
Australian Energy Market Commission

DRAFT RULE DETERMINATION

NATIONAL GAS AMENDMENT (REGULATION OF COVERED PIPELINES) RULE 2019

PROPONENT

COAG Energy Council

6 DECEMBER 2018

RULE

INQUIRIES

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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.

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SUMMARY

- 1 The Australian Energy Market Commission (AEMC or Commission) has made a draft rule that amends the National Gas Rules (NGR) to make improvements to the economic regulatory framework that applies to covered transmission and distribution natural gas pipelines across Australia.
- 2 The draft rule, if made, is expected to improve market information, support effective negotiations and improve access to covered pipelines. The amendments are also expected to assist the regulators to make better informed decisions on reference services, access arrangements and the efficient allocation of costs.
- 3 The draft rule has been made in response to a rule change request submitted by the Council of Australian Governments Energy Council Senior Committee of Officials (COAG Energy Council). This request was based on recommendations from the Commission's Review into the scope of economic regulation applying to covered pipelines (review).¹ The draft rule contains most of the elements proposed by the COAG Energy Council, subject to a few changes described below. The draft rule also includes transitional arrangements.
- 4 The rule change request was eligible for a fast track rule making process under the National Gas Law and has been fast tracked.² This will result in the Commission completing the rule change process eight months after the publication of the final report and five months after receiving the rule change request, inclusive of an extended eight-week consultation period.

The draft rule

- 5 The draft rule, if made, will amend the NGR to:
 - Reduce the ability for service providers to exercise market power over pipeline expansions. This will be achieved by treating all future pipeline expansions as part of the relevant scheme pipeline, and so applying either light or full regulation (as relevant to the original pipeline) to the expansion. These changes will also reduce the regulatory burden and support improved decision-making by regulators.
 - Introduce a new approach to determine which pipeline services should be specified as reference services in a full access arrangement, which may result in additional services being specified as reference services. The new approach includes setting new criteria for determining appropriate reference services. It also provides users with greater opportunity for meaningful input during the reference service determination process.
 - Provide for greater stakeholder engagement in the access arrangement assessment process. Adjustments to the access arrangement assessment process will provide more time for stakeholder engagement, in order to enable the regulator to make more informed decisions in the long-term interest of consumers.

1 AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018.

2 South Australian Government Gazette No.65 1 November 2018, Notice under National Gas Law, p. 3927.

- Improve regulatory decision-making through the removal of the limitations on regulatory discretion applied to certain elements of an access arrangement.
- Clarify the assessment criteria for capital expenditure, cost allocation requirements and non-tariff terms and conditions. This will enable regulators to determine more efficient tariffs and non-tariff terms and conditions set in access arrangements so that risks can be appropriately allocated and so that users do not pay for assets or services that they do not use.
- Strengthen information reporting obligations on full and light regulation pipeline service providers. These changes apply many of the information provision obligations that already apply to Bulletin Board pipelines and non-scheme pipelines under Part 23 of the NGR. The amendments will result in more relevant, timely and accessible information for users and prospective users to inform their negotiations with service providers.
- Improve the access negotiation framework between prospective users and service providers in order to support more timely negotiations and provide greater clarity on the triggers for arbitration.

6 The draft rule also includes draft transitional arrangements that set out an implementation plan for the various components of the draft rule. Most of the draft rule is anticipated to come into effect in March 2019, shortly after the publication of the final rule determination. Specific transitional arrangements have been drafted for those full regulation pipelines who will be engaged in an access arrangement revision process at that time. Other transitional arrangements have been drafted in relation to the new information obligations included in the draft rule.

7 While the draft rule is largely consistent with the proposed rule submitted by the COAG Energy Council, there are some differences. The key differences are:

- Enabling existing pipeline extensions, with the agreement of the pipeline service provider, to be included in access arrangements. While this change was proposed by the COAG Energy Council, specific amendments to the NGR were not included in the proposed rule. The Commission has determined that the policy objective can be achieved by amendments to rules 77 and 104 of the NGR which will provide a process for service providers to identify existing extensions and for a value for such extensions to be made and added to the capital base of the relevant pipeline. This is reflected in the draft rule.
- Speculative capital expenditure account. Consistent with the Commission's final report, the COAG Energy Council proposed that the rule regarding the speculative capital expenditure account be amended such that the rate of return for that account would be determined by the regulator at a rate that is at least equal to the rate of return used in the calculation of reference tariffs. In light of recent legislative changes³ and the forthcoming rate of return instrument,⁴ the Commission has concluded that this policy objective is unable to be met and a draft rule has not been made. It is anticipated that the rule amendments arising from the rate of return instrument NGL changes will amend

3 Specifically, the recent passage of the Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Bill through the South Australian Parliament.

4 Draft National Gas (Binding Rate of Return Instrument) Amendment Rule 2018, 14 September 2018

rule 84 to make clear that the allowed rate of return to be applied to amounts in the speculative capital account will be that determined under the rate of return instrument.

- Clarify that the regulator must have regard to risk sharing arrangements. The draft rule (rule 100) differs in wording to the COAG Energy Council's proposed rule to better achieve the stated policy objective. Specifically, to clarify that in regard to achieving general consistency within an access arrangement, the regulator must be satisfied that the non-tariff elements are consistent with the risk sharing arrangements implicit in the reference tariffs.
- Transitional provisions have also been included as noted above.

Context

8 On 5 May 2017 the COAG Energy Council requested that the AEMC review the economic regulatory framework that currently applies to covered transmission and distribution pipelines. The review covered Parts 8 to 12 of the NGR. This framework had not been comprehensively reviewed since the inception of the National third party access code for natural gas pipeline systems in 1997.

9 On 3 July 2018 the AEMC published its final report for the review which included 32 recommendations to improve the economic regulatory framework. The AEMC also recommended that implementation be carried out in two stages: the first a set of rule changes to be actioned immediately through a rule change request process. The second, a number of changes to the NGL that would trigger subsequent further amendments to the NGR.

Next steps

10 Stakeholders are invited to provide written submissions in response to this draft rule determination and draft rule, including the draft transitional arrangements for implementation of the rule. Submissions should be provided to the AEMC no later than close of business Thursday 31 January 2019.

11 A final rule determination is expected to be published in March 2019.

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COAG ENERGY COUNCIL'S RULE CHANGE REQUEST

1.1

The rule change request

On 5 October 2018, the COAG Energy Council Senior Committee of Officials (COAG Energy Council) made a request to the AEMC to amend the National Gas Rules (NGR) in order to improve the economic regulatory framework that applies to covered transmission and distribution natural gas pipelines (rule change request).

The rule change request is based on many of the recommendations made by the Commission's Review into the scope of economic regulation applied to covered pipelines (review).⁵

On 10 August 2018, the COAG Energy Council considered the Commission's final report for the review (final report). It agreed that most of the recommended amendments to the NGR that were identified in the final report as "package 1" would assist pipeline users and prospective users to negotiate lower prices and better terms for their gas transportation agreements.⁶ The COAG Energy Council further agreed that these recommendations could be progressed immediately through changes to the NGR. Consequently, the COAG Energy Council rule change request seeks to:⁷

- update extension and expansion requirements (AEMC recommendations 2 & 4) (see Chapter 3)
- describe reference and pipeline services and introduce a reference service setting process (AEMC recommendations 5 to 8) (see Chapter 4)
- improve the access arrangement process (AEMC recommendations 9 to 14) (see Chapter 5)
- clarify provisions relating to the calculation of efficient costs (AEMC recommendations 15 to 20) (see Chapter 6)
- improve information provision by service providers (AEMC recommendations 21 to 26) (see Chapter 7)
- improve the access negotiation framework (AEMC recommendation 27) (see Chapter 7).

The exception is the Commission's recommendation regarding the setting of an initial capital base for light regulation pipelines.⁸ The COAG Energy Council agreed in principle to this recommendation but has decided not to progress it at this time.⁹ (see section 1.4)

⁵ The review is discussed further in section 1.5 of this draft rule determination.

⁶ COAG Energy Council, *Gas market reform bulletin No.3*, August 2018.

⁷ COAG Energy Council, *rule change request*, 5 October 2018, p.1.

⁸ This recommendation was referenced as recommendation 17 in AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 151-153.

⁹ COAG Energy Council, *Gas market reform bulletin No.3*, August 2018, attachment, p. 2.

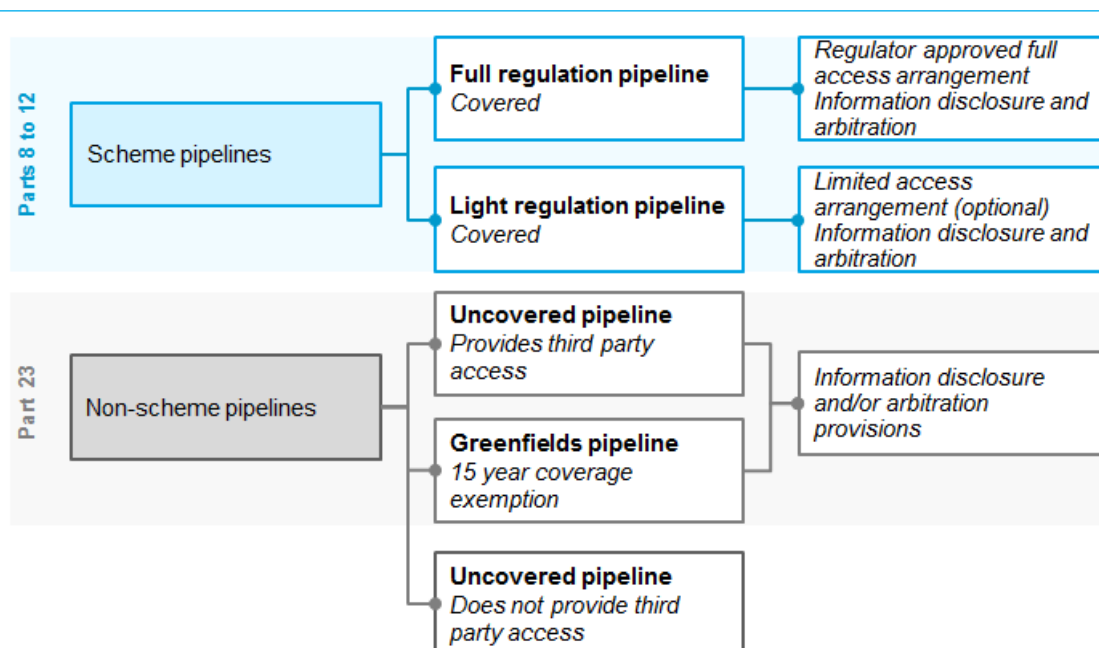
In its statement responding to the Commission's review, the COAG Energy Council indicated that it expected the rule change request be considered using the expedited process. The Commission has determined that the fast track process is more appropriate.¹⁰

1.2

Current arrangements

The regulatory framework applied to covered pipelines is incentive-based, with an underlying reliance on the use of negotiation and arbitration. Pipeline service providers and prospective users negotiate the tariff and non-tariff terms and conditions for access to pipeline services provided by covered pipelines. These negotiations are informed by access arrangements for full regulation pipelines and published pipeline information (for light regulation pipelines, or pipelines regulated by Part 23 of the NGR). The different key regulatory classifications of pipelines are illustrated in Figure 1.1 below.

Figure 1.1: Overview of pipeline classification



Source: AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. ii.

This framework recognises the importance of contractual negotiations, specifically in relation to the provision of pipeline services. As indicated in the figure, the regulatory arrangements for full and light regulation pipelines are primarily located within Parts 8 to 12 of the NGR.

¹⁰ COAG Energy Council, *Gas market reform bulletin No.3*, August 2018. The COAG Energy Council requested and expedited process (s.304 of the NGL). However, an expedited process is used for a non-controversial or urgent rule, as defined in s. 290 of the NGL. Instead, the Commission decided that the rule change request met the fast track criteria (s. 305 of the NGL) as the rule change request has been made on the basis of "a recommendation for the making of a Rule contained in a MCE directed review", that "the request reflects, or is consistent with, the relevant recommendation contained in the MCE directed review" and that there was "adequate consultation with the public".

The key distinguishing feature of full regulation is that the regulator (the Australian Energy Regulator (AER) or Economic Regulation Authority WA (ERA)) undertakes an assessment of, and subsequently approves, a full access arrangement or revisions to a full access arrangement. The access arrangement determines at least one reference service, and the corresponding reference tariff and non-tariff terms and conditions. Reference tariffs and reference services act as a direct constraint on a service provider's ability to price reference services monopolistically (or deliver a lower service standard). More importantly, however, within the negotiate-arbitrate framework, the primary rationale of reference services and reference tariffs is to inform negotiations between service providers and users, in reference to the access arrangement.

Light regulation pipelines do not have full access arrangements and there are no pre-determined reference services or reference tariffs. Nor, under current provisions, are light regulation pipelines required to have a capital base set. Instead, pipelines subject to light regulation are required to publish certain information. Users and prospective users that are unsatisfied with negotiations with a service provider have access to the same arbitration framework as users and prospective users of full regulation pipelines.

The components of the regulatory framework for full and light regulation pipelines that are relevant to this rule change request can be outlined as follows:

- The regulatory framework for extensions and expansions¹¹ currently depends on the form of regulation that applies to the original pipeline that is being extended or expanded.¹²
 - The NGR require a full access arrangement and a limited access arrangement for a light regulation pipeline to include extension and expansion requirements. These requirements may state whether the applicable access arrangement will apply to services to be provided as a result of an extension to, or an expansion of the capacity of, the pipeline.
 - For a light regulation pipeline with no limited access arrangement, an extension or expansion is covered unless the regulator decides otherwise.
- Full access arrangements are the defining feature of the economic regulatory framework for full regulation pipelines under the National Gas Law (NGL) and NGR. Tariff and non-tariff terms and conditions of access to services on full regulation pipelines are regulated by reference to reference services. As a result, the reference services included in an access arrangement are key to the success in applying economic regulation to the services of the pipeline.
- All full regulation pipelines are required to have a full access arrangement which sets out reference tariff and non-tariff terms and conditions for each reference service on that pipeline. A full access arrangement is revised for each access arrangement period through a public consultation process conducted by the regulator. The starting point of this revision process is the service provider's access arrangement revision proposal. The

¹¹ Expansions of gas pipelines are augmentations of capacity (the addition of compressors or looping), while extensions increase the geographic footprint of the pipeline.

¹² Extension and expansion requirements are dealt with together for covered pipelines in both the NGL (ss. 2, 18, 19, 33, schedule 1) and the NGR (rules 122, 323, 324, 329).

regulator must assess and make a decision on all the constituent parts — financial and non-financial — to enable it to make a decision on the whole “package” contained in the access arrangement.

- In relation to the financial aspects of an access arrangement, the accurate determination of efficient costs is fundamental to the setting of efficient reference tariffs. Tariffs that reflect efficient costs are required to enable the efficient use and provision of reference services as well as efficient investment in the pipeline. The revenue and pricing principles in the NGL state that a service provider should be provided with a reasonable opportunity to recover at least the efficient costs of providing the reference services.¹³ The revenue and pricing principles also state that the service provider should be provided with incentives to promote economic efficiency with respect to reference services, which includes efficient investment, efficient provision of pipeline services and efficient use of the pipeline.
- The NGL and NGR provide a negotiate-arbitrate regime for third party access to natural gas pipelines. Effective access negotiations are underpinned by information on the availability and cost of the services to which the user is seeking access. Up to date capacity and usage information is required by prospective users in order to decide whether to seek access and in negotiations for access. Bulletin Board pipeline service providers are required to publicly disclose up to date capacity and usage information. In the absence of reference tariffs, up to date financial information is required by prospective users in order to determine whether the tariff and non tariff terms and conditions being offered are reasonable. Under the current regulatory framework, very little financial information needs to be disclosed for light regulation pipelines.

1.3 Rationale for the rule change request

In the rule change request, the COAG Energy Council has sought to make amendments to Parts 1, 3, 7 to 11, 15 and 18 of the NGR in order to implement most of the Commission’s package 1 recommendations. These changes, if implemented in full, are expected to assist pipeline users and prospective users to negotiate lower tariffs, prices and better terms and conditions for their gas transportation agreements.

The COAG Energy Council considers that the proposed amendments to the NGR will:¹⁴

place greater constraint on the use of market power by pipeline owners and, as gas shippers seek to negotiate new gas transport contracts, make it easier and less costly to move gas on regulated pipelines, placing downward pressure on gas prices

1.4 Solution proposed in the rule change request

To achieve the expected outcome noted above, the COAG Energy Council has proposed a number of amendments to the NGR. These are outlined in the table below which also identifies the corresponding Commission recommendation.

¹³ Section 24 of the NGL.

¹⁴ COAG Energy Council, *Gas market reform bulletin No.3*, August 2018.

Table 1.1: Components of the COAG Energy Council's rule change request

COAG ENERGY COUNCIL PROPOSAL AND AEMC RECOMMENDATION	COAG ENERGY COUNCIL'S PROPOSED AMENDMENTS TO THE NGR
Extensions and expansion arrangements	
Include all new expansions in an access arrangement (recommendation 2)	Amendments to rule 104.
Enable existing extensions to be included in access arrangements (recommendation 4)	Amendments to rule 104 and any other changes necessary to provide a mechanism by which a capital base can be determined for any existing extension or expansion which a service provider wishes to include in the access arrangement.
Reference services	
Clarify the requirements for describing pipeline services (recommendation 5)	Insert new rule 47A and amend rule 45.
Clarify the requirements for describing reference services (recommendation 6)	Insertion of new rule 47A, amendments to rule 48 and omission of rule 101.
Update the test for determining a reference service (recommendation 7)	Insertion of new rule 47A, amendments to rule 48 and omission of rule 101.
Introduce a reference service proposal process and improve the access arrangement review process (recommendation 8)	Insertion of new rule 47A, the omission of rules 13 and 57 and the amendments to rules 41, 50, 59 and 62.
Access arrangements	
Develop financial models to be used by service providers (recommendation 9)	Insertion of new rules 75A and 75B.
Clarify the operation of revenue caps (recommendation 10)	Amendment to rule 92
Clarify that the regulator is to have regard to risk sharing arrangements (recommendation 11)	Amendments to rules 97 and 100.
Extend the revision period (recommendation 12)	Amendment to rule 59.
Clarify the process for equalising revenue during the interval of delay (recommendation 13)	Amendments to rules 3 and 92.
Remove the limited and no discretion regulatory framework (recommendation 14)	Omission of rule 40 and amendments to rules 41, 50, 79, 89, 91, 94 and 95.
Efficient costs	

COAG ENERGY COUNCIL PROPOSAL AND AEMC RECOMMENDATION	COAG ENERGY COUNCIL'S PROPOSED AMENDMENTS TO THE NGR
Provide guidance on the allowed return for speculative capital expenditure (recommendation 15) ^(a)	Amendments to rule 84.
Clarify the application of the new capital expenditure criteria (recommendation 16)	Amendments to rule 79.
Enable addition of existing extensions and expansions to the opening capital base (recommendation 18)	Amendment to rule 77.
Require allocation of expenditure between covered and uncovered parts of a pipeline (recommendation 19)	Amendments to rules 79 and 91.
Amend definition of rebateable services and rebate methodology (recommendation 20)	Amendments to rule 93 and 97.
Information and negotiation	
Require transmission pipeline service providers to disclose Bulletin Board information (recommendation 21)	Omission of rule 111 and amendments to rules 141, 145, 177.
Require distribution pipeline service providers to disclose capacity and usage information (recommendation 22)	Proposed rules 35B, 36A to 36C in Part 7, 112A, 112B, 112C and 112D in Division 2 of Part 11.
Clarify the role of the regulator in passing on information requests to service providers (recommendation 23)	Amendments to rule 107.
Introduce a financial and offer information disclosure regime for light regulation pipelines (recommendation 24)	Proposed rules 35B, 36A, 36D to 36F, in Division 2 of Part 11 and amendments to rule 36.
Remove the requirement to provide KPIs as part of the access arrangement (recommendation 25)	Amendments to rules 45 and 72.
Improve the Scheme Register (recommendation 26)	Amendments to rules 133 to 135 and insertion of new rule 135A.
Improve the access negotiation process (recommendation 27) ^(b)	Amendments to rule 112.

Source: COAG Energy Council, *rule change request*, 5 October 2018, table 1.

Note: The amendments in the draft rule are not identical to COAG Energy Council's proposed amendments above. Some changes have been made either to correct rule numbering and other minor errors or to better match the proposals and recommendations. Table 2.1 of this draft rule determination also provides references to amendments contained in the draft rule.

(a) This recommendation was not implemented in the draft rule. See the discussion on the speculative capital expenditure account in chapter 2 of this draft determination.

(b) This recommendation was not included in table 1 of the COAG Energy Council rule change request, but was included in the accompanying proposed NGR amendments.

As indicated by Table 1.1, most of the recommendations made by the Commission are reflected in the COAG Energy Council's rule change request. The exception is in regard to the Commission's recommendation that a capital base be determined for light regulation pipelines by the relevant regulator.¹⁵

In the review, the Commission concluded that the benefits of developing an initial capital base for light regulation pipelines (of increased certainty and potentially enable a faster outcome in the event of a dispute) would outweigh the costs of making such a determination. As a result, it recommended amending the NGR to require the regulator to determine an initial opening capital base for those light regulation pipelines without an initial capital base. In practice, this new requirement would be immediately relevant to the Carpentaria Gas Pipeline and the Kalgoorlie to Kambalda Pipeline.

The COAG Energy Council has indicated that it agrees in principle to the Commission's recommendation. However, this issue will be considered in the context of further work by the Senior Committee of Officials (SCO) on light regulation, Part 23 and the coverage test:¹⁶

Council have tasked the SCO to commence development of a COAG Regulation Impact Statement (RIS) to consider and develop further options for rule and law changes. It will draw on the large amount of existing material examining pipeline regulation and the tests and governance arrangements used to determine whether a pipeline should be regulated and the form of regulation that should apply. The timing and scope of the RIS is to be developed by the end of 2018 by the Gas Major Project Implementation Team. The RIS will also aid in informing a review of the Part 23 Information Disclosure and Arbitration Framework (commencing August 2019). If required, a further package of law and rule changes will be provided to the Council as soon as possible after completion of the RIS and Part 23 Review.

1.5 Relevant background

As noted previously, the COAG Energy Council's rule change request is based on the package 1 recommendations contained in the Commission's final report for the Review into the scope of economic regulation applied to covered pipelines.¹⁷

The review was undertaken at the direction of the COAG Energy Council, in response to recommendations from the 2016 reports into the east coast gas market by the Australian Consumer & Competition Commission (ACCC) and the AEMC.¹⁸ Both reports found that improvements to the regulatory framework for gas transportation were required in order to:

- prevent the opportunity for monopolistic behaviour and pricing

¹⁵ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 151-152.

¹⁶ COAG Energy Council, *Gas market reform bulletin No.3*, August 2018, p. 1 & attachment.

¹⁷ The package 1 recommendations include amendments to the NGR for immediate consideration through a rule change request and do not require legislative changes to the NGL. In contrast, the 'package 2' includes amendments to the NGL by the South Australian Parliament on the recommendation of the COAG Energy Council and amendments to the NGR either by the COAG Energy Council on recommendation of the South Australian Minister, or through a rule change request to the Commission.

¹⁸ ACCC, *Inquiry into the east coast gas market*, April 2016; AEMC, *East coast wholesale gas market and pipeline framework review*, stage 2, final report, May 2016.

- improve the function of the gas transportation market
- achieve the COAG Energy Council's gas market vision:¹⁹

The Council's vision is for the establishment of a liquid wholesale gas market that provides market signals for investment and supply, where responses to those signals are facilitated by a supportive investment and regulatory environment, where trade is focused at a point that best serves the needs of participants, where an efficient reference price is established, and producers, consumers and trading markets are connected to infrastructure that enables participants the opportunity to readily trade between locations and arbitrage trading opportunities.

As part of a package of reforms responding to these findings, the COAG Energy Council requested that the AEMC review the economic regulatory framework as it currently applies to covered transmission and distribution natural gas pipelines across Australia. The terms of reference for the review asked the AEMC to:²⁰

make recommendations on any amendments it considers necessary to Parts 8-12 of the NGR to address concerns that pipelines subject to full regulation are able to exercise market power to the detriment of economic efficiency and the long term interests of consumers.

1.5.1

Review into the scope of economic regulation applied to covered pipelines

On 3 July 2018, the Commission published its final report for its review into the scope of economic regulation applied to covered pipelines. It set out 32 recommendations to improve the economic regulation applied to full and light regulation transmission and distribution gas pipelines. The Commission's key recommendations from the review included:²¹

- A new approach to determining which pipeline services should be specified as reference services in a full access arrangement.
- Strengthened information reporting obligations on full and light regulation pipeline service providers.
- Requiring the regulators to calculate an initial capital base for light regulation pipelines, where a valuation does not already exist.
- Making arbitration a more credible threat to constrain the use of market power by clarifying the bases for access determinations, improving the arbitration process and enhancing its transparency.
- Reducing the ability for service providers to exercise market power over pipeline expansions.

¹⁹ COAG Energy Council, *Australian gas market vision*, December 2014.

²⁰ COAG Energy Council, *Review into the scope of economic regulation applied to covered pipelines, terms of reference*, 5 May 2017.

²¹ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. ii-v.

- Enabling regulators to determine more efficient tariffs and non-tariff terms and conditions set in access arrangements so that users do not pay for services or terms and conditions that they do not use.
- Facilitating greater stakeholder engagement in the access arrangement assessment process.
- Improving regulatory decision-making through the removal of the limitations on regulatory discretion applied to certain elements of an access arrangement so that it is clear that the regulator has the power to make decisions that best contribute to the national gas objective in relation to all aspects of an access arrangement.

In addition, the Commission concluded that the current order and construction of the tests which determine the form or regulation that applies to a particular pipeline are not consistent with good regulatory practice. The Commission recommended that it carry out a review into these issues in 2019, at the same time as or part of the review into the operation of Part 23 of the NGR.²²

The Commission found that if its recommendations were to be implemented in full, the reforms would assist users and prospective users to negotiate lower prices and better terms for their gas transportation agreements. A broader range of pipeline services would be subject to access arrangements, prices for services would be set at more efficient and cost-reflective levels and contract terms would be more balanced. In addition, greater information would be provided to the pipeline users to aid their negotiations, and arbitration would act as a more credible back-stop if negotiations fail.

Recommended implementation plan

In the final report, the Commission also set out a plan for the implementation of its recommendations into two packages of reforms. These were:²³

- Package 1: Amendments to the NGR for immediate consideration through a rule change request to the AEMC.
 - Updating extension and expansion requirements (recommendation 2)
 - Describing reference and pipeline services and introducing a reference service setting process (recommendations 5 to 8)
 - Improvements to the access arrangement process (recommendations 9 to 14)
 - Clarifying the provisions relating to the calculation of efficient costs (recommendations 15 to 20), which includes a:
 - transitional rule on the calculation of an initial opening capital base for light regulation pipelines (recommendation 17)²⁴

22 AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. v.

23 AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 224-225.

24 The COAG Energy Council has not proposed rules to implement this recommendation. While it agrees in principle, it intends to consider the issue after further work by the Senior Committee of Officials. COAG Energy Council, *Gas market reform bulletin No.3*, August 2018.

- transitional rule on the calculation of an initial opening capital base for an existing uncovered expansion or extension that the service provider elects to cover and rolling it into the opening capital base of the pipeline (recommendations 4 and 18)
- Information provision by service providers (recommendations 21 to 26).
- Package 2: Amendments to the NGL by the South Australian Parliament on the recommendation of the COAG Energy Council, and amendments to the NGR either by the COAG Energy Council on recommendation of the South Australian Minister or through a rule change request to the AEMC.
 - Dispute resolution (NGL amendments) (recommendations 27 to 32)
 - Consequential amendment to create an access negotiation process with clear dispute resolution proceeding triggers (NGR amendment) (recommendation 27)
 - Consequential amendments on the treatment of expansions and extensions for covered pipelines (NGL and NGR amendments) (recommendations 2 to 3).

Stakeholder consultation during the review

Over the course of the 13-month review, the Commission released four papers and received 38 submissions. In addition, the AEMC staff met more than 25 stakeholders including gas pipeline service providers, users, and relevant jurisdictional bodies. A stakeholder workshop was held on 14 December 2017 to discuss the interim report. Regular meetings with the ACCC, AER, ERA, and Gas Market Reform Group (GMRG) were also held.

Table 1.2: Stakeholder consultation during the review

REVIEW STAGE	DATE	SUBMISSIONS RECEIVED
Issues paper	27 June 2017	20
Interim report	31 October 2017	Not applicable
Draft report	27 February 2018	18
Final report	3 July 2018	Not applicable

Source: COAG Energy Council, *rule change request*, p. 19.

1.6

The rule making process

On 1 November 2018, the Commission published a notice advising of its intention to commence the rule making process in respect of the COAG Energy Council's rule change request.²⁵

While the COAG Energy Council requested an expedited rule change process,²⁶ the Commission instead decided to fast-track this rule change request. This is because it concluded that the rule change request reflects recommendations of the Commission's

²⁵ This notice was published under s. 303 of the National Gas Law (NGL).

²⁶ COAG Energy Council, *Gas market reform bulletin No.3*, August 2018.

Review into the scope of economic regulation applied to covered pipelines and it had undertaken consultation with the public on the nature of the request during that review.²⁷ Accordingly, the Commission did not publish a consultation paper upon initiation of the rule change process and there has been no formal consultation carried out in this rule change process to date.

1.7 Consultation on draft rule determination

The Commission invites written submissions on this draft rule determination, including the draft rule and draft transitional arrangements, by close of business 31 January 2019.

Any person or body may request that the Commission hold a hearing in relation to the draft rule determination. Any request for a hearing must be made in writing and must be received by the Commission no later than 13 December 2018.

Submissions and requests for a hearing should quote project number GRC0048 and may be lodged online at www.aemc.gov.au.

²⁷ The decision to fast track the rule change request was made under s. 305(1) of the NGL.

2 DRAFT RULE DETERMINATION

2.1 The Commission's draft rule determination

The Commission's draft rule determination is to make the draft rule as proposed by the COAG Energy Council with consequential transitional arrangements, except as discussed in section 2.2.2. The draft rule will make improvements to the economic regulatory framework that applies to covered transmission and distribution natural gas pipelines across Australia.

The Commission's reasons for making this draft rule determination are set out in section 2.4.

This chapter outlines:

- the rule making test for changes to the NGR
- the assessment framework for considering the rule change request
- the Commission's reasons for making the draft rule in relation to the national gas objective
- the Commission's proposed implementation plan for the draft rule.

Further information on the legal requirements for making this draft rule determination is set out in Appendix A.

2.2 Rule making test

2.2.1 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).²⁸

The NGO is:²⁹

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.

2.2.2 Changes from the proposed rule

The Commission has decided to make a number of changes to the proposed rule. These changes do not materially alter the intent or policy position reflected in the proposed rule and rule change request, and thus do not represent a more preferable rule under s. 296 of the NGL. The changes are summarised below.

Enabling existing pipeline extensions to be included in access arrangements.

While this change was proposed by the COAG Energy Council, specific amendments to the NGR were not included in the proposed rule. The Commission has determined that the policy objective can be achieved by amendments to rules 77 and 104 of the NGR. These changes will, if the service provider agrees, enable existing extensions to be included in an access

²⁸ Section 291(1) of the NGL.

²⁹ Section 23 of the NGL.

arrangement as well as provide for a value for such extensions to be made and added to the capital base of the relevant pipeline. This is reflected in the draft rule.

Speculative capital expenditure account

In its proposed rule change the COAG Energy Council drew on the recommendations and rule contained in the final report from the Commission's Review into the scope of economic regulation applied to covered pipelines.

Recommendation 15 of the final report aimed to provide guidance on the allowed return for speculative capital expenditure, and this recommendation was reflected in proposed amendments to rule 84.

However, on 13 August 2018 a Bill (the Bill) containing legislative amendments on binding rates of return was introduced into the South Australian Parliament.³⁰ The legislative amendments, supported by the COAG Energy Council and developed through a process external to the Commission,³¹ remove heads of power for the Commission to make rules regarding the determination of a rate of return. The amendments implement a binding instrument that sets out a single approach to the calculation of rate of return parameters for all regulated electricity service providers and all full regulation gas pipelines; and which is developed through a single, industry-wide process every four years. The Bill was passed by the Legislative Council on 13 November 2018 and received assent on 27 November 2018.

On 28 September 2018, the COAG Energy Council published proposed rule changes to support the introduction of the binding rate of return legislation.³²

In light of the forthcoming rate of return instrument, the Commission has concluded that the policy objective underlying the proposed amendment to rule 84 cannot be met and a draft rule has not been made. It is anticipated that the rule amendments arising from the rate of return instrument NGL changes will amend rule 84 to be clear that the allowed rate of return to be applied to amounts in the speculative capital account will be that determined under the rate of return instrument.

Clarify that the regulator have regard to risk sharing arrangements.

The draft rule (rule 100) differs in wording to the COAG Energy Council's proposed rule to better achieve the stated policy objective. Specifically, the wording of the rule now more closely matches the recommendation in the Commission's final report clarifying that, in deciding whether the non-tariff terms and conditions of an access arrangement are appropriate, the regulator must have regard to the risk sharing arrangements implicit in the reference tariff.

Other changes

A number of other minor and editorial changes have also been made to improve the drafting.

³⁰ Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Bill 2018.

³¹ COAG Energy Council, *Bulletin - Binding rate of return guideline*, June 2018.

³² Draft National Gas (Binding Rate of Return Instrument) Amendment Rule 2018, 14 September 2018.

2.3 Assessment framework

In making its review recommendations, the Commission considered the following questions in its NGO assessment of the current framework:³³

- Do the NGR provide for an efficient and effectively regulatory framework that is consistent with the NGO?
- Do the NGR support efficient investment in gas transmission and distribution pipelines?
- How do the requirements under the NGR affect the efficient operation and user of gas transmission and distribution pipelines?
- Do the NGR provide appropriate incentives to service providers to provide access to pipeline services for users?
- Do the requirements under the NGR influence the tariff and non-tariff terms and conditions of access to pipeline services for the long term interests of gas consumers?

Having made its recommendations against these criteria, the Commission has assessed the rule change request against the NGO and has considered the following principles:

- **Monopoly pricing:** whether a service provider, unconstrained by competition, could increase prices materially beyond those required in order to support efficient costs.
- **Efficient allocation of costs:** whether users of one service could be inefficiently subsidising users of other services provided on a pipeline by the service provider.
- **Regulatory and administrative complexity:** whether regulation is unnecessarily complex, such as when a single pipeline is unnecessarily subject to multiple regulatory regimes, the cost of which is likely to flow to end gas users.
- **Regulatory discretion:** whether the regulator's discretion is in line with the national gas objective of economic efficiency and the long term interests of gas consumers.

The Commission also considered each proposed rule in the terms of best practice regulation in relation to:

- **Transparency:** sufficient information should be available and relevant for users to negotiate access to a pipeline as well as to enable effective regulatory decision-making.
- **Proportionality:** the context of the issue identified and the potential benefits that may result from changes to the regulation of pipelines should be assessed such that an appropriate balance between the costs and benefits of regulation can be found.
- **Consistency and fit-for-purpose:** while a regulatory framework should apply consistently, it should also accommodate differences in particular requirements where this is necessary and appropriate.
- **Adverse and unintended consequences:** while regulation does have an impact on stakeholders, consideration should be had as to whether any adverse or unintended consequences arise.
- **Market resilience:** amendments to the framework should aim to be flexible and resilient to future market developments.

³³ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 3-5.

2.4 Summary of reasons

Having regard to the issues raised in the rule change request, the Commission is satisfied that the draft rule will, or is likely to, contribute to the achievement of the NGO. The draft rule made by the Commission is attached to and published with this draft rule determination. The key features of the draft rule and the relevant reasons are:

- Extensions and expansions: reduce the ability for service providers to exercise market power over pipeline expansions and extensions, enable more efficient allocation of costs, reduce the regulatory burden and support improved decision-making by regulators (see also Chapter 3). This will be achieved by:
 - treating all new pipeline expansions as part of the relevant scheme pipeline, and so applying either light or full regulation (as applicable to the original pipeline) to the expansion.
 - permitting service providers to elect for existing extensions to a full regulation pipeline to become part of the covered pipeline and incorporated into the access arrangement.
- Reference services: introduce a new approach to determine which pipeline services should be specified as reference services in a full access arrangement. This may result in additional services being specified as reference services. The new approach includes setting new criteria for determining appropriate reference services, as well as providing users with greater opportunity for engagement regarding the decision to determine reference services. This is expected to result in greater transparency of costs relevant to users and lower the likelihood of monopoly pricing (see Chapter 4).
- Access arrangements: facilitate greater stakeholder engagement in the access arrangement assessment process. Adjustments to the access arrangement assessment process will provide more time for stakeholder engagement in order to enable the regulator to make more informed decisions in the long-term interest of consumers (in addition to the introduction of the separate reference service process noted above). The draft rule also seeks to improve regulatory decision-making through the removal of the limitations on regulatory discretion applied to certain elements of an access arrangement so that it is clear that the regulator has the power to make decisions that best contribute to the national gas objective in relation to all aspects of an access arrangement (see Chapter 5).
- Efficient costs: enable the regulator to more effectively determine efficient reference tariffs and non-tariff terms and conditions set in access arrangements so that tariffs are consistent with the level of risk borne by pipeline service providers and users, and so that users do not pay for services or terms and conditions that they do not use. This will be achieved by amendments and clarifications in rules regarding the assessment criteria for capital expenditure, cost allocation requirements and non-tariff terms and conditions (see Chapter 6).
- Information and negotiation: strengthen information reporting obligations on full and light regulation pipeline service providers. These draft rules apply many of the information provision obligations that already apply to Bulletin Board pipelines and non-scheme

pipelines under Part 23 of the NGR. The amendments are expected to result in more relevant, timely and accessible information for users and prospective users to inform their negotiations with service providers. Amendments have also been made to improve the negotiation process for access to covered pipelines (see Chapter 7).

2.5 Implementation of the draft rule

Table 2.1 sets out the draft rule amendments to Parts 1, 3, 7 to 11, 15 and 18 of the NGR and the proposed implementation date for each component.

The final rule is expected to be made on 21 March 2019, subject to the transitional arrangements set out in Chapter 8. The Commission invites stakeholders to inform it of any concerns regarding the proposed implementation approach of the draft rule.

Table 2.1: Components and implementation of the draft rule

COMPONENT	DRAFT RULE	IMPLEMENTATION DATE
Extensions and expansions		
Include all new expansions in an access arrangement	Amend rule 104.	Date rule is made
Enable existing extensions to be included in access arrangements	Amend rules 77 and 104.	Date rule is made
Reference services		
Clarify the requirements for describing pipeline services	Insert new rule 47A, amend rule 45.	Date rule is made
Clarify the requirements for describing reference services	Amend rule 3, insert new rule 47A, amend rule 48 and omit rule 101.	Date rule is made
Update the test for determining a reference service	Amend rule 3, insert new rule 47A, amend rule 48 and omit rule 101.	Date rule is made
Introduce a reference service proposal process and improve the access arrangement review process	Amend rule 3, insert new rule 47A and schedule 1 rules 60, 61, omit rules 13 and 57 and amend rules 3, 45, 46, 47, 50, 51, 58, 59, 62 and 64.	Date rule is made (including a transitional rule to exempt certain pipelines with access arrangement revisions due on or before 1 January 2020 - transitional provisions, draft rules 60, 61)
Access arrangements		
Develop financial models to be used by service providers	Insert new rules 75A and 75B, amend rules	Date rule is made

COMPONENT	DRAFT RULE	IMPLEMENTATION DATE
	72,73.	
Clarify the operation of revenue caps	Amend rule 92.	Date rule is made
Clarify that the regulator is to have regard to risk sharing arrangements	Amend rules 97 and 100.	Date rule is made
Extend the revision period	Amend rule 59.	Date rule is made
Clarify the process for equalising revenue during the interval of delay	Amend rules 3 and 92.	Date rule is made
Remove the limited and no discretion regulatory framework	Omit rule 40 and amend rules 41, 50, 79, 89, 91, 94 and 95.	Date rule is made
Efficient costs		
Clarify the application of the new capital expenditure criteria	Amend rules 79.	Date rule is made
Enable the addition of existing extensions and expansions to the opening capital base	Amend rules 77 and 104.	Date rule is made
Require allocation of expenditure between covered and uncovered parts of a pipeline	Amend rules 79 and 91.	Date rule is made
Amend definition of rebateable services and rebate methodology	Amend rule 93 and 97.	Date rule is made
Negotiation and information		
Require transmission pipeline service providers to disclose Bulletin Board information	Omit rule 111 and amend rules 141, 145, 175.	Date rule is made except as follows Make all transmission scheme pipelines Bulletin Board pipelines (amend rule 141) - one month after the date the rule is made Extend outlook of uncontracted primary capacity from 12 months to 36 months (amend rule 175) - 3 months after the date the rule is made
Require distribution pipeline service providers to disclose capacity and usage information	Insert new rules 35A, 36A-36C, 112A—112D, omit rule 111.	Date rule is made (note that the application date defined in amended rules 35A and 112A is 3 months after the

COMPONENT	DRAFT RULE	IMPLEMENTATION DATE
		date the rule is made).
Clarify the role of the regulator in passing on information requests to service providers	Amend rule 107.	Date rule is made
Introduce a financial and offer information disclosure regime for light regulation pipelines	Insert new rules 35A, 36A-36B, 36D-36F, schedule 1 rules 60, 62, 63 and amend rule 36.	Date rule is made except as follows: Financial reporting guidelines prepared by 31 October 2019 (transitional provisions, draft rule 62). Financial information and weighted average price information to be published for financial years ending after (but not including) 31 December 2019 (transitional provisions, draft rule 60, 63).
Remove the requirement to provide KPIs as part of the access arrangement	Amend rules 45 and 72.	Date rule is made
Improve the Scheme Register	Amend rules 133-135 and insert new rules 134A, schedule 1 rules 60, 64.	Four months after the date the rule is made except as follows: Service providers for non-scheme pipelines must provide information to the AEMC within 6 weeks of the date the rule is made (transitional provisions, draft rules 60, 64).
Improve the access negotiation process	Amend rule 112.	Date rule is made

2.6

Other requirements under the NGL

In applying the rule making test, the Commission has also had regard to the revenue and pricing principles.³⁴ In particular, regard has been given to whether the draft rule provides a service provider with a reasonable opportunity to recover at least the efficient costs in

³⁴ Section 24 of the NGL.

complying with a regulatory obligation. Further, consideration has been given to the effectiveness of incentives to promote economic efficiency with regard to the:

- efficient investment in, or in connection with, a pipeline
- efficient provision of pipeline services
- efficient use of the pipeline.

Consideration has also been given to the revenue and pricing principles in relation to the economic costs and risks of the potential for under and over investment by a service provider in a pipeline with which the service provider provides pipeline services, as well as the economic costs and risks of the potential for under or over utilisation of a pipeline with which a service provider provides pipeline services.

3 EXTENSIONS AND EXPANSIONS

Over the course of a pipeline's life, a service provider may build extensions or expansions to the pipeline.

Extensions to a pipeline increase the geographic range of the pipeline to new locations. A lateral that connects to the original pipeline and has the same service provider as the original pipeline is regarded as an extension. A lateral that connects to the original pipeline but is not owned by the original pipeline service provider is not an extension but a separate pipeline, and would be treated as such for regulatory purposes.

Expansions are augmentations of a pipeline's capacity that are generally achieved through the addition of compressors or looping. Both enable more gas to be transported through the pipeline. The geographic reach of the pipeline is not altered by an expansion.

This chapter first sets out the NGR requirements regarding the regulatory treatment of extensions and expansions to a covered pipeline. It then discusses the proposed amendments to these requirements.

3.1 Current framework for extensions and expansions

The current regulatory framework for extensions and expansions to pipelines is dependent upon the form of regulation that applies to the original pipeline that is being extended or expanded.

Section 18 of the NGL states that an extension or expansion to a covered pipeline must be taken to be part of a covered pipeline if, by operation of the extension and expansion requirements under an applicable access arrangement, the applicable access arrangement will apply to pipeline services provided by means of the covered pipeline as extended or expanded. The NGR requires a full access arrangement³⁵ (for a full regulation pipeline) and a limited access arrangement³⁶ (optional for a light regulation pipeline) to include extension and expansion requirements. Extension and expansion requirements are defined in the NGL as:³⁷

- (a) The requirement contained in an access arrangement, that, in accordance with the Rules, specify –
 - (i) The circumstances when an extension to, or expansion of the capacity of, a covered pipeline is to be treated as forming part of the covered pipeline; and
 - (ii) Whether the pipeline services provided or to be provided by means of, or in connection with, spare capacity arising out of an extension to, or expansion of the capacity of, a covered pipeline will be subject to the applicable access arrangement applying to the pipeline services to which that access

³⁵ Rule 48 of the NGR.

³⁶ Rule 45 of the NGR.

³⁷ Section 18 of the NGL.

arrangement applies; and

(iii) Whether an extension to, or expansion of the capacity of, a covered pipeline will affect a reference tariff, and if so, the effect on the reference tariff; and

(b) Any other requirements specified by the Rules as extension requirements.

As part of a full or limited access arrangement, these requirements must be approved by the regulator. Rule 104 of the NGR states that the extension and expansion requirements:

- may state whether the applicable access arrangement will apply to services to be provided as a result of an extension to, or an expansion of the capacity of, the pipeline
- may outline the basis to later determine whether the applicable full access arrangement will apply to services to be provided as a result of a pipeline extension or expansion
- for a full access arrangement, must specify the impact on tariffs in cases where the access arrangement applies to incremental services as a result of an extension or expansion.

The effect of s. 18 of the NGL is that a full regulation pipeline service provider has the ability to propose an approach to expansions in an access arrangement proposal through the proposed extension and expansion requirements. In assessing the proposal, the regulator may decide not to approve the proposed approach and decide that an alternative approach must be included in the access arrangement.

For light regulation pipelines that do not have a limited access arrangement, s. 19 of the NGL states that an extension or expansion of the pipeline must be taken to be part of the covered pipeline unless the regulator determines otherwise in writing.

Extensions or expansions that have not been included in a full or limited access arrangement for a covered pipeline will not be part of that covered pipeline, and will therefore be a non-scheme pipeline under the NGL. For this reason, Part 23 of the NGR will apply to these parts of a relevant pipeline (subject to the exemption categories in rule 585 of the NGR).³⁸

If a pipeline extension or expansion is uncovered, any person can apply to the National Competition Council (NCC) for its coverage. The NCC applies the coverage criteria to make a coverage recommendation for the relevant Minister to then make a coverage determination.³⁹

The current regulatory approach to extensions and expansions is illustrated in Table 3.1.

³⁸ The exemption categories under rule 585 of the NGR are: Category 1: exemption from arbitration of access disputes (the pipeline does not provide third party access), Category 2: exemption from information disclosure provisions (either the pipeline does not provide third party access, or the pipeline is a single shipper pipeline), and Category 3: exemption from publishing service usage information, service availability information and financial information (at any time, the average daily injection of natural gas into the non-scheme pipeline calculated over the immediately preceding 24 months is less than 10TJ/day).

³⁹ The pipeline coverage criteria are set out in s. 15 of the NGL.

Table 3.1: Current approach to extensions and expansions

FORM OF REGULATION APPLIED TO PIPELINE	COVERAGE OF EXTENSION AND EXPANSION
Full regulation	The access arrangement, as approved by the regulator, specifies if an access arrangement applies to the services provided by an extension and or expansion. If the access arrangement applies, then the extension and or expansion is part of the covered pipeline and the same form of regulation will apply to it (s. 18 of the NGL). If the access arrangement does not apply, Part 23 applies to the expansion.
Light regulation (with limited access arrangement) ^(a)	
Light regulation (no limited access arrangement)	Extension and expansions are included as part of the covered pipeline and light regulation will apply to those services, unless the regulator determines otherwise. (s. 19 of the NGL).
Non-scheme pipeline	Part 23 also applies to extensions and expansions of the pipeline.

Source: AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 61.

Note: (a) None of the service providers of light regulation pipelines have submitted a limited access arrangement under rule 45 of the NGR.

3.2

Assessment of expansions

In the review, the Commission found that the discretion available under the current rules relating to the regulatory treatment of expansions provides flexibility, but that flexibility has resulted in inconsistent regulatory treatment across pipelines. For example, it was noted that 46 per cent of the Goldfields Gas Pipeline is uncovered,⁴⁰ while for the Central Ranges Pipeline access arrangement for 2005-2019, the service provider had no discretion to exclude expansions from being part of the covered pipeline.⁴¹

The Commission concluded that the preferable regulatory arrangement is for expansions to a pipeline to be subject to the same regulatory framework or treatment as the original pipeline. For a covered pipeline, any expansion to its capacity should be treated as part of that covered pipeline.⁴² This is because uncovered capacity on a covered pipeline may lead to:

- Difficulty for regulators in responding to proposed access arrangements that exclude coverage of expansions, particularly where those proposals utilise the coverage criteria⁴³
- Service providers potentially having an opportunity to exert monopoly power over both the uncovered and covered parts of the pipeline where an expansion to a covered pipeline is outside the access arrangement. Consequently, the Commission recommended amendments to the NGR to enable consistent treatment of both the original pipeline and

⁴⁰ ERA, *Final decision on proposed revisions to the access arrangement for Goldfields Gas Pipeline*, June 2016, p. 5.

⁴¹ Access arrangement for Central Ranges Pipeline, November 2005, p. 28.

⁴² And similarly for pipelines subject to Part 23 of the NGR as currently provided.

⁴³ ERA, *Issues paper, Goldfields Gas Transmission's proposed expansion of the Goldfields Gas Pipeline*, 3 November 2014, pp.13-14.

the expansion in order to reduce the likelihood of monopolistic pricing over the expansions and to improve the cost allocation between original and expanded capacity.⁴⁴

- The reference tariff including costs associated with the uncovered capacity. An expansion leverages off the existing pipeline infrastructure. Having uncovered capacity on a full regulation pipeline makes cost allocation more complex and could result in users of the covered pipeline paying for costs that are not relevant to the services they use. This is not in the interest of gas consumers.⁴⁵

Including expansions in access arrangements would remove some regulatory costs and complexity that arise from having parts of the same pipeline subject to different regulatory requirements (that is, preparing an access arrangement for the original pipeline and complying with Part 23 information obligations for the uncovered expansion). An example of the increased complexity is that an access arrangement will be in place for a full regulation pipeline but a service provider will be required to report financial information under Part 23 for an uncovered part of that pipeline. While the Commission acknowledged that the extent of such additional regulatory costs may not be significant, it concluded there will be costs that pipeline users and ultimately gas consumers will pay without obtaining any benefit.

In addition, the Commission concluded that it is very likely that a pipeline expansion faces substantially the same market landscape as the pipeline itself, and that as such it should be subject to the same form of regulation. In making this finding, the Commission noted stakeholder concerns that its recommendation to cover existing expansions could increase sovereign risk and dampen investment incentives. It made the following observations:⁴⁶

- A feature of the current regulatory framework is that the NGR are dynamic and the AEMC is expected to review and change rules over time, with any changes only made following consultation.
- The gas pipeline economic regulation framework allows for coverage of a pipeline to be revisited by application at any time (except for 15 years for pipelines that have been granted a 15-year no-coverage determination). Accordingly, the ability of the regulatory status of a pipeline to change over time should have been taken into account when making an investment decision.
- Moreover, proposals made by service providers to the regulator not to include an expansion in an access arrangement have been made after the expansion has been built. As such, the investment decision to build the expansion could not have been driven by the knowledge that the expansion would be an uncovered asset as that would not have been guaranteed at the time of investment.

Based on the Commission's conclusions in relation to the coverage of future expansions, the COAG Energy Council has sought to amend rule 104 of the NGR to clarify that if a pipeline is covered, then any expansion of that pipeline should also be covered and included in either

⁴⁴ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 64.

⁴⁵ The COAG Energy Council has also proposed to amend the cost allocation rules (rules 79 and 91 of the NGR) in order to clarify that proposed forecast capital and operating expenditures refer to costs after an allocation of costs between the covered and uncovered parts of a pipeline has occurred. The Commission has made a draft rule determination to make this amendment (see Chapter 6).

⁴⁶ AEMC, *Review into the scope of economic framework applied to covered pipelines*, final report, 3 July 2018, pp. 64-65.

the full or limited access arrangement as relevant to the covered pipeline.⁴⁷ This proposal is summarised in the table below.

Table 3.2: Proposed approach for future expansions to covered pipelines

FORM OF REGULATION APPLIED TO PIPELINE	TREATMENT OF FUTURE EXPANSIONS
Full regulation	A new expansion will be included in the access arrangement of the relevant pipeline and be treated as part of that covered pipeline. The form of regulation applied to the pipeline will apply to the expansion.
Light regulation (with limited access arrangement)	
Light regulation (no limited access arrangement)	A new expansion will be treated as part of the covered pipeline and light regulation will apply to that expansion.

Source: AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 67.

In considering this regulatory treatment for new pipeline expansions, the Commission notes that there may be administrative and regulatory costs associated with providing and assessing information on the expansion in the access arrangement (for the service provider and regulator, respectively). Nevertheless, the Commission considers that the implementation of the proposed rule should reduce the prospect of service providers exercising monopoly pricing over the expansion, thereby eroding monopoly profits (to the extent that they are being realised by service providers) which is in the long term interests of consumers.

Further, the Commission considers that the proposed amendments to rule 104 of the NGR should, if made, provide greater certainty on the coverage status of future expansions of covered pipeline which provides a clear framework under which investment decisions can be made. Categorising new expansions of covered pipelines as covered prevents service providers from monopolistic pricing over the expansions, which is in the long term interest of consumers. The Commission considers that these outcomes are consistent with the NGO.

3.2.1

Draft rule

For the reasons outlined above, the Commission has made a draft rule determination to amend the NGR as proposed by the COAG Energy Council such that any future expansions of a covered pipeline will be treated as part of the relevant covered pipeline and included in the access arrangement (where applicable). This is reflected in the draft amendments to rule 104(1)-(3) of the NGR.

⁴⁷ In its review, the Commission also recommended that existing expansions of covered pipelines that are not included in existing access arrangements also be included in the relevant access arrangements. It also recommended removing the regulators' discretion to exclude an expansion from light regulation and to treat any expansions that have been excluded from a light regulation pipeline without a limited access arrangement to become treated as part of that pipeline. These recommendations are not included in the current rule change request. The implementation of these recommendations requires legislative change to ss. 2, 18 and 19 of the NGL and is included in package 2 of the review's recommendations. The COAG Energy Council has indicated its in principle agreement to these recommendations, the implementation of which will be considered following further work by the SCO on light regulation, Part 23 and the coverage test.

3.3 Assessment of extensions

In the review the Commission found that the issues around the application of an access arrangement to pipeline extensions are different to those for expansions. By virtue of its different geographic reach, a pipeline extension may face a different market landscape than the pipeline itself. For example, a pipeline may transport gas to a town with a variety of end users while an extension to the pipeline may be built to service a gas fired generator or mine. In this case, the pipeline and the extension may have different degrees of market power, different risks reflecting the different end use customers, different vertical integration issues and potentially different competitors. For these reasons, the inclusion of an extension in the access arrangement should be considered in light of the particular circumstances.

Consequently, the Commission concluded that:

- For new extensions: the extensions should continue to be treated on a case by case basis, as they may, for example, constitute laterals that face sufficiently different market landscapes from the covered pipelines themselves. This promotes efficiency in balancing the cost and benefit of regulation in each case.
- For existing uncovered extensions: two options should be available:
 - The service provider can propose to include the extension as part of the covered pipeline at the time of revising an access arrangement.
 - If an extension is not included in the access arrangement, then a third party can apply to the NCC for coverage of the extension. If covered, the form of regulation test would then determine which form of regulation should apply to that extension.

The Commission's final report acknowledged that the second of these (that a coverage determination could be sought) was already permissible under the NGL and NGR so that no further amendments to the framework would be required.⁴⁸

However, the first of the above options (to incorporate an existing extension into an existing access arrangement) is not currently achievable under the NGR. Consequently, the Commission recommended that amendments be made.⁴⁹

Based on the Commission's recommendations regarding extensions, the COAG Energy Council has proposed an amendment to rule 104 of the NGR that will permit service providers to include existing extensions to a covered pipeline in the relevant access arrangement (as shown in Table 3.3 below). The COAG Energy Council has also sought to amend the NGR in order to allow for the inclusion of the value of the existing uncovered extension in the capital base. This is discussed further in Chapter 6 of this draft rule determination.

This proposed approach is summarised in Table 3.3.

⁴⁸ From a regulatory perspective, the extension subject to a coverage application would be treated as a separate covered pipeline. However, under rule 53 of the NGR, access arrangements can be consolidated by direction of the regulator.

⁴⁹ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 69-73.

Table 3.3: Proposed approach for extensions to covered pipelines

FORM OF REGULATION APPLIED TO PIPELINE	TREATMENT OF EXISTING EXTENSIONS	TREATMENT OF FUTURE EXTENSIONS
<p>Full regulation</p> <p>Light regulation (with limited access arrangement)</p>	<p>An existing extension included in the current access arrangement will remain included and be treated as part of the covered pipeline. The form of regulation applied to the pipeline applies to the extension.</p> <p>An existing extension that is not included in the current access arrangement:</p> <ul style="list-style-type: none"> may be included in the access arrangement from the next access arrangement period if sought by the service provider and approved by the regulator. The form of regulation applied to the pipeline will apply to the extension may become a covered pipeline as the result of a successful coverage application by the service provider or a third party. 	<p>A new extension:</p> <ul style="list-style-type: none"> may be included in the access arrangement if sought by the service provider and approved by the regulator under the access arrangement's extension requirements. The form of regulation applied to the pipeline will apply to the extension may become a covered pipeline as the result of a successful coverage application by the service provider or a third party.
<p>Light regulation (no limited access arrangement)</p>	<p>An existing extension that is treated as part of the covered pipeline will remain treated as part of that pipeline. Light regulation applies to the extension.</p> <p>An existing extension that the regulator has determined to not be treated as part of the covered pipeline will remain as such. A third party can then submit an application to</p>	<p>A new extension will be treated as part of the covered pipeline and light regulation will apply to that extension, unless the regulator determines that the extension should not be part of the covered pipeline. A third party can then submit an application to the NCC to cover the extension.</p>

FORM OF REGULATION APPLIED TO PIPELINE	TREATMENT OF EXISTING EXTENSIONS	TREATMENT OF FUTURE EXTENSIONS
	the NCC to cover the extension.	

Source: AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 72.

As indicated in the final report, the Commission considers that extensions should continue to be treated on a case by case basis, as they may face sufficiently different market landscapes from the original pipelines. Additional flexibility is provided in the draft rule by permitting existing extensions to also be included as part of a covered pipeline. This approach promotes efficiency in balancing the cost and benefit of regulation in each case. The Commission considers that this fit for purpose approach to the development of extension requirements for an access arrangement, provided for by the draft rule coupled with the existing coverage processes, is consistent with the NGR. Extension requirements specified in this way will support well-informed decision-making on investment in, and use of, a pipeline.

3.3.1

Draft rule

The Commission has made a draft rule determination to amend the NGR to permit a service provider to seek existing extensions to a covered pipeline be included in the relevant access arrangement. The draft rule includes amendments to rule 104(1) and (3) of the NGR.⁵⁰

⁵⁰ See also Chapter 6 of this draft rule determination for the related NGR amendments regarding the valuation of existing extensions.

4 REFERENCE SERVICES

Reference services are the cornerstone of full access arrangements, which are the defining feature of the economic regulatory framework for full regulation pipelines.

Tariff and non-tariff terms and conditions of access to all services on full regulation pipelines are negotiated by reference to reference services. The reference services included within an access arrangement are key to applying economic regulation to the services of pipelines. Defining the reference service performs the following functions:

- The statement of reference service sets the parameters of the service.
- The reference service provides the basis for full access arrangement reference tariff and non-tariff terms and conditions, efficient cost and revenue requirements, and cost allocation.
- The terms and conditions and reference tariffs for reference services set out within full access arrangements aid negotiations and arbitration.

A prospective user seeking access can refer to the reference tariff and reference terms and conditions, as well as the information disclosed in the process of setting them, in access negotiations. Consequently, a reference tariff directly constrains the use of market power of a service provider in the provision of the reference service itself. Moreover, the determination of a reference tariff, through a transparent access arrangement process by a regulator assists parties that are seeking access to services similar to the reference service in their negotiations or in arbitration.

This chapter discusses the COAG Energy Council's proposed amendments to:

- how pipeline services and reference services are defined
- the process used to determine reference services for an access arrangement.

It then sets out the draft rules relating to these issues.

4.1 Defining pipeline and reference services

4.1.1 Current framework

For each reference service provided by a full regulation pipeline, a reference tariff and reference terms and conditions are proposed by the service provider as part of an access arrangement for approval by the regulator. The access arrangement provides a starting point for negotiation and arbitration. In contrast, pipelines subject to light regulation or the access regime for non-scheme pipelines do not have reference services.

A reference service defines a specific service offered by a service provider, in respect of which the regulator has approved tariff and non-tariff terms and conditions. Subject to capacity constraints, a service provider must offer its reference services to any user or prospective user. The user can accept the reference service and reference tariffs, and the associated non-tariff terms and conditions, or negotiate for access to other pipeline services, with associated tariff and non-tariff terms and conditions.

A reference service acts as an aid to the negotiation process between prospective users and a service provider. It narrows points of contention and provides greater predictability of arbitration outcomes. The inclusion of reference services in an access arrangement should reduce the prospect of negotiation leading to arbitration, and reduce the cost of arbitration in the event that it is necessary. To be clear, services that are not reference services (including all services on light regulation pipelines) are still subject to economic regulation through information provision and binding arbitration (if required).

Section 2 of the NGL defines a reference service as:

a pipeline service specified by, or determined or approved by the AER under, the Rules as a reference service.

Section 2 of the NGL defines a pipeline service as follows:

pipeline service means -

- (a) a service provided by means of a pipeline, including—
 - (i) a haulage service (such as firm haulage, interruptible haulage, spot haulage and backhaul); and
 - (ii) a service providing for, or facilitating, the interconnection of pipelines; and
- (b) a service ancillary to the provision of a service referred to in paragraph (a), but does not include the production, sale or purchase of natural gas or processable gas.

Rule 48 of the NGR states that:

- (1) A full access arrangement must: ...
 - (b) describe the pipeline services the service provider proposes to offer to provide by means of the pipeline; and
 - (c) specify the reference services; and
 - (d) specify for each reference service:
 - (i) the reference tariff; and
 - (ii) the other terms and conditions on which the reference service will be provided.

In addition, rule 101 of the NGR states that a full access arrangement must contain a statement of reference services, and provides the basis on which reference services are determined in full access arrangements:

- (1) A full access arrangement must specify as a reference service:
 - (a) at least one pipeline service that is likely to be sought by a significant part of

the market; and

- (b) any other pipeline service that is likely to be sought by a significant part of the market and which the AER considers should be specified as a reference service.

- (2) In deciding whether to specify a pipeline service as a reference service, the AER must take into account the revenue and pricing principles.

The NGL allows for a service provider to enter into an agreement with a user or prospective user for access to the pipeline under terms and conditions that are different from the applicable access arrangement.⁵¹

4.1.2

Assessment

The determination of a reference tariff through a transparent access arrangement process by a regulator assists parties seeking access to the reference service or similar services in their negotiation or arbitration. However, in the review, the Commission noted that most access arrangements for transmission pipelines have contained a single reference service, typically a forward haul service. In some cases this reference service may not provide a useful basis for negotiations for other pipeline services that are not closely related to the reference service. For example, a forward haul reference service may provide little information on negotiations or arbitrations for backhaul, as available, storage or park and loan services.

The Commission concluded that the inclusion of additional reference services in an access arrangement may place further limits on a service provider's use of its market power, through assisting users and prospective users in negotiation and arbitration.⁵²

In order to encourage the inclusion of additional reference services in an access arrangement, the COAG Energy Council has proposed amendments to the NGR to address ambiguities within the framework relating to the definition of pipeline and reference services, specifically in relation to:

- the relationship between pipeline services and reference services
- the degree of specificity required to describe or identify a pipeline service and a reference service
- the purpose of the reference service.

Describing pipeline and reference services

The Commission observed in its final report that interpretation of the term "pipeline services" is not aided by the definition in s. 2 of the NGL and the description of pipeline services in an access arrangement in rule 48 of the NGR.⁵³ The definitional scope of a pipeline service could be interpreted in one of two ways:

⁵¹ Section 322 of the NGL.

⁵² AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 76.

⁵³ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 80-83.

- that the access arrangement needs only to include a description of the services that the pipeline proposes to offer, or
- that the access arrangement should set out a list of all of the services that the pipeline offers or can offer and that a user or prospective user can seek access to.

This suggests that different levels of specificity used in describing pipeline services in an access arrangement may equally satisfy the requirements of the NGR. For example, a pipeline service could be described or identified:

- relatively broadly, such as firm forward haul, or
- more specifically, such as firm forward haul between points A and B.

The Commission found that covered pipeline service providers tend to only provide a general description of services on the pipeline as part of an access arrangement proposal. Service providers have often not provided a more detailed list of pipeline services in response to rule 48. Additionally, the regulators themselves have not required such a list from service providers.

The NGR require a reference service to be a pipeline service that is likely to be sought by a significant part of the market.⁵⁴ The Commission found that under the current framework, if a pipeline service is broadly defined (for example, firm forward haul), then it is not clear how a reference service should be subsequently described or identified so that it is relevant to contract negotiations.

Relatedly, the Commission also concluded that the current definition of a reference service in the NGL and its application in the NGR is ambiguous as there is no stated purpose of the reference service, nor does it clearly distinguish what a reference service is compared to the detailed terms and conditions upon which the service is provided. Rule 101 of the NGR requires a “statement of reference service” although it is not clear what is to be included in such a statement, nor its purpose. For example, it is ambiguous whether the detail of entry and delivery points is part of the statement of a reference service or a term and condition relevant to the reference service.⁵⁵ As a result, users and prospective users may fail to engage effectively in the access arrangement process to determine reference services for a pipeline.

The Commission observed this lack of clarity also creates uncertainty around both negotiation and arbitration. This may in turn provide the opportunity (or perceived opportunity) for service providers to exploit market power by charging monopoly prices for services that cannot be benchmarked against a reference service.

In making this observation, the Commission considered the application of Part 23 of the NGR (the access regime for non-scheme pipelines). Part 23 has sought to address the application of the definition of pipeline service through the following provisions:⁵⁶

⁵⁴ Rule 101 of the NGR.

⁵⁵ Note that a distinction can generally be made between what the reference service is and the terms and conditions on which the service is provided. See the wording in rule 48(1)(c) and (d) of the NGR.

⁵⁶ Rule 549 of the NGR.

- (3) For the purposes of this Part, a pipeline service is to be treated as distinct from another pipeline service having regard to matters including service type (for example, forward haul, backhaul, park and loan) and the priority of the service relative to other pipeline services of the same type.
- (4) For the purposes of this Part, in relation to a prospective user, a pipeline service is also to be treated as distinct from another pipeline service having regard to the service term and the capacity sought by the prospective user.

Part 23 also provides clarity in relation to pipeline service information:⁵⁷

- (3) The pipeline service information for a pipeline comprises a list of the pipeline services available on the pipeline and for each pipeline service:
 - (a) a description of the service and any locational limitations on availability; and
 - (b) the priority ranking of the service in relation to the other pipeline services including when scheduling and in the event of curtailment.

On this basis, the Commission concluded that improving and clarifying the requirements for describing pipeline and reference services would be beneficial to the policy intent of the current framework.⁵⁸

Following on from these recommendations, the COAG Energy Council has proposed to amend the NGR in order to address the lack of clarity and guidance provided in the NGR for service providers and regulators on:

- the relationship between pipeline services and reference services
- the degree of specificity required to describe or identify a pipeline service and a reference service
- the purpose of the reference service.

The Commission has accordingly made a draft rule that will require a pipeline service provider to provide to the regulator a list of the pipeline services that are available on the pipeline. The list will include services that a service provider may not currently offer, but may be the subject of negotiations (past or continuing) with prospective users or that it can reasonably provide, if requested.⁵⁹

The draft rule seeks to amend rule 48 in the NGR to provide additional guidance on the requirements used to define pipeline and reference services, particularly for the following:

- the service provider in proposing reference services and a list of pipeline services
- regulators in the determination of reference services

⁵⁷ Rule 553 of the NGR.

⁵⁸ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 83.

⁵⁹ Consultation periods for reference service and access arrangement processes provide an additional opportunity for users to seek pipeline services (as discussed in chapter 5).

- users and prospective users in understanding reference services, effectively engaging in the access arrangement review process and negotiating tariffs and non-tariff terms and conditions in reference to reference tariffs and non-tariff terms and conditions
- the access arrangement in defining a reference tariff and reference terms and conditions that can be attributed to a distinct service.

The Commission considers the draft rule, if made, should facilitate the inclusion of additional reference services in an access arrangement. Additional reference services will limit a service provider's use of its market power by assisting users and prospective users in negotiation and arbitration. This will ultimately contribute to the achievement of the NGO by promoting access to, and the efficient pricing of, pipeline services.

Test for determining reference services

In the review, the Commission observed that determining an appropriate set of reference services is a trade-off between:⁶⁰

- The benefits that reference services provide to prospective users. A reference service acts as an aid to the negotiation process, by narrowing the points of contention and providing greater predictability of the outcomes of arbitration. This should constrain the use of market power of a service provider in its negotiations, reduce the prospect of negotiation leading to arbitration, and reduce the cost of arbitration in the event that it is necessary.
- The cost and regulatory burden of the ex ante determination of reference services and corresponding reference tariff and non-tariff terms and conditions (for the service provider, the regulator and other stakeholders through the access arrangement assessment process).

However, the Commission found this trade-off is not explicitly recognised in the NGR. As a result, it does not provide sufficient guidance to the regulator in making this trade-off when deciding on the reference services for an access arrangement. As a consequence, the Commission concluded that the test for specifying pipeline services as reference services should be changed so the regulator can assess proposed reference services against a list of criteria that reflect the above trade-off.

The COAG Energy Council has proposed amendments to the NGR that reflect the Commission's recommendations on this issue. Specifically, to require the regulator to have regard to the following factors in order to determine reference services:

- Actual and forecast demand for the service and the number of prospective users: Services with historical or forecast high demand are likely to be useful to a larger number of users and prospective users. Consequently, the benefits of making such services reference services are likely to be relatively high. Conversely, for rarely demanded services, the cost of an ex ante determination of the reference service and reference tariff and non-tariff terms and conditions may be relatively high. Should a user or prospective user and service provider be unable to negotiate access for such a service, the tariff and non-tariff terms and conditions for the service would be determined at that

⁶⁰ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 84.

time through arbitration. As a result, direct regulatory costs are only incurred in the less likely event of the service being brought to arbitration.

- The extent to which the service is substitutable with other pipeline services: Multiple substitutable reference services increase the regulatory burden for little additional benefit. Instead, only one service of a group of services may be specified as the reference service if this service provides a sufficiently good basis to aid the negotiation process for all other services that can be substituted with it. Conversely, two services that are not substitutable are each unlikely to be useful reference points for one another in the negotiation process. Therefore, it may be appropriate for both to be reference services.
- The feasibility of allocating costs to the pipeline service: Identifying the cost of providing a reference service and allocating it to the service enables the regulator to determine a meaningful reference tariff. A meaningful reference tariff and tariffs negotiated or arbitrated by reference to it reduces inefficiencies such as the under-utilisation of, or under-investment in, pipelines. It is also consistent with the cost allocation requirements set out in rule 93 of the NGR. Therefore, a reasonable prospect of allocating costs to the service in a manner that satisfies the NGL and NGR should be a reference service factor.
- The usefulness of the service in supporting access negotiations and dispute resolution for other pipeline services: Reference services assist access negotiations by narrowing the points of contention and providing greater predictability of the outcomes of any arbitration. By replacing services sought by a “significant part of the market” with a test of usefulness in supporting negotiations, regulators have discretion to consider whether the reference service will assist multiple users seeking similar or the same service on the pipeline.
- The likely regulatory cost for all parties in specifying the pipeline service as a reference service.

The COAG Energy Council considers the introduction of this test should enable reference services to better reflect the variety of different services that have become more common due to recent changes in the dynamics of the east coast gas market (such as bi-directional services, and park and loan services).⁶¹

The Commission considers the draft rule, if made, should benefit regulators, users, prospective users and consumers by:

- providing transparency about the availability and potential availability of pipeline services
- specifying appropriate reference services in an access arrangement to guide negotiation and arbitration.

Further, these improvements are expected to support the NGO by balancing the cost of determining reference services and reference tariff and non-tariff terms and conditions (that are ultimately borne by consumers) with the benefits of reference services in aiding negotiation and arbitration on pipeline services.

⁶¹ COAG Energy Council, *rule change request*, p. 16.

4.1.3

Draft rule

The Commission has made a draft rule (new draft rule 47A) to introduce a requirement to describe pipeline services in an access arrangement such that:

- A pipeline service is to be stated or identified in terms of parameters including type, location and priority (firmness of service), consistent with the provisions for the distinction between pipeline services under rule 549(3) of the NGR for non-scheme pipelines.
- The service provider of a covered pipeline is to provide, as part of an access arrangement proposal, a full list of available pipeline services. This list of pipeline services can be referenced to existing gas transportation agreements for that pipeline.

In addition, new draft rule 47A specifies that the reference service proposal must be drawn from the list of pipeline services and must be described having regard to the reference service factors. This amendment is also reflected in amendments to rule 48 and the omission of rule 101.

The Commission has also made a draft rule to require the regulator to determine one or more pipeline services to be reference services, having regard to the following factors:

- actual and forecast demand for the pipeline service and the number of prospective users of the service
- the extent to which the service is substitutable with other pipeline services
- the feasibility of allocating costs to the pipeline service
- the usefulness of specifying the service as a reference service in supporting access negotiations and dispute resolution for other pipeline services, by providing a point of reference or benchmark for:
 - negotiating access
 - tariffs
 - terms and conditions
- the likely regulatory cost for all parties in specifying the pipeline service as a reference service.

These requirements are reflected in new draft rule 47A, amendments to rule 48 and the omission of rule 101.

4.2

Process for determining reference service

4.2.1

Current framework

Under the NGR full regulation pipeline service providers are to submit to the regulator, for approval, a full access arrangement proposal or a full access arrangement revision proposal.⁶²

The regulator assesses the access arrangement proposal under Parts 8 to 11 of the NGR. The regulator seeks submissions on the proposal, issues a draft decision for consultation, and

⁶² Access arrangement proposal refers to the initial access arrangement. Access arrangements are then periodically revised. Access arrangements generally do not expire.

then makes a final decision that either approves or refuses to approve the access arrangement proposal. Prior to submitting the access arrangement proposal, a service provider may request a pre-submission conference in order to discuss questions affecting the proper formulation of the proposal.⁶³

If the regulator approves the access arrangement proposal it approves all elements in the proposal, including the non-price terms and conditions on which the reference service will be provided.⁶⁴

Rule 62(7) of the NGR requires the regulator to make an access arrangement final decision within six months of receiving the proposal, and rule 62(8) states that this time cannot be extended by more than two months.⁶⁵ The regulator will “stop the clock” in the decision-making process when additional information or consultation is required.⁶⁶ Rule 13(1) provides an absolute overall time limit of 13 months between the date the service provider submits a full access arrangement proposal and the date that the regulator makes a final decision.

4.2.2

Assessment

In its final report, the Commission noted that the time period provided under the NGR is insufficient to fully consider, consult and decide on an access arrangement proposal. This is a significant issue if there has been a material change between the draft access arrangement and the final access arrangement to the reference services offered (increased or varied reference services) and to the non-tariff terms and conditions relevant to each reference service.⁶⁷

The Commission concluded that the introduction of a preliminary process (prior to the lodgement of the full access arrangement proposal) that is restricted to the determination of reference services for full regulation pipelines would support the ability of the regulator, users and prospective users to introduce additional reference services where the service provider does not. This is important because the inclusion of additional reference services in an access arrangement is expected to address concerns about monopoly pricing by providing additional reference points (including tariff and non-tariff terms and conditions) on which to base access negotiations. In addition, the Commission anticipated that an upfront process to set reference services would improve customer engagement in the access arrangement assessment process. Constructive engagement between service providers, the regulator, users and consumers increases the likelihood that the reference services will align with the long term interests of consumers.

The COAG Energy Council has therefore proposed introducing a new reference service process in the NGR. As recommended by the Commission, this proposed process will

⁶³ Rule 57 of the NGR.

⁶⁴ Rule 41 of the NGR.

⁶⁵ However, it should be noted that under s. 332 of the NGL a regulator’s decision made after the specified date is not an invalid decision.

⁶⁶ Rule 11 of the NGR; AER, *Access arrangement guideline*, March 2009, pp. 17-18.

⁶⁷ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 90-91.

commence 24 months prior to the revision commencement date of the next access arrangement period for a pipeline. This start date balances the risk:

- that changes in circumstances mean that the decisions made in the reference service setting process are out-of-date, against
- the time it would take to undertake the additional process and then subsequently allow the service provider to draft an access arrangement proposal around the reference services as approved by the regulator.

Other key design features of the COAG Energy Council's proposed reference service process (also consistent with recommendations by the Commission) include:⁶⁸

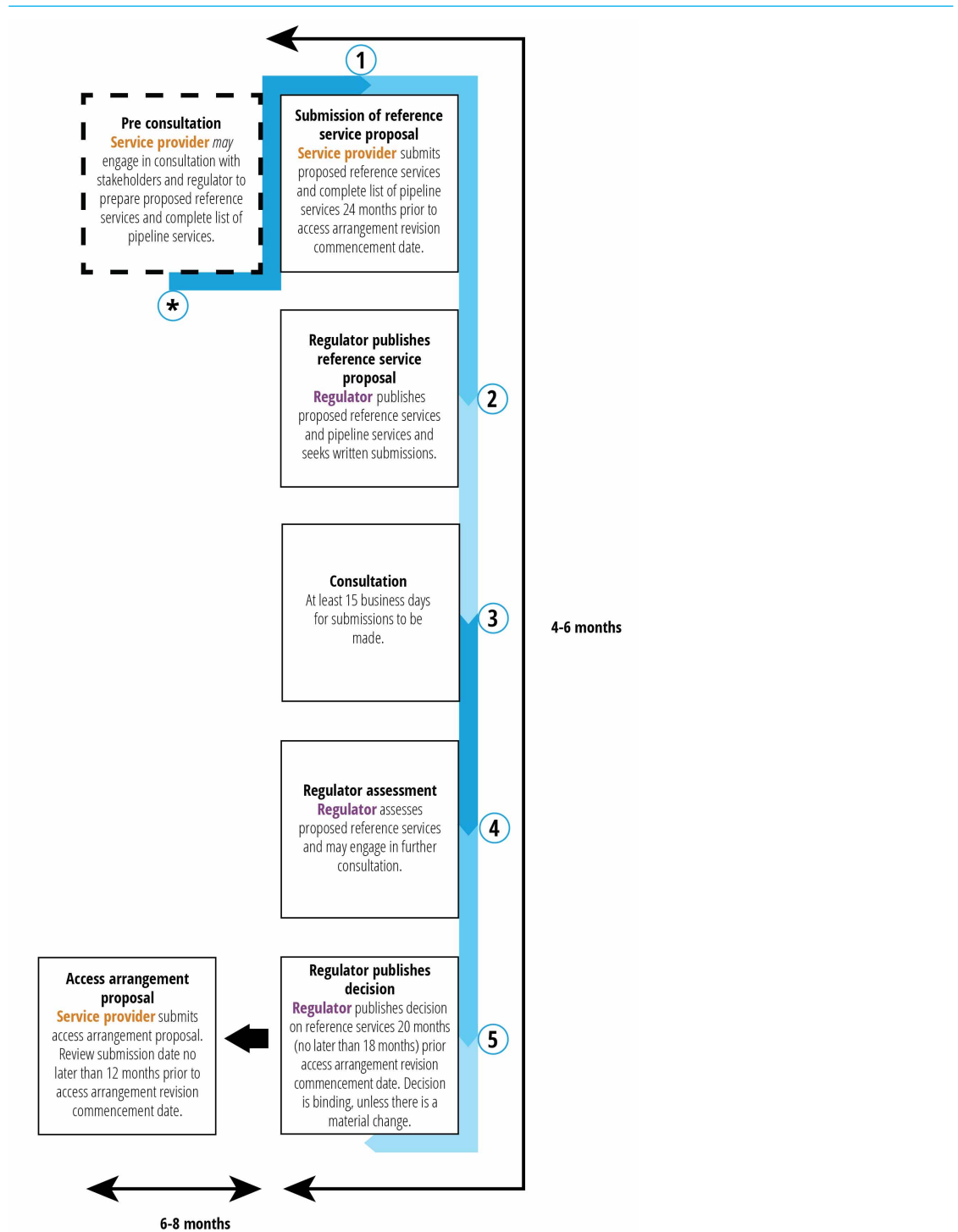
- Pre-consultation: the service provider may engage with consumers, users and other stakeholders and the regulator in order to prepare the list of pipeline services and proposed reference services.
- Pipeline service list and reference services proposal submission: the service provider submits the list of available pipeline services and its reference service proposal no later than 12 months prior to the review submission date.
 - In the event that the service provider fails to submit the list of pipeline services and reference service proposal by 11 months prior to the revision submission date, the regulator will propose reference services for that pipeline and commence consultation on its reference services proposal. (This is similar to rule 63 of the NGR allowing the regulator to make or revise an access arrangement on failure by service provider to submit an access arrangement proposal).
 - In the event that the service provider submits a deficient list of pipeline services and reference service proposal, the regulator will set a date for resubmission of the reference service proposal at its discretion.
- Publication: the regulator publishes the service provider's reference services proposal and list of pipeline services and seeks written submissions from stakeholders on the proposal (including whether additional reference services are required), with a consultation period of at least 15 business days.
- Assessment: the regulator makes its assessment of the reference services proposal having regard to, among other things, the reference service factors and any pre-consultation with its pipeline users and end users. In making its assessment, the regulator has the discretion to undertake further consultation, if required.
- Decision: the regulator publishes the reference service decision no later than six months prior to the review submission date.
 - In the event the regulator refuses to approve the service provider's reference service proposal, the regulator may make or revise a reference service proposal and make a final decision on that proposal. (This is similar to rule 64 of the NGR allowing the regulator to make or revise an access arrangement on refusing to approve an access arrangement proposal.)

68 COAG Energy Council, *rule change request*, p. 10.

- The regulator would not change the approach set out in this decision, unless there is a material change in circumstances that warrants a departure.

These key features of the proposed reference service process are shown in Figure 4.1.

Figure 4.1: Proposed reference service process

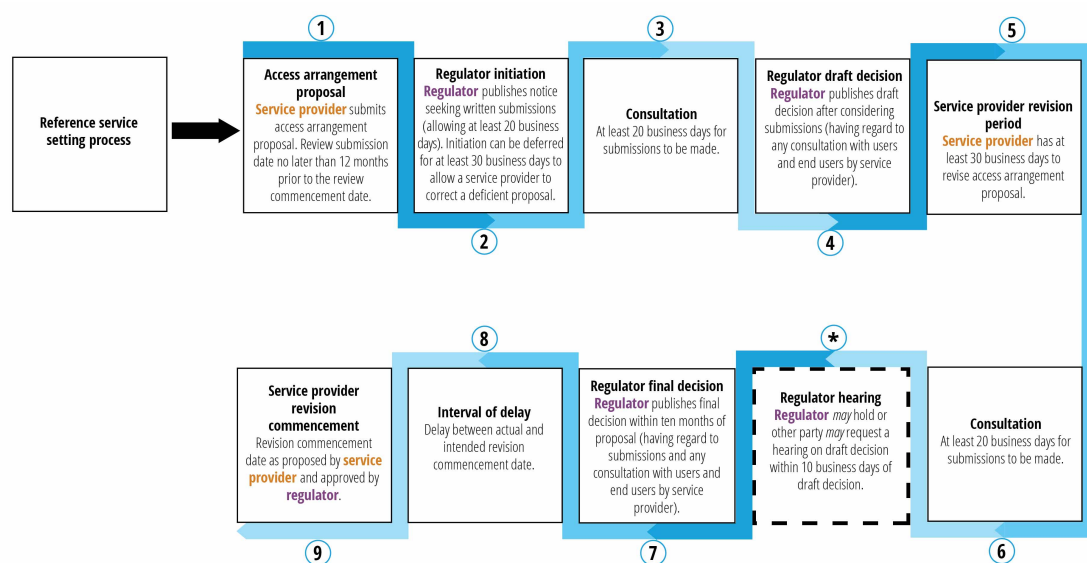


Source: AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 95.

Following the regulator's decision on the reference service proposal, the service provider would be expected to submit the full access arrangement proposal based on the regulator's reference service decision. The access arrangement proposal is due to the regulator on the review submission date (which will be at least 12 months prior to the revision commencement date for the next access arrangement period). This is expected to be between six and eight months after the regulator's decision on the reference service proposal. It is not expected that the service provider would wait for a final decision on the reference services before commencing its preparation of its access arrangement proposal.⁶⁹

The interaction between the proposed reference service process and the access arrangement revision process⁷⁰ is shown in Figure 4.2.

Figure 4.2: Proposed amended access arrangement process



Source: AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 97.

The COAG Energy Council considers the proposed amendments will encourage users and other stakeholders to engage with both the service provider and the regulator through the course of the reference service process, including making submissions to the regulator seeking additional or varied reference services (where it is appropriate). Consultation is an important feature of the new process and will inform the regulator's decision-making.⁷¹

As part of the request, the COAG Energy Council also proposed, consistent with the recommendations of the Commission:

⁶⁹ A number of access arrangement elements are not contingent on the determination of the reference services by the regulator. These elements include the service provider's ongoing operational and capital expenditure (notwithstanding additional expenditure that may be associated with the addition of new reference services) and standard terms and conditions.

⁷⁰ Including the COAG Energy Council's proposed amendments to the access arrangement process, discussed in Chapter 5.

⁷¹ COAG Energy Council, *rule change request*, p. 8.

- Removing the pre-submission conference in rule 57 of the NGR as the new reference service setting process, together with the access arrangement process, will provide sufficient opportunity for the service provider and regulator to engage on the proper formulation of the proposal, without the need for a formal request for a pre-submission conference.
- Allowing the service providers more flexibility to set the review submission date and revision commencement date (with the approval of the regulator) as appropriate to the circumstances of the particular pipeline, while retaining the minimum of 12 months between the review submission date and the revision commencement date.⁷²
- Omitting the requirements for the regulator to make its draft and final decisions available for inspection at its offices and for the notice of publication of those decisions to be made in a national newspaper (see amendments to rules 59(5) and 62(5) of the NGR). The proposed rule similarly amends rules 58(1) and 64(5).

The Commission considers the introduction of a reference service process should contribute to the achievement of the NGO in the following ways:

- An upfront process would provide the regulator with additional time to carefully consider and determine the most appropriate reference service (or set of services) outside the reference tariff and non-tariff terms and conditions determination process. In doing so, the regulator may expand the number and type of reference services. This will enable users to better negotiate with pipeline service providers for the services they seek and provide greater certainty in the event of arbitration.
- Pipeline users and prospective users are better informed about their preferences than the regulator. As such, constructive engagement between service providers, the regulator, users and consumers increases the likelihood that the reference services will align with the long term interests of the consumer. Further, improved user and consumer engagement with the regulatory process helps reduce the risk of regulators making sub-optimal decisions because of poor information on user and consumer preferences.⁷³

The upfront reference service setting process is not intended or expected to be an onerous additional process, particularly as the submission of a proposal that identifies the proposed reference service and pipeline services list is already part of the access arrangement process, as is consultation and the regulator's decision on reference services. However, implementation of the draft rule will require changes to processes for the regulators, service providers and users. The Commission has therefore considered transitional arrangements for those specific stakeholders who will be impacted as discussed in Chapter 8 of this draft rule determination.

4.2.3

Draft rule

The Commission has made a draft rule to amend the NGR in order to:

⁷² Proposed amendment to rule 50 of the NGR.

⁷³ Productivity Commission, *Australia's urban water sector*, inquiry report, vol 1, no. 55, 31 August 2011, p. 234.

- Introduce a fit-for-purpose process in new draft rule 47A to determine the reference services to be provided by the service provider with the following key design elements:
 - the service provider submits to the regulator its full list of pipeline services and proposed reference services, having regard to the reference service factors to be specified in the NGR
 - in the event that the service provider fails to submit the list of pipeline services and reference service proposal by 11 months prior to the review submission date, the regulator will propose reference services for that pipeline and commence consultation
 - in the event that the service provider submits a deficient list of pipeline services and reference service proposal, the regulator will set a date for resubmission of the reference proposal
 - the process for the making of the reference service proposal decision will be approximately six calendar months, with at least one round of consultation
 - the regulator's final decision on the reference services is guided by the reference service factors and must be reflected in the access arrangement, unless there is a material change in circumstances that necessitates a change, having regard to the reference service factors
 - in the event the regulator refuses to approve the service provider's reference service proposal, the regulator may make or revise a reference service proposal and make a final decision on that proposal
- enable service providers to set a review submission date and revision commencement date, with the approval of the regulator (the draft rule amends rule 50 of the NGR)
- remove the pre-submission conference (the draft rule omits rule 57 of the NGR)
- require the regulator to make a final decision on the access arrangement proposal within eight months of receipt of the proposal, with an absolute overall time limit of 10 months between the date that the service provider submits a full access arrangement proposal and the date that the regulator makes a final decision (the draft rule amends rules 62(7) of the NGR).

In addition, the draft rule omits rules 13 and 57 and amends rules 3, 58(1), 59(5), 62(5) and 64(5).

5 ACCESS ARRANGEMENT PROCESS

Every pipeline subject to full regulation is required to have a full access arrangement which sets out reference tariff and non-tariff terms and conditions for each reference service provided by that pipeline.

A full access arrangement is revised for each access arrangement period through a public consultation process conducted by the regulator.

The starting point of this revision process is the service provider's access arrangement revision proposal.

As noted by the Commission in its review, stakeholders had significant concerns in relation to key elements of the full access arrangement process, including: the process for reviewing access arrangements; tariff setting (including aspects of the tariff variation mechanism); the allocation of risk in non-tariff terms and conditions; the process for equalising revenue during an interval of delay between access arrangement periods; and the regulatory discretion framework.

In the course of its review, the Commission identified opportunities to amend the NGR in order to provide clarity and certainty around these key aspects of the access arrangement process and also to reduce regulatory and administrative burden and facilitate better outcomes for pipeline users, and ultimately gas consumers.

The COAG Energy Council accepted all the recommendations made by the AEMC in relation to improvements to the access arrangement process.

This chapter provides an overview of the key issues with the current regulatory framework and the draft rules proposed to address them, covering the following topics:

- reference tariff setting: consistent financial models and tariff variation mechanism
- non-tariff terms and conditions
- the access arrangement process: revision period and interval of delay
- regulatory discretion.

5.1 Reference tariff setting: use of consistent financial models

5.1.1 Current framework

Reference services, reference tariffs, and non-tariff terms and conditions inform access negotiation and dispute resolution processes for services on a full regulation pipeline.

It is important that reference tariffs are set at a level that reflects efficient costs and that costs are correctly allocated across pipeline services. In order to set the reference tariffs the regulator must first determine the efficient costs of providing the reference service(s) using the building block approach and the cost allocation methodology set out in Part 9 of the NGR.⁷⁴

⁷⁴ See Chapter 6 for discussion on total revenue and cost allocation.

Total revenue is required to be allocated between reference and other services in the ratio in which costs are allocated between reference and other services.⁷⁵

Reference tariffs are then set as follows:

- Transmission pipelines: the NGR require that the tariffs are set in order to generate from the provision of each reference service the portion of total revenue referable to that reference service.⁷⁶
- Distribution pipelines: the NGR require that customers for reference services provided by means of a distribution pipeline must be divided into tariff classes. For each tariff class, the revenue expected to be recovered should lie between an upper bound representing the stand-alone cost of providing the reference service to customers who belong to that class, and a lower bound representing the avoidable cost of not providing the reference service to those customers.⁷⁷

The NGR do not currently specify the use of financial models.

5.1.2

Assessment

Service providers use different financial models to prepare and submit access arrangement proposals.⁷⁸ During the review, the Commission found that this inconsistency has resulted in significant resources being invested by regulators, users and prospective users and their representatives in understanding the operation of these models, and in making comparisons between different access arrangements and access arrangement periods.

The Commission noted that most east coast service providers submit access arrangement revision proposals using modified versions of the AER's financial models (post-tax revenue model (PTRM) and roll forward model (RFM))⁷⁹ published as required by the National Electricity Rules (NER).

Some concerns raised by stakeholders during the review included:⁸⁰

- the financial models used by service providers are varied and prone to errors from both the service providers and the regulator
- it can be difficult for regulators and stakeholders to compare the inputs and results between access arrangement revisions
- possible development of new financial models for different revisions of access arrangements may result in additional costs for service providers and generate process inefficiencies

⁷⁵ Rule 93 of the NGR.

⁷⁶ Rule 95 of the NGR.

⁷⁷ Rule 94 of the NGR.

⁷⁸ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 101.

⁷⁹ The PTRM calculates the annual revenue requirement for each year of a regulatory control period using the building block approach (clauses 6.4.1(a) and 6A.5.2(a) of the NER). The RFM is used to calculate the closing regulatory asset base (RAB) for the regulatory period, which becomes the opening RAB in the next regulatory control period (clauses 6.5.1(b) and 6A.6.1(b) of the NER).

⁸⁰ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 103.

- interested stakeholders may face difficulty in understanding and interpreting the inputs and results generated by the varied models
- regulators may find working with various financial models challenging, possibly reducing the efficiency of the access arrangement review process.

The Commission concluded that amending the NGR to mandate the use of regulator developed financial models by service providers (where a model exists) is likely to assist in assessing efficient costs, total revenue and reference tariffs by:

- reducing the opportunity for errors both by the service provider and the regulator
- making it easier for stakeholders to engage in the assessment of total revenue and its constituent components.

However, the NGR should provide a degree of flexibility on whether the regulators develop and publish financial models, the type of models and the contents of those models, including indexation of the capital base. Nevertheless, in the event models are developed and published, their use by service providers to prepare access arrangement proposals should be mandatory.⁸¹

The COAG Energy Council rule change request includes a proposal to amend the NGR as recommended by the Commission.⁸²

The draft rule made by the Commission is consistent with the COAG Energy Council's proposal. These amendments are expected to enable the development and use of consistent financial models. The use of these models should facilitate greater stakeholder engagement in the access arrangement assessment process. Using consistent financial models should also enable the regulator to make quicker, lower cost and more informed decisions in the long-term interest of consumers.

5.1.3

Draft rule

The draft rule allows, but does not require, the regulators to develop and publish financial models that are consistent with Part 9 of the NGR and the revenue and pricing principles in s. 24 of the NGL.

New draft rule 75A (preparation and amendment of financial models) states that the regulator may prepare and publish a revenue model and/or a capital base roll forward model (financial models). If one or both of the models are developed and published, service providers must use them to construct the capital base, and the total expected revenue from the building block approach as set out in Part 9 of the NGR.

The new draft rule 75A also states that these models should be developed (and in the future, modified or replaced) and published in line with:

- a consultation period of no less than 30 business days from publication of the proposed models

⁸¹ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 103-105.

⁸² COAG Energy Council, *rule change request*, p. 11.

- the publication of issues, consultation and discussion papers, and the holding of conferences and information sessions, as appropriate
- the publication of a final decision within 80 business days.

The draft rule also inserts new rule 75B (contents of the financial models) which requires the models to be consistent with the total revenue building block methodology, opening capital base and any other financial element of the access arrangement contained in Part 9 of the NGR.

5.2

Reference tariff setting: tariff variation mechanism

5.2.1

Current framework

Rule 97 of the NGR provides a mechanism for varying approved reference tariffs within an access arrangement period. This is referred to as a reference tariff variation mechanism.

Under rule 97, reference tariffs may vary in accordance with a fixed schedule (for example, annually), as a result of a cost pass through for a defined event (such as changes in taxation arrangements), or in accordance with a formula set out in the access arrangement, or a combination of these.

In regard to the formula to vary a reference tariff, rule 97(2) provides examples of:

- variable caps on revenue
- tariff basket control
- revenue yield control.

In addition, rule 97(5) states that “except as provided by a reference tariff variation mechanism, a reference tariff is not to vary during the course of an access arrangement period.”

Rule 92 of the NGR (revenue equalisation) also provides guidance to the operation of a reference tariff variation mechanism:

- (1) A full access arrangement must include a mechanism (a *reference tariff variation mechanism*) for variation of a reference tariff over the course of an *access arrangement period*.
- (2) The *reference tariff variation mechanism* must be designed to equalise (in terms of present values):
 - (a) forecast revenue from reference services over the access arrangement period; and
 - (b) the portion of total revenue allocated to reference services for the access arrangement period.

5.2.2

Assessment

In the final report, the Commission observed that the general approach of the NGR is for an access arrangement to provide clarity and detail on the operation of the tariff variation

mechanism for a particular pipeline. This applies to any specific method of tariff variation mechanism employed by a service provider.⁸³

As noted above under the NGR, the regulator is able to approve a revenue target control mechanism (namely, variable revenue cap and revenue yield control). In general, under a revenue control approach revenue is determined for each year of the access arrangement and the service provider is able to adjust reference tariffs (approved by the regulator) in order to achieve that revenue.

Tariffs are calculated based on forecast demand, while actual revenues can only be observed after the conclusion of an access arrangement year.

In practice, as forecast and actual demand are unlikely to reconcile over the period, the service provider can reasonably be expected to under or over recover revenue year to year and over the access arrangement period generally. Therefore, revenue yield controls and variable revenue caps should generally include a mechanism to account for the over or under recovery of revenue across years and access arrangement periods. The NGR does not specify such a requirement.

In contrast to the NGR, the NER provides guidance on the use of revenue caps in rules relating to the building blocks for distribution network service providers. The under or over recovery of revenue arising from the application of a control mechanism in the previous period is included as part of the building blocks.⁸⁴

(a) Building blocks generally

The annual revenue requirement for a Distribution Network Service Provider for each regulatory year of a regulatory control period must be determined using a building block approach, under which the building blocks are:

...

- (6) the other revenue increments or decrements (if any) for that year arising from the application of a control mechanism in the previous *regulatory control period* - see paragraph (b)(6).

...

(b) Details of the building blocks

For the purposes of paragraph (a):

...

- (6) the other revenue increments or decrements referred to in paragraph (a)(6) are those that are to be carried forward to the current *regulatory control period* as a result of the application of a control mechanism in the previous *regulatory control period* and are apportioned to the relevant year under the

⁸³ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 108.

⁸⁴ Clauses 6.4.3(a)(6) and 6.4.3(b)(6) of the NER.

distribution determination for the current regulatory control period.

During the review the AER observed that, while providing for a variable revenue cap and revenue yield controls in the tariff variation mechanism provisions, the NGR do not include any specific provisions to allow the regulator to account for over or under recovery of revenue across access arrangement periods. To address this issue, the AER suggested changes to rules 76 (building block approach) and 92 (revenue equalisation) of the NGR, amending them to specifically provide for the operation of a revenue cap, in a manner similar to that under the NER.⁸⁵

In the final report, the Commission noted that there are no access arrangements currently in place with a variable revenue cap or a revenue yield control tariff variation mechanism.⁸⁶ However, a revenue yield control mechanism has been used in the past under the code.⁸⁷ This suggested to the Commission that these tariff control mechanisms may be approved by a regulator and used for a pipeline provided the access arrangement clearly establishes the operation of the mechanism.

As a result, the Commission concluded that the operation of rule 92 of the NGR does not unambiguously prevent the successful use of a variable revenue cap or revenue yield tariff variation mechanism as the AER suggested. Nevertheless, the Commission concluded that greater guidance could be afforded to service providers, pipeline users and regulators if the NGR was amended to clarify that if a variable revenue cap or a revenue yield control mechanism is approved for an access arrangement, then the tariff variation mechanism should accommodate any over or under recovery of total revenue related to one access arrangement period to operate in the following access arrangement period.

The COAG Energy Council rule change request includes a proposal to amend the NGR as recommended by the Commission.⁸⁸ The draft rule is consistent with this proposal. It seeks to improve regulatory decision-making, so that it is clear that the regulator has the power to make decisions in regard to the reference tariff variation mechanism that best contribute to the national gas objective.

5.2.3

Draft rule

The Commission has made a draft rule that clarifies the operation of revenue caps for full regulation pipelines by permitting the over or under recovery adjustment to total revenue to operate in the subsequent access arrangement period. This has been achieved by amending rule 92(2)(a) of the NGR by changing the word “over” to “for”.

⁸⁵ AER email to the AEMC, 31 January 2018.

⁸⁶ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 107.

⁸⁷ *National third party access code for natural gas pipeline systems*, 1997.

⁸⁸ COAG Energy Council, *rule change request*, p. 11.

5.3

5.3.1

Non-tariff terms and conditions: risk sharing arrangements

Current framework

In approving the reference services and reference tariffs for a full access arrangement, the regulator must also assess the proposed non-tariff terms and conditions.

As provided by rule 100 of the NGR, all provisions in an access arrangement should be consistent with the NGR, NGL and any procedures in force when the terms and conditions of the access arrangement are determined or revised.

This requirement is illustrated in practice in recent regulatory decisions. For example, in assessing reference service terms and conditions, the AER considered:⁸⁹

- risk allocation: risks are allocated to the party best placed to control or mitigate that risk, as effective risk mitigation is likely to reduce the total cost of providing the reference service(s) to the consumers in the long-term
- legal consistency and clarity: terms and conditions must be clear and legally certain as they are used as the basis for commercial negotiations and in resolving any access dispute
- consistency with the relevant requirements in the NGL, NGR and the relevant procedures in force.

Further, in making a decision on the terms and conditions of the Goldfields Gas Pipeline access arrangement, the ERA stated:⁹⁰

The Authority considered it important that the terms and conditions for a reference service included in the access arrangement are presented so they can be readily accepted by a prospective user “as is” (without requiring any further changes), if a prospective user wishes to enter a contract for the reference service.

5.3.2

Assessment

In the final report, the Commission acknowledged stakeholder concerns that the regulators had not given adequate attention to the assessment of the non-tariff terms and conditions contained in access arrangements. As a result, some non-tariff terms and conditions did not appropriately allocate risk.

However under the NGR, the allowed rate of return applied to the capital base to determine total revenue and reference tariffs (including through the reference tariff variation mechanism) should be set to account for a degree of risk in providing the reference service.

The Commission concluded that while the NGR implicitly require consideration of the allocation of risk, the NGR could be clarified in order to explicitly require the regulator to have

⁸⁹ AER, *Draft decision*, Roma to Brisbane Gas Pipeline access arrangement 2018-22, Attachment 12, pp. 19-20 (note, this attachment forms part of the AER's final decision: AER, *Final decision*, Roma to Brisbane Gas Pipeline access arrangement 2018-22, Overview, November 2017, p. 2; see also AER, *Draft decision*, Australian Gas Networks Victoria and Albury Gas access arrangement 2018-22, July 2017, p. 48).

⁹⁰ ERA, *Final decision on proposed revisions to the access arrangement for the Goldfield Gas Pipeline*, 30 June 2016, p. 541.

regard to the risk sharing arrangements in the economic elements of the access arrangement when determining the non-tariff terms and conditions.

In addition, the allowed rate of return that is applied to the capital base to determine total revenue and reference tariffs is set to account for a degree of risk in providing the reference service. Rule 87(3) of the NGR states:⁹¹

The allowed rate of return objective is that the rate of return for a service provider is to be commensurate with the efficient financing costs of a benchmark efficient entity with a similar degree of risk as that which applies to the service provider in respect of the provision of reference services (the allowed rate of return objective).

However, there is no explicit corresponding link made to:

- rule 100: the allowed rate of return is not referenced in relation to the assessment of terms and conditions for appropriate risk allocation
- rule 97(3): which sets out the criteria for the regulator to assess a proposed tariff variation mechanism. These criteria do not include the allowed rate of return as a criterion in assessing the risk underlying a tariff variation mechanism.⁹²

On this basis, the Commission concluded that the NGR could be clarified in order to explicitly require the regulator to have regard to the risk sharing arrangements of the access arrangement when determining the non-tariff terms and conditions and the reference tariff variation mechanism.

The COAG Energy Council rule change request includes a proposal to amend the NGR as recommended by the Commission.⁹³ The draft amendments to rule 100 differ in wording to the COAG Energy Council's proposed rule to better achieve the stated policy objective. Specifically, draft rule 100 clarifies that in regard to achieving general consistency within an access arrangement, the regulator must have regard to the risk sharing arrangements implied in the reference tariffs when making a decision on the non-tariff elements of an access arrangement.

The Commission considers that these changes made in the draft rule are consistent with the NGO and support clarity of regulatory decision-making.

5.3.3

Draft rule

The intent of the draft rule made by the Commission is to highlight the importance of the link between the tariff and non-tariff elements of an access arrangement. Together, all of these elements must appropriately reflect the nature of the reference services in the access arrangement.

⁹¹ This provision is proposed to be deleted under the binding rate of return law and rule changes. Nevertheless, the AEMC's approach to this issue remains as described: the degree of risk implicit in the reference tariff should be reflected in the non-tariff terms and conditions as an access arrangement must be internally consistent.

⁹² For example, one of the formulas for tariff variation listed under rule 97(2) allows for revenue yield control. A revenue yield control effectively allows the service provider to change the reference tariff in response to the difference between actual and forecast demand.

⁹³ COAG Energy Council, *rule change request*, p. 11.

Therefore, the draft rule clarifies that the regulator is to have regard to the risk sharing arrangements implicit:

- in the reference tariff when determining the non-tariff terms and conditions (amendment to rule 100 - new rule 100(b))
- in the access arrangement when determining the reference tariff variation mechanism (amendment to rule 97(3)).

5.4

Access arrangement process: revision period

5.4.1

Current framework

The timeframe for submitting a revised access arrangement proposal in response to the regulator's draft decision is at least 15 business days, as set out in rule 59(3) of the NGR:

If an access arrangement draft decision indicates that revision of the access arrangement proposal is necessary to make the proposal acceptable to the AER, the decision must fix a period (at least 15 business days) for revision of the proposal (the revision period).

The NGR also provide a consultation period of at least 20 business days for stakeholders to make submissions on the service provider's revised proposal.⁹⁴

In relation to recent draft decisions the AER has set the revision periods as:

- 35 business days for the Roma to Brisbane Pipeline 2017-2022
- 27 business days for AusNet Services 2018-2022
- 30 business days for Multinet Gas 2018-2022
- 30 business days for Australian Gas Networks (Victoria and Albury) 2018-2022 and for the APA Victorian Declared Transmission System 2018-2022.

Similarly, the ERA set the revision periods on the Dampier to Bunbury Natural Gas Pipeline and the Goldfields Gas Pipeline as two months following its draft decisions for the current access arrangements on these pipelines.⁹⁵

5.4.2

Assessment

As observed by the Commission, revising an access arrangement proposal can be complex and time is required for service providers to digest and respond to a regulator's draft decision. Furthermore, 15 business days may not provide adequate time to allow service providers to engage with stakeholders on any required changes.⁹⁶

The current framework provides the regulator discretion to set the revision period and consultation period. As noted above, in recent times, both the AER and ERA have set revision periods of between 27 and approximately 40 business days and consultation periods of between 20 and 25 business days.

⁹⁴ Rule 59(5)(c)(iii) of the NGR.

⁹⁵ The revision period included the Christmas-New Year holiday period 2015-2016.

⁹⁶ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 115.

Even though the existing access arrangement process already provides an opportunity for stakeholder feedback on the revised proposal ahead of a final decision, the Commission considered that a longer revision period should encourage service providers to work collaboratively with the regulator and stakeholders to resolve the areas of contention and make necessary changes. An extended revision period should also improve the likelihood that the revised proposal would be acceptable to the regulator, and align with user preferences.

Further, while regulators have set longer revision periods in practice, a service provider cannot rely on a longer period in its planning for managing the access arrangement process if the decision on extending the revision period beyond 15 business days is only made at the time the draft decision is made.

A change to the NGR to make a longer revision period would enable service providers to rely on that specified period in making their response to the draft decision. This would make resourcing and planning work over access arrangement process more straightforward.

The Commission also noted that under the NER, network service providers have 45 business days to submit a revised regulatory proposal in response to the regulator's draft determination.⁹⁷

As a consequence of extending the revision period, the regulator would have less time to consider the revised proposal and issue its final decision without further changes being made. However, the introduction of a separate process to determine reference services is expected to provide capacity for the regulator to assess the remaining elements of the access arrangement proposal within the access arrangement assessment timeframe (as discussed in Chapter 4).

The COAG Energy Council rule change request includes a proposal to amend the NGR as recommended by the Commission.⁹⁸

The draft rule reflects the COAG Energy Council's proposal. It should facilitate greater stakeholder engagement in the access arrangement assessment process. Adjustments to the access arrangement assessment process will provide more time for stakeholder engagement, in order to enable the regulator to make more informed decisions in the long-term interest of consumers.

5.4.3

Draft rule

The Commission has made a draft rule that amends rule 59(3) to extend the revision period from at least 15 business days to at least 30 business days.

5.5

Access arrangement process: interval of delay

5.5.1

Current framework

The NGR provide that where there is a delay between the intended commencement of a revised access arrangement and its actual commencement, the tariffs in force in the previous

⁹⁷ Clauses 6.10.3(a) and 6A.12.3(a) of the NER.

⁹⁸ COAG Energy Council, *rule change request*, p. 11.

access arrangement will continue until the revised access arrangement commences. This delay between the two dates is referred to as the “interval of delay”.

Rule 92 of the NGR states:

- (3) However, if there is an interval (the interval of delay) between the revision commencement date stated in a full access arrangement and the date on which revisions to the access arrangement actually commence:
 - (a) reference tariffs, as in force at the end of the previous access arrangement period, continue without variation for the interval of delay; but
 - (b) the operation of this subrule may be taken into account in fixing reference tariffs for the new access arrangement period.

In addition, rule 3 of the NGR include six different meanings of the term *access arrangement period*, each of which could apply at varying times of the access arrangement process.

access arrangement period for an applicable access arrangement means any of the following periods that may be applicable to the access arrangement:

- (a) the period between the commencement of the access arrangement and the commencement of the first revision of the access arrangement;
- (b) if the first revision of the access arrangement has not yet taken effect - the period between the commencement of the access arrangement and the revision commencement date for the access arrangement;
- (c) if revision of the access arrangement prior to its expiry is not contemplated - the period between the commencement of the access arrangement and the *expiry date* for the access arrangement period;
- (d) the period between the actual commencement of successive revisions of the access arrangement;
- (e) the period between the commencement of the last revision of the access arrangement and the revision commencement date for the access arrangement;
- (f) if the access arrangement has been revised but further revision prior to its expiry is not contemplated - the period between the commencement of the last revision of the access arrangement and the *expiry date* for the access arrangement.

5.5.2

Assessment

As noted in the final report, the effect of rule 92(3)(a) of the NGR is that during an interval of delay, the applicable reference tariffs are not derived using the approved tariff variation mechanism set out in rule 92(2). As a consequence, reference tariffs may not reflect an assessment of efficient forecast costs of providing the reference services after the revision commencement date for the duration of the interval of delay.⁹⁹

⁹⁹ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 117.

As discussed in section 5.5.1 above, the NGR include six different definitions of access arrangement period. Consequently, the Commission considered that there was some ambiguity in the NGR in relation to the definition of access arrangement, and the process for equalising revenue during an interval of delay. The Commission also noted that this issue was the subject of a judicial review by the Supreme Court of Western Australia and had previously been considered by the Australia Competition Tribunal.¹⁰⁰

Box 1 below provides an overview of previous interpretations of rule 92(3) of the NGR.¹⁰¹

BOX 1: PRECEDENTS ON THE INTERPRETATION OF RULE 92(3)

The Commission has previously considered the role of rule 92(3) of the NGR in its final rule determination of the *Economic regulation of network service providers and price and revenue regulation of gas services* in 2012.^(a) Specifically in relation to the operation of rule 92(3) of the NGR to true-up revenue during any interval of delay, the Commission stated:^(b)

...the reference tariffs prevailing at the end of the previous access arrangement period continued for the duration of the delay and a NPV [net present value] neutral true-up was carried out on a smoothed basis when the new reference tariffs were approved.

...the Commission is satisfied that rule 92(3) can be relied upon to deal with the effect of any delay between:

- the revision commencement date specified in the ... access arrangements; and
- the date the revisions actually take effect for these two pipelines.

Following the 2012 rule change process, the ERA assessed proposed revisions to the Goldfield Gas Pipeline (GGP) 2015-2019 access arrangement. Specifically, the ERA relied on rule 92(3) of the NGR to determine the reference tariffs for this period by taking account the tariffs that applied during the 18 month period between the intended and actual commencement dates of the access arrangement (that is, the interval of delay). The ERA considered that rule 92(3) of the NGR allowed it to set tariffs for the 2015-2019 access arrangement by taking into account that the forecast revenue during the interval of delay was higher than the total revenue that would have been received using the building block approach in rule 79.^(c)

However, the GGP service provider applied for judicial review of this decision on the basis that the NGR do not permit an inter-period true-up or correction for a perceived windfall in a prior access arrangement period. In its assessment of the case, the Supreme Court of Western Australia found the ERA "did not make an error of law in construing NGR r 92(3) and the application should be dismissed."^(d)

¹⁰⁰ Application by ATCO Gas Australia Pty Ltd [2016] ACompT10.

¹⁰¹ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 119-121.

It is worth noting that the Australian Competition Tribunal had previously considered the ERA's application of rule 92(3) of the NGR to true-up the reference tariffs of ATCO Gas following an interval of delay. In that instance, the Australian Competition Tribunal found that the ERA had not erred in its interpretation of rule 92(3) of the NGR.^(e)

Note: (a) AEMC, *Economic regulation of network service providers and price and revenue regulation of gas services*, final determination, 29 November 2012.

(b) AEMC, *Economic regulation of network service providers and price and revenue regulation of gas services*, final determination, 29 November 2012, p. 276.

(c) ERA, *Goldfields Gas Pipeline access arrangement final decision*, 30 June 2016, p. 449.

(d) *Goldfields Gas Transmission Pty Ltd v ERA* [2018] WASC 104, para. 6.

(e) *Application by ATCO Gas Australia Pty Ltd* [2016] ACompT10.

Relevantly, in the decision regarding ATCO Gas Australia the Supreme Court of Western Australia said that "Rule 92(3) is relevantly ambiguous or obscure."¹⁰²

Based on previous interpretations of rule 92(3) of the NGR and the most recent decision from the Supreme Court of Western Australia regarding Goldfields Gas Pipeline, the Commission concluded that the operation of the NGR in respect of the interval of delay warranted clarification for future access arrangements.¹⁰³

In order to address the issues identified by the Commission, the COAG Energy Council proposed to amend the NGR as recommended by the Commission.¹⁰⁴ The Commission's draft rule is consistent with the COAG Energy Council's proposal. The Commission considers that this amendment to the NGR is consistent with the NGO and is expected to improve regulatory decision-making.

5.5.3

Draft rule

The Commission has made a draft rule to clarify that:

- the process for equalising revenue during an interval of delay is to result in a service provider being no better or worse off as a result of the interval of delay (amendment to rule 92(3))
- the definition of the access arrangement period includes the period known as the interval of delay (amendment to rule 3).

5.6

Regulatory discretion

5.6.1

Current framework

Regardless of the level of discretion allowed under the NGR, the regulator's ability to make decisions or exercise its functions remains constrained by the application of administrative law.¹⁰⁵ As the regulators (the ERA and AER) are government bodies, they are subject to the

¹⁰² *Goldfields Gas Transmission Pty Ltd v ERA* [2018] WASC 104, para. 48.

¹⁰³ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 121.

¹⁰⁴ COAG Energy Council, *rule change request*, pp. 11-12.

¹⁰⁵ Administrative law is a set of principles contained in both court decisions and legislation. It sets out how administrative decision makers must make decisions and provides affected parties with a way to challenge those decisions.

requirements of administrative law and this imposes a form of constraint on the regulators' exercise of discretion when making decisions.¹⁰⁶

In addition, the NGL requires the regulator, in performing or exercising an economic regulatory function or power, to perform or exercise that function or power in a manner that will or is likely to contribute to the achievement of the NGO.¹⁰⁷ Specifically,

- (1) The AER must, in performing or exercising an AER economic regulatory function or power -
 - (a) perform or exercise that function or power in a manner that will or is likely to contribute to the achievement of the national gas objective;
 - (b) if the AER is making a designated reviewable regulatory decision -
...
 - (iii) if there are 2 or more possible designated reviewable regulatory decisions that will or are likely to contribute to the achievement of the national gas objective -
 - (A) make the decision that the AER is satisfied will or is likely to contribute to the achievement of the national gas objective to the greatest degree (the preferable designated reviewable regulatory decision); and
 - (B) specify reasons as to the basis on which the AER is satisfied that the decision is the preferable designated reviewable regulatory decision.

Further, under the NGR, there are more detailed factors, criteria and principles that place a constraint on how the regulator can make decisions regarding specific elements of an access arrangement proposal.

Rule 40 of the NGR sets out three levels of discretion that apply to the regulator when making a decision on specified elements of the access arrangement proposal:

- No discretion: The regulator's discretion is entirely excluded in regard to that element of the access arrangement if the proposal meets the requirements of the relevant provision. This applies to the access arrangement review date and access arrangement revision date (rule 50(2)).
- Limited discretion: The regulator may not withhold its approval of an element of the access arrangement if the regulator is satisfied that the element complies with the requirements of the NGL and NGR and is consistent with any applicable criteria in the NGL and NGR. The regulator's discretion is limited in relation to:

¹⁰⁶ Criteria for making a valid decision include: where does the power to make the decision come from (head of power); appropriate exercise of discretion; authorisation to make the decision; procedural fairness; preconditions to a decision; consideration of all relevant matters and evidence; correctly recorded decisions (Law Institute of Victoria, *A user's guide to administrative decision making*, 2013).

¹⁰⁷ Section 28(1) of the NGL.

- conforming capital expenditure (rule 79)
- the depreciation schedule (rule 89)
- operating expenditure (rule 91)
- for distribution pipelines, the setting of tariff classes to allow service providers to recover the expected revenue (rule 94)
- for transmission pipelines, the reference tariffs set to recover the portion of total revenue referable to the reference service (rule 95).
- Full discretion: The regulator may withhold its approval to the access arrangement element if in its opinion, a preferable alternative exists that complies with the requirements of the NGL and NGR and is consistent with any applicable criteria in the NGL and NGR. This applies to the remaining elements of an access arrangement not noted above.

5.6.2

Assessment

In its review, the Commission concluded that there may be some ambiguity surrounding the link between the regulatory discretion framework in the NGR and the manner in which the regulator must perform or exercise its regulatory functions or powers under the NGL.¹⁰⁸ In addition, the Commission expressed concern that the regulatory discretion framework may prevent the making of decisions on access arrangement proposals that best promote the NGO.

As noted above and discussed in the final report, s. 28 of the NGL provides that in making an access arrangement decision where there are two or more decisions that will or are likely to contribute to the NGO, the regulator must make the decision that it is "satisfied will or is likely to contribute to the achievement of the NGO to the greatest degree."¹⁰⁹

However, it is difficult for the regulator to make a more preferable designated reviewable regulatory decision on the overall access arrangement under s. 28(1)(b)(iii) of the NGL where it is prevented under the NGR, in respect of an element of the access arrangement, from making a decision that better meets the NGO.

The Commission noted in its final report that while there may not be a direct conflict between rules 40(1) and (2) of the NGR and s. 28(1)(b)(iii) of the NGL, the limited discretion framework created by rule 40 does not sit well with the operation of s. 28(1)(b)(iii) of the NGL. In other words, a tension arises because it is difficult for the regulator to give full effect to s. 28 (that is to make a preferable designated reviewable regulatory decision on the overall access arrangement) if it is hampered in its discretion to make decisions on the individual elements of the access arrangement.

Under the NGR, for full discretion provisions, rule 40(3) provides that the regulator has discretion to withhold its approval to an element of an access arrangement proposal, if in the regulator's opinion, a preferable alternative exists that:

¹⁰⁸ Section 28(1)(b)(iii)(A) of the NGL.

¹⁰⁹ Section 28(1)(b)(iii)(A) of the NGL.

- complies with the applicable requirements of the NGL and NGR
- is consistent with any applicable criteria (if any) prescribed in the NGL and NGR.

As a result, the tension that arises between the NGL and the NGR's limited and no discretion provisions does not arise in relation to full discretion provisions, as an alternative decision can clearly be contemplated by the regulator.

In practice, however, the regulator's discretion is always limited in the sense that its decision-making, even for full discretion provisions, is guided by some set of factors or principles that ultimately place a form of constraint on its decision-making power. For example, even for full discretion provisions, there are specific criteria set out in the relevant rules, as well as the overarching requirement to have regard to the NGO, that operate to 'limit' the regulator's discretion. As many aspects of approving an access arrangement proposal are full discretion provisions, this approach of specific criteria applying to specific requirements is relevant for many elements of an access arrangement.

In its final report, the Commission concluded that:¹¹⁰

- As a matter of principle, the regulator should not be prevented from making a decision on an access arrangement proposal that best promotes the NGO, having regard to all the relevant factors, criteria and principles in the NGL and NGR.
- The effect of the current regulatory discretion framework is unclear and confusing and could impede regulatory decisions to best promote the NGO.

On this basis, the Commission considered that no individual rules in the NGR should be identified as "no" or "limited" discretion provisions. All decisions made by the regulators in regard to the elements of an access arrangement proposal, and the access arrangement proposal in total, should be "full" discretion decisions subject to the relevant requirements.¹¹¹ This provides a consistent decision-making framework approach where the regulator is to assess any element of an access arrangement with reference to particular criteria relevant to the element.

The Commission considers that this is consistent with a propose-respond model of decision-making that is part of the regulatory framework for gas pipelines. It provides that the regulator will only refuse to approve a proposal if it does not satisfy the NGO and the relevant rules.

The COAG Energy Council rule change request includes a proposal to amend the NGR as recommended by the Commission.¹¹² The draft rule is consistent with the proposed rule. The Commission considers that this amendment improves and clarifies the regulatory decision-making framework and permits the regulators to make decisions in regard to all elements of an access arrangement that best achieve the NGO.

¹¹⁰ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 127.

¹¹¹ As discussed in Chapter 4, the Commission has made a recommendation to amend rule 50 of the NGR (review of access arrangements) to allow service providers to fix a revision commencement date (and corresponding review submission date) to suit the business, with the approval of the regulator.

¹¹² COAG Energy Council, *rule change request*, p. 12.

5.6.3

Draft rule

The Commission has made a draft rule that removes the limited discretion and no discretion framework from the NGR. This has been achieved by the omission of rule 40 of the NGR. In addition, each instance of referring to limited or no discretion has been omitted in rules 50, 79(6), 89(3), 91(2), 94(6) and 95(4) of the NGR.

6 DETERMINING EFFICIENT COSTS

The accurate determination of efficient costs is fundamental to the setting of efficient reference tariffs. Efficient, cost reflective reference tariffs are required to enable the efficient use and provision of reference services as well as efficient investment in the pipeline.

The revenue and pricing principles in the NGL state that a service provider should be provided with a reasonable opportunity to recover at least the efficient costs of providing the reference services.¹¹³ The revenue and pricing principles also state that the service provider should be provided with incentives to promote economic efficiency with respect to reference services, which includes efficient investment, efficient provision of pipeline services and efficient use of the pipeline.

Reference tariffs are set based on the efficient costs of a prudent service provider acting in accordance with good industry practice and forecast demand to deliver efficient total revenue that is calculated using the building block approach.¹¹⁴ The simplified steps in calculating a reference tariff are set out in the figure below along with the relevant rules.¹¹⁵

Figure 6.1: Simplified calculation of a reference tariff

Step 1: calculate total revenue

Total revenue = (rate of return x *projected capital base*) + depreciation on *projected capital base* + estimated income tax + increments/decrements from incentive mechanism + forecast operating expenditure
(see rules 76, 87, 87A, 88-90, 91, 98)

given that:

Projected capital base = *opening capital base* + conforming forecast capital expenditure – forecast depreciation for the period – forecast disposals
(see rules 78, 79, 88-90)

and

Opening capital base = *opening capital base* of previous access arrangement period + approved capital expenditure + adjustments for capital contributions, speculative capital expenditure and former redundant assets – depreciation over the previous access arrangement period – redundant assets – disposals
(see rules 77, 79, 82, 84, 86)

Step 2: allocation

Allocate *total revenue* between reference services and non-reference services (see rule 93).

Step 3: reference tariffs

Calculate reference tariffs by dividing relevant *total revenue* by forecast demand for the relevant reference service.

Source: AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 129.

¹¹³ Section 24 of the NGL.

¹¹⁴ Rules 76, 79(1)(a), 83(4), 91(1) of the NGL.

¹¹⁵ This example is simplified as it assumes a single reference tariff for a single year (the first year of an access arrangement period) for a pipeline that has a previous access arrangement period. In reality, regulators may approve reference tariffs for multiple services over multiple years and in cases where there may or may not be an access arrangement already in place.

A reference tariff is calculated by dividing the total revenue allocated to the reference service by the forecast demand for the reference service. Total revenue is calculated as the sum of the allowed return on the projected capital base, depreciation, estimated corporate income tax and operating expenditure, plus or minus any adjustments for the incentive mechanism as approved by the regulator.¹¹⁶

This chapter discusses the following elements in the determination of efficient costs in relation to the rule change request and the draft rule made by the commission. These are, in turn:

- speculative investment
- prudence criterion for capital expenditure
- including extensions and expansions in the capital base
- cost allocation
- rebateable services.

6.1

Capital expenditure: speculative investment

6.1.1

Current framework

The NGR allows for the creation of a speculative capital expenditure account.¹¹⁷ In assessing capital expenditure against the criteria in rule 79 of the NGR, the regulator may conclude that a certain amount does not satisfy the criteria and is speculative in nature. Under these circumstances, the non-conforming capital expenditure can be allocated to a notional speculative capital expenditure account. The access arrangement would reflect this decision.

During the period the capital expenditure is in the speculative capital expenditure account, it attracts a rate of return. Under current rule 84, this rate of return is determined by the regulator and may differ to the rate of return used in the calculation of reference tariffs for the pipeline. However, rule 84(2) of the NGR does not provide any further guidance to the calculation of this rate of return.

If as a result of changes to demand or services experienced by the pipeline the capital expenditure would meet the rule 79 criteria, the relevant portion of the speculative capital expenditure account (including the return) can be rolled into the capital base at the commencement of the next access arrangement period. This would then allow that capital cost to be recovered through reference tariffs in the future.¹¹⁸

This rule has not been utilised since the NGR commenced.

6.1.2

Assessment

Rule 84(2) of the NGR states that the rate of return may, but need not be, the rate of return used to determine the reference tariff. It does not provide guidance that the return, for

¹¹⁶ Rule 76 of the NGR.

¹¹⁷ Rule 84 of the NGR.

¹¹⁸ With the rate of return applicable to the capital base generally now being relevant to this former speculative capital amount.

example, should be commensurate with the risk of the expenditure to attract financing for the investment.

In its review, the Commission found that in relation to speculative capital expenditure, the framework should balance encouraging efficient speculative capital expenditure and deterring the service provider from taking risk that creates inefficient costs for users.

The key issue for the speculative capital expenditure account rule as it is currently worded is the lack of clarity on the rate of return that would apply. Rule 84(2) allows the return to be above or below the rate of return used to determine the reference tariff.

However, the appropriate rate of return should be specific to the particular investment project and its level of risk. Accordingly, it would not be appropriate for the NGR to be too prescriptive on the rate of return that should be applied in all speculative capital expenditure scenarios. Some discretion on the part of the regulator in deciding the rate of return is needed.

In its final report, the Commission observed that given the speculative nature of the investment project, the allowed rate of return (the rate of return applied to the capital base) would be unlikely to provide a return sufficient for the service provider to undertake the investment because of the additional risk for the service provider that the capital may not be rolled into the capital base. This is relevant to the regulator's determination of the rate of return for a specific speculative capital expenditure.

Accordingly, the Commission concluded that the NGR should be amended to provide greater certainty on the rate of return that can be set by a regulator for speculative capital expenditure while still allowing the regulator the flexibility to reflect, where appropriate, the specific circumstances of speculative investment.¹¹⁹

As such, the COAG Energy Council proposed that rule 84 be clarified such that the rate of return under rule 84(2) is at a minimum the return used to calculate the reference tariff but that this could be adjusted upwards if the regulator deemed it was appropriate having regard to the speculative nature of the particular investment.

On 2 August 2018 a Bill (the Bill) containing legislative amendments on binding rates of return was introduced into the South Australian Parliament.¹²⁰ The legislative amendments remove heads of power for the Commission to make rules regarding the determination of a rate of return. The amendments implement a binding instrument that sets out a single approach to the calculation of rate of return parameters for all regulated electricity service providers and all full regulation pipelines; and which is developed through a single, industry-wide process every four years.¹²¹

119 AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 138-139. The Commission also concluded that additional guidance on the interaction of the rate of return instrument and the rate of return for speculative capital expenditure could be provided by the regulators in the future if they considered it appropriate.

120 Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Bill 2018.

121 COAG Energy Council Senior Committee of Officials, *Bulletin — Binding rate of return guideline: Senior Committee of Officials response to submissions on binding rate of return legislation*, June 2018, p. 1.

On 28 September 2018 the COAG Energy Council published proposed rule changes to support the introduction of the binding rate of return legislation. Following passage of the Bill, the Commission has formed the view that it will be unable to make the proposed amendments to rule 84. It is anticipated that the rule amendments arising from the rate of return instrument NGL changes will amend rule 84 to be clear that the rate of return instrument will apply.¹²²

6.2 Capital expenditure: prudence criterion

6.2.1 Current framework

Capital expenditure is assessed ex ante and ex post by the regulator:

- ex-ante: At the beginning of an access arrangement period, the regulator determines whether projected capital expenditure for that period is “conforming”.
- ex-post: Prior to the start of the next access arrangement period, the regulator determines whether actual capital expenditure for the current period is “approved”. Approved capital expenditure is rolled into the opening capital base and is included in the calculation of total revenue and reference tariffs for the next and subsequent access arrangement periods.

To be assessed as conforming or approved by the regulator, capital expenditure must satisfy the criteria that are set out in rule 79 of the NGR. This test has multiple limbs.

First, the capital expenditure in question must be that which would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of providing pipeline services.¹²³

Second, projected and actual capital expenditure must be “justifiable” under one of the following criteria to be assessed as either “conforming” or “approved”:¹²⁴

- the overall economic value of the expenditure is positive; or
- the present value of the expected incremental revenue to be generated as a result of the expenditure exceeds the present value of the capital; or
- the capital expenditure is necessary to:
 - maintain and improve the safety of services
 - maintain the integrity of services
 - comply with a regulatory obligation or requirement, or
 - maintain the service provider’s capacity to meet levels of demand for services existing at the time the capital expenditure is incurred.

This rule is currently applied by the regulator with limited discretion.¹²⁵

¹²² Rule 86 of the NGR may similarly require an amendment.

¹²³ Rule 79(1)(a) of the NGR.

¹²⁴ Rules 79(1)(b) and 79(2) of the NGR.

¹²⁵ Rule 79(6) of the NGR. See Chapter 5 for amendments to the regulatory discretion arrangements.

6.2.2

Assessment

During the Commission's review, the regulators commented that the new capital expenditure criteria constrained their ability to address the efficiency of capital expenditure if it meets the safety criterion in rule 79(2)(c)(i) of the NGR.¹²⁶

For capital expenditure to be conforming, it must be expenditure that:

- would be incurred by a prudent service provider acting efficiently (under rule 79(1)(a) of the NGR)
- must also be justifiable (under rule 79(1)(b) of the NGR) in that it meets at least one of the criteria in rule 79(2) (that is, overall economic value is positive; net present value is positive; safety, integrity, regulatory requirement; or to meet demand).

Although neither "and" nor "or" is used between subrules (1)(a) and (1)(b), the Commission considered the proper interpretation of rule 79(1) would be read to include both requirements given the lead in words in (1) "conforms with the following criteria." This interpretation was supported by stakeholders in response to the Commission's draft report.¹²⁷

Nonetheless, in its final report the Commission recommended removing any doubt on this issue. Accordingly, the COAG Energy Council's rule change request seeks to be clear that all new capital expenditure must be such that would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of providing services.

The Commission has made a draft rule consistent with that proposed by the COAG Energy Council. This amendment is expected to support the regulator in making decisions on service provider's investments in the safety of the pipeline that also promote the NGO.

6.2.3

Draft rule

The Commission has made a draft rule that amends rule 79 of the NGR to insert the word "and" in rule 79 between subrules 79(1)(a) and 79(1)(b) to make it clear that regardless of which subrule (2) criteria are relevant for the purposes of subrule 79(1)(b), the expenditure in question must also meet the prudence criterion under rule 79(1)(a).

The Commission has also determined to remove the limited regulatory discretion framework created by rule 40 of the NGR. Consequently, the draft rule also amends rule 79(6) of the NGR. This is discussed further in Chapter 5.

6.3

Capital base: including extensions in the capital base

6.3.1

Current framework

Full regulation pipelines

¹²⁶ For example, see the ERA process for the Mid West to South West Distribution Systems 2014-2019 access arrangement and in particular the submissions from Energy Safety WA. See <https://www.erawa.com.au/gas/gas-access/mid-west-and-south-west-gas-distribution-systems/access-arrangements/access-arrangement-for-period-2014-2019>.

¹²⁷ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 134, 140.

The initial opening capital base for a newly covered full regulation pipeline is determined under rule 77(1) of the NGR and is dependent on the date of commissioning of the pipeline:

- For a covered pipeline commissioned before the commencement of the NGR in 2008: the initial opening capital base is determined with reference to section 8.10 of the code, which states that the regulator should take into account, among a number of other factors “the basis on which tariffs have been (or appear to have been) set in the past, the economic depreciation of the Covered Pipeline and the historical returns to the Service Provider from the Covered Pipeline.”¹²⁸
- For a covered pipeline commissioned after the commencement of the NGR: the opening capital base is determined as the cost of construction of the pipeline and pipeline assets incurred before commissioning of the pipeline (including easement and real property costs), plus the amount of capital expenditure since the commissioning of the pipeline, less depreciation and disposed assets.

For a full regulation pipeline, the initial capital base calculation occurs only once. The NGR does not accommodate any revaluation of the capital base. Instead, under rule 77 there is an ongoing regulatory process where the initial opening capital base is rolled forward and an opening capital base is calculated at the beginning of each access arrangement period. The approach is set out in rule 77(2) as:

- the opening capital base as at the commencement of the earlier access arrangement period
- plus approved capital expenditure made during the earlier access arrangement period plus any amounts to be added to the capital base due to speculative expenditure account, capital contributions and surcharges
- less depreciation over the earlier access arrangement period and redundant and disposed assets.

Rule 77(3) deals with the situation where there is not a continuous series of full access arrangements in place for a pipeline. It sets the opening capital base for an access arrangement period to be:

- the opening capital base determined in accordance with the NGR for a notional access arrangement taking effect at the end of the access arrangement period for the last full access arrangement (“the relevant date”)
- plus the amount of capital expenditure from the relevant date
- less depreciation from the relevant date
- less disposals since the relevant date.

6.3.2

Assessment

As a result of the COAG Energy Council’s proposal and the Commission’s draft rule determination to allow for the inclusion of existing extensions into access arrangements (see Chapter 3), it is possible that some existing assets associated with extensions will be rolled

¹²⁸ National third party access code for natural gas pipeline systems, 1997.

into capital bases for full regulation pipelines as part of future access arrangement review processes. Chapter 3 of this draft rule determination sets out the assessment of this issue and outlines the draft rule amendments to rule 104 of the NGR that will permit service providers to act on this option.

However, the changes to rule 104 do not provide for the calculation of a value for such assets which is required to enable the assets to be included in the capital base.

In considering this issue in the review, the Commission concluded that the appropriate approach for these valuations is to apply the methods contained in rules 77(1) and 77(3) of the NGR. As outlined above, rules 77(1) and 77(3) apply when either a pipeline first becomes covered or after a period intervenes between access arrangement periods respectively. However, the Commission considered that the valuation methods could equally apply to extension assets that are to be included in a capital base for the first time.¹²⁹

In the review, the Commission concluded that the application of the provisions of rule 77(1) would treat the pipeline assets (for example, the pipeline extension) as if they were a separate pipeline for the calculation of the initial capital base. The outcome would be an initial capital base determination for the specific pipeline assets. This value would then be “rolled forward” and then added to the opening capital base for the next access arrangement period for the relevant pipeline under an amended rule 77(3).

This approach was proposed by the COAG Energy Council in its rule change request.

The Commission has made a draft rule to implement the policy outcome sought in the proposal although it differs in drafting to that described in the review’s final report. The Commission is satisfied that the draft rule amendments will enable existing extensions to be included in a relevant access arrangement and valued through an existing, well understood methodology. The change enables one regulatory approach to apply to assets that may be regarded as a single unit, under a fit for purpose approach at the discretion of the service provider.

6.3.3

Draft rule

The Commission has made a draft rule that amends rules 77(2) and (3). These amendments to the calculation of the opening capital base for an access arrangement period insert an additional step: to add to the opening capital base the value of an existing extension that satisfies the amended requirements of rule 104. The method to value such an extension mirrors the method used to value the capital base generally: the cost of construction plus additional capital expenditure since that time, less depreciation and disposals.

¹²⁹ The same rules can be used for valuing existing expansions when the relevant NGL provisions are amended in the future. COAG Energy Council, *rule change request*, p. 6.

6.4

Cost allocation

6.4.1

Current framework

Rules 93(1) and (2) of the NGR include provisions that require the allocation of total revenue across reference services and other services to reflect the allocation of costs directly attributable to reference services and other costs across reference services and other pipeline services that are not reference services:

- cost directly attributable to providing reference services are allocated to those reference services, and the costs directly attributable to providing non-reference services are allocated to those non-reference services
- other costs are allocated between reference services and non-reference services on a basis that is determined or approved by the regulator, in line with the revenue and pricing principles.

6.4.2

Assessment

As observed in the final report, in order to calculate efficient costs, all costs should be allocated between covered and uncovered parts of a pipeline. If this does not occur, then a reference tariff will potentially not reflect the efficient costs of providing the reference service and could include costs associated with providing services utilising uncovered parts of the pipeline. As a result, users may pay more than the efficient cost of providing the service that they use.

The Commission observed that while rule 93 of the NGR provides for the allocation of “total revenue” across reference services and other services, it does not specify that there is an allocation of costs between covered and uncovered parts of a pipeline. This is because “total revenue” calculated by the building block approach under rule 76 of the NGR applies only to the covered assets.

As a result of the Commission’s draft rule on extensions and expansions requirements, there will remain instances where uncovered extensions and expansions of covered pipelines exist.¹³⁰ These situations will require cost allocation to be applied across covered and uncovered assets. This raises practical difficulties for service providers and regulators in determining and assessing costs for an access arrangement.

In the final report, the Commission noted that under the current cost allocation arrangements in the NGR there is potential that the reference tariff will not reflect the efficient costs of providing the reference service. This could occur if a service provider allocates all joint pipeline costs to the covered capacity, rather than the apportioning the costs across covered and uncovered assets appropriately. If this is the case, the reference tariff will be higher than would otherwise be if some joint costs had been allocated to the uncovered expansion capacity. For these reasons, the Commission recommended that the access arrangement proposal must provide the basis and methodology used to calculate the proposed forecast

¹³⁰ This is because this rule change request did not seek existing expansions to be included in the relevant access arrangements. While this change was recommended by the AEMC, it does require amendments to the NGL. (AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 61-68.) As noted in section 6.3.1, the COAG Energy Council has indicated it will consider further legislative changes in the context of the COAG RIS to be prepared in 2019.

operating and capital expenditure and the allocation of that expenditure between the covered and uncovered parts of a covered pipeline.¹³¹

In the rule change request, the COAG Energy Council has proposed that both rules 79 and 91 be amended to clarify that proposed forecast capital and operating expenditures refer to costs after an allocation of costs between the covered and uncovered parts of a pipeline has occurred. To support this change, it is proposed that the NGR should also be amended so that the service provider details the basis for the total costs and the cost allocation method that it has used.

The Commission has made a draft rule that amends rules 79 and 91 that is consistent with the proposed rule. It considers that these amendments should contribute to the NGO by:

- assisting the regulator to assess the reasonableness of the cost allocation and make an informed decision on the proposal, thereby making decisions that best promote the NGO
- ensuring the reference tariff reflects only the efficient cost of providing the reference service.

6.4.3

Draft rule

The Commission has made a draft rule that amends rules 79(1), 79(6) and 91(2) of the NGR in order to:

- require an access arrangement revision proposal to include proposed forecast capital and operating expenditures that refer to costs after an allocation of expenditure between the covered and uncovered parts of a covered pipeline
- require a service provider to provide to the regulator details of the basis and methodology used to calculate the proposed forecast capital expenditure and operating expenditure and the allocation of the expenditure.

The draft rule also amends rules 79 and 91 to remove the limited regulatory discretion that had applied to these rules, consistent with the omission of rule 40 of the NGR as discussed in Chapter 5 of this draft rule determination.

6.5

Rebateable services

6.5.1

Current framework

Rule 93(3) permits the regulator to allocate costs of rebateable services to reference services as long as the regulator is satisfied that the service provider will later apply an appropriate portion of the revenue generated from the sale of rebateable services to provide price rebates (or refunds) to the users of reference services. Rule 93(4) defines rebateable services as non-reference services for which:

- the markets are substantially different from markets for reference services
- demand, or the revenue to be generated from the service, is substantially uncertain.

¹³¹ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July, pp. 158-159.

6.5.2

Assessment

Two issues in regard to rebateable services were explored in the review:

- the requirement related to the market; and
- the ability to refund rebateable services revenue.

During the review, the regulators expressed concern about the requirement for a rebateable service to be in a different market to the market for reference services. In particular, because it is complex to define a market and ascertain that it is different from another market (in this case, the market for the reference services).

Accordingly, the Commission recommended that the separate market requirement for rebateable services be removed from rule 93(4) of the NGR. The recommended removal of the requirement to define a market for a service in this rule was consistent with the recommended removal of the market definition concept from the reference service test in the NGR.¹³²

On the second issue, it was noted that rule 93(3) allows for the costs associated with rebateable services to be allocated to reference services. The rule provides for an ex-post re-allocation of these costs through a refund to users of reference services. However, the rule does not provide any guidance on how this could be practically implemented, particularly as it specifies price rebates or refunds be provided to the “users of reference services” rather than simply that the rebate is to be applied to reference tariffs, for example. As noted in the final report, this is a problem because in practice there may be few, if any, users of the reference service, as the reference service operates as a benchmark under the framework and users may have negotiated to receive a slightly different service. Moreover, the term “users of the reference service” is not defined.¹³³

This aspect of rule 93 of the NGR is also an issue as the intent of the current rebateable service provisions is to restrict the ability of service providers to monopoly price so that new services using covered assets are not cross subsidised by the reference tariffs. However, the ambiguity and insufficient guidance in the rule impacts on achieving this policy intent.

The Commission observed that the rebate is similar in some ways to other adjustments to reference tariffs that take place through the operation of the tariff variation mechanism under rule 97 of the NGR. As the tariff variation mechanism is a process that is understood and applied by service providers and regulators, the Commission recommended that rebates from rebateable services occur through this existing mechanism. It considered that this approach would be achievable in practice and consistent with the overall objective of allocating costs appropriately between services. The application of a rebate to a reference service would decrease the reference tariff. Accordingly, the reference tariff would more appropriately reflect the efficient cost of providing the reference service.¹³⁴

¹³² See Chapter 4 of this draft rule determination.

¹³³ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 161.

¹³⁴ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 160-162.

It was noted that the recommended approach was similar to the outcome achieved in the Roma to Brisbane Pipeline final decision where the AER accepted an adjustment for rebateable services through a tariff amendment rather than direct rebates to users.¹³⁵

Accordingly, the COAG Energy Council proposed to amend rules 93 and 97 of the NGR to allow for the reduction in reference tariffs to occur where there has been revenue generated from the sale of rebateable services.

The Commission has made a draft rule consistent with the proposed rule. It considers that these amendments will enable the regulators to more readily identify services as rebateable services and be able to determine cost reflective tariffs for users. As a result, users should pay for the services they use rather than other services that they do not use. This supports the efficient use of pipeline services.

6.5.3

Draft rule

The Commission has made a draft rule determination to amend rules 93 and 97 the NGR to:

- remove the requirement that rebateable services must be in a different market to reference services
- enable the reduction of reference tariffs in accordance with rebateable service revenue to occur through the reference tariff variation mechanism.

¹³⁵ AER, *Final decision, Roma to Brisbane Gas Pipeline access arrangement 2017-2022*, overview, November 2017.

7 NEGOTIATION AND INFORMATION

In the gas pipeline negotiate-arbitrate regime for full and light regulation pipelines, information is required for the following purposes:

- by the regulator, in order to:
 - approve or amend access arrangements
 - monitor and report on compliance
 - monitor and report on financial and operational performance
 - benchmark service providers.
- by users and prospective users, to:
 - determine whether spare capacity exists or will exist (for example, through an expansion)
 - understand how tariffs and non-tariff terms and conditions are determined.

Currently there are considerable differences in the level of reporting between full and light regulation pipelines, and between light regulation and non-scheme pipelines, notwithstanding the common needs of users and prospective users.

Users and prospective users also need to be able to initiate arbitration within a reasonable period where they are unable to negotiate access on reasonable terms.

This chapter discusses issues and draft rules for covered pipelines in relation to:

- pipeline capacity and usage information
- pipeline financial and offer information
- the access negotiation process
- key performance indicators
- the Scheme Register.

7.1 Pipeline capacity and usage information

7.1.1 Current framework

Published capacity and usage information

Full and light regulation pipeline service providers for all transmission pipelines and some distribution pipelines, as determined by the regulator,¹³⁶ are required to establish and maintain a public register of spare capacity for their trunk or main pipeline or pipelines. The information on the register must include:¹³⁷

- information about the spare capacity that the service provider reasonably believes currently exists for the haulage of natural gas between defined receipt and delivery points

¹³⁶ Under rule 111(2) of the NGR, for a distribution pipeline, the regulator must have regard to whether it is technically feasible and commercially reasonable for the service provider to maintain a register of spare capacity.

¹³⁷ Rule 111(4) of the NGR.

- information about spare capacity that the service provider reasonably believes will exist in the future for the haulage of natural gas between defined receipt and delivery points, including information about planned developable capacity and expected additions to spare capacity
- information (which must be as specific as the circumstances reasonably allow) about when the spare capacity is, or will become, available
- information notified to the service provider by a user about unutilised contracted capacity including:
 - the quantity and type of the unutilised contracted capacity and when it will be available
 - proposed terms and conditions (which may include the price) for the sale of the unutilised contracted capacity.

For full regulation pipelines an access arrangement must also be in place. An access arrangement contains, among other things, capacity trading requirements.¹³⁸ Access arrangement information, which must be submitted with an access arrangement proposal,¹³⁹ must also include usage of the pipeline over the earlier access arrangement period showing minimum, maximum and average demand, along with customer or user numbers. To the extent it is practicable, a forecast of pipeline capacity utilisation over the access arrangement period and the basis on which the forecast has been derived must also be provided.¹⁴⁰

Some pipeline information is also contained within the Scheme Register. All pipelines that are, or have been, subject to any form of regulation or exemption from regulation under the NGL or the old scheme (that is, the code) must be included on the Scheme Register, which the AEMC maintains.¹⁴¹ When the description of a full regulation or light regulation pipeline is affected by an extension or capacity expansion, the service provider must give the AEMC a revised description of the pipeline, incorporating the extension or expansion, for inclusion in the register.¹⁴²

Unpublished capacity and usage information

A full or light regulation pipeline service provider must, on request and free of charge, inform a prospective user whether it can provide a requested service and if so, the terms and conditions on which it is prepared to provide the service. Users may be required to meet costs if further investigations are required. The service provider must provide reasons if it cannot provide the requested service.¹⁴³

Full and light regulation pipeline users must, on request and within 10 business days, disclose unutilised contracted capacity and whether it is, or is likely to become available.¹⁴⁴

¹³⁸ Rule 48(1)(f) of the NGR.

¹³⁹ Rule 43(1) of the NGR.

¹⁴⁰ Rules 72(1)(a)(iii) and 72(d) of the NGR.

¹⁴¹ See section 7.4 for further discussion on the Scheme Register.

¹⁴² Rule 134 of the NGR.

¹⁴³ Rule 112 of the NGR.

¹⁴⁴ Rule 110 of the NGR.

A prospective user may request, through the regulator, the pipeline service provider to provide (free of charge) specified information that the prospective user reasonably requires in order to decide whether to seek access and, if so, how to go about applying for access.¹⁴⁵

Published capacity and usage information – Bulletin Board pipelines

Transmission pipelines that have an impact on the broader market are Bulletin Board pipelines and have an obligation to provide information to AEMO. AEMO must publish this information on the Natural Gas Services Bulletin Board (Bulletin Board), subject to certain aggregation, confidentiality and timing requirements.¹⁴⁶ Most transmission pipelines are Bulletin Board pipelines.¹⁴⁷ Bulletin Board pipelines that are lateral gathering pipelines may also be exempt from information disclosure obligations, and some participants may be exempt from providing information if the information is provided to AEMO by another person.¹⁴⁸

The information that Bulletin Board pipeline service providers must provide to AEMO includes:¹⁴⁹

- nameplate rating information
- detailed facility information
- information about shippers
- secondary trade data
- capacity outlooks
- 12 month outlook of uncontracted primary capacity
- linepack/capacity adequacy indicator
- nominated and forecast delivery information
- actual pipeline gas receipt and delivery information.

The above information disclosures are underpinned by more detailed requirements within the rules and also in the Bulletin Board procedures. A Bulletin Board pipeline may notify other Bulletin Board users that it has spare capacity available for purchase or capacity requirements.¹⁵⁰

Published capacity and usage information – non-scheme pipelines

Non-scheme pipeline service providers must, unless exempted,¹⁵¹ publish the following information, defined together as being “service and access information”:¹⁵²

¹⁴⁵ Rule 107 of the NGR.

¹⁴⁶ Part 18, Divisions 2 and 7 of the NGR. This applies to all jurisdictions except Western Australia. AEMO also maintains the WA Gas Bulletin Board established by the *Gas Services Information Act 2012* (WA).

¹⁴⁷ Exceptions apply to pipelines that are below the reporting threshold of 10TJ/day and remote pipelines. See rules 141, 144 and 151 of the NGR.

¹⁴⁸ Rules 164(1) and 164(2) of the NGR.

¹⁴⁹ Part 18, Division 5 of the NGR. West Australian Bulletin Board pipelines are subject to similar requirements as set out in Part 3, Division 2 of Western Australia’s Gas Services Information Rules.

¹⁵⁰ Rules 176 and 177 of the NGR and Part 18, Division 6 of the NGR.

¹⁵¹ Rule 585 of the NGR.

¹⁵² Rule 553 of the NGR.

- pipeline information for a transmission pipeline:
 - the pipeline's nameplate rating
 - details of all receipt and delivery points and key facilities to which those points connect
 - a schematic map showing the location of each receipt or delivery point and other key facilities
- pipeline information for a distribution pipeline:
 - the quantity of natural gas that can be transported through each gate station on the distribution pipeline in any 24 hour period
 - the details of all points on the pipeline where the service provider takes delivery of natural gas
 - a schematic map of the pipeline that shows the location on the pipeline of the points on the pipeline where the service provider takes delivery of natural gas and the geographic limits of the areas served by the pipeline
- pipeline information (for a transmission or a distribution pipeline):
 - any technical or physical characteristics that may affect access or price
 - policies that may affect access or pricing including queuing, changes to receipt and delivery points and metering and measurement
- pipeline service information including a list of services available on the pipeline and for each pipeline service:
 - a description of the service and locational limitations on availability
 - the priority ranking of the service in relation to other services, including in the event of curtailment
- service usage information for each month including:
 - the quantity of gas injected into the pipeline
 - the quantity of gas withdrawn from the pipeline
 - the quantity of gas scheduled for injection
 - the quantity of gas scheduled for withdrawal
 - for scheduled quantities, the quantities attributable to each service
- service availability information including:
 - the firm capacity outlook (and the amount available and projected for sale) each month in the following 36-month period
 - information on any matters that may affect the capacity of the pipeline for each month in the following 12-month period.

The service availability information that service providers must publish for non-scheme pipelines is similar in nature to the information that service providers for full and light regulation pipelines are required to publish in their public register of spare capacity, as described earlier in this section 7.1.1. However, for full and light regulation pipelines outlook periods (that is, for what outlook period the information must be provided) are not specified.

The service and usage information for non-scheme pipelines is updated every month.¹⁵³ Conversely, the similar access arrangement information for full regulation pipelines is updated only when a new access arrangement proposal is submitted.¹⁵⁴ Where the information is also required to be provided to AEMO for publication on the Bulletin Board, the non-scheme pipeline service provider may instead make the information available by providing a publicly available link on its website to the part of the Bulletin Board where the information is located.¹⁵⁵

7.1.2

Assessment

The capacity and usage information required to be published by service providers for Bulletin Board pipelines described in Part 18 of the NGR,¹⁵⁶ and for non-scheme pipelines described in rules 552 and 553 of the NGR, is more comprehensive and prescriptive than the information published for those full and light regulation pipelines that are not Bulletin Board pipelines. Further, the information is updated regularly. While some additional information on capacity and usage of full regulation pipelines is published through the access arrangement process, this information is updated less frequently.

In its final report the Commission noted that prospective users require access to sufficient up to date capacity and usage information for them to form a view on available capacity in order to facilitate access, regardless of whether pipelines are full or light regulation.

Transmission pipelines

Noting the differences between the current covered pipeline information framework and the information requirements for Bulletin Board pipelines, the Commission considered that the differences should be minimised where possible. It noted that most transmission pipelines are Bulletin Board pipelines, meeting higher information requirements than those required by the full and light regulatory frameworks. To resolve this, the Commission recommended that the Bulletin Board be extended to cover all full and light regulation transmission pipeline service providers, so that all transmission pipelines are required to disclose Bulletin Board information.¹⁵⁷ The Commission considered that the recommended approach would provide comprehensive capacity and usage information at the least cost. It would leverage the existing framework, provide consistency and oversight and also allow the Bulletin Board to move further towards being a “one stop shop” for information, as intended by the reforms recommended in the AEMC’s East coast gas review. The majority of full and light regulation transmission pipelines would incur only the small additional costs associated with the Commission’s proposed Bulletin Board enhancement.¹⁵⁸

¹⁵³ Rule 552(2) of the NGR.

¹⁵⁴ Rules 72(1)(a)(iii)(A) and 72(1)(d) of the NGR.

¹⁵⁵ Rule 552(3)(b) of the NGR.

¹⁵⁶ West Australian Bulletin Board pipelines are subject to similar requirements as set out in Part 3, Division 2 of Western Australia’s Gas Services Information Rules

¹⁵⁷ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 174-175.

¹⁵⁸ Relatedly, the Commission also recommended that rule 111 of the NGR be omitted as the publication of spare capacity would be more appropriately part of the Bulletin Board arrangements. AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 175.

In addition, to achieve further uniformity, the Commission recommended enhancing Bulletin Board reporting by extending the outlook of uncontracted primary pipeline capacity for all Bulletin Board pipelines from 12 months to 36 months. This amendment to Part 18 of the NGR was recommended in order to address a stakeholder concern that users required more notice in order to support timely negotiations.

The COAG Energy Council has proposed rule amendments consistent with the Commission's recommendations in its final report.

The Commission has made a draft rule consistent with the proposed rule. It continues to maintain the views expressed in its final report: that access to sufficient up to date capacity and usage information is necessary in order for users to form a view on available capacity in order to facilitate access negotiations. Efficient access negotiations ultimately assist in minimising costs and optimising capacity, which is in the long term interests of consumers, consistent with achieving the NGO.

Distribution pipelines

The Bulletin Board does not apply to distribution pipelines and the recommendation in the Commission's draft report was for full and light regulation distribution pipeline service providers to publish the same set of capacity and usage information as non-scheme distribution pipeline service providers. In its draft report for the review, the Commission recommended adopting the existing Part 23 framework for full and light regulation distribution pipelines because:

- the existing level of disclosure for full and light regulation pipelines is inadequate
- users, consumer representatives and regulators supported extending the information disclosure requirements under Part 23 of the NGR to full and light regulation pipelines
- Part 23 reporting requirements already apply to non-scheme distribution pipelines
- requiring pipeline service providers to report using an existing framework would result in lower costs compared to requiring reporting of similar information under a new reporting framework
- capacity and usage reporting for full and light regulation pipelines is required for the same reasons as for non-scheme pipelines: to facilitate negotiation and decisions to trigger dispute resolution.

However, through its consultation on the draft report it became apparent that the relevant Part 23 requirements had not been implemented in practice for non-scheme distribution pipelines as all existing non-scheme distribution pipelines met one or more of the exemption criteria in the NGR.

Further investigation revealed that some capacity and usage reporting requirements under Part 23 of the NGR were problematic for distribution pipelines. In particular, for the reasons set out in the Commission's final report, reporting required under rules 553(4)(b)-553(5) could not be provided on most gas distribution pipelines.

The Commission therefore adjusted its recommendation for its final report in order to create a workable reporting regime for full and light regulation distribution pipelines by modifying the additional reporting requirements in rules 553(4)(b) to 553(4)(e) of the NGR.

The Commission also considered that these modified reporting requirements, along with the reporting requirements under rule 553(5), should only apply to large or trunk distribution pipes. This was because large or trunk distribution pipelines perform a similar function to transmission pipelines. Indeed, they sometimes compete directly with transmission pipelines.¹⁵⁹ These are the pipes that shippers may use to move bulk quantities of gas or to bypass lower levels of the distribution network. They are also pipes that large users, such as gas fired electricity generators, producers and storage facility operators connect to where they are located within a distribution pipeline area.¹⁶⁰

While there is no clear dividing line delineating trunk and non-trunk distribution pipes, the Commission understood that the relevance of, and ability to report, certain information is reduced at lower levels of the distribution network because:

- pipes become more interconnected with other elements of the same network
- flow optimisation and capacity augmentation at lower levels of gas distribution networks tends to be in response to general load growth within a geographic area
- interrelationships between load and demand elements, as well as multiple options for augmenting and reconfiguring the network, make spare capacity metrics less meaningful inside these areas of integrated pipes.

The Commission understood that real time measured information on flows through individual pipes deep within distribution networks is also scant, with flow measurements tending to be restricted to some pressure reduction points and some large customer connections. Network monitoring, augmentation and management is instead focussed on maintaining pressures, which are monitored more broadly.

With these operational considerations in mind, the Commission considered that a practical threshold would be to require detailed capacity and usage reporting for pipes with a capacity of greater than 10TJ/day and an operating pressure of greater than 4MPa.¹⁶¹

As noted in the final report, the Commission understands that gas flows across almost all entry and exit points from these major ("trunk") distribution pipes are metered but that, except where revenue metering is installed, the measurement accuracy is well below revenue metering standards. However, real time data is collected from these metering points and that data could be exported to an accessible file. Making this data available to users would be a cost effective means of meeting users' requests for capacity and usage information for distribution pipelines. In addition, pressure is monitored at the same locations and the capacity of the entry or exit point is dependent on the pressure in the pipe[s] at the time. Lower pressure means lower capacity. It is therefore not possible to infer spare capacity solely from flow data, in the absence of contemporaneous pressure data.

¹⁵⁹ For example, Jemena's distribution pipeline between Port Kembla and Horsley Park runs in parallel to the Eastern Gas Pipeline.

¹⁶⁰ For example, Snowy Hydro's Colongra power station, AGL's Camden gas project and Tomago storage facility.

¹⁶¹ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 176-177.

Given these practical considerations, the Commission's final report recommended the following reporting be required for large pipes within distribution networks:

- For each entry and exit point:
 - daily flow data (as defined in Part 18 of the NGR)
 - the daily pressure profile, being the pressure, averaged over the shortest reasonably practical period, reported by period
 - a static table showing the maximum flow rate of the entry or exit point against pressure.
- For metered entry and exit points:
 - the daily flow profile, being the gas flow rate, averaged over the shortest reasonably practical period, reported by period.

The Commission recommended that this detailed capacity and usage information be published on the service provider's own website.

Consequently, the COAG Energy Council has proposed amendments to the NGR reflecting the Commission's recommendations.

The Commission has made a draft rule that reflects the COAG Energy Council's proposal. As expressed in its final report, the Commission considers that access to sufficient up to date capacity and usage information is necessary in order for users to form a view on available capacity in order to facilitate access negotiations. Efficient access negotiations ultimately assist in minimising costs and optimising pipeline usage and capacity, which is in the long term interests of consumers, consistent with achieving the NGO.

The role of the regulator in passing on information requests to service providers

As noted in section 7.1.1, the NGR also allows a prospective user to request, through the regulator, the pipeline service provider to provide (free of charge) specified information that the prospective user reasonably requires in order to decide whether to seek access and, if so, how to go about applying for access.

In its final report, the Commission stated that the regulator should be provided with the discretion to decide whether it is appropriate to pass on all or part of an information request. The final report included recommended changes to clarify the regulator's role as a backstop for users, rather than a potential first port of call, if users and prospective users have sought but not received the information from a service provider and where the information is genuinely required.¹⁶²

Specifically, the Commission recommended that rule 107(2) of the NGR be altered to make it clear that the regulator may decline to issue a notice to the scheme pipeline service provider for all or part of the prospective user's requested information if, in the regulator's reasonable opinion:

¹⁶² AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 178-179.

- the prospective user has not previously requested the information from the pipeline service provider
- the information is otherwise already available to the prospective user
- the pipeline service provider has not had sufficient time to provide the information requested to the prospective user, or
- the information is not reasonably required by the prospective user in order to decide whether to seek access to a service provided by the service provider, or to apply for access.

The COAG Energy Council's subsequent rule change request includes rule amendments in line with those recommended in the final report. The Commission has made a draft rule that is consistent with the proposed rule as it considers these changes would encourage prospective users and pipeline service providers to exchange sufficient information in an efficient and timely manner. This is ultimately in the long term interests of consumers, consistent with achieving the NGO.

7.1.3

Draft rule

The Commission has made a draft rule that amends the NGR in order to:

- require all full and light regulation transmission pipelines to become Bulletin Board pipelines (amendments to rules 141 and 145)
- augment Bulletin Board reporting for transmission pipelines so that the outlook of uncontracted primary pipeline capacity for Bulletin Board pipelines is extended from 12 months to 36 months (by an amendment rule 175)
- remove the requirement for scheme pipeline service providers to establish and maintain a public register of spare capacity (omit rule 111)
- require all full and light regulation distribution pipelines to publish capacity and usage information. The draft rule inserts new rules 35A, 36A to 36C, 112A to 112D of the NGR
- provide the regulator with the ability to decide whether to pass on all or part of an information request, subject to guidance by amending rule 107 of the NGR for this purpose.

7.2

Pipeline financial and offer information

7.2.1

Current framework

Financial and offer information – full regulation pipelines

Negotiation of tariff and non-tariff terms and conditions for full regulation pipelines is informed by the applicable access arrangement, including tariff and non-tariff terms and conditions for reference services. The financial information published with a full access arrangement proposal is also comprehensive. The Commission concluded in its final report for the review that additional financial information reporting was not required for full regulation pipelines.¹⁶³

¹⁶³ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 182-185.

Financial and offer information – light regulation pipelines

The published financial information available to prospective users of light regulation pipelines is minimal by comparison with full regulation pipelines. Part 9 of the NGR does not apply to light regulation pipelines, so there is no obligation to publish information on revenues, costs and information underpinning the allocation of costs to particular tariffs.¹⁶⁴

Light regulation pipeline service providers are required to publish prices on offer for light regulation services and other terms and conditions of access to those services.¹⁶⁵

As with full regulation pipelines, a light regulation pipeline service provider must, on request, fix and notify a tariff to a prospective user where a tariff for a particular service is not published.¹⁶⁶

The service provider is also required to report at least annually to the regulator on access negotiations and the regulator may, from time to time, publish an assessment of such information reported to it by service providers.¹⁶⁷ Light regulation pipeline service providers can choose to submit a limited access arrangement to the regulator for approval.¹⁶⁸ However, no service providers have done so to date.

The regulators' functions and powers include the preparation and publication of reports on the financial and operational performance of service providers¹⁶⁹ and such reports, if prepared, would be available to prospective users.

Financial and offer information – non-scheme pipelines

By contrast, a service provider for a non-scheme pipeline must publish the following information:¹⁷⁰

- standing terms:
 - standard terms and conditions
 - standing price for the service
 - other relevant pricing and charging information, for example charging structure, minimum charges and other additional charges such as imbalance or overrun charges
- certified financial information about each pipeline in accordance with the financial reporting guidelines, including:¹⁷¹
 - financial statements
 - asset values
 - depreciation allowances

¹⁶⁴ Rule 70 of the NGR.

¹⁶⁵ Rule 36(1) of the NGR.

¹⁶⁶ Rule 108 of the NGR.

¹⁶⁷ Rule 37 of the NGR.

¹⁶⁸ Section 116 of the NGL.

¹⁶⁹ Section 27(1)(f) of the NGL.

¹⁷⁰ Rules 554 – 556 of the NGR.

¹⁷¹ Rule 557 of the NGR.

- cost allocations
- financial performance metrics
- weighted average price.

The AER's financial reporting guideline prescribes:¹⁷²

- the form and content of the financial information required to be published
- the methodology, principles and inputs used to calculate the financial information
- the form and content of the weighted average price information to be published
- the manner in which the above information must be certified by an independent auditor.

7.2.2

Assessment

In its review the Commission observed that light regulation pipeline service providers are currently required to publish minimal financial information which is substantially less than non-scheme pipeline service providers. It noted that there appeared to be no basis for this distinction. Given the very limited information that light regulation pipelines are required to disclose and the submissions received, the information available to prospective users of light regulation pipelines did not generally appear to be sufficient for them to negotiate on an informed basis. The Commission concluded that it would be appropriate for users to be provided with greater support in their negotiations by light regulation pipeline service providers publishing the same type of information as published by non-scheme pipeline service providers.

In a number of instances, the financial information reporting recommended for light regulation pipeline service providers is the same as that specified under Part 23 of the NGR. However, some differences were recommended by the Commission. The Commission considered that reporting on capital base values and cost allocation for light regulation pipelines should be on a basis consistent with the price and revenue regulation framework for full regulation pipelines.¹⁷³

In addition, the final report included a recommendation that, consistent with Part 23 of the NGR, light regulation pipeline service providers will need to disclose information to assist users assessing whether prices are reasonable. Relatedly, the Commission recommended that the regulators be required to consult on the development of financial reporting guidelines that will set out the detailed reporting requirements for light regulation pipelines.

The Commission also commented in its final report that while financial reporting could be required of service providers, it was important for users and prospective users to be able to make an assessment of the reasonableness of the information. It noted that rule 554 in Part 23 of the NGR requires standing terms and prices to be reported for non-scheme pipelines, and rule 36 of the NGR requires prices on offer, along with terms and conditions to be reported for light regulation pipelines. These two rules appeared to the Commission to be broadly equivalent, with one material exception. Specifically, that rule 554 requires the

¹⁷² AER, *Financial reporting guidelines for non-scheme pipelines*, December 2017, p. 1.

¹⁷³ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 184-185.

methodology used to calculate the standing price to be disclosed, but rule 36 does not. Determining whether a price being offered is reasonable would be difficult in the absence of knowing the methodology used to calculate it. Consequently, the Commission recommended that rule 36 be amended to also require the pricing methodology to be disclosed for light regulation pipelines in order to assist users and prospective users in determining whether the price that they are being offered is reasonable.¹⁷⁴

The COAG Energy Council has proposed amendments to the NGR consistent with the final report recommendations. The Commission has consequently made a draft rule. It considers that requiring financial and offer information disclosure for light regulation pipelines should enable users and prospective users to negotiate prices, terms and conditions on an informed basis, mitigating potential monopoly power and leading to better prices flowing through to consumers, consistent with achieving the NGO.

7.2.3

Draft rule

The Commission has made a draft rule to require light regulation pipeline service providers to publish certain financial and offer information. In addition, the regulator will be required to publish a guideline for the reporting regime. Accordingly, the draft rule includes inserting new rules 35A, 36A-36F and amendments to rule 36(1) of the NGR.

7.3

Access negotiation process

7.3.1

Current framework

Section 2 of the NGL defines the dispute resolution body for scheme pipelines as the AER. Under the National Gas Access (WA) Act 2009 (NGL (WA)), the Western Australian Energy Disputes Arbitrator (EDA) is the dispute resolution body for Western Australian scheme pipelines.¹⁷⁵

Chapter 6 of the NGL sets out the dispute resolution process for scheme pipelines as follows:¹⁷⁶

- the prospective user or service provider notifies the dispute resolution body of an access dispute
- the dispute resolution body informs the other party of the access dispute
- the dispute resolution body can terminate the dispute, or otherwise must make a determination on access in writing with clearly stated reasons¹⁷⁷
- the dispute resolution body may require the parties to mediate, conciliate or engage in another alternative dispute resolution process
- the dispute resolution body must, in making an access determination, give effect to the access arrangement that applies to the services of the access dispute pipeline

¹⁷⁴ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 184-185.

¹⁷⁵ Section 9 of Schedule 1 to the *National Gas Access (WA) Act 2009*.

¹⁷⁶ Sections 181-207 of the NGL.

¹⁷⁷ Under s. 186 of the NGL, the dispute resolution body may terminate an access dispute in accordance with specified circumstances.

- each party bears its own costs in a dispute hearing.

7.3.2

Assessment

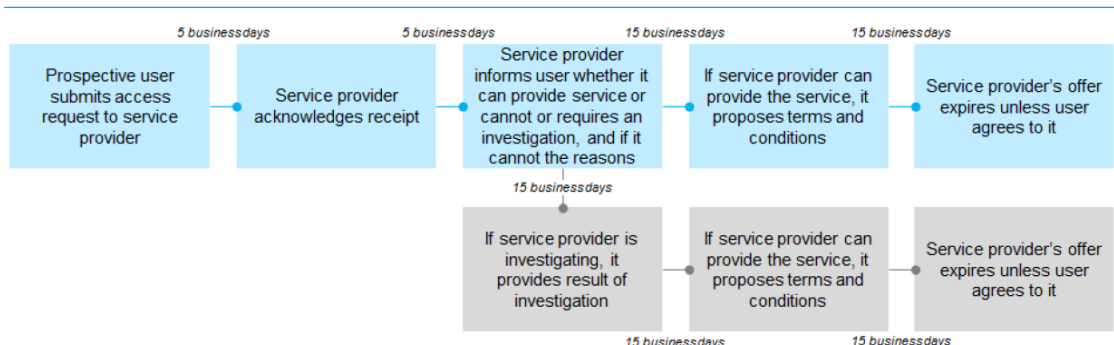
The Commission's final report noted that s. 181 of the NGL defines the trigger for arbitration as the inability of parties to agree.

The Commission noted that a trigger such as the inability to agree may raise some ambiguity. While it may be easy to establish that the parties have not agreed, it is another matter to prove that they are unable to agree. An ambiguous trigger for dispute resolution may mean that even where parties are disputing access, it would be difficult to start the dispute resolution process. The consequence would be that this extends the timeframe for negotiations and reduces the credibility of the threat of arbitration, as it minimises the likelihood that dispute resolution would be triggered. This lessens the constraint on market power and increases the probability of inefficient consumer outcomes.

The Commission considered that it would be more appropriate to enable a dispute to be triggered if parties have not agreed within a prescribed timeframe. It considered that guidance on the process for negotiation and agreement between the parties would allow the dispute resolution body to make such a decision more readily. The Commission therefore considered that the NGR should lay out a clearer access negotiation process with binding timeframes on both parties.

Following consultation the Commission recommended an overall access negotiation timeframe of 55 days, broken down as follows:

Figure 7.1: Proposed access negotiation process



Source: AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 202.

The Commission also considered that complementary changes, defining circumstances that may constitute an access dispute, should be made to the NGL and NGR at a later date,¹⁷⁸ as part of the second package of reforms.¹⁷⁹

¹⁷⁸ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, Table 10.1, p. 228.

¹⁷⁹ AEMC, *Drafting instructions for NGL amendments*, 3 July 2018, section 2.6.

The COAG Energy Council has proposed rule amendments consistent with the Commission's recommendations.

The Commission has made a draft rule consistent with the proposed rule. It continues to maintain the views expressed in its final report: that ambiguous arbitration triggers reduce the effectiveness of the negotiation and arbitration process. Efficient access to arbitration provides a credible threat and backstop, assisting to minimise negotiation and arbitration costs, which is in the long term interests of consumers, consistent with achieving the NGO.

7.3.3

Draft rule

The Commission has made a draft rule that amends the NGR in order to provide guidance on the process for negotiation and agreement between the parties, through changes to rule 112 of the NGR.

7.4

Key performance indicators

7.4.1

Current framework

The NGR provides that access arrangement information must include KPIs for the pipeline.¹⁸⁰ In the case of full access arrangements, the NGR state that the KPIs are "to be used by the service provider to support expenditure to be incurred over the access arrangement period".¹⁸¹ No further guidance is given on the purpose or choice of KPIs.

7.4.2

Assessment

The requirements of the NGR has led to a divergent set of KPIs being adopted across pipeline service providers. During the review, many stakeholders commented that a more prescriptive approach would facilitate obtaining performance information that is comprehensive and consistent across pipelines. They considered that this would be more useful for users and regulators.

The Commission considered that consistency across pipelines and over time along with comprehensiveness was critical to KPI usefulness and that this is best achieved by the regulator setting out, following relevant consultation, the information that is to be collected, reported and published. In the draft report the Commission concluded that regulatory information notices (RINs) and regulatory information orders (RIOs) were appropriate instruments for this purpose. As a result, a draft recommendation was made to remove KPIs from the access arrangement information requirements.¹⁸²

This issue was considered further in the final report in light of stakeholder submissions. However, on balance the Commission maintained its conclusion expressed in its draft report and recommended the removal of KPI from the access arrangement information for full and light regulation pipelines as RIN and RIO were more appropriate mechanisms to achieve the outcomes sought by users.

¹⁸⁰ Rules 45(2)(b), 72(1)(f) and 129(2)(b) of the NGR.

¹⁸¹ Rule 72(1)(f) of the NGR.

¹⁸² AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 186.

Consistent with this recommendation, the COAG Energy Council has proposed an amendment to the access arrangement information requirements specified in the NGR. The Commission has made a draft rule to this effect as it considers that consistency and comprehensiveness of information enhances its value to regulators and users, which is ultimately in the long term interests of consumers, consistent with achieving the NGO.

7.4.3

Draft rule

The Commission has made a draft rule that amends rules 45(2) and 72(1) of the NGR to remove the requirements on service providers to include KPIs in access arrangement information for full and light regulation pipelines.

7.5

Scheme Register

7.5.1

Current framework

The AEMC maintains a public Scheme Register on its website in accordance with the requirements of Part 15 of the NGR.¹⁸³ The Scheme Register is a register of all pipelines that are, or have been, subject to any form of regulation or exemption from regulation under the NGL and the NGR, or the old scheme.¹⁸⁴

The Scheme Register includes, for each pipeline, a description of the pipeline and the pipeline's classification and regulatory history under the NGL and the code. The Scheme Register is also required to include the text of various decisions relating to pipelines that are currently or were formerly covered, or that are or were subject to greenfields pipeline incentives.¹⁸⁵

7.5.2

Issues with the current framework

The making of the National Gas (Pipelines Access — Arbitration) Amendment Rules 2017 (Part 23 of the NGR) brought non-scheme pipelines within the remit of the Scheme Register as these pipelines became subject to a form of regulation under the NGR.

The Commission noted in its final report that the Scheme Register was originally designed to capture information relevant to scheme pipelines. As a result, the information required by the NGR to be captured was not optimal for non-scheme pipelines. For example, only scheme pipelines were required to notify the AEMC of extensions or capacity expansions, and while information related to the pipeline's regulatory history as a scheme pipeline was included, information related to its regulatory history as a non-scheme pipeline was not.

The Commission therefore recommended improvements to the Scheme Register in order to provide a central repository of key regulatory information for pipelines, to minimise search costs for users and service providers, and to provide a more useful resource for regulators and policy makers. At the same time, the Commission recommended changing the register's

¹⁸³ The Scheme Register is part of the AEMC website: <https://www.aemc.gov.au/energy-system/gas/gas-scheme-register>.

¹⁸⁴ Rules 3 and 133(2) of the NGR. An old scheme transmission or distribution pipeline is defined in s. 2 of the NGL as a transmission or distribution pipeline that was, at any time before the repeal of the old access law, a transmission or distribution pipeline as defined in that law and a covered pipeline as defined in the code.

¹⁸⁵ Rule 133(4) of the NGR.

name to reflect the expansion of its coverage to non-scheme pipelines, and some minor administrative updates.¹⁸⁶

The proposed rule changes submitted by the COAG Energy Council are the same as the rule changes recommended by the Commission, except in regard to the requirement to include initial opening capital base determinations for light regulation pipelines, as set out in the Commission's recommended rule 133(4)(i). The proponent has excluded the calculation of an initial capital base for light regulation pipelines (identified as AEMC recommendation 17 in the final report) from its rule change request, and the removal of recommended rule 133(4)(i) from the proposed rule flows from that decision.

The Commission has made a draft rule that is consistent with that proposed by the COAG Energy Council. The Commission is satisfied that providing a central repository of regulatory information provides value to regulators, users, and other interested parties which is ultimately in the long term interests of consumers, consistent with achieving the NGO.

7.5.3

Draft rule

The Commission has made a draft rule that amends Part 15 of the NGR such that:

- service providers for non-scheme pipelines be required to provide the AEMC with a description of the pipeline upon commencement of the relevant rule. Subsequently, both scheme and non-scheme pipeline service providers should be required to provide a description of the pipeline for inclusion in the register whenever a new pipeline is built or when it is affected by an extension or expansion
- the Scheme Register's contents be expanded to include published information about:
 - access determinations made under Division 4 of Part 23 of the NGR
 - exemption decisions made under Division 6 of Part 23 of the NGR
- the name "Scheme Register" be changed to "Pipeline Register"
- the current requirement for the Scheme Register to be made available for inspection at the AEMC's public offices during business hours be removed from the NGR.¹⁸⁷

Specifically, the draft rule amends rules 133 to 135 and inserts new rule 134A in the NGR.

¹⁸⁶ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 189-191.

¹⁸⁷ The register will continue to be available on the AEMC website.

8 IMPLEMENTATION OF RULES

This chapter outlines the approach included in the draft rule to manage its implementation. The chapter sets out:

- the implementation arrangements proposed for certain pipelines that will be participating in an access arrangement review process at the time the final rule determination is expected to be published in March 2019
- the implementation arrangements for transmission and distribution pipelines that are currently expected to be lodging proposed access arrangement revisions with the relevant regulator in or after June 2020
- the implementation arrangements set out in the draft rules for non-access arrangement provisions of the NGR that are included in this rule change process such as information provision requirements and the pipeline register.

8.1 Interaction with access arrangements

The draft rule (other than amendments to the Bulletin Board and Scheme Register), if made, will commence one week after publication of the final determination, when the final rule will be made. This commencement date will mean that some full regulation pipeline service providers will be unable to submit a reference service proposal 12 months prior to the access arrangement revision submission date. However, other rules relating to the assessment of elements within an access arrangement proposal and the access arrangement assessment process are likely to be relevant for these pipelines. On balance, the Commission considers that it would be beneficial for new rules to start as soon as practicable where it is possible to do so.

Access arrangement revision commencement dates, the associated access arrangement review submission dates and the dates that reference service proposals would have to be submitted under the draft rule are shown in the table below for all full regulation pipelines:

Table 8.1: Access arrangement submission dates

PIPELINE	ACCESS ARRANGEMENT REVIEW SUBMISSION DATE	REFERENCE SERVICE PROPOSAL SUBMISSION DATE
Mid West and South West Gas Distribution Systems	1 September 2018	Not applicable
Goldfields Gas Pipeline	1 January 2019	Not applicable
Jemena Gas Networks	30 June 2019	Not applicable
Dampier to Bunbury Natural Gas Pipeline	1 January 2020	Not applicable
Evoenergy	30 June 2020	30 June 2019
Amadeus Gas Pipeline	1 July 2020	1 July 2019

PIPELINE	ACCESS ARRANGEMENT REVIEW SUBMISSION DATE	REFERENCE SERVICE PROPOSAL SUBMISSION DATE
AGN SA	1 July 2020	1 July 2019
Roma Brisbane Pipeline	1 January 2021	1 January 2020
AGN Victoria and Albury	1 December 2021	1 December 2020
Multinet	1 December 2021	1 December 2020
Ausnet	1 December 2021	1 December 2020
Victorian Transmission System	1 December 2021	1 December 2020

Source: Access arrangements, AER and ERAWA websites

The Commission considers that access arrangements with scheduled review submission dates on or after 30 June 2020 will be able to comply with the full suite of new rules arising from the Commission's final rule determination in March 2019.

The Commission has made draft transitional rules to exempt service providers for the Goldfields Gas Pipeline, Jemena Gas Networks and the Dampier to Bunbury Natural Gas Pipeline, which have review submission dates falling prior to June 2020, from having to comply with the new reference service proposal requirements in their forthcoming reviews. The transitional arrangements also amend the access arrangement process to reflect this change for these particular pipelines.

The Commission has also made a draft transitional rule to exempt the service provider of the Mid West and South West Gas Distribution Systems from the amendments set out in Parts 8, 9 and 10 of the draft rule, relating to the access arrangement for the next access arrangement period.

Table 8.2 sets out the impact of the draft rule on the access arrangement processes for full regulation pipelines, and the proposed date for making the relevant components of the rule.

Table 8.2: Impact on access arrangement processes

AMENDMENT	DRAFT RULE	PROPOSED DATE ^(A)
Include all new expansions in an access arrangement	Amend rule 104(2)	21 March 2019
Enable existing extensions to be included in access arrangements	Add rules 77(2)(c1) & 77(3)(b1). Amend rule 104.	21 March 2019
Clarify the requirements for describing pipeline services	New rule 47A(1)(b) & (2)(a)-(e); amend rule 45(b)&(c)	21 March 2019
Clarify the requirements for describing reference services	New rule 47A(1)(c) & 47A(2)(a)-(e); amend rule 48(1)(b), (c) & (d); omit rule 101	21 March 2019

AMENDMENT	DRAFT RULE	PROPOSED DATE ^(A)
Update the test for determining a reference service	New rule 47A(15); amend rule 48(1)(c1); omit rule 101	21 March 2019
Introduce a reference service proposal process and improve the access arrangement review process	New rule 47A(3)-(12); omit rules 13 & 57; amend rules 46(1)&(1A), 50(2), 59(2) and 62(7) & 41(3)	21 March 2019 ^(b)
Develop financial models to be used by service providers	New rules 75A & 75B	21 March 2019 ^(c)
Clarify the operation of revenue caps	Amend rule 92(2)(a)	21 March 2019
Clarify that the regulator is to have regard to risk sharing arrangements	Amend rules 97(3)(e) & 100(c)	21 March 2019
Extend the revision period	Amend rule 59(3)	21 March 2019
Clarify the process for equalising revenue during the interval of delay	Amend rules 3 (definition), 92(3)(a)-(b) & 93(4)	21 March 2019
Remove the limited and no discretion regulatory framework	Omit rule 40; amend rules 41(3), 50(2), 79(6), 89(3), 91(2), 94(6) & 95(4)	21 March 2019
Clarify the application of the new capital expenditure criteria	Amend rule 79(1)(a)-(c)	21 March 2019
Enable the addition of existing extensions and expansions to the opening capital base	Add rules 77(2)(c1) & 77(3)(b1). Amend rule 104.	21 March 2019
Require allocation of expenditure between covered and uncovered parts of a pipeline	Amend rules 79(1)(c) & (6) & 91(2)(a)-(c)	21 March 2019
Amend definition of rebateable services and rebate methodology	Amend rules 93(3)(a)&4(c) & 97(1)(c1)	21 March 2019
Remove the requirement to provide KPIs as part of the access arrangement	Amend rules 45(2)(b) & 72(1)(f)	21 March 2019

Note: (a) Not applicable to the Mid West and South West Gas Distribution Systems access arrangement. Transitional rules will apply.

(b) Transitional rules will apply to the Goldfields Gas Pipeline, Jemena Gas Networks and Dampier to Bunbury Natural Gas Pipeline.

(c) Will apply to service providers if and once financial models have been made.

8.2 Implementation of non-access arrangement amendments

The table below sets out the implementation approach included in the draft rules for the amendments to the NGR that are not related to an access arrangement process. As indicated in the table below, the Commission proposes delayed commencement dates for certain rules to allow for preparations required by stakeholders to enable compliance. For example, the

new information reporting requirements will not commence until six months after the final rule determination is made.

Table 8.3: Implementation of draft rules - non-access arrangement amendments

AMENDMENT	DRAFT RULE	PROPOSED DATE
Require transmission pipeline service providers to disclose Bulletin Board information	Omit rule 111; amend rules 141 (BB pipeline definition), 145(a)(b)(c), 175.	Rules commence 21 March 2019 except: Rule 141 commences 21 April 2019 Rule 175 commences 21 June 2019
Require distribution pipeline service providers to disclose capacity and usage information	New rules 35A, 36A to 36C, 112A to 112D, omit rule 111.	Rules commence 21 March 2019. Application date 21 June 2019.
Clarify the role of the regulator in passing on information requests to service providers	Amend rule 107(2)&(2a).	Rules commence 21 March 2019
Introduce a financial and offer information disclosure regime for light regulation pipelines	New rules 35B, 36A, 36B, 36D to 36F, schedule 1 rules 60, 63, 64; amend rule 36(1).	Rules commence 21 March 2019. Financial reporting guidelines prepared by 31 October 2019. Financial information and weighted average price information to be published for financial years ending after (but not including) 31 December 2019.
Improve the Scheme Register	Amend rules 133(1)-(4) to 135(1)-(2); new rules 135A, schedule 1 rules 60, 65.	Rules commence 21 July 2019 except: Schedule 1 commences on 21 March 2019. Service providers for non scheme pipelines must provide information to the AEMC by 2 May 2019.

ABBREVIATIONS

ACCC	Australia Competition & Consumer Commission
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
COAG	Council of Australian Governments
Code	National third party access code for natural gas pipeline systems
Commission	See AEMC
DBP	Dampier to Bunbury Natural Gas Pipeline
ERA	Economic Regulation Authority of Western Australia
Final report	final report of the AEMC Review into the scope of economic regulation applied to covered pipelines
GGP	Goldfields Gas Pipeline
GSH	gas supply hub
KPI	key performance indicator
NCC	National Competition Council
NER	National Electricity Rules
NGL	National Gas Law
NGL (WA)	National Gas Access (WA) Act 2009
NGO	national gas objective
NGR	National Gas Rules
RBP	Roma Brisbane Pipeline
Review	AEMC Review into the scope of economic regulation applied to covered pipelines
RIN	regulatory information notice
RIO	regulatory information order

A LEGAL REQUIREMENTS UNDER THE NGL

This appendix sets out the relevant legal requirements under the NGL for the AEMC to make this draft rule determination.

A.1 Draft rule determination

In accordance with s. 308 of the NGL the Commission has made this draft rule determination in relation to the rule proposed by the COAG Energy Council.

The Commission's reasons for making this draft rule determination are set out in section 2.4.

A copy of the draft rule attached to and published with this draft rule determination. Its key features are described in section 2.4.

A.2 Power to make the rule

The Commission is satisfied that the draft rule falls within the subject matter about which the Commission may make rules. The draft rule falls within s. 74 of the NGL as it relates to ss. 1(a)(i)&(ii). Further, the draft rule falls within the matters set out in Schedule 1 to the NGL as it relates to item 28(b) on the content of expansion and extension requirements in access arrangements.

A.3 Commission's considerations

In assessing the rule change request the Commission considered:

- it's powers under the NGL to make the rule
- the rule change request
- submissions received during the AEMC's review
- the Commission's analysis as to the ways in which the proposed rule will or is likely to, contribute to the NGO
- the revenue and pricing principles
- the findings and recommendations of the Commission's Review into the scope of regulation applied to covered pipelines.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.

A.4 Civil penalties

The Commission cannot create new civil penalty provisions. However, it may recommend to the COAG Energy Council that new or existing provisions of the NGR be classified as civil penalty provisions.

The draft rule amends rules 36, 46, 107 and 112 of the NGR which are currently classified as civil penalty provisions under the National Gas (South Australia) Regulations. The Commission

proposes to recommend to the COAG Energy Council that rules 36, 46, 107 and 112 continue to be classified as a civil penalty provisions.

The draft rule omits rule 111 of the NGR which is currently classified as a civil penalty provision. The Commission proposes to recommend to the COAG Energy Council that rule 111 be removed from the list of civil penalty provisions in the National Gas (South Australia) Regulations.

A.5 Conduct provisions

The Commission cannot create new conduct provisions. However, it may recommend to the COAG Energy Council that new or existing provisions of the NGR be classified as conduct provisions.

The draft rule amends rules 36, 107 and 112 that are currently classified as conduct provisions under the National Gas (South Australia) Regulations. The Commission proposes to recommend to the COAG Energy Council that rules 36, 107 and 112 continue to be classified as conduct provisions.

The draft rule omits rule 111 of the NGR which is currently classified as a conduct provision. The Commission proposes to recommend to the COAG Energy Council that rule 111 be removed from the list of conduct provisions in the National Gas (South Australia) Regulations.