

RULE

Australian Energy Market Commission

CONSULTATION PAPER

**NATIONAL GAS AMENDMENT
(NORTHERN GAS PIPELINE -
DEROGATION FROM PART 23) RULE
2019**

PROPONENTS

Environmental Justice Australia
Institute for Energy Economics and Financial Analysis

15 NOVEMBER 2018

INQUIRIES

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

E aemc@aemc.gov.au
T (02) 8296 7800
F (02) 8296 7899

Reference: GRC0047

CITATION

AEMC, Northern Gas Pipeline - Derogation from Part 23, Consultation paper, 15 November 2018

ABOUT THE AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

This work is copyright. The Copyright Act 1968 permits fair dealing for study, research, news reporting, criticism and review. Selected passages, tables or diagrams may be reproduced for such purposes provided acknowledgement of the source is included.

CONTENTS

1	Introduction	1
2	Background	2
2.1	Regulatory regime for scheme pipelines	2
2.2	Access regime for non-scheme pipelines	3
2.3	The Northern Gas Pipeline	5
2.4	The derogation from the access regime for non-scheme pipelines	6
3	Details of the rule change request	8
3.1	Issues with the current rules	8
3.2	Proposed solution	9
3.3	Benefits for the proposed solution	9
4	Assessment framework	10
4.1	Achieving the NGO	10
4.2	Making a more preferable rule	10
4.3	Proposed assessment approach	10
5	Issues for consultation	11
5.1	Comparison of the regulatory arrangements	11
5.2	Circumstances impacting the NGP	12
5.3	Outcome for regulatory complexity	13
5.4	Costs and benefits of the proposed rule	14
6	Lodging a submission	15
	Abbreviations	16
	TABLES	
Table 2.1:	Part 23 exemption category and criteria	4
	FIGURES	
Figure 2.1:	Northern Gas Pipeline route	5

1 INTRODUCTION

On 18 July 2018, Environmental Justice Australia (EJA) and the Institute for Energy Economics and Financial Analysis (IEEFA) submitted a rule change request to the Australian Energy Market Commission (Commission) seeking to amend the National Gas Rules (NGR). The rule change request seeks to revoke the derogation applicable to the Northern Gas Pipeline (NGP) contained in the NGR which exempts the NGP from application of Chapter 6A of the National Gas Law (NGL) and Part 23 of the NGR.¹

This consultation paper has been prepared to facilitate public consultation on the rule change request and to seek stakeholder submissions.

This paper:

- sets out a summary of, and a background to, the rule change request
- identifies a number of questions and issues to facilitate the consultation on this rule change request
- outlines the process for making submissions.

Submissions on this consultation paper should be provided to the Commission by 13 December 2018.

¹ Referred to as the access regime for non-scheme pipelines throughout this document.

2 BACKGROUND

The regulatory framework for gas pipelines in Australia is set out in the National Gas Law (NGL) and the National Gas Rules (NGR), which governs access to natural gas pipeline services. The framework has been subject to significant reform recently under the COAG Energy Council's gas market reform package. Under the current regulatory arrangements a pipeline will be in one of two categories:

- **Scheme pipelines:** these are pipelines to which a coverage determination of a relevant Minister applies or which have been deemed to be a covered pipeline. They can also include international pipelines to which a price regulation exemption applies.² Scheme pipelines are regulated by Parts 8 to 12 of the NGR.
- **Non-scheme pipelines:** these are pipelines that are not classified as scheme pipelines. This is the default classification for new pipelines. Non scheme pipelines are regulated by Part 23 of the NGR.

Prior to 1 August 2017, the non-scheme pipelines were not subject to any regulatory obligations but this changed with the introduction of an access regime for non-scheme pipelines (Part 23 of the NGR and Chapter 6A of the NGL) as described in section 2.2.

2.1 Regulatory regime for scheme pipelines

Two forms of regulation can be applied to covered³ pipelines under Parts 8 to 12 of the NGR: light and full regulation. A series of tests are used to determine which form of regulation should apply to a particular pipeline.

The regulation of covered pipelines is carried out within a negotiate-arbitrate framework for third party access to the services provided by a pipeline. Prospective pipeline users negotiate access, based on information required to be provided by the service provider, and in the case of full regulation pipelines, by reference to the regulator-approved access arrangement. If the prospective user and service provider are not able to agree on a contract to access pipeline services, then parties can move to an arbitration.⁴

Any party can apply to the National Competition Council (NCC) seeking that a pipeline be classified as a covered pipeline and be subject to either light or full regulation.⁵ In addition, the regulatory status of a pipeline could be determined prior to the commissioning of a pipeline, utilising either:

- **Competitive tender process.** A project proponent can initiate a competitive tender process with the regulator. Subject to the process meeting the relevant requirements, this will result in the pipeline becoming a covered pipeline, subject to full regulation with certain outcomes of the tender process being incorporated into the access arrangement without

2 There are no pipelines in this category.

3 Covered pipelines are a subset of the classification scheme pipeline. The second category within the scheme pipeline classification is international pipelines with a price regulation exemption.

4 AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 26-29.

5 Service providers also have the ability to voluntarily submit a full access arrangement to the regulator. Once approved, the pipeline is classified as a full regulation pipeline for the duration of the access arrangement period.

any assessment by the regulator. The access arrangement period for a competitive tender pipeline is 15 years, after which, the pipeline automatically becomes a non-scheme pipeline.⁶

- Greenfield 15-year no-coverage determination. The service provider of a greenfields pipeline can apply to the NCC for a 15-year no-coverage determination prior to the commissioning of the pipeline.⁷ If granted, no party can seek coverage of the pipeline for a period of 15 years; thus the pipeline is a non-scheme pipeline for that period.⁸

2.2 Access regime for non-scheme pipelines

In April 2016, the Australian Competition & Consumer Commission (ACCC) published its *Inquiry into the east coast gas market* (inquiry) which found a large number of gas pipeline service providers to be engaging in monopoly pricing, resulting in higher delivered gas prices and having an adverse effect on the economic efficiency of the east coast gas market.⁹ In response to the ACCC's inquiry and the Commission's *Eastern Australian wholesale gas market and pipelines framework review*, the COAG Energy Council published its gas market reform package in August 2016.¹⁰ One of the reform measures in the package directed Dr Michael Vertigan AC to examine the regulatory test for the regulation of gas pipelines and make recommendations on any further actions.

Dr Vertigan undertook the *Examination of the test for the regulation of gas pipelines* (examination).¹¹ He found that the service providers of existing pipelines had market power and, in some instances the exercise of the market power was resulting in inefficient outcomes for the market. Further, Dr Vertigan considered that the test for regulation did not appear to be posing a credible threat to pipeline service providers. As a result, he recommended the introduction of an information disclosure and arbitration framework for non-scheme pipelines in order to reduce the information asymmetry and the imbalance in bargaining power of shippers when negotiating with pipeline service providers.¹²

On 14 December 2016, the COAG Energy Council agreed to the recommendations from the examination and the Gas Market Reform Group (GMRG) commenced the development of the framework.¹³ The establishment of the framework involved legislative changes to add Chapter 6A and s. 83A to the NGL which passed the South Australian Parliament on 20 June 2017. The development of the framework's detailed design involved the publication of an implementation options papers and stakeholder consultation by the GMRG, and approval of the final design recommendations by the COAG Energy Council's Senior Committee of

6 Rules 22(4)(f) and 24(c)(vi) of the NGR specify that the expiry date of a competitive tender process access arrangement must be no more than 15 years from the commissioning of the pipeline.

7 Section 151 of the NGL and rule 122 of the NGR.

8 Section 158 of the NGL sets out the effect of making a 15-year no-coverage determination.

9 ACCC, *Inquiry into the east coast gas market*, April 2016, p. 18.

10 COAG Energy Council, Gas market reform package: Bulletin Two, August 2018, p.1.

11 Dr Michael Vertigan AC, *Examination of the current test for the regulation of gas pipelines*, 14 December 2016.

12 GMRG, Gas pipeline information disclosure and arbitration framework, initial National Gas Rules explanatory note, August 2017, p. 1.

13 GMRG, Gas pipeline information disclosure and arbitration framework, initial National Gas Rules explanatory note, August 2017, p. 1.

Officials (SCO). The GMRG proceeded to publish draft initial rules and sought stakeholder input in developing the final initial rules. On 1 August 2017, the National gas pipeline access-arbitration amendment rule was made by the South Australian Minister for Mineral Resources and Energy which introduced a new Part 23 into the NGR and brought into effect a new regulatory framework for non-scheme pipelines.

The overarching objective of the framework is to facilitate access to services provided by non-scheme pipelines on reasonable terms. This is taken to mean at prices and on terms and conditions that so far as practical reflect the outcomes that would occur in a workably competitive market. The framework:¹⁴

- provides for the publication and exchange of information to facilitate timely and effective commercial negotiations
- provides for a commercially-oriented arbitration process to resolve disputes about proposed terms and conditions of access
- sets out the principles an arbitrator is required to have regard to when determining disputes, consistent with the outcomes that would be expected in a workably competitive market.

Unless exempted under the NGR, the framework applies to all transmission and distribution pipelines that are not scheme pipelines.¹⁵ The AER serves the role of the scheme administrator for the framework.¹⁶ The exemption mechanism allows non-scheme pipeline service providers to apply to the AER for exemption from the framework in its entirety, or some or all of the information reporting requirements under certain circumstances.¹⁷ The categories and criteria for exemptions are provided in the table below.

Table 2.1: Part 23 exemption category and criteria

EXEMPTION CATEGORY	EXEMPTION CRITERIA
Category 1: exemption from the access and arbitration of disputes sections of the framework	The pipeline does not provide third party access
Category 2: exemption from information disclosure provisions	Either of the following: The pipeline does not provide third party access The pipeline is a single shipper pipeline
Category 3: exemption from publishing service usage information, service availability	At any time, the average daily injection of natural gas into the non-scheme pipeline

¹⁴ GMRG, Gas pipeline information disclosure and arbitration framework, initial National Gas Rules explanatory note, August 2017, p. 7.

¹⁵ Section 216C of the NGL.

¹⁶ The ERA plays this role in Western Australia.

¹⁷ GMRG, Gas pipeline information disclosure and arbitration framework, initial National Gas Rules explanatory note, August 2017, p. 43.

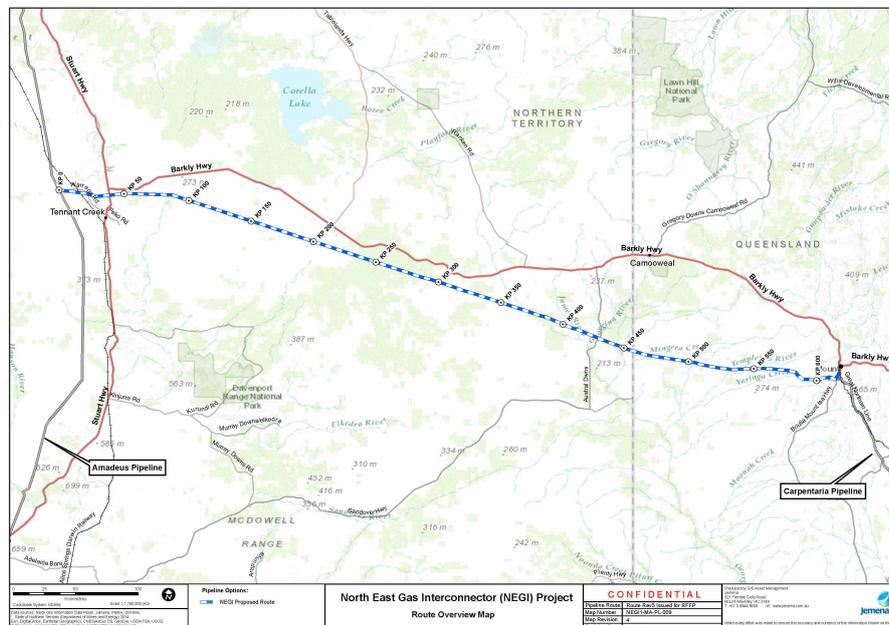
EXEMPTION CATEGORY	EXEMPTION CRITERIA
information and financial information	calculated over the immediately preceding 24 months is less than 10TJ/day

Source: AER website, viewed 2 November 2018, <https://www.aer.gov.au/networks-pipelines/non-scheme-pipelines/part-23-access-to-non-scheme-pipelines-exemptions>.

2.3 The Northern Gas Pipeline

The Northern Territory Government commenced a tender process seeking to connect the Northern Territory (NT) gas market with the east coast gas market in late 2014. In November 2015, Jemena was selected to build, own and operate the Northern Gas Pipeline (NGP) to transport gas between Tennant Creek in the NT and Mt Isa in Queensland. The pipeline interconnects the existing Amadeus Gas Pipeline in the NT and the Carpentaria Gas Pipeline in Queensland. Having commenced construction in July 2017, the pipeline was completed by July 2018 with commissioning expected to take place in late 2018.¹⁸ The NGP has an initial capacity of 90 TJ per day and spans a length of 622 km, 165 km of which is located in Queensland.¹⁹

Figure 2.1: Northern Gas Pipeline route



Source: Jemena website, viewed 23 October 2018, <https://jemena.com.au/documents/pipeline/negi/jemena-negi-preferred-route-pipeline-overview-map.aspx>

18 Jemena, *Jemena to build North East Gas Interconnector*, media release, 17 November 2015, viewed 11 October 2018, <https://jemena.com.au/about/newsroom/media-release/2015/jemena-to-build-north-east-gas-interconnector>.

19 Jemena, Northern Gas Pipeline: Supplement to the Draft Environmental Impact Statement, November 2016, p.1.

The first transportation agreement for the pipeline was with the Northern Territory Government owned Power and Water Corporation. It contracted to transport 31 TJ per day to Incitec Pivot Limited's Phosphate Hill facility (located near Mt Isa) for a period of 10 years. Incitec Pivot subsequently agreed with Jemena for the transportation of an additional 32 TJ of gas per day during 2019 for its Gibson Island facility.²⁰

2.3.1 Access to NGP services

In accordance with an agreement between the NT Government and Jemena, the NGP is subject to the *Northern Gas Pipeline - access principles* (access principles) which govern access to the firm services offered by the pipeline and the associated nitrogen removal service.²¹ The access principles set out and provide for important details regarding access to the NGP such as:

- the pipeline tariffs including prices for firm services and nitrogen removal services
- the dispute resolution procedure including the process for negotiations and arbitration
- arrangements for connecting to the pipeline
- arrangements for extensions and expansions of pipeline
- the process for seeking access to the pipeline (including for as available services)
- terms and conditions of access
- queuing arrangements
- methodology for changes to the firm service tariff over time and as a consequence of certain expansions to the pipeline.

The access principles can be found on Jemena's website:

<https://jemena.com.au/getattachment/industry/pipelines/Northern-Gas-Pipeline/Services/NGP-Access-Principles.pdf.aspx>.

Neither the proponents or the service provider for the NGP project made use of the other regulatory options available for new pipelines such as the competitive tender process or the 15-year no-coverage determination (see section 2.1 above). However, the NGP is exempt from the application of the regulatory arrangements applicable to non-scheme pipelines through a specific rule in the NGR, as explained in the following section.

2.4 The derogation from the access regime for non-scheme pipelines

The *National Gas (Pipeline access-arbitration) Amendment Rule 2017* included a derogation in Part 2 of Schedule 4 to the NGR that excludes the NGP from the operation of Chapter 6A of the National Gas Law (NGL) (and therefore also from Part 23 of the NGR) for a period of 15 years after commissioning of the pipeline.

²⁰ Jemena, *Jemena announces new gas transportation contract*, media release, 25 June 2018, viewed October 2018, [http://jemena.com.au/about/newsroom/media-release/2018/jemena-and-senex-partner-to-fast-track-new-gas-\(1\)](http://jemena.com.au/about/newsroom/media-release/2018/jemena-and-senex-partner-to-fast-track-new-gas-(1)).

²¹ The 'Project Development Agreement' between the NT Government and Jemena is dated 17 November 2015 and relates to the construction and commissioning of the pipeline. The access principles also require Jemena to supply as available services.

In its explanation for the inclusion of the derogation in the final *National Gas (Pipeline access-arbitration) Amendment Rule 2017*, the GMRG noted that “the Project Development Agreement signed by Jemena and the NT Government sets out the access principles that were agreed to as a result of the competitive process and are intended to address many of the same issues the framework is designed to address.”²²

The derogation has no impact on the ability of any person to seek a coverage determination from the relevant minister under Chapter 3 of the NGL. If a coverage determination was made in relation to the NGP, the pipeline would be subject to regulation as a scheme pipeline, either as a full or light regulation pipeline, under Parts 8 to 12 of the NGR.

Derogations in the context of the NGL can include rules or legislative provisions that limit, vary or alter the effect, scope or operation of the NGL or NGR in a particular jurisdiction.²³ This is derived from the terms of the Australian Energy Market Agreement, which also requires any such derogations to be agreed by all energy ministers.²⁴ Derogations are not usually implemented through the NGR, but through the jurisdictional application acts. The Northern Territory and/or Queensland Governments could potentially make legislative changes that provide derogation for the NGP outside of the NGR. Should the Northern Territory or Queensland Governments pursue such a measure, the Commission’s assessment of this rule change request will take this into consideration.

22 GMRG, Gas pipeline information disclosure and arbitration framework, initial National Gas Rules explanatory note, August 2017, p. 47.

23 Ibid.

24 Ibid.

3 DETAILS OF THE RULE CHANGE REQUEST

3.1 Issues with the current rules

Environmental Justice Australia and the Institute for Energy Economics and Financial Analysis (the proponents), claim in the rule change request that the derogation for the NGP leads to several issues for the gas market including monopoly pricing, distorted market signal for investment and an uneven regulatory playing field with respect to other pipelines.

First, according to the proponents, the effect of the derogation applicable to the NGP is to create an unregulated monopoly pipeline, with no limit on tariffs for 15 years.²⁵ The proponents consider that the derogation allows Jemena (the NGP service provider) an unencumbered ability to set tariffs which does not promote the efficient operation of natural gas services with respect to price and security of supply.²⁶ As the derogation also applies to any extension and expansions to the NGP, the proponents consider that it could result in consumers being affected by the service provider's ability to set prices for flows of up to 700 TJ per day given the expectations for capacity expansion.²⁷

The proponents consider that the access principles applicable to the NGP as agreed between Jemena and the NT Government give Jemena considerably more power than is afforded under the NGL.²⁸ In the proponents' view, this is because the disputes procedure available to Jemena is considerably more favourable to them as it is not overseen by the AER or informed by the NGR.

The proponents also noted that the derogation exempts the NGP from the information disclosure principles of the Part 23 framework designed to create an informed and efficient market. As stated in the rule change request, the proponents regard the tariffs for the NGP as set out in the access principles are high resulting in the NGP being the most expensive onshore pipeline per unit of gas over a set distance.²⁹ Furthermore, the proponents consider that the access principles can be changed by Jemena at any time, including the tariffs which can be changed through a notification to the NT Government.³⁰

In addition, the proponents claim that the derogation does not provide for efficient investment in gas services. In their view, it "rewards previous inefficient behaviour in a distorted marketplace" and "provides a perverse incentive to expand or extend the NGP".³¹

As a result, the proponents conclude that the NGP is not on a level playing field with other gas pipelines in Australia with respect to the applicable regulatory arrangements. The proponents also regard the regulatory arrangement applicable to the NGP under the derogation as lacking regulatory oversight and consistency with the NGL.

25 Rule change request, p. 2. The Commission notes that this statement by the proponents does not appear to take into account the requirements of the access principles, which impose some control on tariffs and how they may change over time.

26 Rule change request, p. 2.

27 Rule change request, p. 5.

28 Rule change request, p. 2.

29 Rule change request, p. 6.

30 Rule change request, pp. 2-3. On the information currently available to the Commission, it is not clear whether this statement is correct or whether changes to the access principles require the consent of the NT Government

31 Rule change request, p. 8.

3.2 Proposed solution

The proponents seek to revoke the derogation set out in rule 3 of Part 2 of Schedule 4 to the NGR which is applicable to the NGP. The rule change request does not seek any other rules be amended or made.

3.3 Benefits for the proposed solution

The proponents claim that revoking the derogation would prevent the issues associated with the derogation (as noted in section 3.1 above) from occurring.

According to the proponents, revoking the derogation would prevent Jemena from engaging in unchecked and unreasonable monopoly pricing and thereby safeguard the gas market from the negative impacts of monopoly pricing, such as those highlighted by the ACCC's inquiry into the east coast gas market.³² The reduction in monopoly pricing power of Jemena is expected to have positive impacts for the retailers and consumers of the gas transported through the NGP or any expansion or extension of the NGP.³³ The proponents expect that as a result of the rule change, tariffs under dispute would be set such that pipeline users and gas consumers are not disadvantaged.

The proponents consider that the revocation of the derogation would go towards ensuring an efficient allocation of capital for future expansions or extensions of the NGP. They expect the rule change to remove what they consider to be a perverse incentive to expand or extend the NGP which exists under the current derogation.

According to the proponents, the removal of the current derogation will place the NGP on a more level playing field with other pipelines and ensure that it is subject to the same rules as other pipelines in Australia. The revocation is also expected to ensure that all future pricing for the access to the NGP, and any extensions or expansions is overseen by the AER.

Copies of the rule change request may be found on the AEMC website, <http://www.aemc.gov.au>.

³² Rule change request, p. 8.

³³ Rule change request, pp. 8-9.

4 ASSESSMENT FRAMEWORK

The Commission's assessment of the rule change request must consider whether the proposed rule promotes the NGO.

4.1 Achieving the NGO

The Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national gas objective (NGO).³⁴ The NGO is:³⁵

to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, safety, reliability and security of supply of natural gas.

Based on a preliminary assessment of the rule change request, the Commission considers that the most relevant aspects of the NGO are the efficient investment in, and efficient operation and use of natural gas services with respect to the price of natural gas.

4.2 Making a more preferable rule

Under s. 296 of the NGL, the Commission may make a rule that is different (including materially different) to a proposed rule (a more preferable rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule will or is likely to better contribute to the achievement of the NGO.

4.3 Proposed assessment approach

The Commission proposes to assess if the rule change request is likely to promote the NGO through consideration of whether the proposed rule is more likely to promote efficient investment in, and efficient operation and use of, natural gas services with respect to price of natural gas than the current arrangements in place.

For this assessment, the Commission proposes to compare the expected outcomes for efficient investment in, efficient operation and use of gas services under the current arrangements (with the derogation from Part 23 in place for the NGP) to the expected outcomes under the proposed rule (under which Part 23 would apply to the NGP). In doing so, the Commission proposes to take into account the likely outcomes for market power, information asymmetry, regulatory complexity and any special circumstances that may be impacting the NGP

The Commission considers that the issues raised in the rule change request relate to the application of Part 23 of the NGP, and do not raise the issue of the merits of that access regime for non-scheme pipelines itself. Therefore the Commission considers that any assessment of the merits of Part 23 of the NGR are out of scope for this rule change request.

³⁴ Section 291(1) of the NGL.

³⁵ Section 23 of the NGL.

5 ISSUES FOR CONSULTATION

Taking into consideration the assessment framework, a number of issues have been identified for initial consultation. Stakeholders are encouraged to comment on these issues as well as any other aspect of the rule change request or this paper, including the proposed assessment framework.

5.1 Comparison of the regulatory arrangements

As highlighted in section 2.2, findings of the exercise of market power by pipeline service providers led to the introduction of the framework in Part 23 of the NGR for access and arbitration for non-scheme pipelines. The framework also includes requirements in relation to information provision. The new access framework was introduced to reduce the perceived information asymmetry and imbalance in bargaining power between pipeline users and service providers. The framework consists of two components including:

- the information disclosure requirements aimed at reducing the information asymmetry that users and prospective users can face in negotiating with a pipeline service provider
- a binding arbitration mechanism and principles aimed at constraining the exercise of market power by pipeline service providers.

The NGP has a different regulatory arrangement from other non-scheme pipelines. It is excluded from the application of the Part 23 framework for 15 years through a derogation contained in Schedule 4 to the NGR. It is instead subject to the Northern Gas Pipeline - access principles as agreed between Jemena and the NT Government for that period. As highlighted in section 2.3, the access principles provide for the arrangements for access to the services provided by the NGP and outline details such as the pipeline tariffs, the dispute resolution framework and the process for seeking access to the pipeline.³⁶

In their rule change request, the proponents claim that the regulatory arrangements applicable to the NGP may not produce similar outcomes to Part 23 of the NGR in terms of restricting monopoly pricing and providing greater access to information for users. The rule change request outlines the proponents' concerns that the derogation applicable to the NGP leads to it becoming an unregulated monopoly pipeline.³⁷ The proponents consider that under the current arrangements, the service provider would be able to monopoly price and users of the NGP would face the same issues that were intended to be addressed by the access regime for non-scheme pipelines.³⁸ They argue that the access principles applicable to the NGP give Jemena considerably more power than is afforded under the NGL and that the measures for information disclosure are stronger under Part 23 of the NGR in comparison to the NGP access principles.³⁹

³⁶ The access principles can be sourced from Jemena's website: <https://jemena.com.au/getattachment/industry/pipelines/Northern-Gas-Pipeline/Services/NGP-Access-Principles.pdf.aspx> .

³⁷ Rule change request, p.2.

³⁸ Rule change request, pp 2-4.

³⁹ Rule change request, pp 2-4.

The Commission considers that the assessment of the rule change request would benefit from further consideration of the likely outcomes of the two different regulatory arrangements under consideration. Specifically, a comparison of the regulatory arrangements currently applicable to the NGP and those under Part 23 of the NGR which would apply if the proposed rule were to be made. As the access regime for non-scheme pipelines is aimed at reducing the information asymmetry and imbalance in bargaining power, it will be beneficial to compare the likely outcomes of regulatory arrangement in terms of these criteria.

With this in mind, stakeholders are encouraged to provide comments on the following questions.

QUESTION 1: MONOPOLY PRICING OUTCOMES

Do the regulatory arrangements applicable to the NGP under the access principles produce similar outcomes to the access regime under Part 23 of the NGR with respect to constraining the exercise of market power by a pipeline service provider?

QUESTION 2: INFORMATION ASYMMETRY OUTCOMES

Do the regulatory arrangements applicable to the NGP under the access principles produce similar outcomes to the access regime under Part 23 of the NGR with respect to information asymmetry?

5.2 Circumstances impacting the NGP

In general, the Commission considers that scenarios may exist under which the costs resulting from the application of certain rules would outweigh any benefits arising from compliance. Under such scenarios, an exemption from complying with those obligations may be appropriate. For example, Part 18 of the NGR provides that the provision of information to the Natural Gas Service Bulletin Board is not required for facilities that have a capacity that is less than 10 TJ per day. This exemption was included in the NGR after consideration that the likely cost of compliance would outweigh the potential benefit to the market of receiving information in relation to such facilities.⁴⁰

Similarly, there may be special circumstances affecting certain assets or a type of market participant which may make it appropriate for the relevant asset or market participant(s) to be exempted from complying with a certain rules obligation.

The NGP is a new pipeline, and while the NT Government carried out a tender process to select a service provider, the Commission is not privy to all the circumstances affecting the construction and subsequent operation of the NGP by Jemena. Therefore, consideration of the rule change request and the proposed rule would benefit from more information

⁴⁰ AEMC, *Improvements to Natural Gas Bulletin Board*, Rule determination, 26 September 2017, p. 16.

regarding any special circumstances that may be impacting the NGP and the potential for those particular circumstance to affect the NT and east coast gas markets.

With this in mind, stakeholders are encouraged to provide comments on the following question.

QUESTION 3: SPECIAL CIRCUMSTANCES IMPACTING THE NGP

Are there any special circumstances regarding or impacting the NGP due to which the application of the Part 23 framework for non-scheme pipelines may be inappropriate? What are these circumstances, and how may they impact on the NT and/or east coast gas market?

5.3 Outcome for regulatory complexity

The complexity of a regulatory regime can impact on its effectiveness and the overall benefits that arise from its application. Increased complexity of regulatory arrangements can potentially pose challenges for service providers, regulators and users.⁴¹ For example, having a larger number of distinct regulatory arrangements available may potentially lead to an increase in costs of regulatory compliance for a service provider. It could also cause confusion for users and reduce the benefit they are able to draw from the arrangements. Many options within an overall regulatory framework may also increase administrative costs of the regime for a regulator.

The rule change request highlights that the NGP has a regulatory arrangement that is different to other pipelines. The rule change request also raises concerns that there is an uneven regulatory playing field between the NGP and the rest of the non-scheme pipelines in Australia. Having a different regulatory arrangement apply to the NGP may affect the complexity of the overall regulatory arrangements.

On the other hand, revocation of the derogation applicable to the NGP may also affect the complexity of the arrangements. The arrangements for access to the NGP are currently provided for by the Northern Gas Pipeline access principles, which may still apply if the derogation for the NGP was revoked. This could result in the NGP being subject to overlapping arrangements.

With this in mind, stakeholders are encouraged to provide comments on the following question.

QUESTION 4: REGULATORY COMPLEXITY

Does the proposed rule lead to an increase or a decrease in the complexity of the regulatory arrangements?

⁴¹ Although it is noted that multiple regulatory arrangements may result in arrangements being tailored to the circumstances of different pipelines.

5.4 Costs and benefits of the proposed rule

As with other regulatory arrangements, the proposed rule may impose some costs for participants in the NT and east coast gas markets. The rule change request highlights that the proposed rule would negatively impact the profitability of the NGP, although the potential cost of the proposed rule to the market was not discussed in detail. Stakeholders may consider that there are other costs associated with the proposed rule.

According to the rule change request, the proposed rule is expected to bring benefits to the market by preventing the pipeline operator from engaging in monopoly pricing. The proponents consider that the removal of the derogation would have positive impacts for retailers and consumers by preventing overcharging by Jemena. Further benefits cited by the proponents include removal of distortion to investment signals and creating an even regulatory playing field for non-scheme pipelines. There may also be other benefits associated with the proposed rule.

The Commission notes that the NGP will transport gas between the NT and Queensland and hence the impacts of the rule change request may not be limited to the NT but may be experienced by participants in Queensland and the broader east coast gas market. With this in mind, stakeholders are encouraged to provide comments on the following question.

QUESTION 5: COSTS AND BENEFITS

What are the likely costs and benefits associated with the proposed rule for market participants within the NT and the east coast gas markets?

6 LODGING A SUBMISSION

Written submissions on the rule change request must be lodged with Commission by 13 December 2018 online via the Commission's website, www.aemc.gov.au, using the "lodge a submission" function and selecting the project reference code GRC0047.

The submission must be on letterhead (if submitted on behalf of an organisation), signed and dated.

Where practicable, submissions should be prepared in accordance with the Commission's guidelines for making written submissions on rule change requests.⁴² The Commission publishes all submissions on its website, subject to a claim of confidentiality.

All enquiries on this project should be addressed to Jashan Singh on (02) 8296 7853 or jashan.singh@aemc.gov.au.

⁴² This guideline is available on the Commission's website www.aemc.gov.au.

ABBREVIATIONS

AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
Commission	See AEMC
NGL	National Gas Law
NGO	National gas objective
NGP	Northern Gas Pipeline
NGR	National Gas Rules
NT	Northern Territory
TJ	Terajoules