



Australian Energy Market Commission

CONSULTATION PAPER

National Gas Amendment (Reference service and rebateable service definitions) Rule 2011

Rule Proponent

Australian Energy Regulator

6 October 2011

**RULE
CHANGE**

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About the AEMC

The Council of Australian Governments, through its Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005. The AEMC has two principal functions. We make and amend the national electricity and gas rules, and we conduct independent reviews of the energy markets for the MCE.

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1 Introduction

On 5 August 2011, the Australian Energy Regulator (AER or Proponent) submitted a Rule change request to the Australian Energy Market Commission (AEMC or Commission) in relation to the definition of a reference service and a rebateable service in the National Gas Rules (Rules).

This Consultation Paper has been prepared by the staff of the AEMC to facilitate public consultation on the Rule change proposal and does not represent the views of the AEMC or any individual Commissioner of the AEMC.

This paper:

- sets out a summary of the Rule change proposal;
- identifies a number of questions and issues to facilitate the consultation on the Rule change proposal; and
- outlines the process for making submissions and the Commission's proposed process and timing for considering the Rule change proposal.

As the Rule change request sets out the Proponent's proposal in detail we have only summarised it at a high level here.

2 Details of the Rule Change Request

2.1 Proponent's Rule change request

The Rule change request from the Proponent proposes to:

- amend the definition of a reference service in rule 101 of the Rules by:
 - removing the requirement that a full access arrangement must specify all reference services;
 - including the requirement that a full access arrangement must specify a reference service for at least one pipeline service; and
 - allowing the relevant regulator discretion in determining what other pipeline services that are likely to be sought by a significant part of the market should be included as a reference service.
- amend the definition of a rebateable service in rule 93(4) of the Rules by:
 - removing the requirement that the market for such a service be substantially different to the market for reference services; and
 - providing that a service that is not a reference service may be a rebateable service if either substantial uncertainty exists concerning the extent of demand for the service or the revenue to be generated or it is not commercially and technically reasonable to set a reference tariff for such a service.

The proponent's Rule change request includes the proposed Rules.

2.2 Rationale for Rule change request

In its Rule change request¹, the Proponent provides its rationale for the Rule change. A number of key points raised in the Rule change request are summarised as follows.

In relation to the reference service definition:

- currently all pipeline services are defined as reference services if they are likely to be sought by a significant part of the market;
- the intention is to revert to the previous requirement that existed under the National Third Party Access Code for Natural Gas Pipeline Systems (Gas Code) where at least one pipeline service that is likely to be sought by a significant part of the market be included in an access arrangement;

¹ AER, Request for making of a Rule relating to rebateable service and reference service definitions and criteria, 5 August 2011.

- the Proponent considers that the current definition does not provide flexibility for the regulatory treatment of pipeline services (such as backhaul and interruptible services) as either reference or rebateable services or neither;
- this flexibility previously existed under the Gas Code and was removed in the transfer to the Rules; and
- the Proponent considers that the application of the current definition is likely to result in access arrangement decisions which, in some circumstances, do not satisfy the most efficient investment in and use of pipeline services.

In relation to the rebateable service definition:

- currently the definition requires that the market for a rebateable service be substantially different from the market for any reference service;
- the Proponent considers that this requirement may prevent revenue from other pipeline services being rebated to users, even when it is efficient to do so;
- the Proponent considers that in circumstances where there is a high level of uncertainty of revenue and demand for a pipeline service or where there is uncertainty due to commercial and technical arrangements, the regulator should have discretion to decide whether a pipeline service be a rebateable service negotiated with users, a reference service or neither;
- the Proponent considers that the current definition is likely to result in access arrangement decisions which are contrary to the long term interests of consumers with respect to price.

2.2.1 Specific issue the Rule change is seeking to address

The Proponent submits that the proposed Rule change will address a specific issue that it anticipates will arise in the forthcoming APA GasNet access arrangement review. The service provider, APA GasNet Australia (Operations) Pty Limited (APA) is due to submit a revised access arrangement proposal by 31 March 2012.

The specific issue is whether AMDQ credit certificates (AMDQ cc) should be treated as a reference service or as a rebateable service. AMDQ cc provide preferential rights to shippers/users for specified amounts of pipeline capacity. Under the current rules AMDQ cc would be regarded as a reference service as they are likely to be sought by a significant part of the market.

The Proponent submits that APA has already contracted AMDQ cc with a significant part of the market for the 2013-17 access arrangement period. Under these circumstances if AMDQ cc are not treated as a rebateable service, then users will be effectively paying for transportation pipeline services twice without being rebated and APA will retain all additional revenue resulting from the sale of AMDQ cc. The Proponent submits that this would amount to the recovery of more than the efficient costs of providing the regulated service.

2.3 Broader application of the proposed Rule change

The AEMC notes that the proposed Rule change has broader application than addressing the specific issue identified by the Proponent. The proposed Rule change is relevant to any full regulation, covered pipeline which is required under the Rules to have an access arrangement. The AEMC also notes that the proposed Rule change has the potential to apply to Western Australian pipelines that are subject to full regulation by the Economic Regulation Authority of Western Australia.

3 Assessment Framework

The Commission's assessment of this Rule change request must consider whether the proposed Rule will or is likely to contribute to the achievement of the National Gas Objective (NGO) as set out under section 23 of the National Gas Law (NGL).

The NGO is as follows:

“The objective of this Law is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.”

The Proponent in its Rule change request sets out how it considers that the proposed Rule change will promote the NGO.

The AEMC seeks stakeholders' views on whether the proposed Rules will or are likely to contribute to the achievement of the NGO. The AEMC seeks stakeholder views on whether there is a more preferable Rule that having regard to the issues raised by the Proponent, will or is likely to better contribute to the achievement of the NGO.

4 Rule change process

The AEMC is proposing to adopt the standard Rule change process which provides for the two minimum consultation periods prescribed in sections 303 and 308 of the NGL.

The proposed timetable for the Commission to complete the Rule change process is set out in the table below.

Table 4.1 Proposed timetable

Publication of notice, consultation paper and Rule change request	6 October 2011
Close of first round of submissions	3 November 2011
Publication of draft Rule determination	late December 2011
Close of second round of submissions	early to mid February 2012
Publication of final Rule determination	late March 2012

The Commission will review this timetable once it has received and considered submissions on this Consultation Paper.

5 Issues for Consultation

Taking into consideration the NGO, there are a number of key questions for consultation that appear to be relevant to this Rule change request.

These questions outlined below are provided for guidance. Stakeholders are encouraged to comment on these questions as well as any other aspect of the Rule change request.

Key questions on which stakeholders' views are sought include:

- Do you agree that the problem identified by the Proponent has the potential to limit the regulator's ability to set an efficient tariff? If so, why?
- Is the Rule change proposal likely to effectively address the problem identified by the Proponent?
- Is the Rule change proposal likely to contribute to the achievement of the NGO, particularly in respect of promoting efficient investment in and use of pipeline services? If so, on what basis?
- Is there a more preferable Rule that is likely to better contribute to the achievement of the NGO, particularly in respect of promoting efficient investment in and use of pipeline services?
- Is the proposed wording of the Rule change expressed clearly enough to give sufficient meaning as to what constitutes a reference service and a rebateable service?
- Are there other consequences of the Rule change (intentional or unintentional) that have not been identified by the Proponent?
- Is the level of regulatory discretion that the Rule change proposal provides for appropriate?
- How may the Rule change impact on regulated pipelines other than those identified in the Rule change request?

6 Lodging a submission

The Commission has published a notice under section 303 of the NGL for this Rule change proposal inviting written submissions. Submissions are to be lodged online or by mail by 3 November 2011 in accordance with the following requirements.

Where practicable, submissions should be prepared in accordance with the Commission's Guidelines for making written submissions on Rule change proposals.² The Commission publishes all submissions on its website, subject to a claim of confidentiality.

All enquiries on this project should be addressed to Trevor Johnston on (02) 8296 7800.

6.1 Lodging a submission electronically

Electronic submissions must be lodged online via the Commission's website, www.aemc.gov.au, using the "lodge a submission" function and selecting the project reference code GRC0012. The submission must be on letterhead (if submitted on behalf of an organisation), signed and dated.

Upon receipt of the electronic submission, the Commission will issue a confirmation email. If this confirmation email is not received within three business days, it is the submitter's responsibility to ensure the submission has been delivered successfully.

6.2 Lodging a submission by mail

The submission must be on letterhead (if submitted on behalf of an organisation), signed and dated. The submission should be sent by mail to:

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Or by Fax to (02) 8296 7899.

The envelope must be clearly marked with the project reference code: GRC0012.

Except in circumstances where the submission has been received electronically, upon receipt of the hardcopy submission the Commission will issue a confirmation letter.

If this confirmation letter is not received within 3 business days, it is the submitter's responsibility to ensure successful delivery of the submission has occurred.

² This guideline is available on the Commission's website.

Abbreviations

AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
AMDQ cc	Authorised maximum daily quantity credit certificates
APA	APA GasNet Australia (Operations) Pty Limited
Commission	See AEMC
NGL	National Gas Law
NGO	National Gas Objective
Proponent	See AER
Rules	National Gas Rules