

## **Part 23 Access to non-scheme pipelines**

### **Division 1 Preliminary**

#### **546 Objective**

- (1) The objective of this Part is to facilitate access to pipeline services on non-scheme pipelines on reasonable terms, which, for the purposes of this Part, is taken to mean at prices and on other terms and conditions that, so far as practical, reflect the outcomes of a workably competitive market.
- (2) This Part is intended to contribute to achieving the objective in subrule (1) by means of:
  - (a) requirements for the publication and exchange of information to facilitate timely and effective commercial negotiations in relation to access to non-scheme pipelines;
  - (b) a commercially-orientated arbitration process to resolve access disputes in a cost-effective and efficient manner; and
  - (c) principles that the arbitrator must have regard to when determining access disputes, which are consistent with the outcomes of a workably competitive market.

#### **547 Application**

- (1) This Part is made for section 83A and Chapter 6A of the *NGL*.
- (2) This Part does not apply in Western Australia until the day an order under section 7A of the *National Gas Access (WA) Act 2009* of Western Australia in relation to the *National Gas (South Australia) (Pipelines Access – Arbitration) Amendment Act 2017* of South Australia is published in the Western Australian Government Gazette or, if a later day is specified in the order, on that day.

#### **548 Structure of this Part**

- (1) Division 1 sets out the objectives of this Part and deals with preliminary matters.
- (2) Division 2 sets out information that must be published by the service provider for a non-scheme pipeline.
- (3) Division 3 provides for access requests and negotiations.
- (4) Division 4 provides for the arbitration of access disputes.
- (5) Division 5 contains provisions about the role of the scheme administrator.
- (6) Division 6 provides for exemptions from the application of this Part.

## 549 Definitions and interpretation

(1) In this Part:

**access contract** means a contract between a user and a service provider under which the service provider provides or will provide a pipeline service on a non-scheme pipeline to the user.

**access determination** is defined in section 216A of the *NGL* and includes an interim access determination and a final access determination.

**access dispute** has the meaning in section 216A of the *NGL*.

**access dispute notice** is defined in rule 564.

**access information standard** is defined in rule 551.

**access negotiation information** means, in relation to a party to negotiations under this Part, the following information of the party:

- (a) access offer information; and
- (b) any other information that the party may seek to rely on for the determination of an access dispute in relation to the subject matter of the negotiations,

including information prepared for the party such as expert reports and consultant reports, data sets, models and other documents or materials.

**access offer** means an offer to provide access to a pipeline service that complies with rule 560.

**access offer information** means information relevant to the principles and other matters in rule 569 and includes:

- (a) information about the method used to determine the price in an access offer and the inputs used in the calculation of the price; and
- (b) information regarding the costs associated with the provision of a pipeline service sought by a prospective user.

**access request** means a request referred to in rule 559.

**application date** means:

- (a) in relation to a pipeline that is a non-scheme pipeline on the commencement date – the date falling 5 months after the commencement date;
- (b) in relation to a pipeline that becomes a non-scheme-pipeline within 5 months after the commencement date – the date falling 5 months after the commencement date; and
- (c) in relation to any other pipeline, the later of:
  - (i) the date the pipeline is commissioned; and
  - (ii) the date the pipeline becomes a non-scheme pipeline.

**Note:**

Section 12 of the *NGL* defines when a pipeline is commissioned.

**arbitrator**, in relation to an access dispute, means the pool arbitrator to whom the dispute has been referred for determination.

**business day** means a day that is not a Saturday, Sunday or public holiday in any participating jurisdiction or in relation to a pipeline in Western Australia, that jurisdiction alone.

**commencement date** means the date this Part commences.

**confidential information**, in relation to an arbitration under this Part, means information that relates to the access dispute or the arbitration or to an access determination made in that arbitration and includes the following:

- (a) statements under rule 567 and other statements in the nature of pleadings or submissions, and other information supplied to the arbitrator by a party to the access dispute;
- (b) any information supplied by a party to another party in compliance with a direction of the arbitrator;
- (c) any evidence (whether documentary or otherwise) supplied to the arbitrator;
- (d) any notes made by the arbitrator of oral evidence or submissions given before the arbitrator;
- (e) any transcript of oral evidence or submissions given before the arbitrator;
- (f) any rulings of the arbitrator; and
- (g) any access determination of the arbitrator.

**disclose**, in relation to confidential information, includes publishing or communicating or otherwise supplying the confidential information.

**dispute hearing** has the meaning in section 216A of the *NGL*.

**distribution pipeline** has the meaning in section 216A of the *NGL*.

**exemption** means an exemption granted under Division 6.

**existing access contract** means, at any time, an access contract in force at that time, even if the service term for one or more pipeline services provided under the access contract has not commenced.

**final access determination** means a determination made under rule 572.

**financial information** means the information required to be published under rule 555.

**financial reporting guidelines** means the guidelines published by the AER under rule 557 as amended from time to time.

**further investigations** means investigations to determine the terms and conditions for provision of a pipeline service sought by a prospective user in a manner that is technically feasible and consistent with the safe and reliable operation of the pipeline.

**Gas Bulletin Board** means, as applicable:

- (a) the Natural Gas Services Bulletin Board established under Part 18 of the Rules; or
- (b) the gas bulletin board established under the *Gas Services Information Act 2012* of Western Australia.

**gas day** means in respect of a pipeline, the 24 hour period for which nominations for use of pipeline services on the pipeline are provided or if no such nomination period applies to the pipeline, the 24 hour period commencing at 6:00 am Australian eastern standard time.

**information** includes data.

**interim access determination** means a determination referred to in rule 571.

**nameplate rating** means, in relation to a transmission pipeline and for each direction in which natural gas can be transported on the pipeline, the maximum quantity of natural gas that can be transported through the pipeline on a gas day for the pipeline in that direction under normal operating conditions.

**non-scheme pipeline** means a pipeline to which Chapter 6A of the *NGL* applies.

**non-scheme pipeline arbitration guide** means the guide published by the scheme administrator under rule 584.

**pool arbitrator** means a member of the pool of arbitrators established under rule 583.

**pipeline information** is defined in rule 553(2).

**pipeline service information** is defined in rule 553(3).

**pricing principles** means the principles in rule 569(3).

**prospective user** has the meaning in section 216B of the *NGL*.

**scheme administrator** has the meaning in section 216A of the *NGL*.

**service and access information** is defined in rule 553(1).

**service availability information** is defined in rule 553(5).

**service provider** has the meaning in section 8 of the *NGL*.

**service term** in relation to a pipeline service provided to a user under an access contract means the period during which the pipeline service is available to the user under that access contract.

**service usage information** is defined in rule 553(4).

**standing terms** means the information required to be published under rule 554.

**terms and conditions** includes price and non-price terms and conditions.

**transmission pipeline** has the meaning in section 216A of the *NGL*.

**weighted average price information** is defined in rule 556.

**user access guide** for a non-scheme pipeline means the user access guide published for the non-scheme pipeline under rule 558.

- (2) In this Part, a reference to a pipeline service on a pipeline includes a service provided by means of the pipeline and a service ancillary to the provision of a service provided by means of the pipeline.
- (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.
- (5) For the purpose of this Part, the circumstances in which a service provider for a non-scheme pipeline provides a pipeline service to a user indirectly include where:
  - (a) an associate of the service provider provides the pipeline service to the user; and
  - (b) the pipeline service is bundled with the supply of natural gas.

**Note:**

Section 2 of the NGL defines associate and supply.

## **550 Pipeline classification**

- (1) For the purposes of this Part, each part of a pipeline classified under the *NGL* or another Part is taken to have the same classification.

**Note:**

Refer to sections 18 and 19 of the *NGL*.

- (2) For the purposes of this Part, a pipeline that is not classified under the *NGL*, another Part or subrule (1) is classified as a transmission pipeline or a distribution pipeline applying the pipeline classification criterion in section 13 of the *NGL*.

## **Division 2 Information**

### **551 Access information standard**

- (1) A service provider required by this Division to prepare, publish and maintain information must do so in accordance with the access information standard.

**Note:**

This subrule is classified as a civil penalty provision under the National Gas (South Australian) Regulations. See clause 6 and Schedule 3 of the National Gas (South Australian) Regulations.

- (2) The **access information standard** means that the information:
  - (a) is not false or misleading in a material particular;
  - (b) in relation to information of a technical nature, is prepared, published and maintained in accordance with the practices, methods and acts that would reasonably be expected from an experienced and competent person engaged in the ownership, operation or control of a pipeline in Australia acting with all due skill, diligence, prudence and foresight; and
  - (c) in relation to a forecast or estimate, is supported by a statement of the basis of the forecast or estimate and:
    - (i) is arrived at on a reasonable basis; and

- (ii) represents the best forecast or estimate possible in the circumstances.
- (3) Where a service provider becomes aware that information required to be published by it under this Part does not comply with the access information standard or this Part, the service provider must publish information that does comply as soon as practicable after the service provider becomes aware of the non-compliance.

**Note:**

This subrule is classified as a civil penalty provision under the National Gas (South Australian) Regulations. See clause 6 and Schedule 3 of the National Gas (South Australian) Regulations.

- (4) Information published under this Part must include the date of publication, the date to which the information is current and, if the information replaces an earlier version as provided for by subrule (3), notice of that fact.

**552 Obligation to publish information**

- (1) Subject to subrule (5), a service provider for a non-scheme pipeline must prepare, publish and maintain:
- (a) the service and access information specified in rule 553;
  - (b) standing terms in accordance with rule 554;
  - (c) the financial information specified in rule 555; and
  - (d) weighted average price information, subject to rule 556(3),

in accordance with the *NGL*, this Part and the financial reporting guidelines.

**Note:**

This subrule is classified as a civil penalty provision under the National Gas (South Australian) Regulations. See clause 6 and Schedule 3 of the National Gas (South Australian) Regulations.

- (2) The information referred to in subrule (1) must be published at the following times.

service and access information	pipeline information	No later than 20 business days after the application date for the non-scheme pipeline.  Updated pipeline information must be published within 20 business days after there is a change.
	pipeline service information	No later than 20 business days after the application date for the non-scheme pipeline.  Updated pipeline service information must be published within 20 business days after a new pipeline service is added or an existing pipeline service changes or is withdrawn.

	service usage information	Each month after the application date for the non-scheme pipeline, by the last business day of the month for the prior month.
	service availability information	Each month after the application date for the non-scheme pipeline, by the last business day of the month for the next 36 or 12 months as applicable.
standing terms		No later than 20 business days after the application date for the non-scheme pipeline.  Updated standing terms must be published within 20 business days after a new pipeline service is added or an existing pipeline service changes or is withdrawn.
financial information		Annually no later than four months after the end of the financial year of the service provider for the non-scheme pipeline.
weighted average price information		Annually no later than four months after the end of the financial year of the service provider for the non-scheme pipeline.

- (3) A service provider for a non-scheme pipeline must publish the information referred to in subrule (1) by:
  - (a) making the information publicly available on the service provider's website; or
  - (b) where the information is also required to be provided by the service provider for a non-scheme pipeline to AEMO for publication on a Gas Bulletin Board, by providing a publicly available link on its website to the part of the Gas Bulletin Board where the information is to be located.
- (4) When the service provider for a non-scheme pipeline publishes financial information and weighted average price information, it must notify the AER without delay that the information has been published.
- (5) A service provider for a non-scheme pipeline is not required to comply with subrule (1) in relation to a non-scheme pipeline to the extent that an exemption from the obligation to publish the information has been granted in relation to the non-scheme pipeline and that exemption remains in effect.

- (6) A service provider for a non-scheme pipeline must ensure that historical service usage information, financial information and weighted average price information for its non-scheme pipeline continues to be publicly available for a period of 5 years after the date the information is first published, by publishing the information in accordance with subrule (3).

### **553 Service and access information**

- (1) The service and access information comprises:
- (a) the pipeline information described in subrule (2);
  - (b) the pipeline service information described in subrule (3);
  - (c) the service usage information described in subrule (4); and
  - (d) the service availability information described in subrule (5).
- (2) The pipeline information in respect of a non-scheme pipeline comprises:
- (a) the classification of the pipeline as either a transmission pipeline or a distribution pipeline, determined in accordance with rule 550;
  - (b) for a transmission pipeline:
    - (i) the pipeline's nameplate rating;
    - (ii) the details of all receipt or delivery points on the pipeline and key facilities to which those receipt or delivery points connect; and
    - (iii) a schematic map of the pipeline that shows the location on the pipeline of each receipt or delivery point and other key facilities;
  - (c) for a distribution pipeline:
    - (i) the quantity of natural gas that can be transported through each gate station on the distribution pipeline in any 24 hour period;
    - (ii) the details of all points on the pipeline where the service provider takes delivery of natural gas; and
    - (iii) a schematic map of the pipeline that shows the location on the pipeline of the points referred to in paragraph (ii) and the geographic limits of the areas served by the pipeline;
  - (d) any technical or physical characteristics of the pipeline that may affect access to or use of the pipeline or the price for pipeline services on the pipeline; and
  - (e) policies of the service provider that may affect access to or use of the pipeline or the price for pipeline services on the pipeline which may include:
    - (i) queuing requirements;
    - (ii) a receipt or delivery point change policy;
    - (iii) a metering and measurement policy; and
    - (iv) for a distribution pipeline – a balancing policy.



- (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.
- (4) The service usage information for a pipeline for a month comprises:
  - (a) the total quantity of natural gas metered as having been injected into the pipeline during the month;
  - (b) the total quantity of natural gas metered as having been withdrawn from the pipeline during the month;
  - (c) the total quantity of natural gas scheduled for injection into the pipeline during the month (after taking into account rescheduling);
  - (d) the total quantity of natural gas scheduled for withdrawal from the pipeline during the month (after taking into account rescheduling); and
  - (e) of the scheduled quantities referred to in paragraphs (c) and (d), the quantities attributable to each pipeline service on the pipeline as identified in the pipeline service information.
- (5) The service availability information for a pipeline for a month comprises:
  - (a) an outlook of the firm capacity of the pipeline that the service provider has available for sale or that it will have available for sale for each month in the following 36 month period;
  - (b) information about matters expected to affect the capacity of the pipeline (including any planned expansions of the capacity) for each month in the following 12 month period, including:
    - (i) the expected start and end dates of the matters expected to affect the capacity of the pipeline;
    - (ii) a description of the matters expected to affect the capacity of the pipeline; and
    - (iii) the expected capacity of the pipeline during the period it is affected by the matters referred to in paragraphs (i) and (ii); and
  - (c) information on any other limitations on the availability of the pipeline services identified in the pipeline service information.

## **554 Standing terms**

- (1) The service provider for a non-scheme pipeline must publish:
  - (a) standing terms for each pipeline service on the pipeline in accordance with subrule (2); and
  - (b) the methodology used to calculate the standing price referred to in subrule (2)(b) and sufficient information to enable prospective users to

understand how the standing price reflects the application of the methodology.

- (2) The standing terms must in each case include:
  - (a) the service provider's standard terms and conditions applicable to the pipeline service;
  - (b) the standing price, being the price applicable to the pipeline service under the terms and conditions referred to in paragraph (a); and
  - (c) other information about prices and charges applicable to the pipeline service including the charging structure for the pipeline service, any minimum charge and any additional charges such as imbalance or overrun charges.

## **555 Financial information**

- (1) A service provider for a non-scheme pipeline must prepare and publish on its website financial information about each of its non-scheme pipelines. The financial information must:
  - (a) be in the form and contain the information specified in the financial reporting guidelines; and
  - (b) be certified in the manner provided for in the financial reporting guidelines.
- (2) To avoid doubt, an arbitrator is not bound by financial information published under this rule or by any methods, principles or inputs that have been used to calculate financial information published under this rule.

## **556 Weighted average price information**

- (1) Subject to subrule (3), a service provider for a non-scheme pipeline must prepare and publish on its website weighted average price information for each of its non-scheme pipelines. The weighted average price information must:
  - (a) be determined using a methodology set out in the financial reporting guidelines;
  - (b) be in the form and contain the information specified in the financial reporting guidelines; and
  - (c) be certified in the manner provided for in the financial reporting guidelines.
- (2) The weighted average price information for a non-scheme pipeline means:
  - (a) the weighted average prices paid by users for pipeline services in a financial year of the service provider of the non-scheme pipeline; and
  - (b) a description of the methodology used by the service provider to calculate the weighted average prices.
- (3) Subject to subrule (4), a service provider is not required to publish the weighted average price information for a pipeline service for a financial year if:
  - (a) during the relevant period, the pipeline service was provided, directly or indirectly, to no more than 2 users of the non-scheme pipeline; and

- (b) the service provider gives a notice to the AER at least 20 business days before the date required for publication that the service provider is not publishing the information for that financial year, specifying the pipeline service to which the notice relates and certifying the pipeline service was provided to no more than 2 users of the non-scheme pipeline during the relevant period.
- (4) Where a notice is given to the AER under subrule (3), the AER may by notice to the service provider require the service provider to treat two or more pipeline services on the non-scheme pipeline as if they were the same pipeline service and calculate and publish weighted average price information for the financial year on that basis. A service provider must comply with a notice given to it under this subrule.

## **557 Financial reporting guidelines**

- (1) The AER must publish and maintain financial reporting guidelines under this Part.
- (2) The financial reporting guidelines must:
  - (a) provide for the publication of financial information about each non-scheme pipeline on a pipeline by pipeline basis and in respect of the financial year of the service provider for the pipeline, which may include:
    - (i) financial statements;
    - (ii) information on the methods, principles and inputs used to calculate:
      - (A) the value of any assets used in the provision of pipeline services;
      - (B) depreciation allowances;
      - (C) the allocation of costs between the different categories of pipeline services provided by the pipeline; and
      - (D) the allocation of costs to the pipeline if the service provider operates more than one pipeline; and
    - (iii) financial performance metrics;
  - (b) specify the methods, principles and inputs to be used to calculate weighted average price information and the form this information is to take;
  - (c) specify the level of detail of information required, which must be the level of detail reasonably required given the objectives of this Part and to provide a true and fair statement of the financial performance of the non-scheme pipeline and weighted average prices for pipeline services on the non-scheme pipeline;
  - (d) specify any accounting or audit standards that apply to the reported information; and
  - (e) provide for the manner in which the financial information and weighted average price information is to be certified as being true and fair.
- (3) The AER may from time to time amend the financial reporting guidelines in accordance with the *standard consultative procedure* in rule 8.

**Note:**

The standard consultative procedure provides for publication of the proposal and consultation on the draft decision before making a final decision.

## **Division 3            Access requests and negotiations**

### **558            User access guide**

- (1) A service provider for a non-scheme pipeline must develop, maintain and publish in a publicly accessible part of its website a user access guide that contains the information in subrule (6) for each of its non-scheme pipelines.

**Note:**

This subrule is classified as a civil penalty provision under the National Gas (South Australian) Regulations. See clause 6 and Schedule 3 of the National Gas (South Australian) Regulations.

- (2) Each user access guide:
  - (a) must comply with and give effect to this Division;
  - (b) must not contain anything inconsistent with this Division, the objective of this Part or the outcomes described in rule 546(2); and
  - (c) must not operate or be applied by a service provider in a manner that prevents or delays a prospective user from referring an access dispute to arbitration.

**Note:**

This subrule is classified as a civil penalty provision under the National Gas (South Australian) Regulations. See clause 6 and Schedule 3 of the National Gas (South Australian) Regulations.

- (3) The same user access guide may apply to one or more of the service provider's non-scheme pipelines.
- (4) The service provider for a non-scheme pipeline must publish the user access guide for the non-scheme pipeline no later than 20 business days after the application date for the non-scheme pipeline.
- (5) The service provider for a non-scheme pipeline must publish a revised version of the user access guide for the pipeline as soon as practicable after facts or circumstances arise that require the guide to be updated.
- (6) Each user access guide must:
  - (a) identify the service provider for the non-scheme pipeline and, where there is more than one service provider for the pipeline, identify the service provider responsible for dealing with preliminary enquiries and access requests;
  - (b) set out the *contact details* for an officer of the service provider to whom preliminary enquiries and access requests can be sent;
  - (c) describe the process for making an access request, the information to be included with the access request (subject to subrule (7)) and response times;
  - (d) describe the arrangements for undertaking further investigations;

- (e) explain how the service provider will deal with and use any confidential information exchanged between the service provider and the prospective user;
  - (f) describe the process for preparing an access offer and for requesting negotiations under this Part in relation to an access offer;
  - (g) include a statement of the obligation to negotiate in good faith under section 216G of the *NGL* and the right to refer an access dispute to arbitration under section 216J of the *NGL*; and
  - (h) describe the arrangements in rule 562 for the exchange of information during negotiations under this Part.
- (7) The information to be included with the access request specified in a user access guide must be no more than is reasonably required to enable the service provider to make an access offer. The information may include:
- (a) the time or times when each pipeline service will be required and the capacity that is to be utilised;
  - (b) the *receipt or delivery points* where the prospective user is seeking access; and
  - (c) relevant technical details for any new interconnection to the pipeline.

## **559 Access requests**

- (1) A prospective user may request the service provider for a non-scheme pipeline to provide access to a pipeline service requested by the prospective user and provided or to be provided by means of the non-scheme pipeline (or by part of the non-scheme pipeline or by an extension to, or expansion of the capacity of, the non-scheme pipeline).
- (2) A prospective user may make a preliminary enquiry about the matters referred to in subrule (1) before making an access request. A service provider must:
  - (a) not require a prospective user to make a preliminary enquiry before making an access request; and
  - (b) if requested by the prospective user, carry out further investigations on the basis of the preliminary enquiry and before the prospective user makes an access request.
- (3) An access request must be in writing and must include the information reasonably required to be provided by the prospective user for the service provider to prepare an access offer in relation to the access sought or to determine whether the service provider needs to undertake further investigations in relation to the access request.
- (4) If an access request is incomplete, the service provider must notify the prospective user within 5 business days after the access request is received, specifying the information required to complete the access request.
- (5) The service provider must notify the prospective user if the service provider needs to undertake further investigations in relation to the prospective user's access request. The notice must be given within 10 business days after receipt of the

access request or, if applicable, after receipt of the further information requested under subrule (4).

- (6) A service provider must:
  - (a) only undertake further investigations in relation to an access request when and to the extent reasonably necessary; and
  - (b) carry out further investigations expeditiously.
- (7) A service provider and a prospective user must negotiate in good faith about the terms and conditions on which further investigations will be carried out, including the basis for determining reasonable costs of the further investigations to be paid by the prospective user and any reasonable extension to the time period in rule 560(2) to enable the further investigations to be completed.
- (8) A prospective user may amend the details of the access sought in an access request with the consent of the service provider. The service provider must not unreasonably withhold its consent under this subrule and may give its consent subject to reaching agreement on a reasonable extension to the period for making an access offer under rule 560.

## **560 Access offer**

- (1) The service provider for a non-scheme pipeline in receipt of an access request must prepare and make an access offer that complies with subrule (3) within the period determined under subrule (2).

**Note:**

This subrule is classified as a civil penalty provision under the National Gas (South Australian) Regulations. See clause 6 and Schedule 3 of the National Gas (South Australian) Regulations.

**Note:**

This subrule is classified as a conduct provision under the National Gas (South Australia) Regulations. See clause 7 and Schedule 4 of the National Gas (South Australia) Regulations.

- (2) The period for making an access offer under subrule (1) ends at the time agreed by the prospective user and the service provider or if no time is agreed between them:
  - (a) unless paragraph (b) applies, 20 business days after receiving the access request or if applicable, the further information requested under subrule 559(4); and
  - (b) if the service provider is required to carry out further investigations in relation to the access request, 60 business days after receiving the access request or if applicable, after receiving the further information requested under subrule 559(4).
- (3) An access offer must:
  - (a) set out the price and other terms and conditions on which the service provider offers to make the pipeline service or pipeline services requested in the access request available to the prospective user;

- (b) contain the details of any works to be undertaken by the service provider and prospective user and any applicable technical and performance specifications; and
  - (c) be in a form capable of acceptance by the prospective user so as to constitute a new access contract or form part of an existing access contract.
- (4) A service provider is not required to make an access offer under subrule (1) in relation to a pipeline service if:
- (a) the access request has been withdrawn;
  - (b) the service provider has concluded that it is not technically feasible or consistent with the safe and reliable operation of the pipeline to provide the pipeline service requested by the prospective user, having used all reasonable efforts to accommodate the reasonable requirements of the prospective user; or
  - (c) the provision of the pipeline service requested by the prospective user would require the extension of the service provider's non-scheme pipeline.
- (5) If a service provider does not make an access offer for the reason specified in subrule (4)(b), the service provider must give the prospective user:
- (a) written reasons explaining why the requested pipeline service cannot be provided; and
  - (b) if there is some prospect that it will become possible to provide the requested pipeline service at some time in the future – details (which must be as specific as the circumstances reasonably allow) of when the requested pipeline service is likely to become available.

## 561 Negotiations

- (1) Subject to subrule (2), a prospective user who has made an access request for a pipeline service on a non-scheme pipeline may by notice to the service provider for the non-scheme pipeline request negotiations under this Part in relation to any aspect of access to a pipeline service including:
- (a) whether access can be granted; and
  - (b) the price and other terms and conditions of an access offer.

**Note:**

Section 216G of the *NGL* applies to negotiations referred to in subrule (1).

- (2) A notice under subrule (1) requesting negotiations about a matter excluded from reference to arbitration under Chapter 6A of the *NGL* and this Part by rule 563(2) is of no effect.
- (3) If a notice is given under subrule (1), the parties to the negotiations under this Part are the prospective user and the service provider and any other person that the prospective user and the service provider agree to include as a party to the negotiations.

- (4) Each party to negotiations under this Part must seek to accommodate all reasonable requirements of the other parties to the negotiations regarding the timetable for negotiations.
- (5) The parties to negotiations under this Part must use reasonable endeavours to identify any other person who may become a party to an access dispute relating to the pipeline service the subject of the negotiations.
- (6) If an access request is for more than one pipeline service, the prospective user may by notice to the service provider require negotiations under this Part in relation to those pipeline services take place as part of the same negotiation process.
- (7) A prospective user may at any time by notice to the service provider bring negotiations requested under this Part to an end, whether or not the prospective user also refers or has referred a related access dispute to arbitration under this Part.
- (8) A party to negotiations under this Part must only use or reproduce confidential information of another party for the purpose for which it was disclosed and must not disclose the confidential information except:
  - (a) to the scheme administrator in an access dispute notice;
  - (b) to the arbitrator in the course of an arbitration;
  - (c) with the consent of the other party;
  - (d) to a professional or other adviser of the party who agrees with the party to maintain the confidentiality of the confidential information;
  - (e) if it is required by, or necessary for the purposes of, these Rules or the *NGL*;
  - (f) if the disclosure is in accordance with an order made or a subpoena issued by a court of competent jurisdiction; or
  - (g) if the disclosure is authorised or required by a law of a participating jurisdiction or required by a competent regulatory body, and the person making the disclosure gives written details of the disclosure (including an explanation of the reasons for the disclosure) to the other party.
- (9) In subrule (8), confidential information of a party means all information of that party provided to another party to the negotiations other than information in the public domain at the time it was provided or information that subsequently comes into the public domain in a manner permitted by subrule (8).

## **562 Access negotiation information**

- (1) In negotiations under this Part, each party to the negotiations must, in requesting or providing access negotiation information, do so in a manner and at a time consistent with the duty of the party to negotiate in good faith.
- (2) A prospective user who is party to negotiations under this Part may from time to time by notice request a service provider who is party to the negotiations to



provide access offer information in relation to any aspect of the matters being negotiated.

- (3) Subject to subrules (8) and (9), a service provider given a notice under subrule (2) must comply with the request within 15 business days of the notice or any longer period agreed by the prospective user.

**Note:**

This subrule is classified as a civil penalty provision under the National Gas (South Australian) Regulations. See clause 6 and Schedule 3 of the National Gas (South Australian) Regulations.

**Note:**

This subrule is classified as a conduct provision under the National Gas (South Australia) Regulations. See clause 7 and Schedule 4 of the National Gas (South Australia) Regulations.

- (4) Access offer information provided in response to a request under subrule (2) must:
- (a) comply with the access information standard as if the information were information required to be published under this Part;
  - (b) be relevant to the subject matter of the request; and
  - (c) be provided in a readily readable form including where requested in electronic file format with all underlying data files and inputs.
- (5) A party to negotiations under this Part:
- (a) may from time to time by notice request another party to the negotiations to provide access negotiation information of the other party that the other party is seeking to rely on in relation to a specific matter arising in the negotiations; and
  - (b) subject to subrule (6), may during the course of the negotiations by notice request another party to the negotiations to provide all access negotiation information of the other party.
- (6) A party to negotiations under this Part:
- (a) must give a notice under subrule (5)(b) before the party issues an access dispute notice in relation to the subject matter of the negotiations; and
  - (b) must not issue an access dispute notice earlier than 15 business days after the notice under subrule (5)(b) is given.
- (7) Subject to subrules (8) and (9), a party to negotiations under this Part must provide access negotiation information requested by another party to the negotiations under subrule (5) within 15 business days of the request or any longer period agreed by the party making the request.
- (8) A party to negotiations under this Part is not required to provide an item of information requested by another party under this rule where:
- (a) to do so would breach a confidentiality obligation owed in respect of that information to an unrelated third party; and
  - (b) the third party has not given consent to the disclosure despite reasonable efforts having been made to obtain that consent.

- (9) A person cannot be required under this Division or Division 4 to disclose:
  - (a) information that is the subject of legal professional privilege; or
  - (b) documents that would disclose information subject to legal professional privilege.

## **Division 4            Arbitration of access disputes**

### **563            Application of this Division**

- (1) Without limiting the matters that may be notified under section 216H(1) of the *NGL* but subject to subrule (2), an access dispute notice may be given to the scheme administrator under this Division in relation to:
  - (a) a request for access to a pipeline service under a new access contract;
  - (b) a request to add a new pipeline service to an existing access contract;
  - (c) a request for a new access contract to take effect on the expiry of an existing access contract; and
  - (d) a request for a pipeline service commencing after the expiry of the service term for the same service under an existing access contract.
- (2) For section 216H(4) of the *NGL*, the following matters are excluded from reference to arbitration under Chapter 6A of the *NGL* and this Part:
  - (a) a dispute about a pipeline service provided under an existing access contract;
  - (b) a request to vary the terms and conditions of access applicable to a pipeline service provided under an existing access contract for any part of the current service term for that pipeline service;
  - (c) an access request that would require the extension of a non-scheme pipeline;
  - (d) an access dispute in relation to access to pipeline services on a non-scheme pipeline to the extent an exemption from the operation of this Division has been granted in respect of the non-scheme pipeline and that exemption remains in effect; and
  - (e) an access dispute about standard terms and conditions for secondary trading of capacity excluded from the operation of this Part by a provision of the *NGL* or the Rules.
- (3) For section 216D of the *NGL*, the matters that may be referred for determination by an arbitrator under this Division include, subject to subrule (2), any dispute arising under any rule in this Division between a service provider for a non-scheme pipeline and a prospective user including any dispute about whether a matter is an access dispute.

### **564            Access dispute notice**

- (1) An access dispute notice is a notice given under section 216H(1) of the *NGL* under which a prospective user or a service provider gives notice to the scheme administrator that an access dispute exists.

- (2) An access dispute notice must be in writing and must state:
  - (a) the pipeline service to which the access dispute notice relates and where applicable the access request and the access offer made in response to the request;
  - (b) the matters mentioned in section 216H(2) of the *NGL*, being the matters (if any) on which agreement has been reached and the matters that are in dispute;
  - (c) the name and address of the person giving the notice;
  - (d) the name and address of each other party involved in the access dispute; and
  - (e) where the person giving the access dispute notice reasonably believes another person may be joined as a party under section 216I of the *NGL* – the name and address of that person.
- (3) An access dispute notice must be given to the other parties to the negotiations under this Part as soon as practicable after it is given to the scheme administrator.
- (4) An access dispute notice must be accompanied by the fee (if any) set by the scheme administrator from time to time and specified on its website.
- (5) If an access dispute notice is given by a prospective user, the prospective user may withdraw the access dispute notice at any time before an arbitrator appointed to determine the dispute makes a final access determination.
- (6) If an access dispute notice is given by a service provider, the service provider may only withdraw the access dispute notice if the other parties to the access dispute agree.

## **565 Reference to arbitration**

- (1) For section 216J of the *NGL*, the scheme administrator must refer an access dispute to arbitration applying the procedures in this rule and no later than 15 business days after the receipt of the access dispute notice.
- (2) The scheme administrator must within 5 business days of receipt of an access dispute notice determine the parties to the access dispute for the purposes of section 216I of the *NGL* and give a notice to each party to the access dispute in which the scheme administrator:
  - (a) identifies the parties to the access dispute;
  - (b) invites the parties to the access dispute to give the scheme administrator within 10 business days of the access dispute notice being given written submissions as to which (if any) of the pool arbitrators should be disqualified from appointment, with reasons;
  - (c) requires the parties to the access dispute to notify the scheme administrator of the identity of the pool arbitrator agreed by the parties to determine the access dispute (if any) within 10 business days of the access dispute notice being given; and

- (d) informs the parties that in default of agreement being reached and notified to the scheme administrator within that time, the scheme administrator will select the arbitrator.
- (3) The parties to an access dispute identified in a notice under subrule (2) must:
  - (a) as soon as practicable after an access dispute notice is given notify the other parties to the dispute of at least two pool arbitrators the party will agree to be appointed as the arbitrator to determine the access dispute;
  - (b) negotiate in good faith to agree to the identity of a pool arbitrator to be the arbitrator for the access dispute; and
  - (c) notify the scheme administrator if agreement has been reached, including confirmation that the pool arbitrator is available to undertake the arbitration.
- (4) If the parties to the access dispute do not notify the identity of the pool arbitrator agreed by the parties to determine the access dispute to the scheme administrator within 10 business days of the access dispute notice being given, the scheme administrator must select one of the pool arbitrators to determine the access dispute, taking into account any submissions from the parties under subrule (2)(b) given within the specified time.
- (5) The scheme administrator must refer the access dispute (with the access dispute notice) to the pool arbitrator notified by the parties under subrule (3)(c) or selected by the scheme administrator under subrule (4) within 15 business days after the receipt of the access dispute notice and notify the parties to the access dispute of the referral.
- (6) The scheme administrator's selection of a pool arbitrator to determine an access dispute under subrule (4) is final and binding on the parties to the access dispute.
- (7) An arbitrator is not liable for anything done or omitted to be done in good faith in his or her capacity as arbitrator.
- (8) An arbitrator may, before acting in relation to the access dispute, require each party to the access dispute (and any one of them) to execute a release and indemnity in favour of the arbitrator in relation to any loss, damage or liability that party may suffer or incur as a consequence of anything done or omitted to be done in good faith in his or her capacity as arbitrator.
- (9) If for any reason the arbitrator for an access dispute does not make a final access determination within the time provided for in this Division or withdraws from or abandons the arbitration or is unable to continue the arbitration, any party to the access dispute may notify the other parties and the scheme administrator that they require a new pool arbitrator to be appointed.
- (10) If a notice is given under subrule (9), subject to subrule (11), the scheme administrator must refer the access dispute to a new pool arbitrator no later than 15 business days after the receipt of the notice. Subrules (2) to (9) will apply as if the notice were an access dispute notice for the purposes of this rule.

- (11) If a notice is given under subrule (9) on the grounds that the arbitrator has failed to make a final access determination within the time provided for in this Division and the arbitrator makes the final access determination before the scheme administrator refers the access dispute to a new pool arbitrator, the notice under subrule (9) lapses and the scheme administrator must not refer the access dispute to a new pool arbitrator.

## **566 Conduct of the parties**

- (1) The parties must do all things necessary for the proper and expeditious conduct of the arbitration.
- (2) Without limitation to subrule (1), the parties must comply without undue delay with any order or direction of the arbitrator with respect to any procedural, evidentiary or other matter.
- (3) A party must not wilfully do or cause to be done any act to delay or prevent an access determination being made.

## **567 Statements to be provided to the arbitrator on appointment**

- (1) Within 10 business days of the access dispute being referred to the arbitrator, each party must give to the arbitrator and to the other parties to the access dispute a statement:
  - (a) listing the access negotiation information of the party that the party provided to the other parties to the negotiations before the access dispute notice was given; and
  - (b) identifying with reasonable particularity any other access negotiation information:
    - (i) not provided by the party to the other parties to the negotiations before the access dispute notice was given and that the party seeks leave under rule 568(1) to submit and rely on in the arbitration; and
    - (ii) that the party requested from another party to the negotiations and that has not been provided by that other party.
- (2) Within 15 business days of the access dispute being referred to the arbitrator, each party to the dispute must give to the arbitrator and to the other parties a statement of the access determination the party claims should be made and the matters supporting the party's claim.
- (3) Within the time determined by the arbitrator, each party must give to the arbitrator and to the other parties to the access dispute:
  - (a) its statement in response to the statement provided under subrule (1), which must:
    - (i) identify with reasonable particularity any areas of disagreement; and
    - (ii) state whether it consents to the provision of any of the information identified under subrule (1)(b)(i); and
  - (b) its statement in reply to the statement provided under subrule (2).

- (4) With the leave of the arbitrator, a party may amend or supplement any statement made by the party under this rule during the course of the arbitration.
- (5) A statement under subrule (1) must, if the arbitrator so requires, be verified by statutory declaration of an appropriate officer of the party.

## **568 Arbitrator to give effect to rule 562**

- (1) A party to an access dispute must seek leave of the arbitrator to submit and rely on in the arbitration access negotiation information of that party that it did not provide to the other parties to the negotiations before the access dispute notice was given.
- (2) In determining whether to grant leave under subrule (1), the arbitrator must:
  - (a) seek to give effect to rule 562 insofar as doing so is consistent with the proper consideration of the access dispute; and
  - (b) have regard to whether the party seeking leave was given a reasonable opportunity to provide the access negotiation information to the other parties to the dispute before the access dispute notice was given.
- (3) An arbitrator may direct a party to an access dispute to provide access negotiation information that it did not provide to the other parties to the negotiations before the access dispute notice was given. A party given a direction under this subrule must comply with the direction without undue delay.
- (4) If the arbitrator is satisfied that there has been inordinate and inexcusable failure by a party to comply with the obligation of the party to provide access negotiation information in accordance with rule 562 or subrule (3) or if a party fails to do any other thing necessary for the proper and expeditious conduct of the arbitration, the arbitrator may do any one or more of the following:
  - (a) direct that the party is not entitled to rely on any specified information or materials;
  - (b) draw such adverse inferences from the failure to comply as the circumstances justify; and
  - (c) proceed to an access determination solely on the basis of information relied on by that party that has been provided by that party in negotiations under this Part in accordance with rule 562.

## **569 Pricing and other principles**

- (1) When making a final access determination under this Part, the arbitrator must take the following matters into account:
  - (a) the principle that access to pipeline services on a non-scheme pipeline must be on reasonable terms as defined in rule 546(1);
  - (b) the pricing principles; and
  - (c) the operational and technical requirements necessary for the safe and reliable operation of the pipeline.

- (2) When making a final access determination under this Part, the arbitrator may also take the following matters into account:
  - (a) the legitimate business interests of the service provider;
  - (b) the interests of all persons who have rights to use the pipeline;
  - (c) the value to the service provider of any extension or expansion of the pipeline the cost of which is borne by another person; and
  - (d) the value to the service provider of interconnections to the pipeline the cost of which is borne by another person.
  
- (3) The pricing principles are:
  - (a) the price for access to a pipeline service on a non-scheme pipeline should reflect the cost of providing that service, including a commercial rate of return that is commensurate with the prevailing conditions in the market for funds and reflects the risks the service provider faces in providing the pipeline service; and
  - (b) when applying the principle in paragraph (a) to a pipeline service that when used affects the capacity of the non-scheme pipeline available for other pipeline services and is priced at a premium or a discount to the price for a firm haulage service on the relevant non-scheme pipeline – the premium or discount must:
    - (i) take into account any opportunity cost or benefit to the service provider of providing the pipeline service, having regard to any effect on the cost of providing firm haulage services or the capacity of the non-scheme pipeline; and
    - (ii) be consistent with the price for the pipeline service providing a reasonable contribution to joint and common costs.
  
- (4) For the purposes of subrule (3)(a):
  - (a) the value of any assets used in the provision of the pipeline service must be determined using asset valuation techniques consistent with the objective of this Part set out in rule 546(1); and
  - (b) unless inconsistent with paragraph (a), the value of any assets used in the provision of the pipeline service is to be calculated as:
    - (i) the cost of construction of the pipeline and pipeline assets incurred before commissioning of the pipeline (including the cost of acquiring easements and other interests in land necessary for the establishment and operation of the pipeline);  
plus:
      - (ii) the amount of capital expenditure since the commissioning of the pipeline;
    - less:
      - (iii) the return of capital recovered since the commissioning of the pipeline; and

- (iv) the value of pipeline assets disposed of since the commissioning of the pipeline.

## **570 Matters that may be dealt with in a determination**

- (1) For section 216L(2) of the *NGL*, subject to section 216N of the *NGL* and this rule, an access determination may deal with any matter the subject of the access dispute.
- (2) Without limiting subrule (1), an access determination may:
  - (a) require the service provider for a non-scheme pipeline to provide access to a pipeline service;
  - (b) specify the price and other terms and conditions on which the prospective user must be given access to the pipeline service;
  - (c) require the service provider to permit another facility to be connected to the non-scheme pipeline;
  - (d) subject to subrules (5) and (6), require the service provider to carry out, either alone or in combination:
    - (i) an expansion of the capacity of a non-scheme pipeline;
    - (ii) a conversion of a non-scheme pipeline to a bi-directional pipeline;
    - (iii) the development of a new *receipt or delivery point*;
    - (iv) an expansion of an existing *receipt or delivery point*; or
    - (v) an interconnection with another pipeline or other facility; or
  - (e) specify conditions to be satisfied before access to a pipeline service commences.
- (3) An access determination may require access to be provided for a service term different to that sought by the prospective user but must otherwise be made in relation to the pipeline service or services sought by the prospective user.
- (4) An access determination does not have to require the service provider to provide access to the pipeline service or services sought by the prospective user or any pipeline service.
- (5) An access determination must not require the service provider to provide a pipeline service or carry out any of the activities referred to in subrule (2)(d) unless the provision of the pipeline service or activity is:
  - (i) technically feasible; and
  - (ii) consistent with the safe and reliable operation of the pipeline.
- (6) An access determination must not, unless the service provider agrees, require the service provider to:
  - (a) extend the geographical range of a non-scheme pipeline; or
  - (b) carry out any of the activities referred to in subrule (2)(d) unless the prospective user funds the activity in its entirety.



- (7) An access determination must not provide for a prospective user to acquire an interest in a non-scheme pipeline by funding an expansion of the capacity of the pipeline unless the service provider agrees.

### **571 Interim access determinations (NGL section 199(2))**

- (1) An interim access determination that provides for access to a pipeline service before the final access determination is made must specify the terms and conditions on which the prospective user must be given access to the pipeline service including reasonable payment terms.
- (2) If an arbitrator makes an interim access determination that provides for access to a pipeline service before the final access determination is made, the final access determination must provide for adjustments to reflect any differences between the interim access determination and the final access determination in respect of the period:
  - (a) prior to the prospective user gaining access on the terms of the final access determination; or
  - (b) if the prospective user does not elect to seek access on the terms of the final access determination – prior to access on the terms of the interim access determination ceasing under rule 573(5)(b).
- (3) An interim access determination must:
  - (a) be in writing and dated and signed by the arbitrator;
  - (b) identify the parties to the interim access determination and the place the determination is made;
  - (c) be communicated by email when it is made to the parties to the access dispute and the scheme administrator; and
  - (d) be sent by post to the parties and the scheme administrator within 5 business days of being made.
- (4) An interim access determination takes effect from the later of the time specified in the access determination and the time it is communicated to the parties to the access dispute.

### **572 Final access determinations**

- (1) Unless it terminates the arbitration under the *NGL* and subject to subrule (2), the arbitrator must determine the access dispute as quickly as possible, and in any case the arbitrator must make a final access determination within:
  - (a) 50 business days after the date the access dispute was referred to the arbitrator; or
  - (b) if agreed by the parties to the access dispute, any greater number of business days, up to a maximum of 90 business days, after the date the access dispute was referred to the arbitrator.
- (2) In determining the number of business days elapsed since the date the access dispute was referred to the arbitrator, the following must be disregarded:

- (a) if the arbitrator appoints an independent expert in accordance with rule 575 – any day within a period allowed by the arbitrator for the independent expert to report and that the arbitrator directs must be disregarded; and
  - (b) any day within a period allowed by the arbitrator for a party to prepare access negotiation information not provided in negotiations and that the arbitrator directs must be disregarded.
- (3) A final access determination must:
- (a) be in writing and dated and signed by the arbitrator;
  - (b) identify the parties to the determination and the place the determination is made;
  - (c) set out the matters agreed by the parties and the matters in dispute;
  - (d) set out the arbitrator's determination of the access dispute;
  - (e) be communicated by email when it is made to the parties to the access dispute and the scheme administrator; and
  - (f) be sent by post to the parties and the scheme administrator within 5 business days of being made.
- (4) The arbitrator must give the parties and the scheme administrator a statement of reasons for the arbitrator's final access determination, which must explain how the arbitrator took into account the principles and other matters in rule 569. The statement of reasons must be given to the parties and the scheme administrator with the final access determination or within 20 business days of the final access determination being made.

### **573 Effect of final access determination**

- (1) A final access determination takes effect from the later of the time specified in the access determination and the time it is communicated to the parties to the access dispute.
- (2) A final access determination is binding on the parties to the access dispute subject to section 216Q(2) of the *NGL*.
- (3) A prospective user wishing to enter into an access contract that gives effect to a final access determination must notify that decision to the other parties to the access dispute and the scheme administrator in writing within 10 business days of the access determination being made.
- (4) If the prospective user gives a notice under subrule (3), the parties to the access dispute must enter into an access contract for the provision of access in accordance with the final access determination (as may have been corrected under rule 579).
- (5) If a prospective user does not give a notice under subrule (3) within the period specified in that subrule:
  - (a) the prospective user and any associate of the prospective user must not give an access dispute notice about the same or a substantially similar pipeline

service on the non-scheme pipeline the subject of the final access determination for a period of one year from the date of the final access determination; and

- (b) if the prospective user had access under the terms of an interim access determination, that access ends at the end of that period.
- (6) The parties to an access dispute must comply with a final access determination to the extent it provides for adjustments under rule 571(2), even if the prospective user does not give a notice under subrule (3).

#### **574 Arbitration procedures**

- (1) Subject to Part 6 of Chapter 6 of the *NGL* and this Division, the arbitrator may determine the procedures for the arbitration and conduct the arbitration in such manner as it considers appropriate and is to decide whether to hold any dispute hearings.
- (2) The arbitrator must as soon as practicable after the arbitrator's appointment and after consultation with the parties to the access dispute, notify the parties of the procedures and timetable to apply to the arbitration. The arbitrator may in the arbitrator's discretion amend the procedures specified by the arbitrator during the course of the arbitration.
- (3) If documents are produced to an arbitrator, the arbitrator may take possession of, make copies of, and take extracts from, the documents and may keep the documents for as long as is necessary for the purposes of the arbitration.
- (4) Subject to section 205 of the *NGL*, all statements, documents or other information supplied to the arbitrator by a party must be communicated to the other parties.
- (5) Subject to section 205 of the *NGL*, any expert report or evidentiary document on which the arbitrator may rely in making its decision must be communicated to the parties.

#### **575 Experts appointed by the arbitrator – NGL section 199(1)(e)**

- (1) Unless otherwise agreed by the parties, if the arbitrator appoints an independent expert, the arbitrator may require a party to give the independent expert any relevant information or to produce, or to provide access to, any relevant documents or places for the independent expert's inspection.
- (2) Unless otherwise agreed by the parties, if a party so requests or if the arbitrator considers it necessary, the independent expert must, after delivery of the expert's written or oral report, participate in a hearing where the parties have the opportunity to put questions to the expert and present expert witnesses in order to testify on the points at issue.
- (3) Before appointing an independent expert under subrule (1), the arbitrator must:
  - (a) notify the parties to the access dispute of its intention to refer a matter to an independent expert, the proposed independent expert and the amount the

- independent expert will charge or the manner in which that amount will be determined; and
- (b) obtain the consent of the parties to the maximum amount that may be charged by the independent expert in connection with the reference.
- (4) A party to an access dispute must not unreasonably withhold its consent under subrule (3)(b).

## **576 Confidentiality**

- (1) The parties to an access dispute must not disclose confidential information in relation to the course of the arbitration unless the disclosure is allowed under this rule.
- (2) An arbitrator must not disclose confidential information in relation to the course of the arbitration unless the disclosure is allowed under this rule.
- (3) Subject to an order under section 200 of the *NGL*, confidential information in relation to the course of the arbitration may be disclosed by a party or the arbitrator:
  - (a) with the consent of all the parties to the access dispute;
  - (b) in the case of a party, to a professional or other adviser of the party who agrees to maintain the confidentiality of the confidential information;
  - (c) in the case of the arbitrator, to an independent expert appointed by the arbitrator who agrees to maintain the confidentiality of the confidential information;
  - (d) if it is necessary to ensure that a party has a reasonable opportunity to present the party's case and the disclosure is no more than reasonable for that purpose;
  - (e) if it is necessary for the establishment or protection of a party's legal rights in relation to a third party and the disclosure is no more than reasonable for that purpose;
  - (f) if it is necessary for the purpose of enforcing an access determination and the disclosure is no more than reasonable for that purpose;
  - (g) if it is required by, or necessary for the purposes of, these Rules or the *NGL*;
  - (h) if the disclosure is in accordance with an order made or a subpoena issued by a court of competent jurisdiction; or
  - (i) if the disclosure is authorised or required by a law of a participating jurisdiction or required by a competent regulatory body, and the person making the disclosure gives written details of the disclosure (including an explanation of the reasons for the disclosure) to:
    - (i) if the person is a party – the other parties and the arbitrator; and
    - (ii) if the arbitrator is making the disclosure – all the parties.

## **577 Conflict of interest**

- (1) In this rule, there are justifiable doubts as to the impartiality or independence of a pool arbitrator or arbitrator to whom an access dispute has been referred only if there is a real danger of bias on the part of the person in conducting the arbitration.
- (2) A pool arbitrator approached in connection with the pool arbitrator's possible appointment to determine an access dispute must disclose any circumstances likely to give rise to justifiable doubts as to the pool arbitrator's impartiality or independence.
- (3) An arbitrator, from the time of the arbitrator's appointment and throughout the course of the arbitration, must without delay disclose any circumstances of the kind referred to in subrule (2) to the parties unless they have already been informed of them by the arbitrator.
- (4) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
- (5) A party may challenge an arbitrator agreed by the party only for reasons of which the party becomes aware after the appointment has been made.
- (6) A party who intends to challenge an arbitrator must, within 15 days after becoming aware of any circumstance which gives rise to a justifiable doubt as to the impartiality or independence of the arbitrator, send a written statement of the reasons for the challenge to the arbitrator and the other parties to the dispute.
- (7) Unless the arbitrator withdraws from office or the other parties to the access dispute agree to the challenge, the arbitrator must decide on a challenge under subrule (6).
- (8) If a challenge under subrule (6) is not successful, the challenging party may request, within 30 days after having received notice of the decision rejecting the challenge, the Court to decide on the challenge.
- (9) A decision of the Court on a request under subrule (8) which is within the limits of the authority of the Court is final.
- (10) While a request under subrule (8) is pending, the arbitrator may continue the course of the arbitration and make an access determination.

## **578 Termination of arbitration**

- (1) The arbitration of an access dispute is terminated by:
  - (a) the making of a final access determination;
  - (b) an order of the arbitrator under section 216O of the *NGL* made in accordance with subrule (3); or
  - (c) notice from the prospective user in accordance with section 216P of the *NGL*.

- (2) For section 216O(4) of the *NGL*, a specified dispute resolution circumstance occurs if the parties to the access dispute agree on the termination of the arbitration.
- (3) A decision of an arbitrator to terminate an arbitration under section 216O of the *NGL* must:
  - (a) be in writing and dated and signed by the arbitrator;
  - (b) include a statement of reasons for the termination of the arbitration;
  - (c) be communicated by email to the parties to the access dispute and the scheme administrator; and
  - (d) be sent by post to the parties to the access dispute and the scheme administrator within 5 business days of being made.
- (4) A decision of an arbitrator to terminate an arbitration takes effect from the later of the time specified in the decision and the time it is communicated to the parties to the access dispute.

## **579 Correction of errors**

- (1) Within 30 days of receipt of the arbitrator's statement of reasons under rule 572(4), a party may by notice to the other parties to the access dispute and the arbitrator, request the scheme administrator to correct any of the matters specified in section 216T of the *NGL* in the final access determination.
- (2) If the scheme administrator, after consultation with the parties to the access dispute and the arbitrator considers a request under subrule (1) to be justified, the scheme administrator must make the correction.
- (3) The arbitrator may correct any error of the type referred to in section 216T of the *NGL* on the arbitrator's own initiative within 30 days of giving the arbitrator's statement of reasons under rule 572(4).
- (4) A correction of a final access determination must:
  - (a) be in writing and dated and signed by the person making the correction;
  - (b) identify the final access determination;
  - (c) set out the corrections;
  - (d) when it is made, be communicated by email to the parties to the access dispute and the scheme administrator or arbitrator as applicable; and
  - (e) be sent by post to the parties to the access dispute and the scheme administrator or arbitrator as applicable within 5 business days of being made.

## **580 Costs**

- (1) The parties to an access dispute referred to arbitration under this Division must bear their own costs in accordance with section 216V(4) of the *NGL*.

- (2) Subject to subrule (3), the parties to an access dispute referred to arbitration under this Division must each pay an equal share of the following costs of the arbitration:
  - (a) the fees and expenses of the arbitrator;
  - (b) the fees and expenses of any expert retained by the arbitrator under rule 575, to the extent those fees and expenses are consistent with the costs agreed under that rule;
  - (c) the costs of room hire; and
  - (d) the cost of any additional input agreed by the parties to be necessary to the conduct of the arbitration.
- (3) The arbitrator may, in making a final access determination or within 30 business days after the final access determination is made, direct that the parties must pay the costs of the arbitration referred to in subrule (2) in unequal shares, taking into account:
  - (a) in the case of a party to the access dispute other than the service provider or prospective user – the role of the party in the access dispute and the arbitration;
  - (b) whether the prospective user elects not to enter into an access contract in accordance with the access determination;
  - (c) whether a party has conducted itself in the arbitration in a way that unnecessarily disadvantaged another party by conduct such as:
    - (i) failing to comply with an order or direction of the arbitrator without reasonable excuse;
    - (ii) failing to comply with the *NGL*, the Regulations or the Rules;
    - (iii) asking for an adjournment as a result of paragraph (i) or (ii);
    - (iv) causing an adjournment;
    - (v) attempting to deceive another party or the arbitrator; or
    - (vi) vexatiously conducting an access dispute;
  - (d) whether a party has been responsible for unreasonably prolonging the time taken to complete the arbitration; and
  - (e) any other matter the arbitrator considers relevant.
- (4) Costs that are payable under this rule:
  - (a) are a debt due by the party to the arbitrator, or the person to whom the arbitrator has ordered that they be paid; and
  - (b) may be recovered by that person in a court of competent jurisdiction.

## **581 Information to be published about access determinations**

- (1) Within a reasonable time of a final access determination being made, the scheme administrator must publish on its website the following information:
  - (a) the non-scheme pipeline the subject of the arbitration;

- (b) with the consent of the prospective user, the parties to the access dispute;
  - (c) the name of the arbitrator who made the final access determination;
  - (d) the time elapsed between the access dispute being referred to the arbitrator and the making of the final access determination;
  - (e) which of the pipeline services offered on the non-scheme pipeline was the subject of the access dispute;
  - (f) whether the prospective user has given notice that it wishes to enter into an access contract in accordance with the final access determination; and
  - (g) if the final access determination includes a determination with respect to asset valuation, the valuation method adopted, the assets to which the valuation applied and the determination of the asset value.
- (2) The scheme administrator must publish on its website information about the number of access disputes referred to arbitration under this Part and brought to an end before a final access determination is made.

## **Division 5            Scheme administrator**

### **582            Role of the scheme administrator**

- (1) The scheme administrator has the functions provided for the scheme administrator under Chapter 6A of the *NGL* and this Part.
- (2) Without limiting subrule (1), the functions of the scheme administrator include:
  - (a) establishing a pool of arbitrators;
  - (b) publication of guides, including the non-scheme pipeline arbitration guide;
  - (c) referring access disputes to arbitration and appointing the arbitrator;
  - (d) correcting errors in access determinations; and
  - (e) publishing information about access determinations under rule 581.
- (3) The scheme administrator has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (4) The scheme administrator does not incur any civil monetary liability for an act or omission done or made under or for the purposes of this Part unless the act or omission is done or made in bad faith.

### **583            Pool of arbitrators**

- (1) The scheme administrator must establish and maintain a pool of suitably qualified and experienced commercial arbitrators who may be appointed to determine access disputes referred to arbitration under this Part.
- (2) The scheme administrator may at any time change the composition of the pool of arbitrators and may include commercial arbitrators in the pool of arbitrators on a temporary basis.



- (3) The scheme administrator must publish on its website and keep up to date the name, contact details and a professional profile of each person in the pool of arbitrators.
- (4) The scheme administrator may determine in its discretion from time to time the process for identifying candidates for the pool of arbitrators.
- (5) In identifying candidates for the pool of arbitrators, the scheme administrator may consult with any person it considers appropriate including current pool arbitrators, other nationally or internationally recognised commercial arbitrators and nationally or internationally recognised institutions with relevant experience in the appointment of commercial arbitrators.
- (6) The scheme administrator must establish and maintain for each pool arbitrator an indicative schedule of fees for the conduct of arbitrations under this Part by the pool arbitrator which may include fixed or capped rates for specified categories of access dispute.
- (7) The scheme administrator must at the request of a prospective user, a service provider or any party to an access dispute provide the indicative schedule of fees of one or more pool arbitrators. Each indicative schedule of fees is confidential information and may only be disclosed by the person to whom it is provided in the circumstances provided for in rule 561(8).

#### **584 Non-scheme pipeline arbitration guide**

- (1) The scheme administrator must publish and maintain a non-scheme pipeline arbitration guide containing guidance for pool arbitrators and any person who may become a party to an access dispute about the process for the determination of access disputes under the NGL and these Rules including the matters that may be referred to arbitration under this Part, timelines and information requirements.
- (2) The non-scheme pipeline arbitration guide may include model arbitration terms and conditions and model procedures for arbitrations conducted under this Part.
- (3) The non-scheme pipeline arbitration guide is not binding on an arbitrator or the parties to an access dispute.
- (4) The scheme administrator may in its discretion develop and publish and may from time to time amend, other non-binding guides relating to this Part.

### **Division 6 Exemptions**

#### **585 Exemption categories**

- (1) The AER must on the application of the service provider for a non-scheme pipeline, grant an exemption under this Division in respect of the service provider's non-scheme pipeline, if:
  - (a) the exemption sought is one of the exemption categories in subrule (4);

- (b) the service provider has demonstrated to the reasonable satisfaction of the AER that the non-scheme pipeline satisfies the exemption criteria applicable to the exemption category; and
  - (c) the AER is otherwise satisfied that in all the circumstances the exemption should be granted.
- (2) Subject to this Division, the AER may grant an exemption under this Division in respect of a class or group of non-scheme pipelines on the application of a service provider for one or more of the non-scheme pipelines or on its own initiative.
- (3) The AER must only grant exemptions in the categories specified in the table in subrule (4) and may grant more than one category of exemption in respect of a non-scheme pipeline.
- (4) The exemption categories and exemption criteria are set out in the table in this subrule.

Exemption category	Exemption criteria
Category 1: The non-scheme pipeline is exempt from the operation of Division 3 and Division 4.	The non-scheme pipeline is not a third party access pipeline.
Category 2: The service provider for the non-scheme pipeline is exempt from the obligation to publish information under Division 2 in relation to the non-scheme pipeline.	Either of the following: (a) The non-scheme pipeline is not a third party access pipeline. (b) The non-scheme pipeline is a single user pipeline.
Category 3: The service provider for the non-scheme pipeline is exempt from the obligations to publish information under Division 2 other than pipeline information and pipeline service 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.

- (5) For the purposes of the table in subrule (4):
- (a) a non-scheme pipeline is a third party access pipeline if any pipeline services on the non-scheme pipeline are offered or provided, directly or indirectly, to any person other than:
    - (i) the service provider for the non-scheme pipeline;
    - (ii) a *related body corporate* of the service provider for the non-scheme pipeline; or
    - (iii) a joint venture in which the service provider for the non-scheme pipeline or a *related body corporate* of the service provider is a joint venture participant;

- (b) a non-scheme pipeline is a single user pipeline if:
  - (i) the pipeline is a third party access pipeline; and
  - (ii) all pipeline services on the non-scheme pipeline are provided to a single user, taking into account pipeline services provided both directly and indirectly by the service provider.
- (6) An exemption granted by the AER in accordance with this Division:
  - (a) takes effect on the date specified by the AER in the exemption; and
  - (b) ends on the expiry date specified in the exemption or, if earlier, the date a revocation of the exemption made under this Division comes into effect.
- (7) The AER must establish, publish and maintain a register of exemptions and exemption revocations made under this Division.
- (8) The service provider for a non-scheme pipeline for which an exemption has been granted under this Division must notify the AER without delay if circumstances change such that the non-scheme pipeline no longer qualifies for the exemption under this Division.

**Note:**

This subrule is classified as a civil penalty provision under the National Gas (South Australian) Regulations. See clause 6 and Schedule 3 of the National Gas (South Australian) Regulations.

## **586 Exemption conditions**

- (1) An exemption under this Division may be granted subject to any conditions determined by the AER.
- (2) The service provider for a non-scheme pipeline for which an exemption has been granted under this Division must comply with any conditions of the exemption.

**Note:**

This subrule is classified as a civil penalty provision under the National Gas (South Australian) Regulations. See clause 6 and Schedule 3 of the National Gas (South Australian) Regulations.

- (3) The AER may on the application of the service provider for the non-scheme pipeline concerned or on its own initiative vary the conditions of an exemption.
- (4) A variation to the conditions of an exemption takes effect on the date specified by the AER in its decision to grant the variation.

## **587 Revocation**

- (1) The AER may revoke an exemption granted by it under this Division where in the AER's reasonable opinion, the relevant exemption criteria in rule 585(4) is no longer satisfied.
- (2) The AER may revoke an exemption granted by it under this Division on its own initiative or following an application made by any person.

- (3) A revocation of an exemption under this rule takes effect on the date specified by the AER in its decision to revoke the exemption.
- (4) If a category 1 or category 3 exemption is revoked for a non-scheme pipeline, for the purpose of rule 552(2) the application date for the non-scheme pipeline is taken to be the date on which the revocation takes effect.

### **588 Making and form of application**

- (1) A service provider for a non-scheme pipeline may apply to the AER for:
  - (a) the grant of an exemption for its non-scheme pipeline; or
  - (b) a variation to any condition of an exemption for its non-scheme pipeline.
- (2) Any person may apply to the AER for the revocation of an exemption.
- (3) An application under this Division must be in the form, and contain the information, specified in any guidelines issued by the AER for the purposes of this rule.
- (4) The AER may, within the period for making a decision on the application under rule 589 ask the applicant to provide further information or clarification in support of the application if the AER considers that the application is incomplete or requires clarification.
- (5) If the AER asks for further information or clarification under subrule (4), the application is taken to have been made when the further information or clarification is provided to the AER's satisfaction.

### **589 Decision on application**

- (1) The AER must decide whether to grant or refuse to grant an application made under rule 588 within 40 business days after the application is made.
- (2) The AER may extend the time period in subrule (1) by a further period of 20 business days by giving the applicant written notice of the extension not later than 30 business days after the application is made.
- (3) The AER must:
  - (a) give the applicant written notice of its decision to grant or refuse to grant an application made under rule 588, including any conditions imposed in accordance with rule 586; and
  - (b) if the AER imposes conditions on the grant of an exemption or a variation of an exemption in accordance with rule 586, or refuses to grant an application made under rule 588, it must give the applicant written reasons for its decision.

### **590 Decision to vary or revoke an exemption**

- (1) If the AER proposes to vary or revoke an exemption other than on the application of the service provider for the non-scheme pipeline concerned, it must notify the

service provider for the pipeline and invite the service provider to make submissions about the proposed variation or revocation within 20 business days of the notice.

- (2) If a service provider given a notice under subrule (1) provides written submissions to the AER within the period required by the notice, the AER must have regard to those submissions in deciding to vary or revoke the exemption.
- (3) If the AER varies or revokes an exemption it must give the service provider for the non-scheme pipeline written reasons for its decision.