

Part 12 Access disputes

Division 1 Preliminary

113 Interpretation

In this Part:

expert safety report means a report by an independent expert on whether the provision of a requested pipeline service would be unsafe;

safety of operation notification means a notification by a service provider to a prospective user that the service provider believes the provision of a pipeline service requested by the prospective user would be unsafe;

submissions lodgement date means a date fixed by the relevant dispute resolution body and notified to the parties to an access dispute, as the date by which initial submissions in the access dispute must be lodged.

unsafe – the provision of a pipeline service is unsafe if it is not reasonably possible for the service provider to provide it consistently with:

- (a) the safe operation of the relevant pipeline; or
- (b) prudent pipeline practices in the gas industry.

Division 2 Safety of operation notification

114 Safety of operation notification

- (1) If a service provider refuses to provide a requested pipeline service and an access dispute arises in consequence of the refusal, the service provider may, on or before the submissions lodgement date, give a safety of operation notification.
- (2) A safety of operation notification is given (and may be withdrawn) by notice to the relevant dispute resolution body and the other parties to the dispute.
- (3) A safety of operation notification must set out the grounds on which the notification is based, including a statement of any facts and assumptions relevant to those grounds.

115 Expert safety report

- (1) When a service provider gives a safety of operation notification, it must submit the name of an independent expert who might be engaged to provide an expert safety report.

- (2) The relevant dispute resolution body may approve the person nominated by the service provider or some other person as the independent expert to provide an expert safety report.
- (3) The service provider must, on receiving notice of the approval, immediately engage the independent expert approved by the relevant dispute resolution body to provide an expert safety report on the requested pipeline service to which the access dispute relates.

Note:

This subrule is a conduct provision for the purposes of the *NGL*. (See the Regulations, Clause 7 and Schedule 4.)

- (4) In carrying out the investigations necessary for the expert safety report, the approved independent expert must have regard to all relevant statutory or regulatory requirements or restrictions (including those imposed under the conditions of a licence).
- (5) When the independent expert provides the service provider with the expert safety report, the service provider must immediately give copies of the report to the relevant dispute resolution body and the other parties to the dispute.

116 Access determination

In proceedings for the resolution of the access dispute, the relevant dispute resolution body is bound by the findings of an approved independent expert in an expert safety report.

Division 3 Access determinations

117 Past capital contributions (Section 190 of the NGL)

In proceedings for the resolution of an access dispute, the relevant dispute resolution body must (where relevant) take into account:

- (a) the value of any past capital contribution made by a party to the dispute; and
- (b) the extent the party has re-couped any such past capital contribution.

118 Access determination requiring expansion of capacity (Section 191 of the NGL)

- (1) An access determination:
 - (a) may require the service provider to carry out an expansion of the capacity of the access dispute pipeline; but
 - (b) may not require the service provider to extend the geographical range of the access dispute pipeline.

- (2) However:
 - (a) the service provider cannot be required to carry out an expansion of the capacity of a *light regulation pipeline* unless the prospective user funds the capacity expansion in its entirety; and
 - (b) the service provider cannot be required to fund, in whole or part, an expansion of the capacity of a *full regulation pipeline* unless the extension and expansion requirements of the applicable access arrangement provide for the relevant funding; and
 - (c) an expansion of capacity required under an access determination must be:
 - (i) technically and economically feasible; and
 - (ii) consistent with the safe and reliable operation of the pipeline.
- (3) A user or prospective user acquires no interest in a pipeline by funding an expansion of capacity of the pipeline in accordance with an access determination unless the service provider agrees.

119 Variation of applicable access arrangement to accommodate capacity expansion (Section 191 of the NGL)

- (1) This rule applies if an access determination:
 - (a) requires a service provider to expand the capacity of the access dispute pipeline; and
 - (b) requires a prospective user of incremental capacity to contribute some or all the cost.
- (2) The access determination may make consequential amendments to the applicable access arrangement.
- (3) The consequential amendments must provide for one or more of the following:
 - (a) a mechanism to roll some or all the capital costs of the expansion into the capital base;
 - (b) consequential adjustments to reference tariffs;
 - (c) a surcharge to be levied on users of incremental services;
 - (d) the establishment of a speculative capital expenditure account and regulation of its operation.
- (4) The access determination (and the consequential amendments to the access arrangement) must set out the terms and conditions of access for a prospective user of incremental capacity who is to contribute some or all the cost of the capacity expansion.

- (5) The terms and conditions of access for any such prospective user must reflect the value to the service provider of the capital contribution made by the prospective user.