

Australian Energy Market Commission

DRAFT RULE DETERMINATION

National Gas Amendment (Pipeline operator
cost recovery processes) Rule 2013

Rule Proponent

Australian Energy Regulator

4 April 2013

**RULE
CHANGE**

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About the AEMC

The Council of Australian Governments (COAG), through its then Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005. In June 2011, COAG established the Standing Council on Energy and Resources (SCER) to replace the MCE. The AEMC has two main functions. We make and amend the national electricity, gas and energy retail rules, and we conduct independent reviews of the energy markets for the SCER.

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Summary

The Commission has made this draft rule determination in response to the pipeline operator cost recovery processes rule change request (rule change request) submitted by the Australian Energy Regulator (AER) on 1 June 2012.

This draft rule will establish a framework for cost recovery which better promotes the efficient operation and use of the cost recovery provisions by pipeline operators, AEMO, the AER and other relevant stakeholders.

Rule change request

The rule change request seeks to amend the cost recovery processes which exist for gas transmission pipeline operators who provide:

- market operator service (MOS) allocation services in the short term trading market (STTM); and
- aggregation and information services in the National Gas Market Bulletin Board (BB).

Following the first use of the cost recovery provisions for the assessment of MOS allocation service costs in 2011, the Australian Energy Market Operator (AEMO) and the AER identified a number of issues with the current process. Consequently, the AER has submitted this rule change request to improve the efficiency and operation of the cost recovery processes for pipeline operators providing the MOS allocation service in the STTM and aggregation and information services in the BB. The AER proposes to achieve this by amending a number of aspects of the current processes to:

- require pipeline operators to submit costs and, where required, the relevant body to assess costs, by reference to efficient costs that would have been incurred by a prudent operator (rather than by reference to reasonable costs);
- transfer responsibility for decision making on the amounts payable to pipeline operators in respect of MOS allocation and aggregation and information services costs from AEMO to the AER;
- extend the timeframes for assessment of cost invoices¹ to provide the AER with sufficient time to seek further clarification and collect additional information from pipeline operators, if required;
- require pipeline operators to submit evidence with their cost estimates and invoices to demonstrate that the costs specified reflect the efficient costs that would be incurred by a prudent operator;
- clarify the definitions of 'MOS allocation service costs' and 'aggregation and information services costs'; and

¹ The terms 'cost invoice' and 'tax invoice' are used interchangeably in this draft rule determination.

- amend the aggregation and information services cost recovery process in the BB in line with any changes made to the MOS allocation service cost recovery process in the STTM rules.

Commission's decision

The Commission considers that, on balance, the proposed rule would be likely to provide a more efficient cost recovery process relative to the current rules. However, having had regard to the views of stakeholders in submissions to the consultation paper and having undertaken its own analysis and review, the Commission considers that additional amendments could be made to the cost recovery processes to further promote efficiency in their operation and use.

On this basis, the Commission has decided to make a draft rule which is a more preferable rule to the AER's proposed rule. The draft (more preferable) rule differs from the proposed rule in the following respects:

- All cost invoices submitted by pipeline operators for payment by AEMO will be subject to review by the AER. To this end, the objection mechanism that currently exists will no longer act as trigger for an assessment process. In carrying out the review, the AER will be required to either approve or reject the amount specified in an invoice by determining whether the costs specified:
 - have been incurred; and/or
 - are reasonable.
- If the AER rejects the amount specified in a cost invoice, it must undertake an assessment to determine an amount payable that, in the AER's opinion, is reasonable for the relevant services in respect of that invoice.
- If In deciding whether to approve or reject the amount specified in an invoice, the AER must have regard to:
 - the evidence provided with a cost invoice;
 - any comments received by AEMO from other parties, including objections to the payment of an invoice;
 - any comments from AEMO;
 - any information received in accordance with a request or relevant notice issued by the AER;
 - any other relevant information; and
 - whether the likely costs of undertaking an assessment of the costs specified in an invoice outweigh the likely public benefit resulting from such an assessment.

- The AER will be required to make a decision on the amounts payable to pipeline operators (if any) within 30 business days of receiving the cost invoice and other relevant information from AEMO.
- AEMO will be required to publish the evidence provided by pipeline operators to support their cost estimates and cost invoices, subject to any claims of confidentiality by pipeline operators.
- AEMO must publish pipeline operators' cost estimates and supporting evidence, and cost invoices and supporting evidence, within five business days following receipt.
- AEMO must pay any amount the AER has determined payable to a pipeline operator within 10 business days of the AER publishing its determination.

The changes proposed by the AER to the definitions of 'MOS allocation service costs' and BB 'aggregation and services costs' have been included in the draft (more preferable) rule.

In addition, the draft (more preferable) rule has made corresponding changes to the cost recovery process set out in Part 18 of the NGR such that the process for assessing pipeline operators' aggregation and information services costs is consistent with the amended MOS allocation service cost recovery process.

Reasons for the Commission's decision

The Commission is making a more preferable rule which it considers is likely to better contribute to the achievement of the national gas objective (NGO) than the proposed rule. Specifically, the Commission considers that the draft (more preferable) rule will:

- better promote transparency and increase the scope for effective engagement by stakeholders in the cost recovery process by requiring AEMO to publish the information provided by pipeline operators in support of their cost estimates and cost invoices;
- increase certainty (and thereby promoting confidence in the process) for pipeline operators and other stakeholders by providing a mechanism which ensures all cost invoices will be subject to oversight by the AER;
- improve overall efficiency of the cost recovery process by providing a framework within which the costs of carrying out a detailed assessment of pipeline operators' invoiced costs can be weighed against the benefits to consumers of amending the amounts payable to pipeline operators; and
- provide a more proportionate approach to the assessment of pipeline operators' invoiced costs given the uncertainty around how the AER would apply a test of efficiency to assess MOS allocation service costs (and aggregation and

information services costs), and given the relatively small size and nature of the costs claimed to date.²

Invitation for submissions

The Commission invites public submissions on this draft rule determination by 16 May 2013. See section 1.7 for details on how to make a submission and how to request a public hearing on this draft rule determination.

² Appendix C provides a summary of pipeline operators' MOS allocation service costs claimed and paid to date.

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1 AER's rule change request

1.1 The rule change request

On 1 June 2012, the Australian Energy Regulator (AER or proponent) submitted a rule change request to the Australian Energy Market Commission (AEMC or Commission) proposing changes to the National Gas Rules (NGR).³

Specifically, this rule change request seeks to amend the cost recovery processes which exist for gas transmission pipeline operators who provide:

- market operator service (MOS) allocation services in the short term trading market (STTM); and
- aggregation and information services in the National Gas Market Bulletin Board (BB).

1.2 Rationale for rule change request

Following the first use of the provisions in Part 20 of the NGR for the assessment of MOS allocation service costs in 2011, AEMO and the AER identified a number of issues with the current process.⁴ As a result, the AER seeks to improve the efficiency and operation of the cost recovery processes for pipeline operators providing the MOS allocation, and BB aggregation and information, services.

1.3 Issues this rule change seeks to address

The proponent considers there are a number of problems with the current rules in relation to the cost recovery arrangements for the MOS allocation service. The key issues as set out in the rule change request are as follows:

- **Approach to assessment:** The current assessment of MOS allocation service costs includes whether the proposed costs meet the definition of having been 'reasonably incurred'. However, at present, there is no requirement to assess whether the level of costs incurred by a pipeline operator is efficient, nor is there a requirement for pipeline operators to justify that the costs were incurred prudently or efficiently. The proponent considers that it is not appropriate for STTM shippers to have to pay for costs above those which the AER considers have been incurred efficiently.
- **Appropriate decision making body:** Under the current process, AEMO is the decision maker (even where advice is provided by the AER) on whether the

³ The rule change request is available to download from the AEMC's website: www.aemc.gov.au.

⁴ The Commission understands that the issues experienced by AEMO and the AER during the first application of the assessment process in 2010-2011 did not reoccur during the second application in 2011-2012.

invoiced costs are reasonable. The proponent considers that, arguably, it may be more appropriate for the AER in its role as economic regulator to be responsible for making determinations on the appropriate level of MOS allocation service costs. In addition, in the instance the AER is unable to provide advice within the required timeframes, there is currently potential for double handling in that the relevant information will be handed back to AEMO for it to then consider the reasonableness of the claims.

- **Timeframes for assessment of invoiced costs:** In the proponent's view, one of the most significant problems with the current process is the timeframes for undertaking an assessment of MOS allocation service costs. It considers that the current rules, which require the AER to respond to an AEMO request for advice within 15 business days, are insufficient to allow for a robust and comprehensive assessment of multiple pipeline operators' MOS allocation costs.⁵ The proponent notes that, despite the AER being the body undertaking the key assessment work, it only has 15 business days to provide advice to AEMO. In comparison, AEMO has 30 business days after receiving the advice to make a determination on the amount payable (see Figure 2.2).
- **Information requirements – justification of costs:** The proponent considers that the information provided by pipeline operators (and therefore the information published by AEMO for comment) currently provides relatively limited justification for the level of MOS service costs claimed on invoices. The current information requirements (which are primarily specified in the procedures) mean that, in practice, the AER must seek significant additional information from pipeline operators in order to undertake the assessment of invoiced costs.
- **Clarity of definition of 'MOS allocation service costs':** The proponent considers there is currently some ambiguity around which costs are recoverable under the definition of 'MOS allocation service costs'. The experience of assessing invoices for MOS allocation service costs for 2010-2011 highlighted different opinions as to which costs are recoverable as MOS allocation service costs.⁶

The analysis within the AER's rule change request focuses on the MOS allocation service costs process. However, the AER also seeks to amend the process for the submission of costs and invoices, and the assessment and payment of invoices, for BB aggregation and information services provided by pipeline operators.

The AEMC sought additional information from the AER on why the proposed changes should apply to the BB rules, particularly as cost recovery has not yet been sought by pipeline operators for the services they provide to the BB. In its response, the AER

⁵ In response to these timing limitations, the AER elected to use formal information gathering powers under s. 42 of the National Gas Law (NGL) to seek information and supporting documents from the pipeline operators regarding their 2010-2011 invoiced costs.

⁶ There are a broader set of costs associated with the process for determining STTM facility allocations which are separate to the costs associated with the MOS allocation service. It is not intended that the costs associated with the provision of STTM facility allocations to AEMO be recoverable under the definition of 'MOS allocation service costs'.

identified two reasons for why the changes should be made. First, there is benefit in retaining a consistent assessment process between the BB process and the MOS allocation service costs process. Second, there is the potential for identical problems to occur in the BB to those that occurred under the STTM rules.⁷

1.4 Solution proposed in the rule change request

The proponent proposes to resolve the issues discussed above by making a rule that seeks to amend Part 18 and Part 20 of the NGR. The rule change request includes a proposed rule. The proposed rule seeks to make the following changes:

- **Approach to assessment:** require the AER to assess an invoice by reference to the 'efficient' MOS allocation service costs that the AER considers would have been incurred by a prudent operator. That is, the proposed rule would require the AER to apply an efficiency test, rather than a test of reasonableness, in determining the appropriate level of MOS allocation service costs.
- **Appropriate decision making body:** amend the roles of the AER and AEMO such that, when an objection is raised, the AER becomes the decision maker and informs AEMO of the amount payable. Alternatively, where no objection is raised, the proposed rule would provide AEMO with the discretion either to pay the invoiced amount, or refer the invoice to the AER, if it considers an invoice should be assessed.
- **Timeframes for assessment of invoiced costs:** provide the AER with a period of 60 business days to assess an invoice, with the ability for the AER to extend this deadline by a further 30 business days if required. The clock would start upon receipt of a request from AEMO to make a determination.
- **Information requirements – justification of costs:** amend the rules to require that the evidence included with a pipeline operator's costs estimates and invoices provides justification that costs reflect efficient costs that could be expected to be, or would have been, incurred by a prudent operator.
- **Clarity of definition of 'MOS allocation service costs':** include a definition of 'MOS allocation service'⁸ to clarify that the process for determining STTM facility allocations is not part of the MOS allocation service. This amendment is intended to clarify that only the costs associated with allocating pipeline deviations as MOS or overrun MOS (in accordance with rule 421) are recoverable under this process.
- **Bulletin Board:** to the extent that changes are made in rules 424 and 425, amend rules 197 and 198 to reflect those changes. In addition, the proposed rule amends rule 141 to include a definition of 'aggregation and information services costs'.

⁷ AER response to AEMC questions, Rule Change Request, 23 August 2012.

⁸ This concept is currently embedded within the definition of 'MOS allocation service costs' in NGR rule 364 (Definitions).

This is intended to clarify that only the costs incurred by a pipeline operator in providing aggregation and information services are recoverable under this process.

A summary of the proposed process is provided in section 3.1.2 of this draft determination.

1.5 Relevant background

MOS allocation services in the STTM

There are five key roles for industry participants operating in the STTM.⁹ These are outlined in the figure below.

Figure 1.1 Participant roles in the STTM

Role	Description	Obligation
Information providers (non-financial role)		
STTM facility operator	Operates an STTM facility (such as a transmission pipeline, a storage facility or a production facility)	Obligations to provide certain information to AEMO to enable the market to operate
STTM distributor	Operates an STTM distribution system (or a deemed STTM distribution system)	
Allocation agent	Provides AEMO with allocations on behalf of facility operators, distributors and shippers	
Trading participants (financial role)		
STTM shipper	Delivers gas to and withdraws gas from the hub	Ongoing financial obligations to meet prudential requirements
STTM user	Withdraws gas at the hub	

Pipeline operators participate in the STTM in two of the non-financial roles, namely, as STTM facility operators and as allocation agents.

There are a number of specific obligations imposed by the NGR on pipeline operators in their role as STTM facility operators. These obligations require the provision of certain information to AEMO to assist in the effective operation of the market. The information required to be provided by pipeline operators to AEMO includes (among other things):

- default capacity and maximum default capacity for the pipeline (rule 376);
- hub capacity for the following three days (rule 414); and
- facility allocations on a daily and monthly basis (rule 419).

In respect of their role as allocation agents, the NGR requires pipeline operators to either act as, or appoint, allocation agents to determine the daily gas allocations for

⁹ All participants who operate in the STTM must register with AEMO. Participants who operate on multiple hubs must register separately for each hub. In addition, a single participant may register with AEMO in multiple roles.

each STTM shipper which must be submitted to AEMO for the purpose of settlement.¹⁰

Market operator service

MOS is an STTM balancing service managed by AEMO. It is used to balance the amount of physical gas that actually flows on a transmission pipeline connected to an STTM hub on a gas day, with the amount of gas that was scheduled to flow on that pipeline to that hub on that day.¹¹ MOS can be provided by shippers and pipeline operators that have the ability to increase or decrease the quantity of gas they flow on a day.¹²

At quarterly intervals,¹³ AEMO seeks price-quantity offers for the provision of MOS on each hub-connected transmission pipeline. Under the terms of a MOS provision, a MOS provider agrees to accept an additional gas allocation quantity (positive or negative) on a gas day to balance the difference between scheduled flows and actual gas flows on an STTM pipeline.

Based on the prices and quantities offered by MOS providers, AEMO maintains separate MOS stacks for "increase MOS" (where additional gas needs to be delivered to the hub) and "decrease MOS" (where excess gas needs to be withdrawn from the hub). It does this each gas day for each transmission pipeline connected to an STTM hub. AEMO provides these stacks to each pipeline operator who, in turn, allocate any pipeline deviations to the MOS providers in accordance with the stack order (from the lowest offer price to the highest offer price provider).

Pipeline operators are required to inform AEMO of all MOS gas allocations for each gas day. This allows AEMO to adjust the MOS provider's market schedule to account for the MOS allocation. In this way, any resulting deviations incurred by the MOS provider are exempt from deviation payments and charges.¹⁴

¹⁰ Allocations define the actual quantities flowed to and from the hub on the gas day. AEMO uses this information to settle the market. While allocations to individual shippers are provided by the pipeline operators, the allocations to individual users are determined by AEMO using metered data provided by distributors and aligned with the pipeline allocations. Pipeline operators also provide allocations for transmission-connected users.

¹¹ Differences between actual deliveries and scheduled pipeline flows can occur if, for example, there is a discrepancy between forecast gas demand and actual gas demand in the hub, or if trading participants do not nominate in accordance with market schedules.

¹² Currently, only shippers who have a transportation contract on a pipeline can provide MOS. The AEMC is currently assessing a rule change request which seeks to expand the eligibility of who can provide MOS in the STTM. See 'Market operator service - timing and eligibility' rule change request, available at www.aemc.gov.au.

¹³ Under current arrangements, AEMO receives MOS offers from eligible trading participants every three months (the MOS period). The 'Market operator service - timing and eligibility' rule change request impacts the MOS period. On 28 February 2013, the AEMC published a draft rule in respect of this rule change which specified the MOS period as one month and defined the MOS period in the NGR (previously in the Procedures). See www.aemc.gov.au.

¹⁴ An individual trading participant's deviation quantity is the difference between its modified market schedule quantity and its allocated quantity (that is, actual gas supplied to, or withdrawn

If the deviation on a pipeline exceeds the allocation capacity of the relevant MOS stack on a gas day, the residual quantity is allocated by the pipeline operator to shippers in accordance with the allocation rules on that pipeline. The pipeline operator submits these to AEMO as overrun MOS allocations.

The process for the recovery of MOS allocation services costs by pipeline operators is set out in section 3.1.1 of this draft determination.

Aggregation and information services in relation to the Bulletin Board

The National Gas Market Bulletin Board is a public website which displays information on all major gas production fields, major demand centres and the interconnected natural gas transmission pipeline systems in South Australia, Victoria, Tasmania, New South Wales, the Australian Capital Territory and Queensland.¹⁵ Through the provision of system and gas market information, the BB is intended to facilitate trade in gas and pipeline capacity.

The BB commenced operation in 2008 and is operated by AEMO. The NGR requires pipeline operators to provide aggregation and information services to assist AEMO in operating the BB. Specifically, the NGR sets out obligations on pipeline operators to provide to AEMO:

- information on aggregated delivery nominations and aggregate forecast deliveries for the BB pipeline (rule 173); and
- certain information to allow AEMO to calculate a BB shipper's share of estimated BB costs (under rule 191) for the relevant invoice period (rule 196).

Pipeline operators are entitled to recover the costs of providing these services, via AEMO, in accordance with rule 197 of the NGR. To date, no pipeline operator has submitted an invoice to AEMO under this provision.

The process for the recovery of aggregation and information services costs by pipeline operators is also set out in section 3.1.1 of this draft determination.

1.6 Commencement of rule making process

On 6 December 2012, the Commission published a notice under s. 303 of the NGL advising of its intention to commence the rule making process and the first round of consultation in respect of the rule change request. A consultation paper prepared by AEMC staff identifying specific issues and questions for consultation was published with the rule change request. Submissions closed on 24 January 2013.

from, the hub). Deviation quantities attract deviation penalties, the severity of which will depend on whether a trading participant has a "short" or "long" deviation. The AEMC is currently considering a rule change which seeks to better align charges for deviations with the costs caused by deviations. See 'STTM deviations and the settlement surplus and shortfall' rule change request available at www.aemc.gov.au.

¹⁵ See www.gasbb.com.au.

Five submissions on the rule change request were received. These submissions are available on the AEMC website.¹⁶ A summary of the issues raised in all submissions, and the Commission's response to each issue, is contained in Appendix A.

On 6 December 2012, the Commission decided under s. 317 of the NGL to extend the period of time for the making of the draft rule determination to 4 April 2013. This extension of time was required due to the consultation period coinciding with the Christmas-new year period. It was made to provide sufficient time for stakeholders to fully and adequately consider the issues and to prepare their submissions to the consultation paper.

1.7 Consultation on draft rule determination

In accordance with the notice published under s. 308 of the NGL, the Commission invites submissions on this draft rule determination, including the draft (more preferable) rule, by 16 May 2013.

In accordance with s. 310(2) of the NGL, any person or body may request that the Commission hold a hearing in relation to the draft rule determination. Any request for a hearing must be made in writing and must be received by the Commission no later than 11 April 2013.

Submissions and requests for a hearing should quote project number "GRC0017" and may be lodged online at www.aemc.gov.au or by mail to:

Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

¹⁶ www.aemc.gov.au.

2 Draft rule determination

2.1 Commission's draft determination

In accordance with s. 308 of the NGL the Commission has made this draft rule determination in response to the rule proposed by the AER.

The Commission's draft determination is that it should not make the proposed rule but should instead make a more preferable rule.¹⁷ The draft (more preferable) rule incorporates several of the changes proposed in the AER's rule change request. It also makes additional amendments to the trigger for the assessment of pipeline operator invoiced costs, the timeframes for assessment and payment of invoiced costs, and to the information requirements. The draft (more preferable) rule does not change the existing decision making test.

The Commission's draft (more preferable) rule is attached to and published with this draft rule determination. Its key features are described in section 3.2 of this draft determination.

2.2 Commission's considerations

In assessing the rule change request, the Commission considered:

- the Commission's powers under the NGL to make the rule;
- the rule change request;
- submissions received during first round consultation;
- other information relevant to the rule change request; and
- the Commission's analysis as to the ways in which the proposed rule will, or is likely to, contribute to the national gas objective (NGO).

2.3 Commission's power to make the rule

The Commission is satisfied that the draft rule falls within the subject matter about which the Commission may make rules. The draft rule falls with s. 74 of the NGL as it relates to:

- AEMO's STTM functions and the operation of a short term trading market of an adoptive jurisdiction (s. 74(1)(a)(va)); and

¹⁷ Under s. 296 of the NGL, the AEMC may make a rule that is different (including materially different) from a market initiated proposed rule (a more preferable rule) if it is satisfied that having regard to the issue or issues that were raised by the market initiated proposed rule (to which the more preferable rule relates), the more preferable rule will or is likely to, better contribute to the achievement of the national gas objective.

- the activities of registered participants, users, end users and other persons in a regulated gas market (s. 74(1)(a)(vi)).

Further, the draft rule falls within the matters set out in schedule 1 to the NGL, including:

- item 55N, because it relates to the terms and conditions on which service providers, or classes of service providers, may recover costs for allocating quantities of natural gas relating to market operator services; and
- item 67, because it relates to the terms and conditions on which service providers, or classes of service providers, may recover amounts from AEMO for aggregating Bulletin Board information for the Bulletin Board operator.

2.4 Rule making test

Under s. 291(1) of the NGL, the Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the NGO. This is the decision making framework that the Commission must apply.

The NGO is set out in s. 23 of the NGL 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.”

Under s. 291(1) of the NGL, for the purposes of s. 291(1) of the NGL the AEMC may give weight to any aspect of the NGO as it considers appropriate in all the circumstances, having regard to any relevant MCE statement of policy principles.¹⁸

For this rule change request, the relevant aspect of the NGO is the efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price.

The Commission is satisfied that the proposed rule will, or is likely to, contribute to the achievement of the NGO by:

- promoting clarity of meaning of the rules by removing ambiguity about the costs that can be claimed under the MOS allocation service and aggregation and information services;
- promoting administrative efficiencies by providing a consistent approach to pipeline operator cost recovery in Part 18 and Part 20 of the NGR;

¹⁸ In this case, there is no relevant MCE statement of policy principles.

- providing an assessment approach which should provide incentives for pipeline operators to incur only efficient costs in providing the MOS allocation service and aggregation and information services; and
- aligning the roles and responsibilities of AEMO and the AER within the cost recovery framework with their experience, expertise and broader statutory roles.

2.5 More preferable rule

Under s. 296 of the NGL, the AEMC may make a rule that is different (including materially different) from a proposed rule (a more preferable rule) if the AEMC is satisfied that, having regard to the issues or issues that were raised by the market initiated proposed rule (to which the more preferable rule relates), the more preferable rule will, or is likely to, better contribute to the achievement of the NGO.

Having regard to the issues raised by in the rule change request, the Commission is satisfied that the draft (more preferable) rule will, or is likely to, better contribute to the NGO than the proposed rule by:

- establishing a framework which better promotes the efficient operation and use of the cost recovery provisions by pipeline operators, AEMO, the AER and other relevant stakeholders; and
- better promoting good regulatory practice and design.

Specifically, the Commission considers that the more preferable rule will:

- promote transparency and increase the scope for effective engagement by stakeholders in the cost recovery process by requiring AEMO to publish the information provided by pipeline operators in support of their cost estimates and cost invoices;
- increase certainty (and thereby promote confidence in the process) for pipeline operators and other stakeholders by providing a mechanism which ensures all cost invoices will be subject to oversight by the AER;
- improve overall efficiency of the cost recovery process by providing a framework within which the costs of carrying out a detailed assessment of pipeline operators' invoiced costs can be weighed against the benefits to consumers of amending the amounts payable to pipeline operators; and
- provide a more proportionate approach to the assessment of pipeline operators' invoiced costs given the uncertainty around how the AER would apply a test of efficiency to assess MOS allocation service costs (and aggregation and information services costs), and given the relatively small size and nature of the costs claimed to date.

3 Commission's reasons

The Commission has analysed the rule change request and assessed the issues arising from it. For the reasons set out below, the Commission has determined that a draft (more preferable) rule be made. Its analysis of the proposed rule and the differences between the proposed rule and draft rule are set out below.

3.1 Assessment of issues

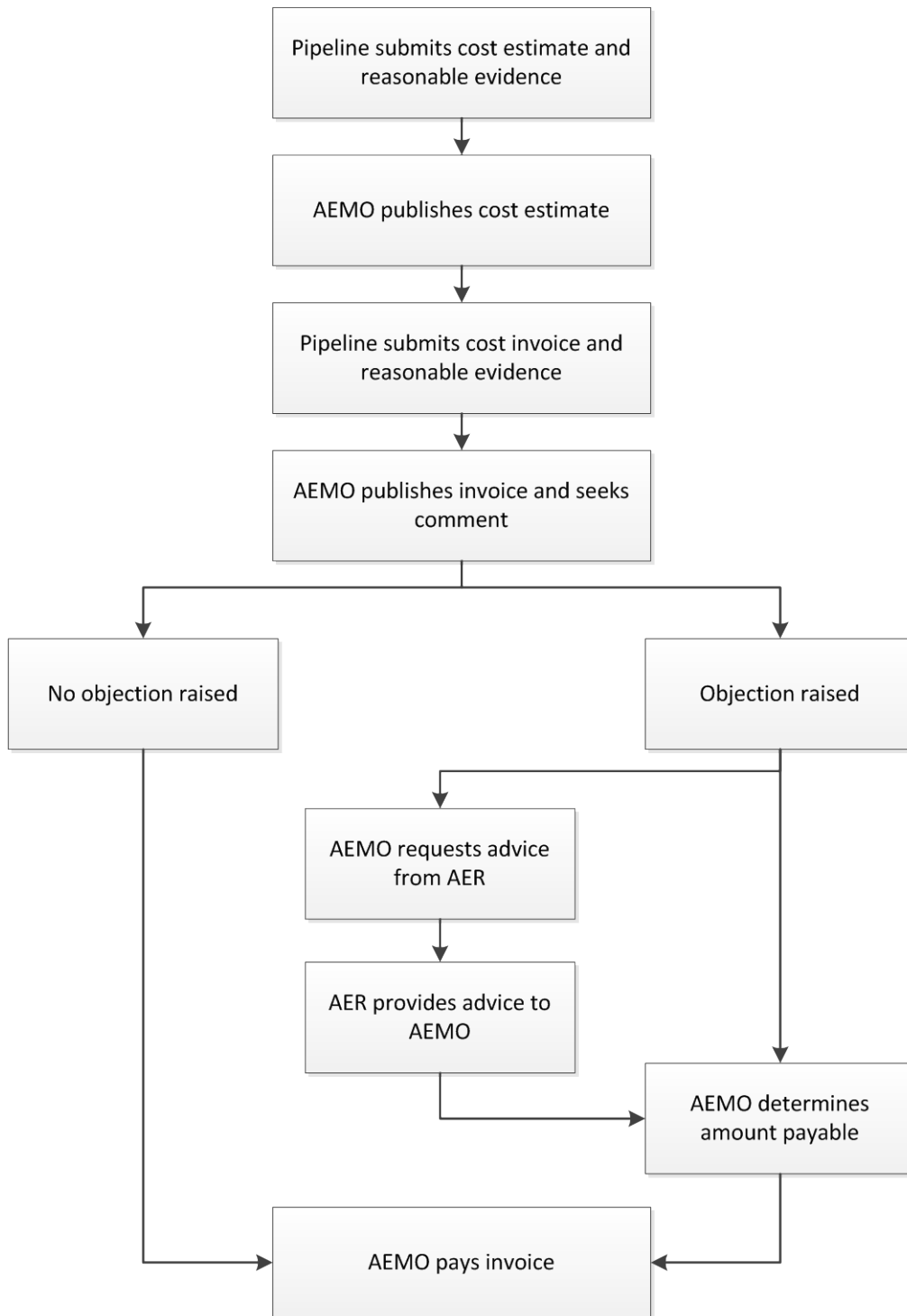
Ahead of considering the amendments proposed by the AER in its rule change request, the next section details the current requirements in the NGR in relation to the MOS allocation service, and aggregation and information services, cost recovery processes. For ease of reference, Appendix B provides a table briefly summarising the key differences between the current cost recovery processes for the MOS allocation service and aggregation and information services, and the proposed rule and draft rule.

3.1.1 Current arrangements

Cost recovery process for MOS allocation service costs

The current process for the submission and assessment of invoices from pipeline operators in respect of their MOS allocation services costs is set out in rules 424 and 425 of the NGR. A summary of the process is provided in Figure 3.1.

Figure 3.1 MOS allocation service cost recovery process



The key requirements for the current process are as follows:

- STTM pipeline operators that wish to recover MOS allocation service costs must:
 - give AEMO an estimate of MOS allocation service costs they will seek to recover by 31 January each year for the financial year commencing on the following 1 July (rule 424(1));

- notify AEMO as soon as practicable of any expected material variation between actual MOS allocation service costs and the costs specified in its estimate (rule 424(3));
- issue AEMO with a tax invoice regarding its actual MOS allocation service costs during the previous financial year no later than 20 business days after the start of the next financial year (rule 424(4)); and
- in accordance with the STTM Procedures¹⁹, provide AEMO with reasonable evidence to demonstrate that:
 - each cost estimate or expected variation is reasonable (rule 424(5)(a));
 - invoiced costs were actually incurred (rule 424(5)(b));
 - any material variation between actual costs and the most recent estimate given to AEMO is reasonable (rule 424(5)(c)); and
 - all costs specified in an estimate or invoice are MOS allocation service costs (rule 424(5)(d)).
- AEMO is required to:
 - publish any cost estimates received from a pipeline operator (rule 424(2));
 - publish any notice of variation received (rule 424(3)); and
 - publish any invoices received as soon as practicable and seek comments for at least 10 business days on whether there is any objection to the payment of those invoices (rule 425(1)).
- After AEMO seeks objections on invoices received, the assessment of those invoices is to be conducted as follows:
 - If an objection to the payment of an invoice is received, AEMO may, within 10 business days after receiving an objection, request the AER’s advice on the amount payable (if any), having regard to the evidence provided to AEMO to support the estimated and invoiced costs (rule 425(2)).
 - If AEMO seeks the AER’s advice:
 - the AER must provide its advice to AEMO within 15 business days after having received the request (rule 425(3));

¹⁹ The STTM Procedures set out the information which must be provided to AEMO (at a minimum) by pipeline operators as evidence that their invoiced costs are reasonable. See STTM Procedures, section 7.4.

- AEMO must determine the amount payable consistent with the AER's advice within 30 business days of receiving the advice (rule 425(4)(a)).
- If AEMO does not receive advice from the AER (either because it did not request advice or the advice was not received within specified timeframes):
 - AEMO must determine the amount payable having regard to the evidence provided by the pipeline operator, within 30 business days of receiving the invoice (rule 425(4)(b)).
- AEMO must pay any amount it has determined as payable as soon as practicable after making the determination (rule 425(5)).²⁰

Cost recovery process for aggregation and information services costs

The assessment of costs associated with providing BB aggregation and information services is currently carried out according to rules 197 and 198 of the NGR. Although broadly similar to the cost recovery process for pipeline operators providing the MOS allocation service in the STTM, there are a number of small differences, namely in relation to:

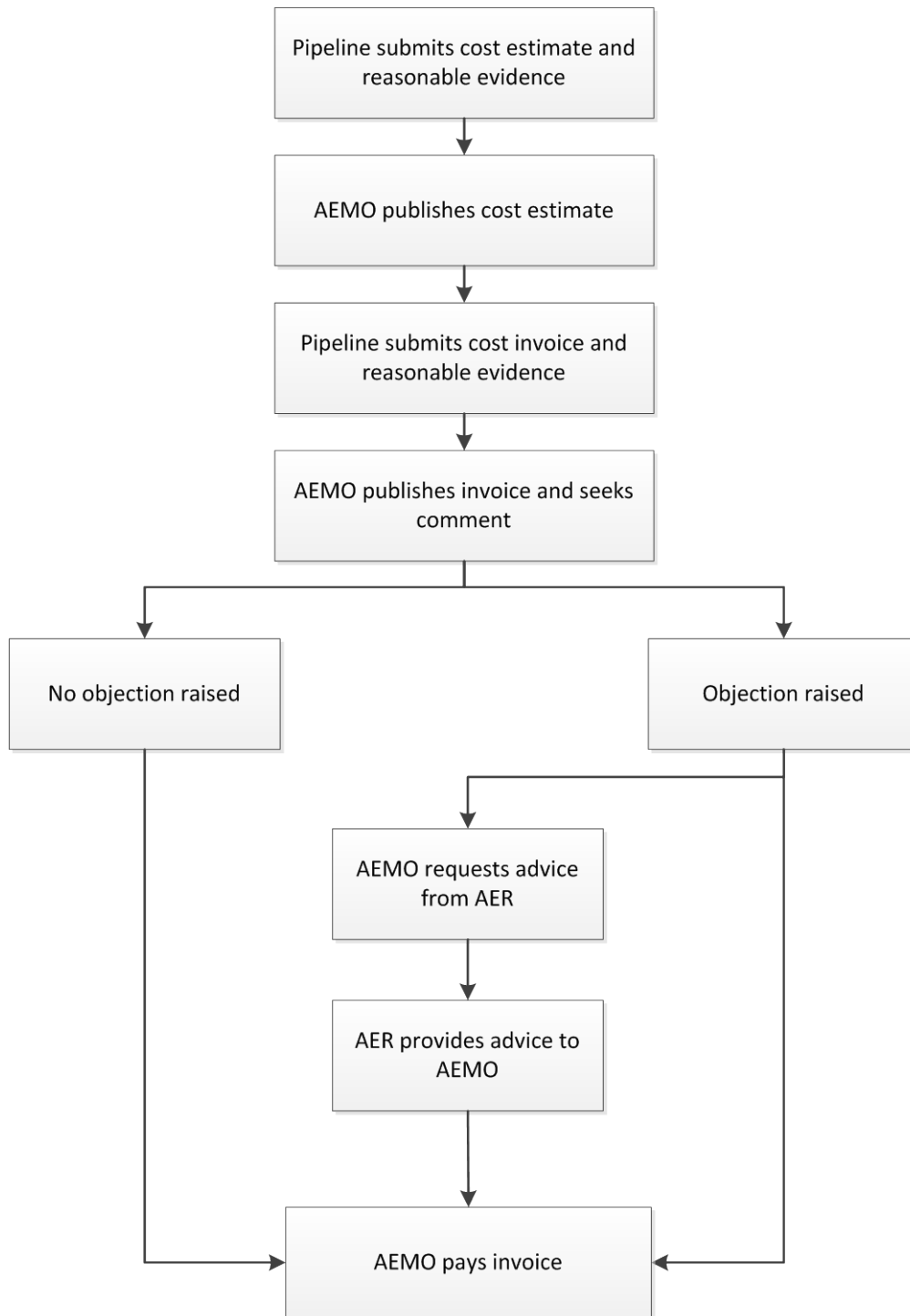
- the deadlines (times of year) provided for the submission of cost estimates and cost invoices by pipeline operators for the respective services;
- the timeframes provided to AEMO for payment of final invoices (both in the event an objection to payment is received, and when it is not); and
- the provision of a discrete step in the process dedicated to the determination by AEMO of a final amount payable to pipeline operators following receipt of advice from the AER.²¹

A summary of the current process is provided in the figure below:

²⁰ The amounts payable are ultimately recovered from participants via AEMO's fee process.

²¹ Unlike the provisions in Part 20, Part 18 does not include a discrete step in the process for the determination by AEMO of the amount payable to a pipeline operator following receipt of advice from AER. Rather, AEMO is required to pay an invoice within 10 business days of receiving that advice.

Figure 3.2 **Aggregation and information services cost recovery process**



The key requirements are as follows:

- Pipeline operators that wish to recover costs of providing aggregation and information services must:
 - no later than 20 business days after the start of an invoice period, provide AEMO with:

- an estimate of costs of providing aggregation and information services during the invoice period (rule 197(1)(a)); and
 - a tax invoice in relation to actual costs of providing aggregation and information services during the previous invoice period (rule 197(1)(b));
- in accordance with the BB Procedures²², provide AEMO with reasonable evidence to demonstrate that:
 - the cost estimate is reasonable (rule 197(2)(a));
 - it has incurred the invoiced costs (rule 197(2)(b)); and
 - not issue a tax invoice to AEMO which includes an amount that it has recovered, or is entitled to recover, from a BB shipper or any other person either at law or under any contract, arrangements or understanding, or pursuant to an access arrangement (rule 197(3)).
- AEMO is required to publish any invoices received as soon as practical and seek comments for 10 business days as to whether there is any objection to payment of those invoices (rule 198(1)).
 - After AEMO seeks objections on invoices received, the assessment of those invoices is to be conducted as follows:
 - If an objection to the payment of an invoice is received, AEMO may, within 10 business days after receiving an objection, refer the question of payment to the AER for advice (rule 198(2)).
 - If AEMO seeks the AER's advice, the AER must provide its advice to AEMO within 15 business days after the question of payment is referred to it (rule 198(3)).
 - Subject to being satisfied that the invoice should be paid, having regard to the evidence provided by the pipeline operator and any advice provided by the AER, AEMO must pay the invoice within the later of:
 - 20 business days after receipt of the invoice; or
 - 10 business days of receiving advice from the AER (rule 198(4)).

²² The BB Procedures set out the information which must be provided to AEMO (at a minimum) by pipeline operators to substantiate forecast cost estimates and actual costs. See BB Procedures, section 11.

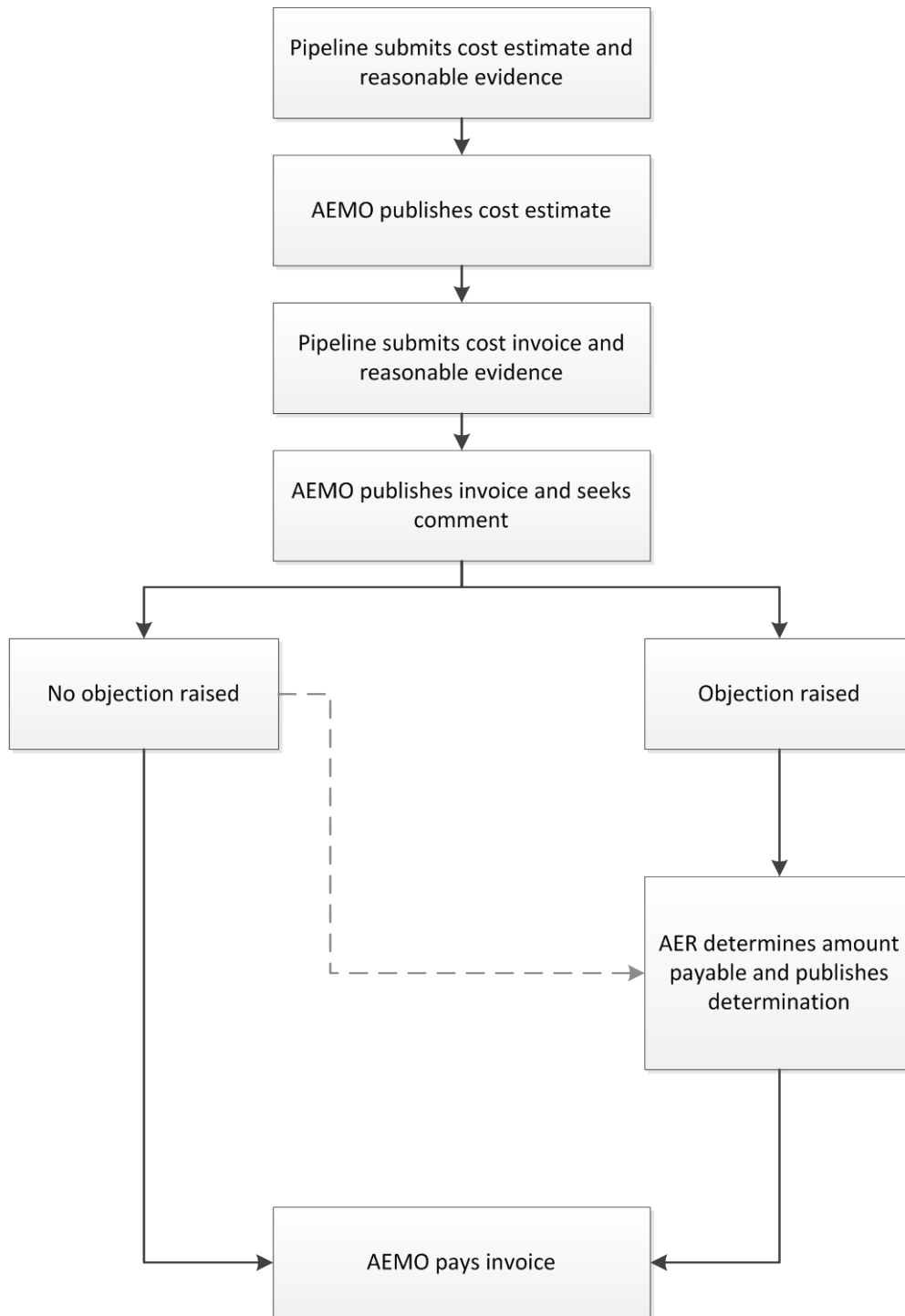
3.1.2 AER's proposed rule

The AER submitted that the proposed rule would provide for a more efficient process for assessing pipeline operators' MOS and BB cost recovery proposals. It expects to achieve this by amending a number of aspects of the assessment processes to:

- require pipeline operators to submit costs and, where required, the relevant body to assess costs, by reference to efficient costs that would have been incurred by a prudent operator (rather than by reference to reasonable costs);
- transfer responsibility for decision making on the amounts payable to pipeline operators in respect of MOS allocation and aggregation and information services costs, from AEMO to the AER;
- extend the timeframes for assessment of cost invoices to provide the AER with sufficient time to seek further clarification and collect additional information from pipeline operators, if required;
- require pipeline operators to submit evidence with their cost estimates and invoices to demonstrate that the costs specified reflect the efficient costs that would be incurred by a prudent operator;
- clarify the definitions of 'MOS allocation service costs' and 'aggregation and information services costs'; and
- amend the aggregation and information services cost recovery process in the Bulletin Board in line with any changes made to the MOS allocation service cost recovery process for the STTM.

A summary of the AER's proposed cost recovery process is provided in Figure 3.3 below. The detailed process is set out in the proposed rule which is attached to the AER's rule change request published on the AEMC website.

Figure 3.3 AER's proposed cost recovery process



3.1.3 Impact and assessment of the proposed rule

This section summarises the Commission's assessment of the impact of the proposed rule. These matters are discussed in more detail in Chapters 5-9.

Approach to assessment

The proposal to require the assessment of invoiced costs by reference to efficient costs that would have been incurred by a prudent operator (rather than by reference to reasonable costs) could, at least conceptually, be more likely to provide an incentive for pipeline operators not to incur costs which are above efficient levels. However, given the uncertainty around how the AER would apply a test of efficiency to assess MOS allocation service costs, and given the size and nature of these costs claimed to date,²³ the Commission does not support the move to an efficiency assessment at this time.

Appropriate decision making body

The Commission considers the proposal to transfer responsibility for decision making on the amounts payable to pipeline operators from AEMO to the AER is appropriate in the context of the changes proposed by the AER to the decision making test. That is, the proposed rule necessitates a decision maker with the capacity to utilise a range of analytical tools. This would align with the AER's responsibilities and experiences of economic regulation.

Timeframes for assessing invoiced costs

The Commission does not support the proposal to extend the timeframes for assessment of cost invoices by the AER to 60 business days (with the option of an additional 30 business days, where required). In the context of the proposed changes to the information requirements on pipeline operators, which should reduce the need for the AER to seek additional information from pipeline operators to support their costs claims, 60-90 business days would be excessive.

Information requirements – justification of costs

The proposed changes require pipeline operators to submit evidence with their cost estimates and invoices to demonstrate that the costs specified in their estimates and invoices reflect the efficient costs that would be incurred by a prudent operator. These changes are, in effect, consequential amendments required to align the current information requirements in the rules with the proposed changes to the assessment approach. On this basis, the Commission supports the changes as means to promoting consistency in the rules.

Definition of 'MOS allocation service costs'

The Commission supports the proposals to clarify the definitions of 'MOS allocation service costs' and 'aggregation and information services costs' in the rules. It considers these changes will promote clarity of meaning of the rules by removing ambiguity around which costs can be claimed.

²³ Appendix C provides a summary of pipeline operators' MOS allocation service costs claimed and paid to date.

Bulletin Board

To the extent that changes are made to the MOS allocation service cost recovery process, the Commission supports corresponding changes being made to the aggregation and information services cost recovery process. Providing consistency in the approach to pipeline operator costs recovery in the NGR should promote administrative efficiencies for all relevant stakeholders.

3.1.4 Commission's conclusions

The Commission considers that, on balance, the proposed rule would be likely to provide a more efficient cost recovery process relative to the current rules. However, having had regard to the views of stakeholders in submissions to the consultation paper, and having undertaken its own analysis and review, the Commission considers that additional amendments could be made to the cost recovery processes to further promote efficiency in their operation and use. On this basis, the Commission is proposing to make a draft (more preferable) rule which it considers will, or is likely to, better contribute to the NGO than the proposed rule.

3.2 The draft (more preferable) rule

The Commission has decided to make a draft rule which is a more preferable rule to the AER's proposed rule. The draft (more preferable) rule differs from the proposed rule in the following respects:

- All cost invoices submitted by pipeline operators for payment by AEMO will be subject to review by the AER. To this end, the objection mechanism that currently exists will no longer act as trigger for an assessment process. In carrying out the review, the AER will be required to either approve or reject the amount specified in an invoice by determining whether the costs specified:
 - have been incurred; and/or
 - are reasonable.
- If the AER rejects the amount specified in a cost invoice, it must undertake an assessment to determine an amount payable that, in the AER's opinion, is reasonable for the relevant services in respect of that invoice.
- In deciding whether to approve or reject the amount specified in an invoice, the AER must have regard to:
 - the evidence provided with a cost invoice;
 - any comments received by AEMO from other parties, including objections to the payment of an invoice;
 - any comments from AEMO;

- any information received in accordance with a request or relevant notice issued by the AER;
 - any other relevant information; and
 - whether the likely costs of undertaking an assessment of the costs specified in an invoice outweigh the likely public benefit resulting from such an assessment.
- The AER will be required to make a decision on the amounts payable to pipeline operators (if any) within 30 business days of receiving the cost invoice and other relevant information from AEMO.
 - AEMO will be required to publish the evidence provided by pipeline operators to support their cost estimates and cost invoices, subject to any claims of confidentiality by pipeline operators.
 - AEMO must publish pipeline operators' cost estimates and supporting evidence, and cost invoices and supporting evidence, within five business days following receipt.
 - AEMO must pay any amount the AER has determined payable to a pipeline operator within 10 business days of the AER publishing its determination.

The draft (more preferable) rule will apply to both the MOS allocation service cost recovery process set out in Part 20 of the rules, and to the aggregation and information services cost recovery process set out in Part 18 of the rules.

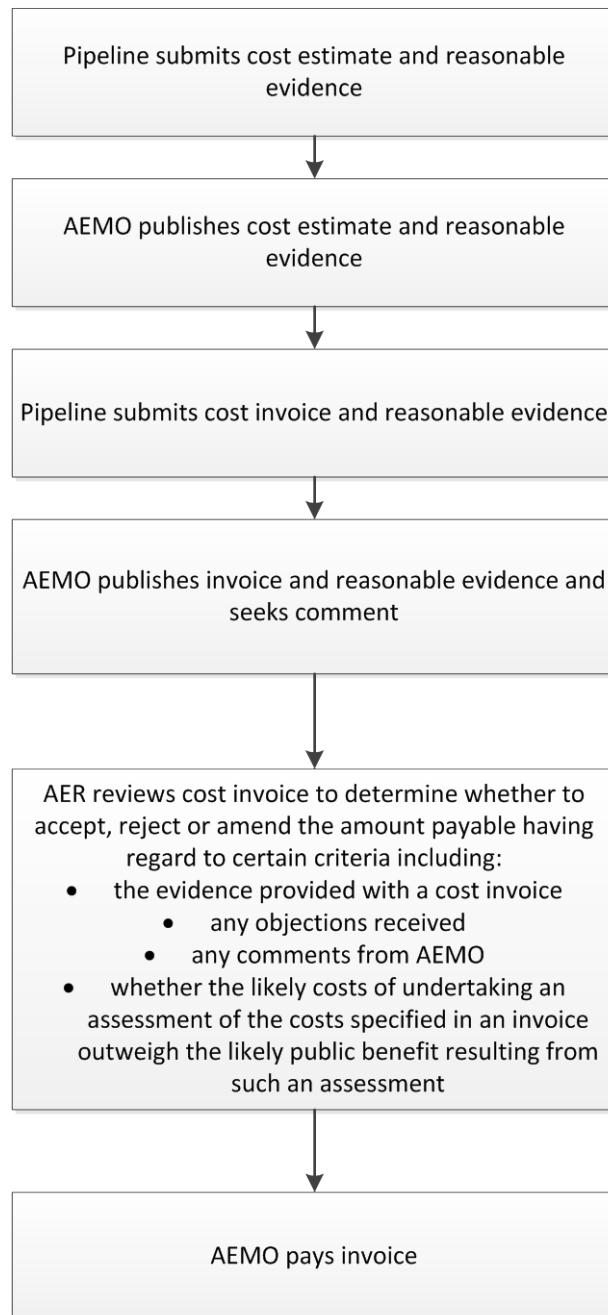
The changes proposed by the AER to the definitions of 'MOS allocation service costs' and BB 'aggregation and services costs' have also been included in the draft (more preferable) rule.

The draft (more preferable) rule does not incorporate the change proposed by the AER to have cost invoices assessed by reference to 'efficient costs incurred by a prudent operator'.

The detailed process is set out in the draft (more preferable) rule which is attached to and published with this draft rule determination.

A summary of the cost recovery process set out in the draft (more preferable) rule is provided in Figure 3.4 below.

Figure 3.4 Draft (more preferable) rule cost recovery process



3.3 Civil penalties

The draft (more preferable) rule does not amend any rules that are currently classified as civil penalty provisions under the NGL or Regulations. The Commission does not propose to recommend to the Standing Council on Energy and Resources (SCER) that any of the amendments in the draft (more preferable) rule be classified as civil penalty provisions.

4 Commission's assessment approach

This chapter describes the Commission's approach to assessing the rule change request in accordance with the requirements set out in the NGL (and explained in Chapter 2).

In assessing any rule change request against the NGL criteria, the first step is to consider the counterfactual arrangements against which the rule change is being compared. In the present case, the counterfactual arrangements are the MOS allocation service cost recovery arrangements set out in Chapter 20 of the NGR, and the BB aggregation and information services cost recovery process set out in Chapter 18 of the NGR. The key features of these arrangements have been set out in section 3.1.1.

In assessing this rule change request, the Commission has considered how the AER's rule change request, and the more preferable rule, may improve efficiency of the arrangements for cost recovery relative to the current arrangements. In doing so, the Commission has focussed on the following key features for a cost recovery framework:

- appropriate trigger for the assessment of pipeline operators' invoiced costs;
- approach to assessing pipeline operators' invoiced costs ('efficiency' test versus a test of 'reasonableness');
- appropriate body to carry out the assessment and determine the amount payable to pipeline operators;
- disclosure of information to justify invoiced costs;
- timeframes necessary to assess invoiced costs; and
- definitions of costs that can be claimed.

To assist in its assessment, the Commission has considered the AER's proposed rule and the more preferable rule against the following criteria:

- transparency: whether the proposed and draft cost recovery processes provide sufficient information to enable the AER to undertake an efficient assessment and to promote effective engagement by stakeholders;
- proportionality: whether the costs arising from the proposed and draft cost recovery processes and regulatory requirements are proportionate to the benefits;
- fit for purpose: whether the proposed and draft cost recovery processes achieve an effective balance between quick decision making and thorough assessment and consultation;
- clarity of the rules: whether the proposed and draft rules are likely to introduce greater clarity and certainty in the rules; and

- consistency within the rules: where appropriate, the rules should provide consistent approach to cost recovery.

Chapters 5 and 6 set out the Commission's analysis of the key features of the cost recovery framework against this assessment framework. Chapter 7 then sets out the implementation and transitional issues relevant to the rule change request.

5 Assessment of cost invoices - roles, responsibilities and trigger

The current processes for pipeline operator cost recovery set out in the NGR include a number of key design features. This chapter sets out the Commission's views specifically in relation to:

- the approach to assessing pipeline operators' invoiced costs ('efficiency' test or a test of 'reasonableness');
- the appropriate decision making body to carry out the assessment and determine the amounts payable to pipeline operators; and
- the appropriate trigger for the assessment of pipeline operators' invoiced costs.

In considering these issues, the Commission has had regard to the views of stakeholders in submissions to the consultation paper.

5.1 Proposed rule

Current approach

As set out in detail in Chapter 3, pipeline operators seeking to recover their MOS allocation service costs are currently required to submit cost estimates to AEMO by the end of January each year for the following financial year. Pipeline operators must also submit cost invoices to AEMO at the end of each financial year for that financial year.²⁴

To support their cost estimates and invoices, pipeline operators must also provide reasonable evidence to demonstrate that the estimates submitted are 'reasonable', and that the levels of costs claimed on invoices have been incurred.

AEMO is required to publish any cost estimates and invoices it receives. In respect of the latter, AEMO must also seek comment from any person as to whether there is an objection to payment of an invoice.

In the event that an objection is raised, AEMO must determine the appropriate amount payable to the pipeline operator, having regard to the reasonable evidence provided with the cost estimate and invoice. Ahead of making a decision, AEMO may request advice from the AER on the amount payable.

5.1.1 Approach to assessment

The AER is concerned that, under the current process, in the event an objection is raised, there is currently no requirement for AEMO to assess (or the AER to consider) whether the level of costs incurred by a pipeline operator are 'efficient', nor is there a

²⁴ This process is largely the same for pipeline operators seeking to recover their aggregation and information services costs.

requirement for a pipeline operator to justify that it has incurred its invoiced costs prudently or efficiently.

To address this issue, the AER has proposed a change to the rules which would require pipeline operators to provide evidence with their cost estimates and cost invoices demonstrating that the level of costs incurred are 'efficient'.²⁵ Further, in the event that an objection to payment of an invoice is raised, the proposed rule would require the level of costs incurred by a pipeline operator to be assessed by reference to "the efficient MOS allocation service costs that would have been incurred by a prudent operator".²⁶

5.1.2 Appropriate decision making body

The AER also considers that it may be more appropriate for the AER as economic regulator, rather than AEMO, to be responsible for making determinations on the appropriate level of MOS allocation service costs payable to pipeline operators.

The rule change request therefore also proposes to amend the roles of the AER and AEMO such that where an objection was raised, the AER would be the decision maker and inform AEMO of the amount payable. In addition, where no objection is raised, the proposed rule clarifies that AEMO may either pay the invoiced amount, or refer the invoice to the AER for assessment and a determination, which AEMO will then apply.

The AER considers that this change would also address the potential for double handling of a cost invoice in the event the AER was unable to provide advice to AEMO within the timeframe provided in the rules (currently 15 business days).²⁷

Under the proposed rule, AEMO would still receive and publish pipeline operators' cost estimates and cost invoices, seek comment on pipeline operators cost invoices, receive any objections and pay pipeline operators the final amounts.

5.1.3 Trigger for assessment

As noted above, the assessment process is currently triggered by AEMO receiving an objection to the payment of a cost invoice. Objections can be raised by any person, in any manner and without any justification.

The proposed rule retains this arrangement but clarifies that, in the instance AEMO does not receive an objection to payment of a cost invoice, it may still refer a cost invoice to the AER for assessment and a determination on the amount payable.

²⁵ Proposed rule 424(5)(a).

²⁶ Proposed rule 425(2).

²⁷ The AER considers 'double handling' would arise where it was unable to provide advice within the required timeframes, and would therefore have to pass the relevant information back to AEMO in order for AEMO to assess whether the costs claimed were reasonable and to determine the amount payable. AER rule change request, p. 10.

5.2 Rule proponent's view

5.2.1 Approach to assessment

The AER considers that an assessment of efficiency (rather than reasonableness) will place more appropriate incentives on pipeline operators to reduce their costs to efficient levels and, in doing so, will reduce the likelihood of recovery of costs that are above efficient levels. The AER does not consider it appropriate for STTM shippers to be required to pay for costs above those which the AER considers have been incurred efficiently.²⁸

The AER also considers that use of terminology such as 'efficient costs' provides an approach which is consistent with other assessment approaches in the rules. It argues that use of terms such as 'reasonably incurred' may introduce different considerations and a level of ambiguity in the way the regulator is meant to assess MOS allocation service costs claims.²⁹

The AER submits that the proposed change to the assessment test is an important part of ensuring that the MOS assessment process to be administered by the AER appropriately advances the NGO.

Rule change request - additional information

Following receipt of the rule change request, the AEMC requested that the AER provide further explanation as to how the application of an efficiency test would differ from the application of a reasonableness test. Specifically, information was sought in relation to the evidence that pipeline operators would be required to provide to support their cost claims, and how the AER would assess these invoices in the event that an objection was raised.

In its response, the AER explained that the application of an efficiency test would not be expected to make a large practical difference to the way in which it would assess a cost invoice. It considered that, in the context of MOS allocation service costs and BB aggregation and information services costs, reasonable costs could typically be argued to be efficient and prudently incurred.³⁰

Further, the AER stated that it would be free to use a range of techniques when determining whether the level of costs claimed by a pipeline operator were reflective of the efficient costs that would have been incurred by a prudent operator. It noted that the detail of the assessment process would be dependent on the relevant circumstances and information available at the time.³¹

²⁸ AER rule change request, p. 7.

²⁹ AER rule change request – additional information, pp. 3-4.

³⁰ AER rule change request – additional information, p. 3.

³¹ AER rule change request – additional information, p. 4.

5.2.2 Appropriate decision making body

The AER considers that it is in the best position to assess pipeline operator cost invoices to determine the appropriate level of costs payable. In carrying out this assessment, the proposed rule would require the AER to have regard to the efficient level of costs that would have been incurred by a prudent operator. The AER argues that the proposed change to the decision maker role would recognise its role as economic regulator.³²

In its rule change request, the AER states that the benefits of this change would be administrative efficiencies for both the AER and AEMO. It also considers the proposed change will result in clearer accountability for decision making and more appropriate allocation of relevant functions to the AER in its role as economic regulator.³³

5.2.3 Trigger for assessment

The AER did not have a view on this matter.

5.3 Stakeholder's views

5.3.1 Approach to assessment

While supportive of the proposal to require the AER (rather than AEMO) to determine the amount payable to pipeline operators, Alinta considered the AER may be constrained in its assessment of efficient costs by the absence of a relevant benchmark. Specifically, Alinta considered it was unclear against which theoretical 'prudent or efficient pipeline service provider' actual pipeline operators would be assessed. It considered that where there is scant evidence, or absence of benchmarks, available to assess efficiency it may be appropriate to fall back on the current test of reasonableness.³⁴

The Australian Pipeline Industry Association (APIA) considered that, depending on whether there was a difference between reasonable costs and efficient costs, it was possible that the proposed rule would reduce the ability of pipeline operators to recover the costs incurred in performing the MOS allocation service. APIA requested that the difference between the applications of each test be clarified before any change was made to the current test.³⁵

In addition, APIA noted that pipeline operators providing MOS allocation services have different systems, resources and in house capabilities which means that the AER, in carrying out an efficiency assessment, would be unlikely to have a benchmark for

³² AER rule change request, pp. 8-9.

³³ AER rule change request, p. 13.

³⁴ Alinta, Consultation Paper submission, p. 1.

³⁵ APIA, Consultation Paper submission, p. 6.

comparison. Given this, APIA believed that cost invoices should be assessed based on whether costs have been incurred “under prudent commercial processes taking into account specific circumstances of the business”.³⁶

It also considered that the development of a guideline on appropriate costs and appropriate information justification would increase the efficiency of the cost recovery and assessment process, and lower the potential for dispute.³⁷

5.3.2 Appropriate decision making body

Both AGL Energy (AGL) and Alinta Energy (Alinta) considered that the proposed changes will lead to more efficient outcomes, including enhanced effectiveness and transparency of cost recovery by clarifying points within the decision-making process and the responsibilities of parties within that process.³⁸

Alinta agreed with the AER that it was best placed to assess pipeline operators’ cost invoices.³⁹ Similarly, AGL considered that it was appropriate to assign the assessment role to the AER, thereby ensuring the roles and responsibilities of AEMO and the AER in this process were aligned with their key statutory roles.⁴⁰

In contrast, APIA submitted that AEMO, as the party responsible for developing and maintaining the systems that run the STTM, would have a good understanding of the obligations on pipeline operators to provide MOS allocation services, and hence also a good understanding of the costs that would be incurred in doing so.⁴¹

5.3.3 Trigger for assessment

It was APIA's "strong view" that improvements could be made to the current objection mechanism to increase the threshold at which an objection would occur. It considered that the current lack of barriers to objections, and the lack of any requirement for objections to be justified, meant that frequent and unnecessary objections were probable. It noted that, once triggered, the assessment process consumes resources from the AER, AEMO and pipeline operators, and delays payment to pipeline operators. In light of this, APIA considered the current objection mechanism is inherently inefficient.⁴²

APIA suggested there were a number of ways that the objection mechanism could be improved, including: introducing a cost to objection; removing a blanket objection;

36 *ibid.*

37 *ibid.*

38 AGL, Consultation Paper submission, p. 2; Alinta, Consultation Paper submission, p.1.

39 Alinta, Consultation Paper submission, p. 1.

40 AGL, Consultation Paper submission, p. 2.

41 APIA, Consultation Paper submission, p. 8.

42 *ibid.*, p. 4.

requiring justification for an objection to be provided; or considering a pipeline operators' histories before initiating a full cost assessment.⁴³

5.4 Commission's analysis

5.4.1 Approach to assessment

The AER's rationale for implementing an approach which requires the assessment of costs on the basis of efficiency (rather than reasonableness) is to provide an incentive for pipeline operators not to seek recompense for costs above efficient levels. The proposed approach would achieve this by not guaranteeing full cost recovery to pipeline operators who are unable to demonstrate that the costs specified in their cost invoices are reflective of the efficient costs that would have been incurred by a prudent operator.⁴⁴

At a conceptual level, the Commission acknowledges that an assessment of pipeline operators' costs on the basis of efficiency would be consistent with other approaches to cost assessments in the NGR. The proposed changes, which provide only for the recovery of costs which have been 'efficiently incurred', could also be consistent with the NGO, which seeks to promote the achievement of efficient outcomes in the market, for the long term interests of consumers.

However, having regard to the information available to it, the Commission is not satisfied that the implementation of an efficiency test in place of a test of reasonableness is appropriate in this circumstance. The key reasons for this relate to the practicalities of applying an efficiency test to pipeline operator information service costs, and the materiality of the problem this aspect of the proposed rule seeks to address.

First, as highlighted by stakeholders in their submissions to the consultation paper, there are a number of issues around the practicalities of applying an efficiency test to the assessment of costs incurred in providing the MOS allocation service, including the usefulness of benchmarking.⁴⁵

⁴³ *ibid*, pp. 4-5.

⁴⁴ Under the proposed rule, a pipeline operator's invoice would only be subject to an efficiency assessment in the event that an objection was raised or AEMO referred the invoice to the AER for assessment.

⁴⁵ Benchmarking is an analytical tool used by regulators to estimate the efficient costs of delivering a service through the examination of the historic costs of a firm or industry. There are many different types of benchmarks, and multiple ways of calculating and using benchmarks. The appropriateness of benchmarking as a tool in promoting efficient outcomes depends on a number of factors, including being able to develop a benchmark which is transparent, provides certainty and does not involve onerous data obligations or take too much time to prepare.

As the AER's explanation on the use of an efficiency test was unclear in its rule change proposal, the AEMC requested additional information. In response, the AER noted that:⁴⁶

“It would be open to the AER to use a range of techniques when determining whether the proposed costs reflect the efficient costs of a prudent operator. However, it is difficult in the abstract to explain this assessment process in more detail as it would be dependent on the relevant circumstances and information available at the time.”

The Commission recognises that there are potential difficulties associated with determining what ‘efficiently incurred’ costs may be.⁴⁷ However, it also recognises that it is important for stakeholder confidence in the process that the AER is transparent in its approach to assessing efficient costs. This would include how it would determine ‘efficient costs that would be incurred by a prudent operator’. Having regard to the AER’s explanation above, the Commission is not satisfied that this aspect of the proposed rule will result in a more transparent, certain and robust regulatory environment for pipeline operators and other stakeholders, relative to the current arrangements.

Second, the Commission is not satisfied that the key reason for making a change to this feature of the cost recovery arrangements, as described by the AER in its rule change request, has been clearly demonstrated. As noted previously, the rationale for amending the rules to introduce the concept of an efficiency assessment is driven primarily by the view that an efficiency assessment will place more appropriate incentives on pipeline operators to seek recompense only for costs at efficient levels. However, it is not clear that the current approach used to assess pipeline operators’ cost invoices, which is based on reference to reasonable costs, has led to (or is expected to lead to) inefficient outcomes.⁴⁸

In addition, there is some uncertainty around the materiality of the benefits likely to flow from the proposed change, particularly in light of the AER’s view that:⁴⁹

- the application of an efficiency test would not be expected to make a large practical difference to the way in which the AER would assess a cost invoice; and
- in the context of MOS allocation service costs and BB aggregation and information services costs, reasonable costs could typically be argued to be efficient and prudently incurred.

Accordingly, having regard to the information available to it, the Commission is not satisfied that the problem identified by the AER as the driver for change to this aspect

⁴⁶ AER rule change request – additional information, p. 4.

⁴⁷ This is because ‘efficient costs’ can be very specific to participant size and operating environment.

⁴⁸ For example, the Commission is not aware of any evidence to suggest that the amounts paid to pipeline operators to date (or the amounts expected to be claimed by pipeline operators in the future), although reasonable, do not (or are not expected to) reflect efficient costs.

⁴⁹ AER rule change request - additional information, p. 3.

of the cost recovery process is material enough to justify making a change to the rules. Consequently, the Commission's draft determination is to make a draft (more preferable) rule which retains the current reasonableness test to assess pipeline operators' costs.

5.4.2 Appropriate decision making body

The Commission understands that there are two drivers behind the proposed changes to the roles and responsibilities of AEMO and the AER in the cost recovery process. The first relates to the apparent inefficient duplication of activities by the AER and AEMO ('double handling') in the event the AER is unable to provide advice to AEMO on the amount payable within specified timeframes. The second reason relates to the AER's role as economic regulator, which the AER considers places it in a more appropriate position than AEMO to make determinations on the appropriate level of MOS allocation service costs.

In respect of the first, there does appear to be the potential for double handling of cost invoices under the current arrangements, in certain circumstances. However, whether double handling would be a consequence of an overlap in the roles and responsibilities assigned to AEMO and the AER, or as a consequence of the timeframes and information requirements currently specified in the rules and procedures, is debatable.

In respect of the second issue, the Commission accepts that in general the AER, as economic regulator, is in a good position to be able to assess cost invoices and determine the amounts payable. However, the decision maker role should not be viewed in isolation from the decision making test which must be applied and, in the case of the draft (more preferable) rule, the trigger for assessment.

As noted by APIA, AEMO is likely to have a relatively good idea of the costs involved to pipeline operators in providing the MOS allocation service, given its experience in developing and maintaining the systems that run the STTM. On this basis, the Commission considers that AEMO is likely to be in at least as good a position as the AER to carry out an effective test of reasonableness.⁵⁰

In contrast, in terms of assessing pipeline operators' cost invoices by reference to the level of efficient costs, the AER is in a unique position relative to AEMO given its role as economic regulator. The need for a decision maker with the capacity to utilise a range of analytical tools, including benchmarking, to carry out such assessments aligns with the AER's responsibilities and experiences of economic regulation. The regulation of costs is not a core competency of AEMO.

To this end, the Commission considers that AEMO's role as decision maker in the context of the current arrangements, and the AER's role under the proposed rule, are both appropriate and likely to result in effective and robust assessments of pipeline operators' invoiced costs, given the respective tests which must be applied.

⁵⁰ The Commission notes that AEMO already possesses the experience necessary to assess cost invoices having regard to reasonable costs, having done so each year since 2010.

However, unlike the current and proposed arrangements where an assessment of a cost invoice would be triggered by receipt of an objection, the draft (more preferable) rule would require all pipeline operators' cost invoices to be subject to review by the AER. The AER would then have the discretion to undertake a more detailed assessment of a cost invoice having regard to a number of factors, including where it considers the costs of undertaking the assessment outweigh the likely public benefit resulting from such an assessment.

Therefore, while the draft (more preferable) rule retains the requirement for assessment of cost invoices by reference to reasonable costs, the Commission considers it is appropriate for the AER, rather than AEMO, to take on the role of decision maker, given its broader oversight role (see section 5.4.3 below).

5.4.3 Trigger for assessment

As noted above, under the current cost recovery arrangements, assessment of a pipeline operator's cost invoice is triggered by receipt of an objection to payment of that invoice by AEMO. Objections may be raised by any person and do not require justification or any supporting materials. Where an objection is not received and the AER is not called upon to provide advice, the current provisions require AEMO to pay pipeline operators the amounts set out in their cost invoice.

The Commission notes the concerns of APIA regarding the effectiveness of the current (and proposed) objection mechanism, and its role as trigger of the assessment process. The Commission also has some concerns.

First, effective review of pipeline operator's invoiced costs is contingent upon stakeholder engagement in the process. This implies that stakeholders are in a position to be able to make a judgement within 10 business days on what is or isn't a 'reasonable cost', in order to inform the decision on whether or not to object to payment. This requires that a degree of transparency be provided about pipeline operators' costs (information requirements are considered further in the next chapter).

Second, in the instance an objection to payment is received, a full assessment process is triggered. As demonstrated in 2010-2011, the cost assessment process has the potential to be resource intensive and time consuming for AEMO, the AER and relevant pipeline operators, particularly where objections to multiple invoices are received. Under the current (and proposed) arrangements, it is therefore not guaranteed that the benefits from assessing pipeline operators' invoices (that is, a reduction in the costs payable by shippers to pipeline operators)⁵¹ will in all cases be proportionate to the costs of conducting the assessment.

For these reasons, the Commission considers there is a case to amend the operation of the objection mechanism as the trigger for assessment. Ideally, the design of the cost recovery process should allow the potential benefits from carrying out a full assessment to be identified and balanced against the total costs of conducting the

⁵¹ The amounts payable are ultimately recovered from participants via AEMO's fee process.

process in instances where a full assessment is unlikely to deliver broader benefits to the market.

The draft (more preferable) rule achieves this by removing the role of the objection mechanism as the trigger for assessment. Instead, it requires all cost invoices submitted to AEMO to undergo review by the AER. The key requirements of the review are as follows:

- The AER would be required, within 30 business days after receiving the invoices and supporting evidence from AEMO, to review a cost invoice and either approve or reject the amount specified in that invoice by determining whether the costs specified:
 - have been incurred; and/or
 - are reasonable.
- If the AER rejects the amount specified in a cost invoice, it must undertake an assessment to determine an amount payable that, in the AER's opinion, is reasonable for the relevant services in respect of that invoice.
- In deciding whether to approve or reject the amount specified in an invoice, the AER must have regard to:
 - the evidence provided with a cost invoice;
 - any comments received by AEMO from other parties, including objections to the payment of an invoice;
 - any comments from AEMO;
 - any information received in accordance with a request or relevant notice issued by the AER;
 - any other relevant information; and
 - whether the likely costs of undertaking an assessment of the costs specified in an invoice outweigh the likely public benefit resulting from such an assessment.

The draft (more preferable) rule ensures that all pipeline operator's MOS allocation service costs (and aggregation and information services costs) are subject to at least a high level review by the regulator ahead of the invoices being paid. This provides a safeguard against shippers being required to pay costs above those which have been reasonably incurred (this is particularly important where an objection is not raised to an invoice which, arguably, should be subject to review). It also removes the necessity of shippers and other parties being active in the process.

In addition, the draft (more preferable) rule addresses some of the concerns of APIA by preventing objections which may be misconceived or lacking in substance triggering a

full assessment process and unnecessarily delaying payment. Stakeholders would, however, still be provided with an opportunity to comment on, or object to, invoices and evidence. This would be taken into account by the AER.

The Commission considers that this aspect of the draft (more preferable) rule promotes good regulatory practice and design by providing a framework which allows an appropriate balance to be struck between the potential benefits of amending final invoiced costs and the potential costs of conducting the assessment. It also provides a balance between quick decision making and thorough assessment and consultation, thereby promoting efficiency of the cost recovery process.

5.5 Conclusion

Approach to assessment

The Commission considers that the proposal to require the assessment of invoiced costs by reference to efficient costs that would have been incurred by a prudent operator (rather than by reference to reasonable costs) could encourage pipeline operators not to seek recompense for costs which are above efficient levels. On this basis, the Commission considers that this aspect of the proposed rule will, or is likely to, contribute to the achievement of the NGO.

However, given the uncertainty around how the AER would apply a test of efficiency to assess MOS allocation service costs, and given the relatively small size and nature of these costs claimed to date, the Commission does not support the move to an efficiency assessment at this time. The draft (more preferable rule) therefore retains the current approach to the assessment of cost invoices which is based on reference to reasonable costs. This aspect of the draft (more preferable) rule will, or is likely to, better contribute to the NGO than the proposed rule by providing a more proportionate approach to the assessment of pipeline operators' invoiced costs.

Appropriate decision maker

The Commission considers that the AER's proposal to transfer responsibility for decision making on the amounts payable from AEMO to the AER is appropriate if the decision maker is to carry out an effective assessment of invoiced costs by reference to 'efficient costs'. This would align with the AER's responsibilities and experiences of economic regulation.

In the context of the draft (more preferable) rule, which proposes to retain the current test of reasonableness, the Commission considers that both the AER and AEMO possess the skills and experience necessary to be able to carry out an effective assessment of invoices costs.

However, having regard to the broader changes proposed by the draft (more preferable) rule, the Commission considers it is appropriate for the AER, rather than AEMO, to assume the role of decision maker on the amount payable. By aligning the roles and responsibilities of AEMO and the AER within the cost recovery framework

with their experience, expertise and broader statutory roles, the Commission considers this aspect of the draft (more preferable) rule will also be consistent with the NGO.

Trigger for assessment

Having considered the issues raised by stakeholders, the draft (more preferable) rule provides a framework where all pipeline operators' cost invoices would be subject to AER oversight and, where deemed necessary by the AER, undergo a more detailed assessment where there is benefit in doing so. The Commission considers that this aspect of the draft (more preferable) rule will, or is likely to, better contribute to the NGO than the proposed rule by:

- increasing certainty (thereby promoting confidence in the process) for pipeline operators and other stakeholders by providing a mechanism which ensures all cost invoices will be subject to oversight by the AER; and
- improving overall efficiency of the cost recovery process by providing a framework within which the costs of carrying out a detailed assessment of pipeline operators' invoiced costs can be weighed against the benefits to consumers of amending the amounts payable to pipeline operators.

6 Timeframes for assessment of invoiced costs

This chapter sets out the Commission's views in relation to the timeframes necessary to assess invoiced costs. In considering this feature of the cost recovery process, the Commission has had regard to the views of stakeholders in submissions to the consultation paper.

6.1 Proposed rule

Under the current rules, the AER is required to respond to an AEMO request for advice within 15 business days of receiving that request. AEMO then has 30 business days to make a determination on the amount payable after receiving the AER advice.

Following first use of the provisions in 2010-2011, the AER found that this timeframe was insufficient for it to be able to provide advice to AEMO on the amount payable for one of four pipeline operators' invoices subject to review that year.⁵² Consequently, the AER has proposed to amend the current timeframe provided for it to assess any cost invoices, from 15 business days to 60 business days. The AER would also have the ability to extend this deadline by a further 30 business days if required.⁵³

6.2 Rule proponent's view

The AER states that the additional assessment time (from 15 business days to 60 business days) will allow it to properly determine MOS allocation service cost amounts, including allowing more time for pipeline operators to respond to requests for information. The AER also considers that the ability to extend this timeframe by a further 30 business days will allow it to deal with circumstances where there has been a delay to the process, such as a need to wait for information from pipeline operators or where the determination involves questions of unusual complexity of difficulty.⁵⁴

The AER considers that the proposed rule achieves a better balance between quick decision making and thorough assessment and consultation processes. It also considers that the proposed changes will provide a better opportunity for the AER to engage with pipeline operators to clarify aspects of their invoices, including more time for pipeline operators to comment or clarify aspects if required.⁵⁵

⁵² During the 2010-2011 assessment process, AEMO received an objection to payment of all four cost invoices submitted to AEMO. AEMO subsequently sought advice from the AER on the amounts payable. However, due to the short prescribed timeframes, the AER was unable to collect additional information from one of the four pipeline operators and was therefore unable to provide advice to AEMO on an amount payable for that pipeline operator. AEMO subsequently carried out further work and obtained additional information from the pipeline operator before determining the amount payable itself.

⁵³ The clock would start upon receipt of a request from AEMO to make a determination.

⁵⁴ AER rule change proposal, p. 9.

⁵⁵ AER rule change proposal, p. 13.

Notwithstanding the above, the AER recognises that introducing the potential for a longer assessment process could lead to delays in the payment of invoices by AEMO. However, it considers that any delay would be relatively modest and manageable, given the level of costs involved. In addition, the AER notes that its proposal to remove the potential for doubling handling of invoices between AEMO and the AER may reduce the amount of time between when the AER has assessed costs and when AEMO can pay the invoices, somewhat offsetting the additional assessment time.⁵⁶

Finally, the AER considers that the additional time will likely reduce its own assessment costs on the basis that it would be able to more efficiently allocate resources to the task.⁵⁷

6.3 Stakeholder views

APIA considered that the timeframes set out in the proposed rule were excessive. It considered that if the AER required 60-90 business days to make a decision on the amount payable to a pipeline operator, it was likely that the costs of making the decision would outweigh the benefits of both the rule change proposal and of any assessment of pipeline operator invoices. APIA submitted that a 30 business day timeframe would be sufficient for this task.⁵⁸

In addition, APIA considered that in the event the extended timeframes were implemented, pipeline operators should be allowed to charge interest on their payments. This would be in line with standard commercial terms on invoices which require payment within 30 days before interest can be charged.⁵⁹

APIA also noted that it was standard for invoices to be paid within 30 days (equivalent to 20 business days). Given the proposed rule would shift the decision making role from AEMO to the AER, APIA considered that 10 business days (rather than 30 business days as provided in the proposed rule) would be appropriate for the payment of invoices by AEMO.⁶⁰

Finally, APIA expressed concern that the current and proposed rules required AEMO to publish cost invoices, and refer invoices to the AER, “as soon as practicable”. APIA suggested that a five business day statutory time limit apply to both these activities.⁶¹

In its submission, Alinta noted that it was uncertain how the AER had determined that up to 90 days would be required to perform the cost assessment.⁶²

⁵⁶ AER rule change proposal, p. 10.

⁵⁷ AER rule change proposal, p. 9.

⁵⁸ APIA, Consultation Paper submission, p. 8.

⁵⁹ *ibid*, p. 4.

⁶⁰ *ibid*, pp. 8-9.

⁶¹ *ibid*, p. 9.

⁶² Alinta, Consultation Paper submission, p. 2.

6.4 Commission's analysis

The Commission understands that one of the AER's key concerns regarding the current cost recovery process relates to the timeframes for undertaking an assessment of MOS allocation service costs. At present, the rules require the AER to respond to an AEMO request for advice within 15 business days.⁶³

The Commission recognises that allowing a longer assessment period (in this case, 60-90 business days) would provide the AER with additional time to conduct a robust assessment of pipeline operators' invoiced costs, including time for the AER to request, and pipeline operators to provide, additional information if necessary. However, the need for thorough assessment and consultation must be balanced with the need for quick and effective decision making. This is because implementing a longer assessment period also has the potential to impact on pipeline operators' financial arrangements and potentially also on AEMO's operational arrangements in terms of the payment of invoices. The period of time should also be proportional to the nature of the task involved. In this case, 60-90 business days implies that the cost assessment process is a significant task which may not be proportionate to the costs involved and their importance in the market.

The Commission notes that stakeholders' generally supported a shorter timeframe for assessment. In particular, APIA submitted that a 30 business day timeframe would be sufficient for this matter.⁶⁴

The Commission considers that the proposed changes to the timeframes should be assessed in the context of other changes included in the draft (more preferable) rule in relation to both the information requirements and the approach to assessment of cost invoices.

First, by requiring the provision of more detailed and targeted information by pipeline operators at the time cost estimates and invoices are submitted to the AER, the need for the AER to seek further information from pipeline operators in support of their cost claims (and the time needed for this), should be reduced.

Second, the AER has proposed a 60-90 business day assessment period in the context of an efficiency assessment approach. However, as noted in Chapter 5, the draft (more preferable) rule retains the current reasonableness test for the assessment of cost invoices. Arguably, carrying out a test of reasonableness would be less time consuming and resource intensive than conducting an efficiency assessment.

In addition, the Commission notes that the issues experienced by AEMO and the AER during the first application of the assessment process in 2010-2011 did not reoccur during the second application in 2011-2012. That is, the AER successfully carried out an assessment of invoiced costs within the currently specified 15 business days.

⁶³ Following receipt of the AER's advice, AEMO then has 30 business days in which to determine an amount payable.

⁶⁴ APIA, Consultation Paper submission, p. 8.

For these reasons, the Commission does not support the proposal set out in the rule change request to amend the timeframes for assessment of cost invoices from 15 business days to 60 business days, with the option for an additional 30 business day extension if required. Instead, the draft (more preferable) rule provides the AER with a period of 30 business days to undertake a review of all pipeline operators' cost invoices. Where the AER chooses to exercise its discretion to carry out a more detailed assessment of a pipeline operator's invoiced costs, it would be required to do so, and to determine the amount payable, within this period.

In line with the suggestion by APIA, the draft (more preferable) rule makes two further changes to the timeframes specified in the AER's proposed rule. The draft (more preferable) rule requires that:

- AEMO publishes pipeline operators' cost estimates, invoices and supporting information, "within five business days after receipt" (rather than "as soon as practicable"); and
- AEMO pays any amount determined as payable by the AER "within 10 business days of the AER publishing its determination" (rather than "within 30 business days" of receipt of an invoice or of the AER publishing its determination).

The Commission considers these amendments will further clarify the process and facilitate quick and effective decision making for all parties. The changes to the payment period will also reduce the likelihood of unnecessary delays in the payment of final invoices.

6.5 Conclusion

The Commission does not support the proposal to extend the timeframes for assessment of cost invoices by the AER to 60 business days (with the option of an additional 30 business days, where required). The Commission notes that the changes proposed to the information requirements should reduce the need for the AER to seek additional information from pipeline operators to support their costs claims.

In addition, given the draft (more preferable) rule retains the current approach to the assessment of cost invoices which is based on reference to 'reasonable costs', the Commission considers 60-90 business days to be excessive. The draft (more preferable) rule therefore provides the AER with a period of 30 business days to review pipeline operator's cost invoices, and to undertake a more detailed assessment of any cost invoices where it considers there is benefit in doing so.

Therefore, the Commission considers that the draft (more preferable) rule will, or is likely to, better contribute to the achievement of the NGO that the proposed rule by providing a timeframe for assessment which better balances the need for thorough assessment and consultation with quick decision making by the AER.

7 Information requirements – justification of costs

This chapter sets out the Commission's views in relation to the provision of information to justify invoiced costs. In considering this feature of the cost recovery process, the Commission has had regard to the views of stakeholders in submissions to the consultation paper.

7.1 Proposed rule

The current obligations on pipeline operators to provide information in support of their costs claims are set out in both the rules and STTM (and BB) procedures. The NGR includes a broad requirement on pipeline operators to provide AEMO with reasonable evidence to demonstrate that:

- each cost estimate or expected variation in cost estimate is reasonable;
- invoiced costs were actually incurred;
- any material variation between actual costs and the most recent estimate given to AEMO is reasonable; and
- all costs specified in an estimate or invoice are MOS allocation service costs (or in the case of the BB rules, aggregation and information services costs).

The STTM procedures then detail the minimum 'reasonable evidence' which must be provided by pipeline operators.⁶⁵

Currently, AEMO is not required to publish the supporting information provided with cost estimates (rule 424) and cost invoices (rule 425). However, to date, some supporting information has been included within MOS cost applicant's estimates and tax invoice documents, and has been published by AEMO.

The AER considers that the information provided by pipeline operators, and therefore the information published by AEMO, currently provides relatively limited justification for the level of MOS allocation service costs claimed. In addition, given that the current information requirements are specified in the STTM procedures, the AER is concerned that it must seek significant additional information from pipeline operators in order to undertake the assessment of invoiced costs. Further, given the other changes proposed by the AER in its rule change request, it considers that pipeline operators should be required to explain in sufficient detail the reasons why the costs they are claiming are efficient, rather than just reasonably incurred.

⁶⁵ This includes, for example, the number of STTM pipelines operated by the pipeline operator; the number of STTM shippers and MOS providers on each pipeline; a breakdown of costs by reference to time allocation to tasks or process steps performed exclusively for MOS allocation services, labour cost rates, fixed cost allocations etc. The BB procedures set out similar information requirements in the context of pipeline operator aggregation and information services.

To the address these issues, the AER has proposed a change to the rules to ensure that the required evidence included with cost estimates and invoices provide justification that costs reflect efficient costs that could expect to be incurred by a prudent operator. The AER will need to have regard to this evidence when making its determination.

It is also intended that pipeline operators be required to provide a breakdown of their estimated and invoiced costs, as well as justification as to why each element of their cost proposal is efficient. Amendments to the specific evidence required for this purpose would need to be made to the STTM (and BB) procedures through the procedure change process.

7.2 Rule proponent's view

The AER considers that the proposed information requirements will improve the quality of consultation and reduce the amount of information it needs to subsequently request at the time of assessment.⁶⁶

Although it recognises that a requirement to provide justification that costs are efficient will create some additional work for pipeline operators, the AER considers this will be appropriate for the scale of invoiced costs. To the extent that provision of greater up front information reduces the need for the AER to subsequently request that information from pipeline operators later in the assessment process, the AER submits that the requirements would not add to existing costs.⁶⁷

7.3 Stakeholder views

Origin Energy (Origin) stated that its key concern with the current arrangements was the limited requirement for pipeline operators to provide information to justify the level of MOS service costs claimed on invoices. Origin considered this made it difficult for participants to assess invoices and raise objections if necessary. On this basis, it expressed strong support for the proposal to require evidence to be provided with invoices which would allow participants to engage more effectively in the process from the outset.⁶⁸

APIA noted two key concerns with the proposed changes to the information requirements. First, although it found that it wasn't clear from the proposed rule whether AEMO would be required to publish this information, APIA submitted that if publication was the intention, it would be very likely that this information would include commercially sensitive information which pipeline operators would not wish to share with the broader market.⁶⁹

⁶⁶ AER rule change request, p. 8.

⁶⁷ AER rule change request, p. 13.

⁶⁸ Origin, Consultation Paper submission, p. 1.

⁶⁹ APIA, Consultation Paper submission, pp. 7-8.

Second, APIA considered it was excessive to require pipeline operators to provide reasonable evidence to justify the efficiency of their estimated costs. It stated that pipeline operators have sufficient incentives to provide accurate costs estimates on the basis that alignment of estimates with final invoices would reduce the likelihood of objections being raised. While APIA accepted that some level of justification may be relevant at the cost estimate stage, it considered that any new rule should explicitly reflect that the information required is less than for the final invoice.⁷⁰

7.4 Commission's analysis

The current obligations on pipeline operators to provide information in support of their costs claims are set out in both the rules and procedures. The rules include a broad requirement on pipeline operators to provide reasonable evidence to demonstrate (among other things) that the cost estimates they have provided are reasonable, and that the costs specified on their cost invoices have been incurred. The reasonable evidence which must be provided by pipeline operators (at a minimum) for this purpose is specified in the STTM (and BB) procedures.

The rules do not currently require AEMO to publish the reasonable evidence provided by pipeline operators in support of their cost estimates and invoices. However, in practice, pipeline operators have tended to embed this information within their cost estimates and invoices, and thus it has been published by AEMO.

In its rule change request, the AER noted that it was the intention to tighten the information requirements in the procedures so that pipeline operators must submit more supporting information with their cost estimates and invoices. In addition, the AER proposed to amend the rules to require pipeline operators to provide evidence to demonstrate that their invoiced cost reflected the 'efficient costs that would be incurred by a prudent operator' (rather than 'reasonable costs'). It is noted that the AER's rule change request does not seek to alter the rules to require AEMO to publish the supporting evidence provided by pipeline operators in support of their cost estimates (rule 424) and cost invoices (rule 425).

Any tightening of the information requirements would need to be effected through AEMO's procedure change process and are thus beyond the scope of this rule change request. Consequently, the key change to the NGR proposed by the AER is the requirement for pipeline operators to provide evidence to demonstrate that their invoiced costs reflect the efficient costs that would have been incurred by a prudent operator. In effect, this change is a consequential amendment which seeks to align the information requirements set out in the NGR, with the changes proposed to the decision making test (considered in Chapter 5).

However, for the reasons discussed in Chapter 5, the draft (more preferable) rule retains the current decision making test which requires an assessment of whether the levels of costs claimed by pipeline operators' are reasonable. To this end, the

⁷⁰ APIA, Consultation Paper submission, p. 8.

Commission does not support the proposed changes to the information requirements set out in rule 424(5) as proposed by the AER.

With that said, having considered the issue of information provision more generally, the Commission considers there would be benefit in including a requirement on AEMO to publish the supporting information provided by pipeline operators, together with their cost estimates and cost invoices. This would ensure that, where supporting information was provided but was not embedded within an estimate and/or invoice document, it would still be published and available for comment.

By providing further transparency around pipeline operators' costs, stakeholders will be better informed and thus better able to effectively engage in the cost recovery process. Further, improving transparency may strengthen the accountability of pipeline operators and further provide incentives for them to keep costs at reasonable levels.

The Commission notes the concerns of APIA in respect of confidential information. However, the requirement included in the draft (more preferable) rule would not prevent confidentiality being claimed over information which is legitimately confidential, in accordance with broader confidentiality principles in the NGL.

7.5 Conclusion

The changes would require pipeline operators to submit evidence with their cost estimates and invoices to demonstrate that the costs specified in their estimates and invoices reflect the efficient costs that would be incurred by a prudent operator. These changes are, in effect, consequential amendments required to align the current information requirements in the rules with the proposed changes to the assessment approach. On this basis, the Commission supports the changes as means to promoting consistency for the cost recovery process.

The draft (more preferable) rule also includes a requirement for AEMO to publish the evidence provided by pipeline operators with their cost estimates and costs invoices. On this basis, the Commission considers that the draft (more preferable) rule will, or is likely to, better contribute to the NGO than the proposed rule by promoting transparency and increasing the scope for effective engagement by stakeholders in the cost recovery process.

8 Definition of MOS allocation service costs

This chapter sets out the Commission's views in relation to the definition of 'MOS allocation service costs'. In considering this issue, the Commission has had regard to the views of stakeholders in submissions to the consultation paper.

8.1 Proposed rule

Rule 364 currently defines MOS allocation service costs as follows:

"MOS allocation service costs mean the costs reasonably incurred by an STTM pipeline operator (including fees and expenses payable to an allocation agent) for the purposes of allocating pipeline deviations as MOS or overrun MOS in accordance with rule 421 (the MOS allocation service) to the extent that those costs:

- (a) are either:
 - (i) incremental costs incurred exclusively for the provision of MOS allocation service; or
 - (ii) a proportionate share of any incremental costs reasonably attributable to the MOS allocation service; and
- (b) would not have been incurred but for the requirements to provide MOS allocation service; and
- (c) are not offset by benefits reasonably available to the STTM pipeline operator in relation to its other activities."

The AER considers there is currently some ambiguity around which costs are recoverable under this definition. It notes that the experience of assessing invoices for MOS allocation service costs for 2010-2011 highlighted different opinions on which costs are recoverable as MOS allocation service costs.

The proposed rule seeks to clarify the definition of recoverable costs by making some minor amendments to the definition of 'MOS allocation service costs' and including a new definition of 'MOS allocation service' in rule 364 as follows:

"MOS allocation service means the allocation of pipeline deviations as MOS or overrun MOS in accordance with rule 421, but excludes any other part of the process for determining STTM facility allocations."

The proposed definition confirms that costs associated with allocating pipeline deviations as MOS or overrun MOS in accordance with rule 421 are recoverable, but that other parts of the process for determining STTM facility allocations are not part of the MOS allocation service. The proposed wording is intended to confirm that

associated costs are not recoverable under the definition of MOS allocation service costs.

8.2 Rule proponent's view

The AER has stated that there are a broader set of costs associated with the process for determining STTM facility allocations that are not part of the costs of providing the MOS allocation service. These costs would have been incurred regardless of the requirement to provide the MOS allocation service. It does not consider that these costs should be recoverable under the definition of MOS allocations service costs. The AER considers that amending the definition of MOS allocation service will clarify that costs that are not part of the MOS allocation service, but which relate to other parts of the process for determining STTM facility allocations, are not recoverable under the definition of MOS allocation service costs.⁷¹

8.3 Stakeholder views

APIA considered that by explicitly excluding certain costs, the proposed rule could be considered to increase clarity on the types of costs that can be recovered. However, APIA noted that pipeline operator systems are not readily separable into 'MOS allocation systems' and 'STTM systems' on the basis that MOS allocation processes utilise existing systems and functionality and have the potential to impact existing systems and functionality. Therefore, APIA noted that a level of discretion would always be present and the potential for dispute as to what comprises a 'MOS allocation service cost' would always remain.⁷²

Alinta considered that the definition of allocation services that the revised process relates to needed to be clarified to ensure all parties and pipelines have greater certainty around cost recovery.⁷³

8.4 Commission's analysis

The Commission understands that this proposed change is driven by the experience of assessing invoices for MOS allocation service costs for 2010-2011. At that time, there was some confusion among stakeholders regarding which costs were recoverable under the definition of 'MOS allocation service costs'. The AER's proposed change to the definition is therefore intended to clarify that costs which are not part of the MOS allocation service, but which relate to other parts of the process for determining STTM facility allocations, are not recoverable under the MOS allocation service cost recovery process.

⁷¹ AER rule change request, pp. 10, 12.

⁷² APIA, Consultation Paper submission, p. 9.

⁷³ Alinta, Consultation Paper submission, p. 2.

Having considered the issues raised, the Commission has concluded that the proposed changes will be likely to remove some uncertainty about which costs can be claimed as part of the cost recovery process. Given that the rules inform stakeholders of their rights and obligations for participating in the gas market and that stakeholders rely on these rules in their commercial transactions and documentation, changes which increase clarity, accuracy and consistency are likely to contribute to the achievement of the NGO.

With that said, the Commission recognises that the efficiency benefits of this change are likely to be minimal, particularly given that pipeline operators and other stakeholders have now had some experience in the cost recovery process. Over this time, pipeline operators, through their interactions with AEMO and the AER, are likely to have developed a sound understanding of which costs can be claimed for the MOS allocation service.

8.5 Conclusion

The Commission has decided to include the proposed change to the definition of 'MOS allocation service costs' in the draft (more preferable) rule. It considers this change will promote clarity of meaning by removing ambiguity around which costs can be claimed as MOS allocation service costs. On this basis, the Commission considers that the proposed rule will, or is likely to, contribute to the achievement of the NGO. In addition, given that the draft (more preferable) rule incorporates this aspect of the AER's proposed rule, the draft (more preferable) rule is also likely to contribute to the achievement of the NGO.

9 Bulletin Board

The analysis included in the AER's rule change request focuses on the MOS allocation service cost recovery process. However, the AER also seeks to amend the process for the submission of cost estimates and invoices, and the assessment and payment of invoices, for aggregation and information services provided by pipeline operators in the BB.

This chapter sets out the Commission's views in relation to those changes, having regard to the views of stakeholders in submissions to the consultation paper.

9.1 Proposed rule

The current process for cost recovery by pipeline operators providing aggregation and information services in the BB is summarised in section 3.1.1.⁷⁴

To the extent that changes are made to the cost recovery process in rules 424 and 425, the AER proposes to amend rules 197 and 198 to reflect those changes. Specifically, the proposed rule intends to make the following amendments to the aggregation and information services cost recovery process:

- require pipeline operators to submit costs and, where required, the relevant body to assess costs, by reference to efficient costs that would have been incurred by a prudent operator (rather than by reference to reasonable costs);
- transfer responsibility for decision making on the amounts payable to pipeline operators in respect of aggregation and information service costs from AEMO to the AER;
- extend the timeframes for assessment of cost invoices to provide the AER with sufficient time to seek further clarification and collect additional information from pipeline operators, if required; and
- require pipeline operators to submit evidence with their cost estimates and invoices to demonstrate that the costs specified reflect the efficient costs that would be incurred by a prudent operator.

In addition, the proposed rule would amend rule 141 to include a definition of 'aggregation and information services costs'. The current definition of 'aggregation and information services' is as follows:

⁷⁴ As note in section 3.1.1, although broadly similar to the cost recovery process for pipeline operators providing the MOS allocation service in the STTM, the aggregation and information services cost recovery process differs in several respects, most notably through the exclusion of a discrete step in the process for the determination by AEMO of the amount payable to a pipeline operator following receipt of advice from AER. In the context of the BB process, AEMO is required to pay an invoice within 10 business days of receiving that advice.

“aggregation and information services means the costs incurred by a pipeline operator in aggregating and providing information to the AEMO in compliance with rules 173 and 196.”

The proposed rule seeks to clarify this definition by including a new definition of ‘aggregation and information services costs’ in rule 141 as follows:

“aggregation and information services costs means the costs incurred by a pipeline operator in providing aggregation and information services.”

The new definition is intended to clarify that ‘aggregation and information services costs’ are the costs incurred by a pipeline operator in providing aggregation and information services. The AER considers that making this change should make clear that only the costs incurred by a pipeline operator in providing aggregation and information services are recoverable under this process.

9.2 Rule proponent's view

As noted above, the analysis within the AER’s rule change request largely focuses on the MOS allocation service cost recovery process. However, following a request from the AEMC for further justification for the proposed changes to the BB rules, the AER noted that:

- there is benefit in retaining a consistent assessment process between the BB cost recovery process and the MOS allocation service cost recovery process; and
- there is the potential for identical problems to occur in the BB to those that occurred under the STTM rules.⁷⁵

9.3 Stakeholder views

In their submissions to the consultation paper, EnergyAustralia, AGL and Alinta expressed support for the inclusion of changes to the BB cost recovery process within this rule change request.⁷⁶

APIA considered the approach to cost recovery for the BB should be consistent with that for the MOS allocation service. In addition, it suggested that the consistent approach should be detailed in one section in the NGR and referenced in the relevant STTM and BB sections of the rules.⁷⁷

In respect of the proposed amendment to include a definition of ‘aggregation and information services costs’, APIA did not consider this inclusion would provide more clarity. APIA noted that the change simply moves the reference to “costs incurred in

⁷⁵ AER rule change request – additional information, p. 4.

⁷⁶ EnergyAustralia, Consultation Paper submission, p. 1; AGL, consultation paper submission, p. 2; Alinta, Consultation Paper submission, p. 2.

⁷⁷ APIA, Consultation Paper submission, p. 9.

providing aggregation and information service” from the rules into a definition without proving any additional information or explanation as to what those costs may be.⁷⁸

9.4 Commission's analysis

The AER has stated that the relevant rules for the BB cost recovery process should be amended in line with any changes made to the MOS allocation service cost recovery process so that the arrangements remain consistent. However, as stated in Chapter 2, the current processes are not the same. Nevertheless, the Commission has considered this aspect of the AER's rule change request on the basis of the AER's intention to create a consistent cost recovery process for pipeline operators.

The Commission's analysis and reasons for supporting (or otherwise) the changes proposed by the AER in relation to the MOS allocation service cost recovery provisions are set out in detail in Chapters 5-8. To the extent that those considerations are also relevant in the context of the aggregation and information services cost recovery process, the Commission has not revisited that analysis here. Similarly, the Commission's analysis of the draft (more preferable) rule in the context of the MOS allocation service is also relevant in the context of the cost recovery process for aggregation and information services. That analysis has therefore not been reproduced in this chapter either.

However, having regard to the Commission's considerations in Chapters 5-8, and in line with the intent of the proposed rule to ensure that the cost recovery provisions in Part 18 and Part 20 of the NGR are consistent, the draft (more preferable) rule includes amendments to rules 197 and 198 of the NGR in line with the amendments proposed to rules 424 and 425 of the NGR. Specifically, the draft (more preferable) rule makes the following amendments to the aggregation and information services cost recovery process:

- All cost invoices submitted by pipeline operators for payment by AEMO will be subject to review by the AER. To this end, the objection mechanism that currently exists will no longer act as trigger for an assessment process. In carrying out the review, the AER will be required to either approve or reject the amount specified in an invoice by determining whether the costs specified:
 - have been incurred; and/or
 - are reasonable.
- If the AER rejects the amount specified in a cost invoice, it must undertake an assessment to determine an amount payable that, in the AER's opinion, is reasonable for the relevant services in respect of that invoice.

⁷⁸ *ibid*, p. 10.

- In deciding whether to approve or reject the amount specified in an invoice, the AER must have regard to:
 - the evidence provided with a cost invoice;
 - any comments received by AEMO from other parties, including objections to the payment of an invoice;
 - any comments from AEMO;
 - any information received in accordance with a request or relevant notice issued by the AER;
 - any other relevant information; and
 - whether the likely costs of undertaking an assessment of the costs specified in an invoice outweigh the likely public benefit resulting from such an assessment.
- The AER will be required to make a decision on the amounts payable to pipeline operators (if any) within 30 business days of receiving the cost invoice and other relevant information from AEMO.
- AEMO will be required to publish the evidence provided by pipeline operators to support their cost estimates and cost invoices, subject to any claims of confidentiality by pipeline operators.
- AEMO must publish pipeline operators' cost estimates and supporting evidence, and cost invoices and supporting evidence, within five business days following receipt.
- AEMO must pay any amount the AER has determined payable to a pipeline operator within 10 business days of the AER publishing its determination.

In addition to the amendments made to Part 18 to reflect the key changes made to Part 20 affected by the draft (more preferable) rule, the Commission has made a number of other minor amendments to the provisions in Part 18 to align the two cost recovery processes.

The Commission considers that the changes made by the draft (more preferable) rule to aggregation and information services cost recovery process will improve the overall efficiency of the cost recovery process, with benefits accruing to pipeline operators, AEMO, the AER and ultimately to consumers.

9.5 Conclusion

To the extent that changes are made to the MOS allocation service cost recovery process, the Commission has decided that corresponding changes should be made to the aggregation and information services cost recovery process. Providing consistency

in the approach to pipeline operator costs recovery in the rules should promote administrative efficiencies for all relevant stakeholders, including pipeline operators seeking to recovery costs for the provision of the relevant services in the STTM and BB, and for AEMO and the AER in carrying out their respective roles in this process.

10 Transition and implementation

10.1 Rule proponent's view

In its rule change request, the AER requested that consideration of the proposed rule be finalised before June 2013 to allow it to apply to the assessment of invoices for costs incurred during 2012-2013.⁷⁹

10.2 Stakeholder views

In the consultation paper, the Commission sought views from stakeholders on whether there were any implications from applying a new cost recovery process to costs incurred under the current cost recovery process.⁸⁰

In its submission to the consultation paper, AGL cautioned against any retrospective application of any approved rule change.⁸¹ Alinta also noted that pipeline operators may have concerns if the rule were to be applied retrospectively.⁸²

In addition, APIA strongly opposed the rule applying retrospectively in the instance a final rule was made which changed the category of costs able to be claimed from 'reasonable' costs to 'efficient' costs. However, where any changes made were only procedural, APIA noted that it did not have a strong view on the matter.⁸³

10.3 Commission's analysis

Having considered the issues in relation to implementation of the rule in the context of the changes proposed by the draft (more preferable) rule, the Commission notes the following:

- the draft (more preferable) rule will still require pipeline operator's cost invoices to be assessed having regard to 'reasonable' costs;
- the nature of the evidence required to be provided by pipeline operators in support of their cost estimates and cost invoice will not change under the draft (more preferable) rule;
- the dates for submission of pipeline operators cost estimates and cost invoices will not be affected by the draft (more preferable) rule;

⁷⁹ AER rule change request - cover letter, p. 2.

⁸⁰ AEMC 2012, Pipeline operator cost recovery processes, Consultation Paper, 6 December 2012, Sydney, p. 15.

⁸¹ AGL, Consultation Paper submission, p. 2.

⁸² Alinta, Consultation Paper submission, p. 2.

⁸³ APIA, Consultation Paper submission, p. 5.

- the most substantive change made by the draft (more preferable) rule is procedural and relates to the organisation responsible for assessing pipeline operators cost invoices.

On this basis, the Commission does not consider there are any issues with allowing the final rule (if made) to be applied to costs incurred by pipeline operators' during the 2012-2013 financial year.

10.4 Conclusions

In light of the above, the Commission has identified 1 July 2013 as a possible date for commencement of a final rule (where the Commission determines to make a final rule).

Abbreviations

AEMC	Australian Energy Market Commission
AER or proponent	Australian Energy Regulator
APIA	Australian Pipeline Industry Association
BB	National Gas Market Bulletin Board
Commission	See AEMC
MOS	market operator service
NGO	national gas objective
NGR	National Gas Rules
SCER	Standing Council on Energy and Resources
STTM	short term trading market

A Summary of issues raised in submissions

The table below provides a summary of the policy issues raised by stakeholders in their submissions to the consultation paper. The table sets out the Commission's response to each issue.

The submissions received are available on the AEMC website at www.aemc.gov.au.

Stakeholder	Issue	AEMC Response
General comments		
EnergyAustralia	Supports the rule change proposal submitted by the AER. Considers it will improve the efficiency and operation of the process for the recovery of costs incurred by pipeline operators in relation to the MOS allocation service and the aggregation and information service in the BB. (p. 1)	The Commission agrees that the proposed rule should lead to improvements in efficiency and operation of the processes for pipeline operator cost recovery in the NGR. However, for the reasons set out Chapter 2, the Commission considers that the draft (more preferable) rule will, or is likely to, better contribute to the NGO than the proposed rule.
Origin Energy (Origin)	Supports the rule change proposal. From a trading participant perspective, the rule change improves clarity and transparency of the cost recovery process. Consequently, this affords Origin greater confidence that the costs recovered by pipeline operators reflect the efficient costs of providing MOS allocation services. (p. 1)	As above.
AGL Energy (AGL)	Endorses the proposed changes as they are seen to have the potential to bring about the following outcomes (which will contribute to the NGO): a more efficient process for cost recovery; enhanced effectiveness and transparency for cost recovery, including clarifying the points within the decision-making process and the responsibilities within that process; greater role clarity between the AER and AEMO; appropriate assignment of the assessment role to the AER	As above.

Stakeholder	Issue	AEMC Response
	as this aligns with on either key statutory roles; and enhanced confidence in the process for shippers, users and ultimately end-users. (pp. 1-2)	
Alinta Energy (Alinta)	Welcomes the rule change on the basis that the existing process does not appropriately assess costs claimed on invoices. In broad terms, supports the rule change and endorses the view that it will: drive more efficient cost recovery by pipeline operators; improve effectiveness and transparency for cost recovery including clarifying the points within the decision-making process and the responsibilities within that process; improve overall confidence in the process for market participants and general stakeholders. Considers these outcomes are in the long term interest of customers consistent with the NGO. (p. 1)	As above.
Australian Pipeline Industry Association (APIA)	Considers there is little improvement in overall efficiency resulting from the rule change as it is proposed. Several changes could be made to improve efficiency including in relation to: drafting efficiency; objection mechanism; timeframe of full process. Supports a framework which: focusses on and resolves contentious issues; provides for the pipeline operator to produce additional information on request; and that takes account of materiality. (pp. 1, 3)	The Commission notes this point. It also considers that a number of additional amendments could be made to the cost recovery process proposed by the AER to further promote efficiency in its operation and use. For this reason, the Commission has decided to make a draft rule which is a more preferable rule. The differences between the proposed rule and draft (more preferable) rule are set out in section 3.2.
Approach to assessment		
Alinta	Considers the AER's assessment of 'efficient' costs may be constrained by the absence of a relevant benchmark. It is unclear against which theoretical "prudent or efficient pipeline service provider" actual pipelines will be assessed. On this basis, considers the information provided by pipelines to justify invoices will be critical in determining efficiency. Notes that where there is scant evidence or	The Commission notes this point. See section 5.4 for further discussion on this matter.

Stakeholder	Issue	AEMC Response
	absence of benchmarks to assess efficiency, then it may be appropriate to fall back on the existing test of reasonableness. (p. 1)	
APIA	Notes it is not clear how an efficiency test would differ from a test of reasonableness. Considers the test should be whether "the costs have been incurred under prudent commercial processes, taking into account specific circumstances of the business". Does not believe that introducing an efficiency test creates the onus for pipeline operators to prove their costs are efficient. Rather, considers this is done by changing the requirements on information supporting the invoice. (pp. 5-7)	The Commission agrees that there is some uncertainty around how an efficiency test would differ from a test of reasonableness based on the information provided by the AER in its rule change request and supplementary letter. For this reason (among others) the draft (more preferable) rule retains the current test of reasonableness. See section 5.4 for further discussion on this matter.
Appropriate decision making body		
Alinta	Agrees that the AER is best placed to make the assessment of costs. (p. 1)	The Commission notes this point.
APIA	Considers that AEMO, as the party responsible for developing and maintaining the systems that run the STTM, would have a good understanding of the obligations on pipeline operators to provide MOS allocations services and the costs that would be incurred in doing so. (p. 8)	The Commission notes this point. See section 5.4 for further discussion on this matter.
Timeframes for assessment of invoiced costs		
Alinta	Notes that it is uncertain how the AER determined that up to 90 days would be required to perform the cost assessment. (p. 2)	The Commission understands that the rationale for 60 business days is to allow the AER to properly determine MOS allocation service cost amounts, including allowing sufficient time for pipeline operators to respond to requests for information. The ability to extend this timeframe by an additional 30 business days would allow the AER to deal with circumstances where there has been a delay in the process. The Commission does not support the timeframes proposed by the AER in

Stakeholder	Issue	AEMC Response
		its rule change request. The draft (more preferable) rule provides the AER with 30 business days to review pipeline operator invoices and undertake further assessment where deemed necessary. See section 6.4 for further discussion on this matter.
APIA	Notes that if all stages carried out to full extent, payment would not be made for 6 months. Standard commercial terms on invoices requirement payment within 30 days – beyond this consider pipeline operators should be able to charge interest on payments. Considers that if the AER requires 60-90 days, the resources required and cost of making the decision will outweigh the benefits of this rule change or any assessment of the invoices. Also considers 30 business days (a doubling of the existing timeframe), and 10 business days for payment of invoices, is appropriate. (pp. 8-9)	The Commission has considered these points. See section 6.4 for further discussion on this matter.
Information requirements - justification of costs		
Origin	Its key concern regarding the current arrangements is that there is a limited requirement for pipeline operators to provide accompanying information to justify the level of MOS service costs claimed on invoices which makes it difficult for participants to assess invoices and raise objections if necessary. Therefore it supports the proposal to require that the evidence provided with an invoice provides this justification. Considers this will allow participants to engage more effectively in the process from the outset. (p. 1)	The draft (more preferable) rule requires pipeline operators to provide evidence in support of their cost estimates and cost invoices demonstrating that: (1) their cost estimates are reasonable; and (2) their invoiced costs have been incurred and are reasonable. The draft (more preferable) rule also requires AEMO to publish the evidence provided by pipeline operators with the cost estimates and cost invoices. Details of the information which must be provided by pipeline operators to AEMO (at a minimum) are set out in the STTM and BB procedures are therefore out of the scope of this rule change request.
APIA	Considers the rule change introduces “burdensome” information requirements at the cost estimation stage. Changes to rule 424(5) create the same information requirements for the cost estimate and final invoice and the justification of efficient costs at the cost estimation stage is excessive. it is also very onerous to require operators to	The draft (more preferable) rule retains the current approach to the assessment of cost invoices which is based on a test of reasonableness. Pipeline operators are therefore not required to provide evidence that their cost estimates and cost invoices are ‘efficient’. Rather, pipeline operators will continue to be required to provide

Stakeholder	Issue	AEMC Response
	provide evidence to demonstrate that every component of the invoiced amount is efficient, irrespective of amounts involved and only when some components may be contentious. Accepts that there should be appropriate detail and explanatory material, but not to level of detail implied by AER. (pp. 5-7)	evidence that their cost estimates and cost invoices are reasonable.
APIA	Notes that there is suggestion in the commentary of the AER's rule change request that information provided to the AER to justify invoices will be published. If this is the intention, it is very likely that the supporting information will include commercially sensitive information that pipeline operators do not wish to share with the wider market. (pp. 7-8)	The AER's rule change request did not include a requirement for AEMO to publish the evidence provided by pipeline operators in support of their cost estimates and invoices. However, the draft (more preferable) rule does include such a requirement. The Commission notes that this requirement would not prevent confidentiality being claimed over information which is legitimately confidential, in accordance with broader confidentiality principles in the NGL. See section 7.4 for further discussion on this matter.
Definition of 'MOS allocation service costs'		
Alinta	Considers the definition of 'MOS allocation services' that the revised process relates to needs to be clarified to ensure all parties and pipelines have greater certainty around cost recovery. (p. 2)	The Commission notes this point. The draft (more preferable) rule includes the proposed definition of 'MOS allocation service costs'.
APIA	Considers that by explicitly excluding certain costs, the proposed rule could be considered to increase clarity on the types of costs that can be recovered. However, notes that pipeline operator systems are not readily separable into 'MOS allocation systems' and 'STTM systems' on the basis that MOS allocation processes utilise existing systems and functionality and have the potential to impact existing systems and functionality. Therefore, notes that a level of discretion would always be present and the potential for dispute as to what comprises a 'MOS allocation service cost'	As above.

Stakeholder	Issue	AEMC Response
	would always remain. (p. 9)	
Bulletin Board		
Energy Australia	Supports the inclusion of the Bulletin Board in the rule change request. (p. 1)	The Commission notes this point.
AGL	Supports the inclusion of cost recovery by pipeline operators in relation to the Bulletin Board. (p. 2)	As above.
Alinta	Supports the inclusion of the Bulletin Board in the rule change request. (p. 2)	As above.
APIA	Considered the approach to cost recovery for the BB should be consistent with that for the MOS allocation service. In respect of the proposed amendment to include a definition of 'aggregation and information services costs', does not consider this inclusion would provide more clarity. Notes that the change simply moves the reference to "costs incurred in providing aggregation and information service" from the rules into a definition without proving any additional information or explanation as to what those costs may be. (pp. 9, 10)	The Commission notes these points. The proposed definition of 'aggregation and information services' has been included in the draft (more preferable) rule.
Implementation		
Alinta	Supports the timing of the rule change process but considers that retrospective application may be of concern to pipeline operators. (p. 2)	The Commission notes this point. On the basis that the changes set out in the draft (more preferable) rule are procedural only, there is unlikely to be any issues in respect of retrospective application of the rule (where a final rule is made). See section 10.3 for further discussion on this matter.
AGL	Cautions against any retrospective application of any approved rule change. (p.2)	As above.

Stakeholder	Issue	AEMC Response
APIA	Notes strong opposition to the rule applying retrospectively in the instance a final rule is made which changes the category of costs able to be claimed from 'reasonable' costs to 'efficient' costs. However, where any changes made are only procedural, notes it does not have a strong view on the matter. (p. 5)	As above.
Trigger for assessment		
APIA	Strongly believes improvements could be made to increase the threshold at which an objection will occur (not efficient to have a process that will routinely lead to objections and a full assessment process). Notes that this is not an area which is addressed in the proposed rule. Notes that there are currently no barriers to objections, or the need for an objecting party to provide any justification for their objection, which means that frequent and unnecessary objections are probable. Suggests a number of ways the objection process could be improved including: introduction of cost to objections; removal of a blanket objection; provision of justification for an objection; track record should matter. (pp. 3-4)	The Commission also considers that there are some issues in respect of the current operation of the objection mechanism. The draft (more preferable) rule removes the role of the objection mechanism as the trigger for assessment of pipeline operators' cost invoices. Instead, it provides a framework where all cost invoices submitted to AEMO would be subject to AER oversight which could include a more detailed assessment where there is benefit in doing so. See section 5.4 for further discussion on this matter.
Other issues		
APIA	The proposed drafting requires the creation of identical sections in two separate parts of the NGR. It could be more efficient to have a single cost recovery section that can be referenced as necessary. This section could be readily applied to future services provided by pipeline operators and other market participants (for example, in the context of the gas supply hub). (p. 3)	The Commission notes this point but has retained the current drafting structure which sets out the cost recovery process for the MOS allocation service in Part 20 of the NGR, and for aggregation and information services in Part 18 of the NGR. The Commission would welcome further views from stakeholders in submissions to the draft rule determination on the benefits or otherwise of creating a single section on cost recovery in the NGR.

B Key features of the pipeline operator cost recovery processes

Table B.1 briefly summarises the key characteristics of the current cost recovery processes for the MOS allocation service in the STTM, and for aggregation and information services in the BB, compared to the proposed rule and draft (more preferable) rule. These processes are described in more detail in Chapter 3 of this draft rule determination.

Table B.1 Differences between the cost recovery processes

Key feature	Current process - STTM	Current process - BB	Proposed rule	Draft (more preferable) rule
Trigger for assessment	Objection to payment of an invoice by any person	Objection to payment of an invoice by any person	Objection to payment of an invoice by any person	All invoices subject to AER oversight. Assessment when: <ul style="list-style-type: none"> • pipeline operator has failed to demonstrate invoiced costs have been incurred and are reasonable; and • benefits of undertaking assessment outweigh costs
Approach to assessment	Costs reflect 'reasonable' costs	Costs reflect 'reasonable' costs	Costs reflect 'efficient costs incurred by a prudent operator'	Costs reflect 'reasonable' costs
Decision making body	AER provides advice where requested by AEMO	AER provides advice where requested by AEMO	AER determines amount payable where requested by AEMO	AER determines amount payable

Key feature	Current process - STTM	Current process - BB	Proposed rule	Draft (more preferable) rule
	AEMO determines amount payable	(Although not explicitly stated, presume intention is for AEMO to determine amount payable)		
Information requirements – justification of costs	Reasonable evidence that: <ul style="list-style-type: none"> • estimated costs are reasonable • invoiced costs have been incurred • any material variation between invoiced costs and estimate are reasonable 	Reasonable evidence that: <ul style="list-style-type: none"> • estimated costs are reasonable • invoiced costs have been incurred • any material variation between invoiced costs and estimate are reasonable 	Evidence that: <ul style="list-style-type: none"> • estimated costs reflect efficient costs that would have been incurred by a prudent operator • invoiced costs reflect efficient costs that would have been incurred by a prudent operator 	Evidence that: <ul style="list-style-type: none"> • estimated costs are reasonable; • invoiced costs have been incurred and are reasonable
Timeframe for publication of estimates and invoices	As soon as practicable	As soon as practicable	As soon as practicable	Within five business days following receipt
Timeframes for assessment	AER advice: <ul style="list-style-type: none"> • within 15 business days of receipt of request for advice from AEMO AEMO determination: <ul style="list-style-type: none"> • within 30 business days of receipt of advice from AER 	AER advice: <ul style="list-style-type: none"> • within 15 business days of receipt of request for advice from AEMO AEMO determination: <ul style="list-style-type: none"> • no time allocated (presume this occurs within the timeframe provided for payment) 	AER determination: <ul style="list-style-type: none"> • within 60-90 business days of receipt of request for advice from AEMO 	AER determination: <ul style="list-style-type: none"> • within 30 business days after receipt of invoices and other information from AEMO

Key feature	Current process - STTM	Current process - BB	Proposed rule	Draft (more preferable) rule
Timeframes for payment by AEMO	As soon as practicable where advice received otherwise within 30 business days of receipt of an invoice	Within the later of 20 business days after receipt of an invoice or 10 business days after receipt of advice	Within 30 business days of receipt of an invoice where no advice requested otherwise within 30 business days of AER publishing its determination	Within 10 business days of AER publishing its determination

C Pipeline operators' MOS allocation service costs

The tables below provide summaries of the pipeline operators' MOS allocation service cost estimates and invoices submitted to AEMO since 2010-2011.

The cost estimates, original invoices and final invoices are available on AEMO's website at www.aemo.com.au.

Table C.1 2013-2014 estimates

	Adelaide Hub		Sydney Hub		Brisbane Hub
	SEAGas pipeline (SEAGas)	Moomba to Adelaide (Epic Energy)	Eastern Gas Pipeline (Jemena)	Moomba to Sydney Pipeline (APA Group)	Roma to Brisbane Pipeline (APA Group)
Original estimate	\$18,000	\$134,765	\$18,500	\$99,237	\$99,237

Table C.2 2012-2013 estimates

	Adelaide Hub		Sydney Hub		Brisbane Hub
	SEAGas pipeline (SEAGas)	Moomba to Adelaide (Epic Energy)	Eastern Gas Pipeline (Jemena)	Moomba to Sydney Pipeline (APA Group)	Roma to Brisbane Pipeline (APA Group)
Original estimate	\$15,000	\$294,435	\$18,601	\$110,762	\$110,762

Table C.3 2011-2012 final invoices (paid)

	Adelaide Hub		Sydney Hub		Brisbane Hub
	SEAGas pipeline (SEAGas)	Moomba to Adelaide (Epic Energy)	Eastern Gas Pipeline (Jemena)	Moomba to Sydney Pipeline (APA Group)	Roma to Brisbane Pipeline (APA Group)
Original estimate	\$15,000	\$268,943	\$18,601	\$268,653	\$752,434
Initial invoice	\$30,115	\$123,984	\$15,805	\$188,814	\$722,442
Final invoice	\$30,115	\$117,209	\$15,805	\$188,814	\$722,442

Table C.4 2010-2011 final invoices (paid)

	Adelaide Hub		Sydney Hub	
	SEAGas pipeline (SEAGas)	Moomba to Adelaide (Epic Energy)	Eastern Gas Pipeline (Jemena)	Moomba to Sydney Pipeline (APA Group)
Original estimate	\$76,124	\$216,254	\$274,485	\$891,966
Initial invoice	\$75,463	\$163,200	\$263,139	\$957,394
Final invoice	\$75,038	\$40,800	\$263,139	\$815,846