



Draft National Gas Amendment (Price and Revenue Regulation of Gas Services) Rule 2012

under the National Gas Law as applied by:

- (a) the National Gas (South Australia) Act 2008;
- (b) the National Gas (ACT) Act 2008 of the Australian Capital Territory;
- (c) the National Gas (New South Wales) Act 2000 of New South Wales;
- (d) the National Gas (Queensland) Act 2008 of Queensland;
- (e) the National Gas (Tasmania) Act 2008 of Tasmania;
- (f) the National Gas (Victoria) Act 2008 of Victoria; and
- (g) the National Gas (Northern Territory) Act 2008 of Northern Territory;
- (h) the Australian Energy Market Act 2004 of the Commonwealth.

The Australian Energy Market Commission makes the following Rule under the National Gas Law.

John Pierce
Chairman
Australian Energy Market Commission

Draft National Gas Amendment (Price and Revenue Regulation of Gas Services) Rule 2012

1 Title of Rule

This Rule is the *Draft National Gas Amendment (Price and Revenue Regulation of Gas Services) Rule 2012*.

2 Commencement

This Rule commences operation on [COMMENCEMENT_DATE].

3 Amendment of the National Gas Rules

The National Gas Rules are amended as set out in Schedule 1.

4 Savings and Transitional Amendments to the National Gas Rules

The National Gas Rules are amended as set out in Schedule 2.

Schedule 1 Amendment to the National Gas Rules

(Clause 3)

[1] Rule 3 Interpretation

In rule 3, insert the following definitions in alphabetical order:

allowed rate of return see rule 87(1).

allowed rate of return objective see rule 87(2).

rate of return consultative procedure means the procedure for consultative decision making laid down in rule 9B.

rate of return guidelines means the guidelines made under rule 87.

[2] New Rule 9B Rate of return consultative procedure

After rule 9A, insert:

9B Rate of return consultative procedure

- (1) If the Law requires a *decision* maker to comply with the *rate of return consultative procedure* in making, amending, replacing or reviewing the *rate of return guidelines*, the *decision* maker must proceed in accordance with this rule.
- (2) The *decision* maker must proceed as follows:
 - (a) the *decision* maker must publish a notice on its website and in a newspaper circulating generally throughout Australia:
 - (i) describing the proposed *rate of return guidelines*, amendments or review, and giving the address of a website on which the details of such guidelines, amendments or review, and the reasons for them, are published; and
 - (ii) inviting written submissions on the proposed *rate of return guidelines*, amendments or review within no less than 30 *business days* of the date of the notice;
 - (b) the *decision* maker may publish such issues, consultation and discussion papers, and hold such conferences and information sessions in relation to the proposed *rate of return guidelines*, amendments or review as it considers appropriate; and
 - (c) the *decision* maker must, within 80 *business days* of the date of the notice referred to in subrule (2)(a) and after considering relevant submissions made within the time allowed in the

notice and other matters the *decision* maker considers relevant, make its final *decision*.

- (3) The final *decision* must:
 - (a) be in writing;
 - (b) state the terms of the *decision* and the reasons for it; and
 - (c) include a summary of each issue raised in submission, that the *decision* maker reasonably considers to be material, together with the *decision* maker's response to each such issue.
- (4) The *decision* maker may extend the time within which it is required to make its final *decision* if:
 - (a) the consultation involves questions of unusual complexity or difficulty; or
 - (b) the extension of time has become necessary because of circumstances beyond the decision maker's control.
- (5) After making a final decision, the *decision* maker must, without delay:
 - (a) publish the final *decision* on the *decision* maker's website; and
 - (b) make the final *decision* available for inspection during business hours at the *decision* maker's public offices.

**[3] Rule 72 Specific requirements for access
arrangement information relevant to price and revenue
regulation**

Omit rules 72(g) and 72(h), and substitute:

- (g) the proposed return on equity, return on debt and *allowed rate of return*, for each *regulatory year* of the *access arrangement period*, in accordance with rule 87, including any departure from the methodologies set out in the *rate of return guidelines* and the reasons for that departure;
- (ga) the proposed formula (if any) that is to be applied in accordance with rule 87(8);
- (h) the estimated cost of corporate income tax calculated in accordance with rule 87A, including the proposed value of imputation credits referred to in that rule;

[4] Rule 76 Total revenue

Omit rule 76(c) and substitute:

- (c) the estimated cost of corporate income tax for the year (see Division 5A); and

[5] Rule 87 Rate of return

Omit rule 87 and substitute:

- (1) The return on the projected capital base for each regulatory year of the *access arrangement period* is to be calculated by applying a rate of return that is determined in accordance with this rule 87 (the *allowed rate of return*).
- (2) The *allowed rate of return* is to correspond to the efficient financing costs of a benchmark efficient entity with a similar nature and degree of risk as that which applies to the service provider in respect of the provision of reference services (the *allowed rate of return objective*).
- (3) The *allowed rate of return* for a regulatory year is to be determined:
 - (a) as a weighted average of the return on equity for the *access arrangement period* (as estimated under subrule (5)) and the return on debt for that regulatory year (as estimated under subrule (6)) where the weights applied to compute the average reflect the relative proportions of equity and debt finance that would be employed an efficiently financed by a benchmark efficient entity with a similar nature and degree of risk as that which applies to the service provider in respect of the provision of reference services;
 - (b) on a nominal post-tax basis that is consistent with the estimate of the value of imputation credits referred to in rule 87A; and
 - (c) taking into account relevant estimation methods, financial models, market data and other evidence.
- (4) In determining the *allowed rate of return*, regard is to be had to:
 - (a) the desirability of using an approach that leads to the consistent application of any estimates of financial parameters that are relevant to the estimates of, and that are common to, the return on equity and the return on debt; and
 - (b) any interrelationships between estimates of financial parameters that are relevant to the estimates of the return on equity and the return on debt.

Return on equity

- (5) The return on equity for an *access arrangement period* is to be estimated:
 - (a) in a way that is consistent with the *allowed rate of return objective*; and
 - (b) taking into account the prevailing conditions in the market for equity funds.

Return on debt

- (6) The return on debt for a regulatory year is to be estimated:
 - (a) in a way that is consistent with the *allowed rate of return objective*; and;
 - (b) using a methodology under which:
 - (i) the return on debt for each regulatory year in the access arrangement period is the same; or
 - (ii) the return on debt for a regulatory year (other than the first regulatory year in the access arrangement period) is estimated using a methodology which complies with subparagraph (i).
- (7) Subject to subrule (6), the methodology adopted to estimate the return on debt may, without limitation, be designed to result in the return on debt reflecting:
 - (a) the return that would be required by debt investors in a benchmark efficient entity if it raised debt at the time or shortly before the time when the AER's decision on the access arrangement for that access arrangement period is made;
 - (b) the average return that would have been required by debt investors in a benchmark efficient entity if it raised debt over an historical period prior to the time when the when the AER's decision on the access arrangement for that access arrangement period is made; or
 - (c) some combination of the returns referred to in subparagraphs (a) and (b).
- (8) In determining whether the return on debt for a regulatory year is estimated in a way that is consistent with the allowed rate of return objective, regard must be had to the following factors:

- (a) the likelihood of any significant differences between the costs of servicing debt of a benchmark efficient entity referred to in subrule (3)(a) and the return on debt over the access arrangement period;
 - (b) the impact on gas consumers, including due to any impact on the return on equity of a benchmark efficient entity referred to in subrule (3)(a);
 - (c) the incentive effects of inefficiently delaying or bringing forward capital expenditure; and
 - (d) the impact of changing the methodology for estimating the return on debt across access arrangement periods.
- (9) A methodology referred to in subrule (6)(2)(ii) must provide for any change in total revenue for the regulatory year that would result from a change to the allowed rate of return for that regulatory year, as a result of the return on debt for that regulatory year being different from that estimated under subrule (6), to be effected through the automatic application of a formula that is specified in the access arrangement.

Rate of return guidelines

- (10) The AER must, in accordance with the *rate of return consultative procedure*, make guidelines (the *rate of return guidelines*), except that the first *rate of return guidelines* are to be made in accordance with subrule (13) and not the *rate of return consultative procedure*.
- (11) The *rate of return guidelines* are to set out:
- (a) the methodologies that the AER proposes to use in estimating the *allowed rate of return*, including how those methodologies are proposed to result in the determination of a return on equity and a return on debt in a way that is consistent with the *allowed rate of return objective*;
 - (b) the estimation methods, financial models, market data and other evidence the AER proposes to take into account in estimating the return on equity, the return on debt and the value of imputation credits referred to in rule 87A.
- (12) The AER must make the first *rate of return guidelines* by [29 August 2013] and there must be *rate of return guidelines* in force at all times after that date.
- (13) For the purposes of making the first *rate of return guidelines* the AER must:
- (a) by no later than [29 March 2013], publish on its website a consultation paper that sets out its preliminary views on the

material issues that are to be addressed by the *rate of return guidelines*;

- (b) publish on its website an invitation for written submissions on the consultation paper, with such submissions to be made within the time specified in the invitation (which must not be earlier than 30 business days after the invitation for submissions is published);
 - (c) by no later than [31 July 2013], publish on its website a draft of the *rate of return guidelines*; and
 - (d) publish on its website an invitation for written submissions on the draft *rate of return guidelines*, with such submissions to be made within the time specified in the invitation (which must not be earlier than 30 business days after the invitation for submissions is published).
- (14) The AER must, in accordance with the rate of return *consultative procedure*, review the *rate of return guidelines*:
- (a) at intervals not exceeding three years, with the first interval starting from the date referred to in subrule (12); and
 - (b) at the same time as it reviews the *rate of return guidelines* under clauses 6.5.2 and 6A.6.2 of the National Electricity Rules.
- (15) The AER may, from time to time and in accordance with the *rate of return consultative procedure*, amend or replace the *rate of return guidelines*.
- (16) The *rate of return guidelines* are not mandatory (and so do not bind the AER or anyone else) but, if the AER makes a *decision* in relation to the rate of return (including in an access arrangement draft *decision* or an access arrangement final *decision*) that is not in accordance with them, the AER must state, in its reasons for the *decision*, the reasons for departing from the guidelines.

Division 5A

87A Estimated cost of corporate income tax

- (1) The estimated cost of corporate income tax of a service provider for each regulatory year of an *access arrangement period* (ETCt) is to be estimated in accordance with the following formula:

$$\text{ETCt} = (\text{ETIt} \times \text{rt}) (1 - \gamma)$$

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Where

ETIt is an estimate of the taxable income for that regulatory year that would be earned by a benchmark efficient entity as a result of the provision of reference services if such an entity, rather than the service provider, operated the business of the service provider;

rt is the expected statutory income tax rate for that regulatory year as determined by the AER; and

γ is the value of imputation credits.

**Schedule 2 Savings and Transitional Amendments to the
National Gas Rules**

(Clause 4)
