fee over the AA4 period has included factors for increases in:

- End users services, user connectivity services and application services in line with workforce growth;
- Growth in distributed server services, followed by an assumption of reduction in the later part of the period; and
- Data services and data storage services at an annual growth rate of 10%.

3 Analyses and inquiries

3.1 Drivers of IT Opex

Following discussions with ATCO Gas Australia's Management and review of its access arrangement proposal and IT investments, In KPMG's view, the business drivers that may impact on IT Opex include the following:

- Increase in demand for IT services due to increase in users;
- Increase in demand for IT services due to increase and change in network operations;
- Replacement of ageing, near end-of-life IT infrastructure; and
- IT Opex increase as a result of IT Capex projects.

3.1.1 Increase in demand for IT services due to increase in users

Increase in the number of users may directly increase the following Wipro Managed Services:

- Application managed services;
- End user computing services; and
- User connectivity services.

ATCO Gas Australia has proposed increases in these three managed services in line with its planned workforce growth of 15% over the 5.5 years of the AA4 period and the increases have been factored into the new Wipro Master Services Agreement.

It is the Expert's opinion that the moderate increases in the number of users will have moderate impact on the increase of IT Opex over the AA4 period.

3.1.2 Increase in demand for IT services due to increase and change in network operations;

This business driver refers to increase in the number of customers, increase in the scale of network operations from network extensions and change in network operations such as increased regulatory reporting.

Increase in this business driver may indirectly increase in the following Wipro Management Services:

- Data – LAN/WAN Services;
- Data Storage Services; and
- Application Managed Services

ATCO Gas Australia has proposed the rate of increases in these services in line with the forecasted rate of customer increase at 2.1% p.a., 10% increase in Data Storage

Services p.a. and a small increase in data storage services. The forecasted increases in these services have been factored into the Wipro Master Services Agreement.

It is the Expert's opinion that the moderate increases in these drivers will have moderate impact on the increase of IT Opex over the AA4 period due to the small rate of growth and the small percentage component of these managed services within the Wipro Master Services Agreement.

3.1.3 Replacement of ageing, near end-of-life IT infrastructures;

ATCO Gas Australia has factored within its Master Services Agreement with Wipro the forecasts to replace its ageing, near end-of-life infrastructure.

ATCO Gas Australia Management has indicated an average infrastructure age of greater than 4 years. Additionally ATCO Gas Australia has presented an increasing level of operational risk associated with the ageing infrastructure.

It is the Expert's opinion that replacement of ageing infrastructure is consistent with prudent management practices in reducing the operational risk in maintaining network supply.

Additionally, ATCO Gas Australia has factored efficiency within the Wipro Master Services Agreement, by decreasing 20% of the number of Unix servers supported in the final two years of the AA4 period.

3.1.4 IT Opex increase as a result of IT Capex projects

ATCO Gas Australia has estimated \$0.93m of the proposed \$58.6m as increase in IT Opex as a result of proposed IT Capex projects. Examples of proposed IT Capex projects are as follows:

- Field mobility;
- Asset management systems integration;
- Strategic asset management feasibility; and
- Periodic refresh of applications and infrastructure.

The \$0.93m of IT Opex is a top-down estimate over the IT Capex project portfolio, estimation assumptions were made independent of the network business and project stakeholders.

It is the Expert's opinion that:

- The range of IT Capex projects proposed is consistent with other Australian distribution businesses in their recent regulatory submissions;
- An increase in IT Opex corresponding to IT Capex investment is in line with the recent trends in other Australian distribution businesses regulatory submissions;

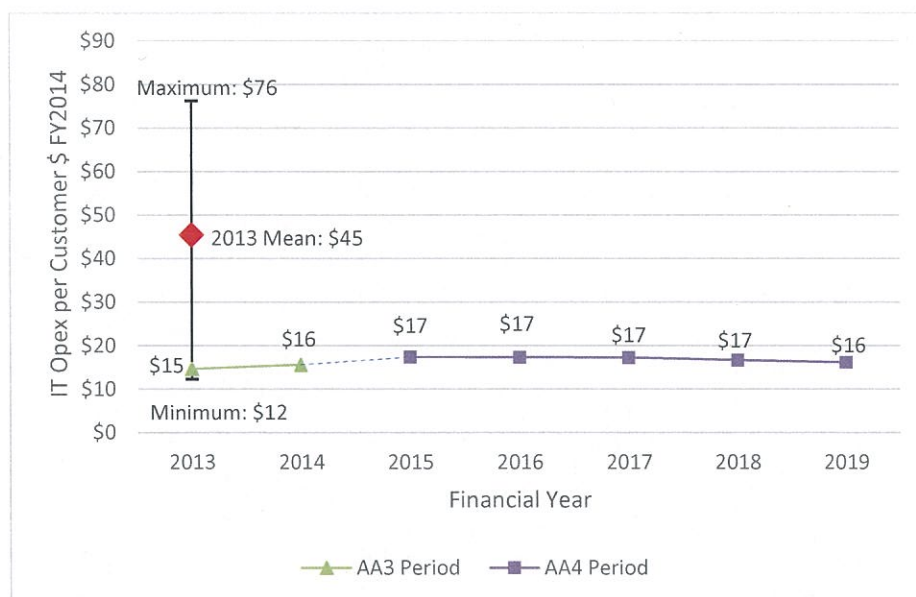
- ATCO’s estimated IT Opex as a percentage of its IT Capex forecast is low compared to the recent trends in other Australian distribution business regulatory submissions; and
- The proposed projects are likely to increase demand for the IT managed services and ATCO Gas Australia may need to confirm the IT Opex estimates through a bottom-up approach as part of the IT Capex business case process.

3.2 Comparison of IT Opex to industry benchmarks

ATCO Gas Australia has compared favourably in an industry benchmarking survey conducted by ITNewcom based on its former I-Tek IT services fees¹.

Further to this, KPMG can confirm ATCO Gas Australia’s overall IT Opex is below the industry mean when compared to the 2013 KPMG IT Utilities Benchmarking result on IT Opex per customer², as illustrated in the Chart below:

Chart 1 - IT Opex per Customer



KPMG’s 2013 IT Utilities Benchmarking survey involved predominantly participants of eastern and south-eastern Australian electricity distribution businesses.

The Expert recognises that IT expenditure tends to be less for gas distribution businesses due to the lesser complexity in network operations and IT requirements, when compared to electricity distribution businesses.

The benchmark results for gas distribution businesses would therefore be at the lower range (i.e. lower maximum, lower average and lower minimum), when compared to

¹ ITNewcom, May 2014, ATCO Gas Australia Price Benchmark

² KPMG, March 2014, KPMG 2013 Utilities IT Benchmarking

electricity distribution business networks. With these considerations, ATCO Gas Australia's benchmark result for IT Opex per customer is expected to be at the low range.

Additionally, the benchmark results based on ATCO Gas Australia's forecasted AA4 IT Opex, the results of IT Opex per customer increase from \$15 to \$17 per customer, followed by a planned decrease to \$16 per customer as part of the planned efficiency gain from the new Wipro Master Services Agreement. The chart below illustrate ATCO Gas's result.

3.3 Consideration of NGR 91(1)

National Gas Rule 91 "Criteria governing operating expenditure" provides that:

(1) Operating expenditure must be such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of delivering pipeline services.

In the Expert's opinion, based on the consideration of ATCO Gas Australia's approach in formulating the planned IT Opex forecasts in relation to NGR 91(1):

- The range of proposed IT projects and IT operating activities are consistent with those in recent network distribution businesses regulatory submissions;
- The level of IT operating expenditure forecast is reasonable when compared to industry IT benchmarks;
- Prudent management practices have been observed in the delivery of IT services through a commercial and industry based Master Services Agreement established through competitive market tendering, due diligence and formal negotiation processes;
- In delivering the above, ATCO Gas Australia has reduced its IT Opex submission by 12% based on the new Wipro Master Services Agreement, a greater reduction than recommended by EMC^a; and
- The rate of changes proposed for IT managed services are based on reasonable business drivers.

4 Expert's statement

Ted Surette has made all the enquiries that Ted Surette believes are desirable and appropriate and that no matters of significance that Ted Surette regards as relevant, to Ted Surette's knowledge, been withheld from the report.



Ted Surette

Appendix A -Letter of instruction from Johnson Winter & Slattery

JOHNSON WINTER & SLATTERY
LAWYERS

Partner: Roxanne Smith +61 8239 7108
Email: roxanne.smith@jws.com.au
Our Ref: B1299
Doc ID: 66224377.1

14 November 2014

Mr Ted Surette
Partner
KPMG
10 Shelley Street
SYDNEY NSW 2000

Dear Sir

ATCO Gas Australia Pty Ltd – ERA Price Determination

We act for ATCO Gas Australia Pty Ltd (**ATCO Gas**) in relation to the Economic Regulation Authority's (**ERA**) review of the Gas Access Arrangement for ATCO Gas under the National Gas Law and Rules for the period July 2014 to December 2019.

As you are aware, on 14 October 2014 the ERA published its Draft Decision on ATCO Gas' Access Arrangement Review Proposal. ATCO Gas wishes to engage you to prepare an expert report in connection with the ERA's Draft Decision.

This letter sets out the matters which ATCO Gas wishes you to address in your report and the requirements with which the report must comply.

In particular, ATCO Gas wishes you to address questions related to its forecast of IT Services, being services that cover IT support for telephony, telecommunications, network servers, security monitoring, applications, desktop support for ATCO Gas' direct and shared systems, incident management, back-up and Disaster Recovery/Business Continuity Planning readiness, change and release management.

Terms of Reference

A fundamental aspect of the Access Arrangement review and the Draft Decision is the ERA's assessment of the efficiency of proposed expenditure.

In this context the following provisions of the National Gas Rules are of note:

Rule 91(1) provides:

Level 10, 211 Victoria Square
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Mr Ted Surette
Partner
KPMG

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14 November 2014

“Operating expenditure must be such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of delivering pipeline services.”

Rule 74 provides:

- “(1) Information in the nature of a forecast or estimate must be supported by a statement of the basis of the forecast or estimate.*
- (2) A forecast or estimate:*
- (a) must be arrived at on a reasonable basis; and*
 - (b) must represent the best forecast or estimate possible in the circumstances.”*

Rule 75 provides:

“Information in the nature of an extrapolation or inference must be supported by the primary information on which the extrapolation or inference is based.”

Capital expenditure is defined as:

“...costs and expenditure of a capital nature incurred to provide, or in providing, pipeline services.”

Operating expenditure is defined as:

“...operating, maintenance and other costs and expenditure of a non-capital nature incurred in providing pipeline services and includes expenditure incurred in increasing long-term demand for pipeline services and otherwise developing the market for pipeline services.”

Opinion

Your report is prepared in the context of assessing whether ATCO Gas's forecast IT services operating expenditure meets the requirements of rules 74 and 91 of the National Gas Rules.

ATCO Gas wishes to engage you to prepare an expert report, providing your opinion:

- (a) as to whether there are particular business drivers that would increase ATCO Gas' ongoing IT services operating expenditure; and
- (b) how such business drivers should be factored into forecasts of IT services operating expenditure.

Use of Report

It is intended that your report will be submitted by ATCO Gas to the ERA with its response to the Draft Decision. The report may be provided by the ERA to its own advisers. The report must be expressed so that it may be relied upon both by ATCO Gas and by the ERA.

The ERA may ask queries in respect of the report and you will be required to assist in answering these queries. The ERA may choose to interview you and if so, you will be required to participate in any such interviews.

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Mr Ted Surette
Partner
KPMG

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14 November 2014

The report will be reviewed by ATCO Gas' legal advisers and will be used by them to provide legal advice as to its respective rights and obligations under the National Gas Law and National Gas Rules.

If ATCO Gas was to challenge any decision ultimately made by the ERA, that appeal will be made to the Australian Competition Tribunal and your report will be considered by the Tribunal. ATCO Gas may also seek review by a court and the report would be subject to consideration by such court. You should therefore be conscious that the report may be used in the resolution of a dispute between the ERA and ATCO Gas. Due to this, the report will need to comply with the Federal Court requirements for expert reports, which are outlined below.

Timeframe

ATCO Gas' response to the Draft Decision must be submitted by **25 November 2014**. Your report will need to be finalised by **19 November 2014**.

Compliance with the Code of Conduct for Expert Witnesses

Attached is a copy of the Federal Court's Practice Note CM 7, entitled "*Expert Witnesses in Proceedings in the Federal Court of Australia*", which comprises the guidelines for expert witnesses in the Federal Court of Australia (**Expert Witness Guidelines**).

Please read and familiarise yourself with the Expert Witness Guidelines and comply with them at all times in the course of your engagement by ATCO Gas.

In particular, your report should contain a statement at the beginning of the report to the effect that the author of the report has read, understood and complied with the Expert Witness Guidelines.

Your report must also:

- 1 contain particulars of the training, study or experience by which the expert has acquired specialised knowledge;
- 2 identify the questions that the expert has been asked to address;
- 3 set out separately each of the factual findings or assumptions on which the expert's opinion is based;
- 4 set out each of the expert's opinions separately from the factual findings or assumptions;
- 5 set out the reasons for each of the expert's opinions; and
- 6 otherwise comply with the Expert Witness Guidelines.

The expert is also required to state that each of the expert's opinions is wholly or substantially based on the expert's specialised knowledge.

It is also a requirement that the report be signed by the expert and include a declaration that "*[the expert] has made all the inquiries that [the expert] believes are desirable and appropriate and that no matters of significance that [the expert] regards as relevant have, to [the expert's] knowledge, been withheld from the report*".

Please also attach a copy of these terms of reference to the report.

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Mr Ted Surette
Partner
KPMG

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14 November 2014

Terms of Engagement

Your contract for the provision of the report will be directly with ATCO Gas. You should forward ATCO Gas any terms you propose govern that contract and your fee proposal.

Please sign a counterpart of this letter and return it to us to confirm your acceptance of the engagement.

Yours faithfully

Johnson Winter & Slattery

Enc: Federal Court of Australia Practice Note CM 7, "Expert Witnesses in Proceedings in the Federal Court of Australia"

Theodore Suttle

.....
Signed and acknowledged by Ted Surette

Date 17 November 2014
.....

FEDERAL COURT OF AUSTRALIA
Practice Note CM 7
**EXPERT WITNESSES IN PROCEEDINGS IN THE
FEDERAL COURT OF AUSTRALIA**

Practice Note CM 7 issued on 1 August 2011 is revoked with effect from midnight on 3 June 2013 and the following Practice Note is substituted.

Commencement

1. This Practice Note commences on 4 June 2013.

Introduction

2. Rule 23.12 of the Federal Court Rules 2011 requires a party to give a copy of the following guidelines to any witness they propose to retain for the purpose of preparing a report or giving evidence in a proceeding as to an opinion held by the witness that is wholly or substantially based on the specialised knowledge of the witness (see **Part 3.3 - Opinion** of the *Evidence Act 1995* (Cth)).
3. The guidelines are not intended to address all aspects of an expert witness's duties, but are intended to facilitate the admission of opinion evidence¹, and to assist experts to understand in general terms what the Court expects of them. Additionally, it is hoped that the guidelines will assist individual expert witnesses to avoid the criticism that is sometimes made (whether rightly or wrongly) that expert witnesses lack objectivity, or have coloured their evidence in favour of the party calling them.

Guidelines

1. General Duty to the Court²

- 1.1 An expert witness has an overriding duty to assist the Court on matters relevant to the expert's area of expertise.
- 1.2 An expert witness is not an advocate for a party even when giving testimony that is necessarily evaluative rather than inferential.
- 1.3 An expert witness's paramount duty is to the Court and not to the person retaining the expert.

¹ As to the distinction between expert opinion evidence and expert assistance see *Evans Deakin Pty Ltd v Sebel Furniture Ltd* [2003] FCA 171 per Allsop J at [676].

² The "*Ikarian Reefer*" (1993) 20 FSR 563 at 565-566.

2. The Form of the Expert's Report³

- 2.1 An expert's written report must comply with Rule 23.13 and therefore must
- (a) be signed by the expert who prepared the report; and
 - (b) contain an acknowledgement at the beginning of the report that the expert has read, understood and complied with the Practice Note; and
 - (c) contain particulars of the training, study or experience by which the expert has acquired specialised knowledge; and
 - (d) identify the questions that the expert was asked to address; and
 - (e) set out separately each of the factual findings or assumptions on which the expert's opinion is based; and
 - (f) set out separately from the factual findings or assumptions each of the expert's opinions; and
 - (g) set out the reasons for each of the expert's opinions; and
 - (ga) contain an acknowledgment that the expert's opinions are based wholly or substantially on the specialised knowledge mentioned in paragraph (c) above⁴; and
 - (h) comply with the Practice Note.
- 2.2 At the end of the report the expert should declare that "[the expert] has made all the inquiries that [the expert] believes are desirable and appropriate and that no matters of significance that [the expert] regards as relevant have, to [the expert's] knowledge, been withheld from the Court."
- 2.3 There should be included in or attached to the report the documents and other materials that the expert has been instructed to consider.
- 2.4 If, after exchange of reports or at any other stage, an expert witness changes the expert's opinion, having read another expert's report or for any other reason, the change should be communicated as soon as practicable (through the party's lawyers) to each party to whom the expert witness's report has been provided and, when appropriate, to the Court⁵.
- 2.5 If an expert's opinion is not fully researched because the expert considers that insufficient data are available, or for any other reason, this must be stated with an indication that the opinion is no more than a provisional one. Where an expert witness who has prepared a report believes that it may be incomplete or inaccurate without some qualification, that qualification must be stated in the report.
- 2.6 The expert should make it clear if a particular question or issue falls outside the relevant field of expertise.
- 2.7 Where an expert's report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to the opposite party at the same time as the exchange of reports⁶.

³ Rule 23.13.

⁴ See also *Dasreef Pty Limited v Nawaf Hawchar* [2011] HCA 21.

⁵ The "*Ikarian Reefer*" [1993] 20 FSR 563 at 565

⁶ The "*Ikarian Reefer*" [1993] 20 FSR 563 at 565-566. See also Ormrod "*Scientific Evidence in Court*" [1968] Crim LR 240

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3. Experts' Conference

- 3.1 If experts retained by the parties meet at the direction of the Court, it would be improper for an expert to be given, or to accept, instructions not to reach agreement. If, at a meeting directed by the Court, the experts cannot reach agreement about matters of expert opinion, they should specify their reasons for being unable to do so.

J L B ALLSOP
Chief Justice
4 June 2013

Appendix B - References

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- ATCO Gas Australia, March 2014, IT Asset Management Plan
- ATCO Gas Australia, March 2014, Technology Strategy
- ATCO Gas Australia, July 2014, ATCO
- ATCO Gas Australia, August 2014, ATCO Gas Australia Pty Ltd proposed revisions to its Access Arrangement: IT services
- ATCO Gas Australia, January 2014, Information Technology Business Case, Project Name: EHS&R – Stage 2 Incident Management & Risk Assessment, Project ID: AGA-2014-S-01
- ATCO Gas Australia, August 2014, Information Technology Business Case, Project Name: Field Mobility Continuous Improvements, Project ID: AGA-2014-01A-RFE 15727
- ATCO Gas Australia, August 2014, Information Technology Business Case, Project Name: Network Data Visualisation Continuous Improvements, Project ID: 2014-03a
- ATCO Gas Australia, August 2014, Information Technology Business Case, Project Name: Metering & Billing Continuous Improvements, Project ID: 2014-04
- ATCO Gas Australia, September 2014, ATCO Gas Australia Pty Ltd proposed revisions to its Access Arrangement: IT services
- ATCO Gas Australia, August 2014, Master Services Agreement Key Terms Summary for ATCO Gas Australia IT
- ATCO Gas Australia, 2014-11-13 AGA AA_IT Volume Assumptions
- ATCO Gas Australia, 2014 Opex Budget TOTAL-Mod_AH_FINAL_ERA
- Economic Regulation Authority, October 2014, Public Version Draft Decision on Proposed Revisions to the Access Arrangement for the Mid-West and South-West Gas Distribution System, submitted by ATCO Gas Australia Pty Ltd
- EMCa, June 2014, ATCO Gas Australia Proposed Access Arrangement for the Mid-West and South-West Gas Distribution Systems, Review of Technical Aspects of the Proposed Access Arrangement, Confidential Report to Economic Regulation Authority of Western Australia

KPMG, March 2014, 2013 Utilities IT Benchmarking Survey Final Report

ITNewcom, May 2014, ATCO Gas Australia Price Benchmark

National Gas Rules v 22, Rules 74 and 91

Ted Surette

Partner

Appendix C - Curriculum vitae



Ted Surette

Partner

KPMG

10 Shelley Street
Sydney NSW 2000

Certifications & Professional Memberships

- Bachelor of Accounting, University of Quebec, Canada
- Member of the Australian Institute of Chartered Accountants
- Member of Institute Chartered Accountants of Canada
- Prince2 Registered Practitioner

Profile/Overview

Ted has 24 years of advisory experience with KPMG in Australia, Canada, and Luxembourg. Ted is KPMG's National Sector Leader for Power & Utilities. Ted specialises in providing IT management consulting services involving large business transformational projects.

Experience – examples

Utility IT project experience – Led numerous IT consulting projects at all NSW State Owned Corporation utilities as well as utilities in Queensland, Victoria, South Australia, and Tasmania. In total, he has led over 50 projects covering IT strategic review, cost optimisation, separation planning, sourcing, project assessments, financial analysis and performance improvement. Ted has an established reputation as a trusted advisor to senior management and Boards for providing independent and pragmatic advice.

ICT benchmarking experience – Since 2003, led bi-annual IT performance benchmarking studies across Australasia. The study encompassed over 25 energy transmitters, distributors, and retailers. The scope included: IT costs, resources, hardware/software, strategic IT priorities and business alignment, business drivers and outsourcing. In 2010, Ted provided cost benchmarking methodology advice in KPMG's project for NSW Treasury to benchmark the IT costs across all of NSW Government.

Regulatory advice – Levering detailed knowledge of utilities IT expenditure profiles and benchmarking, he has led assignments to review electricity and gas distribution utilities in Queensland, Victoria, South Australia and New South Wales. Ted has provided advice to distributors on their proposed opex and capex proposals and provided independent reports to these distributors to support their regulatory submissions.

IT cost optimisation and sourcing – Led IT sourcing strategy for Endeavour Energy, Power Water Corporation and Macquarie Generation. Led outsourcing contract review for Aurora Energy and Hydro Tasmania. Led sourcing due diligence advice to BT Financial Group for business process outsourcing to India. Recently led IT sourcing market scan for Essential Energy; provided insight on key service towers outsourced and market trends.

NSW Electricity Reform Project – Led provision of IT advice to NSW Treasury and its other Advisors on all IT matters relating to the sale of the State's electricity Retailers and Gentraders. He advised on complex issues including IT asset valuation, separation and transition issues, and IT matters affecting potential sale strategy plans. The complex sale required extensive collaboration with other legal and financial advisers over a period of three years.

Independent quality assurance services – Led the IT quality assurance engagement for Sydney Water's recent implementation of its Enterprise Asset Management systems. Engaged at the start of the design phase through to the post-implementation phase, Ted led a team working over 2 years with Sydney Water to assess project progress, minimise and manage risks and provide practical recommendations to the Steering Committee and the Project Team. Due to the business criticality of this project, Ted was also asked to regularly update the Board Audit Committee on progress. In addition to this large project, Ted has overseen another 30 IT reviews for project in-flight reviews and post benefit realisation reviews over a four-year period.

Transaction experience - Participated in over 30 IT due diligence transactions in recent years. Examples of complex vendor IT assistance includes projects for Telstra sale of a KAZ business, sale of P&O Logistics, and detailed due diligence for OASIS Asset Management. Similarly, Ted has supported and provided IT assistance advice on transactions involving corporate sector organisations including: AGL, Veda Advantage, PowerTel, DynoNobel, and Australian Discount Retailers.