

31 January 2019

Mr John Mackay
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Australian Energy Market Commission
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Submitted online via the Commission's website

Dear Mr Mackay

Re: National Gas Amendment (Regulation of Covered Pipelines) Rule 2019 – Draft Rule Determination

Thank you for the opportunity to comment on the Regulation of Covered Pipelines – Draft Rule Determination published on 6 December 2018 (reference: GRC0048). This letter outlines a submission from ATCO Australia (ATCO).

As an owner and operator of energy and logistics infrastructure in Australia for over 55 years, ATCO is proud of its ongoing commitment to supporting the communities in which we operate. ATCO is a long-term investor with a clear vision of delivering customer value through sustainable growth, continuous investment, improvement and innovation.

The disruption of energy markets has highlighted the importance of consistent policy settings, regulatory certainty and appropriate investment signals to ensure that customers continue to receive safe, affordable and reliable energy.

Overarching comments

The themes of ATCO's submission to the Australian Energy Market Commission (Commission) are as follows:

- **Distribution pipelines are subject to an increasingly competitive environment** – ATCO operates its distribution pipelines in an increasingly diverse, contestable, and competitive energy services market that places a natural constraint on pricing and access decisions. The increasingly contestable, and in many cases substitutable, nature of energy services is being driven by changes in technology and the increased adoption of distributed energy resources (DER), such as battery and solar photovoltaic (PV) systems.

ATCO considers that the case for increasing the regulatory burden on distribution pipelines in this environment is weak. It is unclear whether the proposed benefits will outweigh the costs. In such an increasingly competitive environment ATCO considers that the regulatory burden on distribution pipelines should be diminishing rather than increasing.

For example, the new process for determining reference services detailed in the draft rule determination is likely to significantly duplicate, and overlap with, the extensive consultation and engagement programs and process that are already been adopted by gas distribution businesses. ATCO considers that the proposed process is likely to add to, rather than mitigate, regulatory costs and add to the complexity of the regulatory process. For distribution

pipelines, the Commission has not cited any evidence that the benefits of this new process will outweigh the additional costs for both service providers and users.

Furthermore, the case for requiring distribution pipelines to publish capacity and usage information is weak in this environment. ATCO notes that the weakness of the case has been practically demonstrated for non-scheme pipelines, as this information has not been published because all non-scheme distribution pipelines meet one or more of the exemption criteria.

- **Changes will address existing practices and availability of information for transmission pipelines** – ATCO supports the draft rule determination as it applies to transmission pipelines in the east coast gas pipeline market as ATCO considers that it will reduce barriers for new pipeline owners/operators in that market where there has been documented evidence of a lack of transparency of market information and dysfunction. However ATCO has not observed the same issues in the Western Australian market, and queries whether those changes should be implemented in the Western Australian market. The draft rule determination will result in greater transparency and availability of information to address the east coast gas pipeline market concerns.
- **Innovation** – ATCO considers that it is consistent with the National Gas Objective and in the long-term interest of gas consumers for there to be stronger incentives for service providers to take greater levels of considered risks and invest in innovation. However, the available mechanisms under the national gas regulatory framework do not provide adequate incentives for the business to invest in innovative technologies. ATCO supports the introduction of a regulatory sandbox framework within which participants can trial innovative business models, products and services in the market under relaxed regulatory requirements. ATCO considers that the regulatory sandbox framework should be available across different energy types, including gas, to avoid biases towards any particular technology. ATCO has made a separate submission to the Commission on the regulatory sandbox arrangements consultation.

ATCO's detailed submission on the draft rule determination is attached.

About ATCO

ATCO is a customer-focussed global company that develops, builds, owns and operates a range of energy infrastructure assets, supporting residential, business and commercial consumers. ATCO has been proudly operating in Australia and providing employment opportunities for more than half a century. In Australia, ATCO:

- owns and maintains two non-regulated gas distribution networks in Albany and Kalgoorlie, together with the largest (Mid-West and South-West) gas distribution network in Western Australia, servicing over 750,000 connections through more than 14,000 km of natural gas pipelines and associated infrastructure;
- owns and operates two power generation facilities (a joint-owned facility in Adelaide and a wholly-owned facility in Karratha) with a combined capacity of 266 MW; and
- manufactures and delivers modular building solutions to a diverse group of customers.

ATCO's Australian businesses are part of the worldwide ATCO Group with approximately 7,000 employees and assets of \$22 billion. ATCO is engaged in pipelines and liquids (natural gas transmission, distribution and infrastructure development, energy storage, and industrial water solutions); electricity (electricity generation, transmission, and distribution); retail energy; and structures and logistics.

If you have any questions or would like to discuss any of these issues further please contact me or Matthew Cronin, General Manager Strategy & Regulation.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'J.D. Patrick Creaghan', with a large, stylized initial 'J' and a horizontal line extending to the right.

J.D Patrick Creaghan
Managing Director & Chief Operating Officer

Attachment 1: ATCO submission



ATTACHMENT 1: ATCO SUBMISSION

**NATIONAL GAS AMENDMENT
(REGULATION OF COVERED PIPELINES)
RULE 2019**

PUBLIC
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**ATCO**

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Attachment 1: ATCO submission

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1. Introduction

1. ATCO welcomes the opportunity to provide a submission on the Australian Energy Market Commission's (Commission) draft rule determination on the National Gas Amendment (Regulation of Covered Pipelines) Rule 2019, published on 6 December 2018.
2. The draft rule determination results from a request from the COAG Energy Council to amend the National Gas Rules (NGR). The request incorporates recommendations from the Commission's review into the scope of economic regulation applied to covered pipelines. ATCO previously made a submission to the Commission on its draft report into the Review into the Scope of Economic Regulation Applied to Covered Pipelines.¹ This submission builds on the themes in ATCO's previous submission.

Transmission and distribution

3. ATCO considers that many aspects of the draft rule determination are not relevant to and therefore should not be applied to distribution pipelines. Aspects of the determination do not adequately distinguish between transmission pipelines and distribution pipelines.
4. Distribution pipelines operate in an increasingly competitive environment that places a natural constraint on pricing and access decisions. The increasing contestable and in many cases substitutable nature of energy services is being driven by changes in technology and the increased adoption of distributed energy resources (DER), such as battery and solar photovoltaic (PV) systems.
5. The increasing competitive environment is already driving changes in the way that distribution pipelines operate and engage with customers as part of the regulatory process. Some of the changes proposed in the draft rule determination are proactively being progressed by distribution pipelines with customers in some form. For example, during its consultation with retailers and end users as part of the current access arrangement review process ATCO sought input from customers on all aspects of its submission through workshops and by seeking submissions on a draft of the submission, including seeking input on the services that would be reference services. Others such as AGN, for example, have also undertaken similar consultations.
6. ATCO considers that the case for increasing the regulatory burden on distribution pipelines in this environment is weak as it is unclear whether the proposed benefits will outweigh the costs. Given this, ATCO does not agree that the Rule making test (that the rule will or is likely to contribute to the achievement of the National Gas Objective (**NGO**)) can be satisfied. In such an increasingly competitive environment ATCO considers that the regulatory burden on distribution pipelines should be diminishing rather than increasing.
7. The Commission must reconsider whether aspects of the draft rule determination should only be applied to transmission pipelines, and further whether only to east coast transmission pipelines. It is important that the final rule determination distinguishes between the increasingly competitive environment being faced by gas distribution networks and the market environment (i.e. Western Australia in the case of ATCO), and the natural constraints that this level of competition places on pricing and access decisions.
8. In particular, ATCO considers that differentiation between transmission and distribution is required in the following rules:
 - Assessment of expansions

¹ ATCO Australia, Submission to the AEMC, 27 March 2018

- Reference services
 - Preparation and amendment of financial models
 - Capital base: including extensions to the capital base
 - Pipeline capacity and usage information
 - Scheme register.
9. These are discussed further in the body of this submission document.
10. As a general comment, ATCO considers that the Commission must be clearer on the proposed benefits that will arise from making the rule changes, particularly in terms of measureable cost savings and other efficiencies for service providers and users and in respect of both distribution and transmission. ATCO considers that the case for increasing the regulatory burden on distribution pipelines in this environment is weak as it is unclear whether the benefits will outweigh the costs and therefore whether the Rule making test is satisfied.

East coast vs West coast

11. ATCO is of the view that the nature of the transmission pipeline market in Western Australia is materially different to the east coast market. The issues that the rule changes have been designed to address are not evident in transmission pipelines in Western Australia. On that basis, with the exception of the proposals relating to negotiation and information, which ATCO welcomes and supports, the case for the rule changes to apply to transmission pipelines in Western Australia is weak.
12. In the Western Australian market, transmission pipeline capacity, particularly for the GGP, is directly negotiated with customers on a long-term, capacity style take-or-pay arrangement basis, predominantly with power generators and mining operators and (for the DBNGP), to a lesser extent, retailers. Reference services are not taken by any customers. Expansions of the pipelines are at the election of the operator based on the investment economics at the time. The proposals relating to extensions and expansions and reference services in particular for Western Australian transmission pipelines do not take into account the specific market dynamics that have underpinned investment decisions and pipeline service offerings by transmission service providers in Western Australia, which have been and remain materially different to those in the east coast.
13. The recent Australian Competition and Consumer Commission (ACCC) Public Competition Assessment (PCA), published 24 October 2018, “CK Consortium – proposed acquisition of APA Group”², which includes an overview of the transmission pipeline assets and market in Western Australia, provides a detailed description of the transmission pipeline services market in Western Australia and compares and contrasts key aspects of the markets in Western Australia and the east coast.
14. ATCO’s view is that the Western Australian and east coast transmission pipeline services markets operate in materially different ways as illustrated in the PCA. The AEMC review that preceded this draft rule determination was undertaken at the direction of the COAG Energy Council in response to recommendations from the 2016 reports into the east coast gas market by the ACCC and the AEMC. In addition, the report (14 December 2016) commissioned by the COAG Energy Council and prepared by Dr Michael Vertigan AC “Examination of the current test for the regulation of gas pipelines” included an analysis of all of the Australian gas markets, with the bulk of the evidence and analysis focussing on the

² <https://www.accc.gov.au/system/files/public-registers/documents/CK%20Consortium%20-%20proposed%20acquisition%20of%20APA%20Group%20-%20Public%20Competition%20Assessment.pdf>

issues identified in the east coast gas market, and little evidence of actual or prospective issues of that type in Western Australia.

15. ATCO supports the negotiation and information proposals as they relate to transmission pipelines in Western Australia as well as the east coast, as the proposals will clearly assist users and prospective users in negotiating services.
16. ATCO's reasoning and analysis for its responses in respect of access arrangement process, determining efficient costs and implementation of rules in the case of distribution pipelines apply equally for transmission pipelines except as set out specifically below.

Innovation

17. ATCO's position in its March 2018 submission to the Commission was that this draft rule determination provided an opportunity to develop a framework to facilitate and enable innovation by gas network businesses, which although regarded as natural monopolies, operate in an increasingly diverse, contestable and competitive energy services market. This is particularly true for gas distribution networks.
18. Recommendation 2.8 of the Finkel Review recommended that the Commission review and update the regulatory framework to facilitate proof-of-concept testing of innovative approaches and technologies.³
19. The draft rule determination does not include any changes to the NGR that would assist in facilitating and enabling innovation by gas network businesses. ATCO notes that the proposals relating to speculative investment (NGR 84(2)) are not being progressed as part of this review but will be subject instead to the binding rate of return guidelines. However, ATCO notes that the Commission is separately consulting on regulatory sandbox arrangements to support proof-of-concept trials.⁴ ATCO supports the regulatory sandbox concept and considers that it should be introduced for gas networks to remove barriers for undertaking proof-of-concept trials.
20. ATCO supports the NGR being strengthened to incorporate an effective incentive to invest in innovation. The innovation incentive framework must promote economic efficiency and be sufficient to address future market power concerns as the energy service sector continues to change. The Commission could achieve this by mirroring the regulatory sandbox rule changes for electricity networks in the NGR.

Summary of ATCO's position

21. ATCO's position on the draft rule determination can be summarised as follows:
 - **Extensions and expansions** – the proposed changes in relation to assessment of expansions are unnecessary and may limit future flexibility, and fail to take into account the specific market dynamics in Western Australia.
 - **Reference services** – this aspect of the draft rule determination does not adequately distinguish between gas transmission services and gas distribution services:
 - draft Rule 47A should be applied only to gas transmission services. The new requirements for distribution pipeline services are unnecessary given the increasing contestable nature of energy services and ATCO does not consider the proposed change will or is likely to contribute to the achievement of the NGO insofar as it relates to distribution services.

³ Finkel, A., Independent Review into the Future Security of the National Electricity Market – Blueprint for the future, June 2017, p. 66

⁴ AEMC, Regulatory Sandbox Arrangement to Support Proof-of-Concept Trials – Consultation Paper, 20 December 2018

- the process for determining reference services detailed in the draft rule determination is likely to duplicate, and overlap with, the extensive consultation and engagement programs and process already adopted by gas distribution pipelines. ATCO considers that the proposed process is unnecessary for distribution pipelines given the activities already occurring due to the increasing contestable nature of energy services.
- **Access Arrangement process** – ATCO is generally supportive of the proposed changes to the access arrangement process, with the exception of consistent financial models and the risk sharing arrangements changes.
 - ATCO does not support the adoption of consistent financial models as the benefits relied upon by the Commission will not be realised, in terms of a quicker, lower cost and more informed decision, as it is typically other elements of the regulators review, such as expenditures, that are resource intensive for the regulator and on the critical path.
 - ATCO does not support the proposed risk sharing arrangements rule changes as it will create a circularity with the binding rate of return instrument and is inconsistent with the revenue and pricing principles.
- **Determining efficient costs** – ATCO is generally supportive of the proposed rule changes in the section related to determining efficient costs. ATCO has made suggestions for further refinements in response to specific elements of the draft rules.
- **Negotiation and information** – this aspect of the draft rule determination does not adequately distinguish between gas transmission services and gas distribution services:
 - **Draft Rules 112A to 112D** - the draft rule determination relates more to information that would be required by a transmission pipeline user than a distribution pipeline user. ATCO considers that draft Rules 112A to 112D are not in the long term interests of consumers as they provide no material benefit to end users or retailers and create additional costs that will be recovered from retailers and ultimately end users. The proposed changes do not meet the Rule making test.
 - **Rule 134** - For distribution pipelines, rule 134 should be amended to allow for annual updates, say 3 months after financial year end or otherwise as specified in an access arrangement.
- **Implementation of rules** – ATCO is seeking further delay to the implementation of rule 112 and rules 112A to 112D to avoid making changes to its access arrangement during the current revision process (which is not due to conclude until in or after September 2019) and to allow sufficient time to implement the necessary systems to report the required information.

2. Extensions and expansions

22. The Commission has made a draft rule determination to amend the NGR:
- as proposed by the COAG Energy Council such that any future expansions of a covered pipeline will be treated as part of the relevant covered pipeline and included in the access arrangement (where applicable)
 - to permit a service provider to seek existing extensions to a covered pipeline be included in the relevant access arrangement

2.1 Assessment of expansions

23. The Commission has found that the Regulators are applying different regulatory treatment to expansions. The Commission noted examples from transmission pipelines where some expansions were fully covered (the Central Ranges Pipeline) and others where only a portion of the capacity is covered (the Goldfields Gas Pipeline). The Commission did not provide any examples from distribution pipelines.⁵

Distribution pipelines

24. In ATCO's case, the extensions and expansions policy under ATCO's existing Access Arrangement for the Mid-West and South-West Gas Distribution Systems requires that all pipeline expansions and extensions under 1,920 kPa form part of the covered pipeline. This policy also requires that for any pipeline extension with a pressure rating over 1,920 kPa, ATCO must apply in writing to the Economic Regulation Authority (ERA) to have this included as part of the covered pipeline.
25. From a distribution pipeline perspective, ATCO considers that the proposed changes are unnecessary and may limit future flexibility for distribution pipelines in an environment of increasingly contestable energy services, including from the increased adoption of DER such as battery and solar PV systems. Whilst the draft rule determination allows for ATCO's current form of extensions and expansions policy to continue to be adopted it may reduce future flexibility.
26. For example, ATCO has proposed a Development Rebate Scheme to apply to certain extensions to the network. ATCO is concerned that the changes proposed may limit the development of similar schemes (including expansion schemes) in the future because the flexibility for an expansion to be uncovered is proposed to be removed.

Transmission pipelines

27. From a transmission pipeline perspective, ATCO considers that the proposed changes are unnecessary and may limit future flexibility for transmission pipelines to provide services in different markets.
28. ATCO considers that the Commission have incorrectly concluded that consistent regulatory arrangements for expansions of pipelines are necessary. The draft rule determination relating to expansions, in particular for Western Australian transmission pipelines, do not take into account the specific market dynamics that underpin investment decisions by transmission service providers in Western Australia, which have been and remain materially different to those in the east coast.

⁵ AEMC, National Gas Amendment (Regulation of covered pipelines) Rule 2019 - Draft rule determination, 6 December 2018, pg 22

29. The nature of the mining industry in Western Australia materially affects the investment decisions made by transmission service providers in pipeline expansions. The pipeline expansion does not face the same market landscape as the pipeline itself due to the differing market dynamic between differing resources in the mining sector. This draft rule determination removes the flexibility for transmission service providers to respond to the dynamic of the mining industry, the dynamic of different mining resources and ultimately the needs of its customers. Regulators have previously determined that this flexibility is appropriate and consistent with the NGO as part of approving access arrangements.
30. The draft rule determination has flagged that there will be future legislative changes to cover existing expansions. ATCO does not support these proposed change as ATCO considers that this will realise a sovereign risk and will deter future investment in transmission pipeline capacity.

2.2 Assessment of extensions

31. ATCO has no comments on the draft rule determination to permit a service provider to seek existing extensions to a covered pipeline to be included in the relevant access arrangement.

3. Reference services

32. The Commission has made a draft rule determination to amend the NGR:
- to introduce a new requirement to list and describe all of the pipeline services that the service provider can reasonably provide on the pipeline
 - to require a reference service proposal be drawn from the list of pipeline services and must be described having regard to the reference service factors
 - to introduce a new process to determine the reference services to be provided by the service provider prior to the access arrangement revision process and consequential changes to the access arrangement process.
33. ATCO's response to the draft rule determination on each of these matters is set out below.

3.1 Defining pipeline and reference services

34. ATCO considers that this aspect of the draft rule determination does not adequately distinguish between gas transmission services and gas distribution services.
35. The Commission has found that most access arrangements for transmission pipelines contain a single reference service, typically a forward haul service. The Commission did not provide any examples from distribution pipelines.⁶
36. ATCO notes that the access arrangements for distribution pipelines typically include three or more reference services for haulage services and four or more reference services for ancillary reference services.

Table 3.1: Number of reference services for distribution pipelines

NETWORK SERVICE PROVIDER	NUMBER OF HAULAGE REFERENCE SERVICES	NUMBER OF ANCILLARY REFERENCE SERVICES
ATCO	5	5
Ausnet Services	3	4
Multinet Gas	3	5
Australian Gas Networks (Victoria and Albury)	3	6
Australia Gas Networks (SA)	3	6
Evoenergy	1 ⁷	4
Jemena Gas Networks	1	4

37. The nature of gas transmission services are very different to gas distribution services. Distribution pipelines provide reference services to retailers, usually relating to the delivery of gas to a large number

⁶ AEMC, National Gas Amendment (Regulation of covered pipelines) Rule 2019 - Draft rule determination, 6 December 2018, p. 30

⁷ Evoenergy and Jemena provides multiple tariff classes under the haulage reference service that includes a business tariff class and residential tariff class.

of 'delivery points'. The services provided by gas distribution businesses are not point to point services and as a result do not typically include backhaul, park and loan, location or priority features.

38. Gas distribution services also differ from gas transmission services due to the characteristics of the distribution network, including:
- pipes being interconnected with other elements of the network
 - flow optimisation and capacity augmentation being in response to general load growth within a geographical area
 - interrelationships between load and demand elements.
39. In ATCO's experience the characteristics that distinguished between gas distribution services typically relates to the type of customer (residential vs commercial), the maximum hourly quantity (MHQ) and the pressure of the supplied gas.
40. Under the Retail Market Procedures (WA) and the associated AEMO Specification Pack, ATCO discloses the available ancillary services (both reference and non-reference) to retailers. Almost all of the services provided are relevant to retailers, for example disconnections, rather than end users. End users typically only access ancillary services via a retailer, for example meter upgrades. Publishing pipeline services on the distribution pipeline operator's website will duplicate this information and provides no additional useful information to retailers.
41. ATCO considers that the drafting of draft rule 47A is unworkable for distribution pipelines as the characteristics detailed in draft rule 47A(2) appear to apply exclusively to gas transmission services. Draft rule 47A should be applied only to gas transmission services. The new requirements for distribution pipeline services are unnecessary given the increasing contestable nature of energy services and the AEMC has not established that applying the changes to distribution pipelines will or is likely to contribute to the achievement of the NGO.
42. If the Commission disagrees, as a minimum draft Rule 47A(2) must be amended to make the draft rule 47A workable for gas distribution services by including a separate set of characteristics for gas distribution services.

3.2 Process for determining reference services

43. ATCO considers that the process for determining reference services detailed in the draft rule determination is likely to duplicate, and overlap with, the extensive consultation and engagement programs and process already adopted by gas distribution pipelines.
44. ATCO considers that the proposed process is likely to add to, rather than mitigate, regulatory costs and add to the complexity of the regulatory process. For distribution pipelines, the Commission has not provided any evidence that the benefits of this new process will outweigh the costs and the changes will or are likely to contribute to the achievement of the NGO.
45. Furthermore, ATCO considers the proposed process is unnecessary for distribution pipelines given the activities already occurring due to the increasing contestable nature of energy services. For example, ATCO published and sought submissions from stakeholders on a draft of its recent submission some four months ahead of its submission to the ERA. Public submissions received by the ERA in November 2018,

on ATCO's recent revisions submission proposal, demonstrate that ATCO's consultation and engagement program resulted in the proposed set of reference services meeting the needs of retailers.⁸

46. ATCO considers that the time frame for the proposed process is insufficient to allow service providers to prepare the access arrangement submission post the regulator's reference service proposal decision and will likely conflict with the stakeholder consultation activities network businesses are now adopting. Formalising a reference service proposal to be made to the regulator adds cost and time to the process. The service provider's ability to progress the development of its access arrangement revision submission is dependent on the regulator's reference service proposal decision which may be only 6 months prior to the review submission date under the draft rule.
47. ATCO submits that if the AER implements the proposed provisions with regard to a reference service proposal a decision on the reference service proposal is required at least 12 months prior to the access arrangement review submission date.

⁸ Public submission are available from the ERA's website - <https://www.era.gov.au/gas/gas-access/mid-west-and-south-west-gas-distribution-systems/access-arrangements/access-arrangement-for-period-2020-2024>

4. Access arrangement process

48. The Commission has made a draft rule determination to amend the NGR:
- to allow, but not require, regulators to develop and publish financial models that are consistent with Part 9 of the NGR and the revenue and pricing principles in s. 24 of the National Gas Law (NGL)
 - to clarify the operation of revenue caps for full regulation pipelines by permitting the over or under recovery adjustment to total revenue to operate in the subsequent access arrangement period
 - to highlight the importance of the link between tariff and non-tariff components by clarifying that the regulators are to have regard to the risk sharing arrangements
 - to extend the access arrangement process revision period to at least 30 business days
 - to clarify the process for equalising revenue during an interval of delay
 - to remove the limited and no discretion framework from the NGR.
49. ATCO's response to the draft rule determination on each of these matters is set out below.

4.1 Reference tariff setting: use of consistent financial models

50. ATCO recognises the potential benefits of using consistent financial models. However, ATCO considers that continuing to allow for flexibility in the modelling assumptions and parameters is in the long term interest of consumers. Therefore, draft Rules 75A and 75B should be removed to enable financial models to continue to suit local conditions and preferences.
51. ATCO considers that the Commission has not demonstrated that the benefits of draft rules 75A and 75B will outweigh the costs of developing the models. ATCO does not agree with the Commission that consistent financial models will allow the regulator to make quicker, lower cost and more informed decision as it is typically other elements of the regulators review, such as expenditures, that are resource intensive for the regulator and on the critical path. In relation to the benefit that the model will reduce the opportunity for errors ATCO notes that the existing rule 68 already provides a mechanism for the regulator to address any material errors and in ATCO's case this rule has not yet been invoked.
52. If the Commission seeks to retain draft rules 75A and 75B ATCO provides the following feedback:
- **Indexation of the capital base** – The final rule should provide flexibility on the modelling assumptions associated with the indexation of the capital base and the rules must not require that a particular form of modelling assumption be adopted. The modelling assumptions are best determined by the regulators as part of their role in developing and publishing the financial models. To provide clarity that the regulators have a role to determine the modelling assumption associated with any indexation of the capital base, ATCO would like to see draft Rule 75B(2) amended to include a new sub-clause as follows:

(f) the accounting method assumption for dealing with the effects of inflation and the indexation of the capital base.

A similar change may also be necessary to draft Rule 75B(3).

- **Transmission and distribution models** – The final rule must allow for the regulators to develop separate models, assumptions and parameters for transmission and distribution pipelines, as is the case in the National Electricity Rules (NER) for transmission and distribution electricity networks. To provide clarity on this, ATCO would like to see draft Rule 75A amended to include a new sub-clause as follows:

(1a) The AER must prepare and publish separate financial models to apply to each of a transmission pipeline and a distribution pipeline.

4.2 Reference tariff setting: tariff variation mechanism

53. ATCO accepts that the NGR does not currently include any specific provisions to allow the regulator to account for over or under recovery of revenue, under a revenue cap or revenue yield form of tariff variation mechanism, across access arrangement periods.
54. ATCO has no comments on the draft rule determination to amend rule 92(2)(a).

4.3 Non-tariff terms and conditions: risk sharing arrangements

55. ATCO does not support the NGR being amended to require the regulator to have regard to the risk sharing arrangements in the economic elements of the access arrangement when determining the non-tariff terms and conditions.
56. ATCO considers that the proposed amendment to rules 97(3) and 100 will create a circularity between the binding rate of return instrument and the non-tariff terms and conditions.
57. In late 2018, the binding rate of return framework came into force. In establishing the rate of return instrument the regulators are required to have regard to the revenue and pricing principles. Section 24(5) of the NGL already makes allowances for regulatory and commercial risks involved in providing reference services.
58. ATCO considers that the risk-sharing arrangement implicit in the reference tariff are already a function of the non-tariff terms and conditions (i.e. the regulatory and commercial risks involved in providing reference services) and it is unnecessary and duplicative for the regulator to be required to undertake this assessment again. In relation to draft rule 97(3), ATCO does not support the regulator having additional discretion to vary reference tariffs as part of the tariff variation mechanism in a manner that is inconsistent with the building blocks method that is firmly established in regulatory precedent in network regulation.
59. The effect of the proposed amendments to define pipeline and reference services (see section 3) will result in additional reference services defined in the access arrangement, in particular for transmission pipelines (the intent of the proposed rule changes is for transmission pipelines to offer several reference services rather than the single reference service that many offer now). As a result the regulators will now assess the risk sharing arrangements for these new services, which are typically set out in the template service agreement. ATCO expects that this additional oversight of the non-tariff terms and conditions for the additional transmission reference services will address the concern that regulators have not previously given these adequate attention.

4.4 Access arrangement process: revision period

60. The process of revising an access arrangement proposal in response to a draft decision by a regulator is complex. Time is required by service providers to review the draft decision, prepare the response and then obtain the necessary approvals to submit the revised access arrangement proposal.
61. ATCO's experience in recent access arrangement processes is that more than 30 business days is required. The time provided by the ERA in the last two access arrangement processes is as follows:
- AA3 (2010 – 2014) – The ERA initially set a revision period of 30 business days but this was extended by a further 5 business days, total of **35 business days**
 - AA4 (2010 – 2019) – The ERA initially set a revision period of 30 business days but this was extended by a further 2 business days, total of **32 business days**.
62. ATCO supports the draft rule determination to amend rule 59(3) to increase the minimum revision period from at least 15 business days to at least 30 business days.

4.5 Access arrangement process: interval of delay

63. ATCO supports the draft rule determination to amend rules 3 and 92(3) but considers that the draft rule determination could be improved if it provided additional clarity on whether the process for equalising revenue during the access arrangement period is to be based on **actual revenue** during the interval of delay or a **forecast of revenue** based on the prevailing tariffs during the interval of delay.
64. ATCO submits using forecast information rather than actual data:
- a) preserves the incentive principles in the NGL
 - b) Smooths the review process by minimising amendments made necessary by the interval of delay
 - c) Preserves consistency between revenue and expenditure forecasts.
65. The Commission intend for the process of equalising revenue during an interval of delay to result in a service provider being no better or worse off as a result of the interval of delay. ATCO submits that the drafting of draft rule 92(3)(b) does not achieve this as it allows for the exercise of discretion by the regulator. There seems no reason to provide such a discretion and the Rule will better contribute to the achievement of the NGL if draft rule 92(3)(b) was amended as follows:

*“(b) the operation of this subrule ~~may~~ **must** be taken into account in fixing reference tariffs for the new access arrangement period, such that there may be an adjustment for any under-recovery or over-recovery by the service provider as a result of the continuation of reference tariffs from the previous access arrangement period during the interval of delay.*

4.6 Regulatory discretion

66. ATCO has no comments on the draft rule determination to remove the limited discretion and no discretion framework from the NGR.

5. Determining efficient costs

67. The Commission has made a draft rule determination to amend the NGR:
- to make it clear that capital expenditure must also meet the prudence criterion under rule 79(1)(a)
 - to allow the value of existing extensions that satisfy the amended requirements of rule 104 to be added to the opening capital base
 - to allocate costs between the covered and uncovered parts of the pipeline and provide details to the regulator on the basis and methodology used to undertake the allocation
 - to amend the requirements for rebateable services.
68. ATCO's response to the draft rule determination on each of these matters is set out below.

5.1 Capital expenditure: prudence criterion

69. The draft rule determination provides clarity that capital expenditure must also meet the prudence criterion under rule 79(1)(a).
70. ATCO supports the draft rule determination to amend rule 79.

5.2 Capital base: including extensions in the capital base

71. The draft rule determination proposes to amend the calculation of the opening capital base for an access arrangement period to allow for the addition of existing extensions that satisfies the amended requirements of rule 104.
72. ATCO has no comments on the draft rule determination to amend rule 77(2) and (3).

5.3 Cost allocation

73. The draft rule determination proposes amendments that:
- Assist the regulator in assessing the reasonableness of the cost allocation and making an informed decision on the proposal, thereby making decisions that best promote the NGO
 - Ensures reference tariffs reflect only the efficient cost of providing the reference services.
74. The Commission have stated that the draft rules will require the service provider to provide the regulator with details of the basis and methodology used to calculate the proposed forecast capital and operating expenditure and the allocation of the expenditure. However, ATCO considers that this requirement is not explicit in the draft rules as currently proposed. For example, the NER includes explicit provisions that address the information that is required to be submitted by the network service provider on cost allocation.⁹
75. ATCO considers that the requirement to detail the cost allocation methodology in an access arrangement proposal could be clarified through the following additional sub-clause to Rule 72(1):

⁹ For example, Part F of Chapter 6 of the NER.

(ea) the methodology adopted to allocate forecasts of conforming capital expenditure and operating expenditure between:

(i) reference services;

(ii) other services provided by means of the covered pipeline; and

(iii) other services provided by means of uncovered parts (if any) of the pipeline

76. ATCO supports the draft rule determination to amend rule 79(1), 79(6) and 91(2).

5.4 Rebateable services

77. ATCO has no comments on the draft rule determination to amend the requirements for rebateable services.

6. Negotiation and information

78. The Commission has made a draft rule determination to amend the NGR:
- to require the publication of capacity and usage information
 - to require light regulation pipeline service providers to publish certain financial and offer information
 - to provide guidance on the process for negotiation and agreement between the parties
 - to remove the requirement on service providers to include KPIs in access arrangement information for full and light regulation pipelines
 - to make improvements to the Scheme Register to reflect the expansion of its coverage to non-scheme pipelines, and some minor administrative updates.
79. ATCO's response to the draft rule determination on each of these matters is set out below.

6.1 Pipeline capacity and usage information

6.1.1 Distribution pipelines

80. ATCO supports the concept of improving transparency and access to information that underpins this draft rule determination, consistent with the requirements for non-scheme pipelines to publish pipeline capacity and usage information under Part 23 of the Rules, however the draft rule determination relates more to information that would be required by a transmission pipeline user than a distribution pipeline user. ATCO considers that draft Rules 112A to 112D are not in the long term interests of consumers as they provide no material benefit to end users or retailers and create additional costs that will be recovered from retailers and ultimately end users. For these reasons, ATCO does not consider the Rule making criteria insofar as it relates to distribution pipelines, is met.
81. For non-scheme distribution pipelines, the Commission has found that the relevant Part 23 requirements (to publish pipeline capacity and usage information) have not been implemented in practice as all existing scheme non-scheme distribution pipelines met one or more of the exemption criteria.¹⁰
82. The Commission has considered operational factors in proposing a threshold for detailed capacity and usage reporting for pipes with a capacity of greater than 10 TJ/day and a maximum operating pressure capability of greater than 4 MPa.
83. For distribution pipelines, ATCO has considered whether the information required by the draft rule determination, specifically draft rules 112A to 112D, can practically be prepared and published. ATCO has found:
- The information requirements detailed in the draft rules have been designed to suit transmission pipelines rather than distribution pipelines
 - Additional clarity is required with some requirements
 - Information is already available from other sources
 - Benefits will not outweigh costs and thus compliance is not in the long term interests of consumers.
84. These are each discussed in turn in below.

¹⁰ AEMC, National Gas Amendment (Regulation of covered pipelines) Rule 2019 - Draft rule determination, 6 December 2018, pg 76

Information relates to transmission rather than distribution

85. ATCO considers that draft rules 112A to 112D have been drafted with applicability to transmission pipelines rather than distribution pipelines and should be limited to transmission pipeline service providers.
86. If the proposed Rules are maintained and applied to distribution pipeline service providers, ATCO submits that the following should be removed from the final rule determination insofar as they relate to distribution pipelines:
- **Gate Station information** – draft rule 112D(2)(a) requires the publications of “the quantity of natural gas that can be transported through each gate station on the distribution pipeline in any 24 hour period”. However, gate station information is available from the transmission pipeline service provider (as they typically own and operate the gate station), not the distribution pipeline. Even if provided, gate station information does not provide useful information to a retailer or potential end user regarding the potential to provide a service at a particular location on the distribution network.
 - **Outlook of firm capacity** – draft rule 112D(5)(a) requires the publications of “an outlook of the firm capacity of the pipeline that the service provider has available for sale or that it will have available for sale each month in following 36 month period”. Forecasting an outlook of firm capacity of the large distribution pipeline is not useful for decision making with regard to expanding or extending the distribution network to accommodate for forecast demand increases due to connection of large individual end users or multiple small end users. Typically a distribution pipeline can be extended or expanded in a timely manner to meet forecast demand at different points on the network. The capacity of a distribution network is more dynamic relative to a transmission pipeline due to pipes being interconnected with other elements of the network. Therefore this draft rule does not provide useful information to a retailer or potential end user regarding the potential to provide a service at a particular location on the distribution network.

Additional clarity is required

87. In addition to the above, ATCO submits that additional clarity is required with regard to some requirements of the draft rule determination:
- **Gate station definition** – The definition of gate station should be re-stated at rule 112A to align with rule 141 so that it is clear the same definition applies.
 - **Firm capacity definition** – The definition of firm capacity should be re-stated at rule 112A to align with rule 141 so that it is clear the same definition applies.
 - **Distribution pipeline definition** – The definition of distribution pipeline should be re-stated at rule 112A to align with section 2 of the NGL so that it is clear the same definition applies. In particular a reference to a pipeline, other than a large distribution pipeline, is a reference to the distribution network as a whole.
 - **Metering and measurement policy definition** – The elements of a metering and measurement policy are undefined.
 - **Form of information provision**
 - It should be made clear that where large amounts of data are required such as envisaged by Rules 112C(4) and 112D(5) then it is sufficient to provide a link to a data file that may be downloaded rather than publishing the detailed data on the website.
 - It should be made clear that where information prescribed in the draft rules is available from an alternative source it is sufficient to provide a link to that data source rather than duplicate the information.

Information is available from other sources

88. Much of the information to be provided under the proposed new rules is already available through other means. Meeting the draft rule requirements will result in duplication and potential confusion. For example:

- **Rule 112D(2)(a)** – Transmission related information such as gas flows via gate stations is available from the transmission pipeline service providers.
- **Rule 112D(2)(e)** – The distribution pipeline information at rule 112D(2)(e) is already available in the access arrangement or template service agreement annexure. ATCO notes that it is unclear what information a metering and measurement policy should contain and queries whether this is already provided for in the Retail Market Procedures (WA) and associated documentation.
- **Rule 112D(3)** – Information regarding pipeline services is already provided to retailers to enable the operation of the markets systems under the Retail Market Procedures (WA) and the associated AEMO Specification Pack. Reference services are already described in the access arrangement.

Benefits will not outweigh costs

89. ATCO considers that draft Rules 112A to 112D can largely be practically implemented but provide no material benefit to end users or retailers. If implemented these rules will create additional costs that will be recovered from retailers and ultimately end users.

90. ATCO submits that draft Rules 112A to 112D are not in the long term interests of consumers for the following reasons:

- **Rules 112D(2)(a), 112D(2)(b), 112D(2)(c) and 112D(4)** – Information regarding gas flows, receipt and delivery points is not useful for a retailer acting on behalf of an end user. Whether a service can be provided at a particular location on a distribution pipeline is a function of the user specific flow rates and pressure. ATCO will always work with retailers and end users to provide a solution to the end user's requirements including an extension and or expansion of the network where that is economically viable.
- **Rule 112D(2)(d)** – Information regarding technical or physical characteristics of the pipeline are not useful for a retailer acting on behalf of an end user. All reference services are available across the entire distribution network, albeit potentially subject to network reinforcement or end user specific mains extension. Stating restrictions on service availability may actively discourage use of the network where usage is possible subject to changes to the network. Prices for reference services are contained in the access arrangement and are fixed. Prices for non-reference services are provided to retailers annually in AEMO schedules. Where prices are not able to be provided on a standard basis there is a process to provide a quotation to retailers given specific delivery point factors.
- **Rule 112D(5)(b)** – ATCO acknowledges the intent of this Rule to ensure that retailers and end users are aware of potential interruptions to supply. However publication of this information is unlikely to be useful for individual end users to understand the impact of changes to the capacity of large distribution pipelines. ATCO as a customer focussed organisation provides information to end users in advance of maintenance work on all pipelines within its network that may have an effect on supply of gas to end users. In addition, ATCO is subject to licence conditions by the ERA that requires it to give advance notice of outages.¹¹

¹¹ Condition number 89 in the Economic Regulation Authority's compliance reporting manual states: "A licensee must give at least four days notice to a customer of its intentions to undertake inspections, repairs, testing or maintenance at the customer's supply address".

91. The discussion within section 6.1.1 (see *“Information relates to transmission rather than distribution”* and *“Information is available from other sources”*) is also relevant to demonstrating the lack of benefit from the proposed information requirements with regard to distribution pipeline end users and retailers.
92. ATCO’s position regarding the lack of benefit to retailers and end users is supported by the exemptions granted to non-scheme pipelines to date with regard to publishing the information required by Part 23.
93. Network business will incur additional costs to comply with draft rules 112A to 112D. ATCO expects to incur addition costs related to:
- Initial setup costs:
 - set up new computer systems extract data from existing systems in a form suitable to be published or accessed by the website
 - set up internal processes for updating the website where that data needs to be manually updated, for example, the impact of maintenance activities on pipeline capacity
 - Data storage costs
 - Ongoing software maintenance and licence costs
 - Where data requires manual updates ongoing costs to update the website.
94. ATCO has not been able to estimate these costs in the available timeframe for this submission. However, given that ATCO has not received any feedback regarding the lack of network information from retailers or end users during its recent consultations with stakeholders, ATCO considers it is unlikely that the benefits to retailers and consumers will outweigh the costs and therefore unlikely that the proposed rules will or are likely to contribute to the NGO to the greatest degree.
95. Finally, publication of information regarding the location of critical infrastructure such as gate stations, high pressure pipelines and regulators raises the risk of intentional damage or interference with the infrastructure. ATCO notes that distribution networks serving greater than 100,000 end users would be regarded as critical infrastructure assets under the Security of Critical Infrastructure Act 2018. Before finalising the rule determination the Commission may wish to obtain a risk assessment from the Critical Infrastructure Centre on the information that is to be published and seek confirmation that the information proposed to be published is not “protected information” under the Act.

A better approach to retailer and end user information requirements

96. ATCO acknowledges the intent of the draft Rules relating to distribution pipeline information, however as outlined above the requirements as drafted relate more to the benefit of transmission pipeline users.
97. Rather than prescribe information to be published on a website by distribution pipeline operators it is more practical and effective to allow the competitive forces driving usage of the pipeline to drive the information provided and how it is provided.
98. Regulating distribution pipeline service providers under a price cap regime provides incentive to the operators to increase usage of the pipeline. In order to maximise the revenue in a price cap regime service providers will provide the information necessary to retailers and end users that maximises utilisation of the network by facilitating new connections and providing high quality customer service to maintain connections to the network.
99. ATCO like other distribution pipelines faces competition from alternative energy sources such as electricity and in particular DER based on a combination of solar electricity generation and batteries. These competitive forces ensure that information is provided to maximise utilisation of the network in the long term interest of consumers.

100. To maximise utilisation of the network in the long term interests of customers ATCO:
- Publishes on its website a map of the geographic limits of its gas distribution network
 - During its current access arrangement review process consulted with stakeholders regarding the services provided
 - Has a business development and customer experience team to ensure a customer orientated focus of the business
 - Has a contact and quotation process to ensure non-standard requests for access to the network are evaluated according to the needs of the end user including extension or expansion of the network
 - Has a process in place to inform end users of any maintenance works that could cause interruptions to supply
 - As part of its capital expenditure programme has planned information systems projects to improve the customer experience including:
 - Enhanced capabilities in the Commercial/Industrial customer portal by providing access to consumption history and other customer data
 - A secure on-line portal enabling self-service capabilities for developers requesting network expansions, installations at multi-dwelling developments and gas meter relocations
 - Enhanced capabilities on ATCO's website to provide self-service functionality for residential and SME customers to request various services.
 - An interactive gas distribution system map accessible from ATCO's website, providing external parties with real-time access to GDS information.
101. The implementation of these customer focussed initiatives demonstrate that legislation is not required in the case of distribution pipelines to force the publication of information deemed to be of use to end users. It is less likely information prescribed in a general way will be as effective as information driven by competitive forces and customer feedback to improve customer service.

6.1.2 Transmission pipelines

102. The draft rule determination requires that all transmission pipelines become Bulletin Board pipelines and enhancing the Bulletin Board reporting requirements by extending the outlook of uncontracted primary pipeline capacity for all Bulletin Board pipelines from 12 months to 36 months.
103. ATCO supports the use of the Gas Bulletin Boards to publish additional information including uncontracted capacity. ATCO believes that access to and transparency of information (and thus the facilitation of fair market competition) will be greatly enhanced by the draft rules determination to require transmission pipelines to publishing information on the Bulletin Boards.
104. For the reasons set out earlier in this response, ATCO welcomes and supports the proposed rule changes above for transmission pipelines as ATCO believes that will assist users and prospective users in negotiation of transmission pipeline services.

6.2 Pipeline financial and offer information

105. ATCO has some concerns regarding the draft rule determination to require light regulation pipeline service providers to publish certain financial and offer information.
106. ATCO acknowledges the intent to bring light regulation pipeline information into line with full access arrangement information. However the Commission needs to take care in imposing additional cost

burden on service providers for little or no benefit. For example, what use could “financial performance metrics” (draft Rule 36F(2)(a)(iii)) be in the evaluation of the pricing of individual pipeline services. The usefulness of financial statements on a pipeline by pipeline basis is similarly doubtful.

107. Draft rule 36F(2)(a) also needs to be clear that on a “pipeline by pipeline basis” with regard to distribution pipelines refers to distribution “network by network”.

6.3 Access negotiation process

108. ATCO has no comments on the draft rule determination to provide guidance on the process for negotiation and agreement between the parties, other than the comments set out in section 7 below on the timing of the implementation of the changes to Rule 112.

6.4 Key performance indicators

109. ATCO supports the draft rule determination to remove the requirement to include key performance indicators in the Access Arrangement Information document.

6.5 Scheme Register

110. ATCO has no comments on the draft rule determination to amend the Scheme Register to reflect the expansion of its coverage to non-scheme pipelines, and other minor administrative updates. ATCO notes that the Commission is already publishing information about non-scheme pipelines, including ATCO’s Albany and Kalgoorlie networks.
111. ATCO considers that the Commission should review the information requirements under rules 134 and 134A to avoid the duplication of information given the new requirements of draft rules 112A to 112D for distribution pipelines and the requirements for transmission pipelines to disclose Bulletin Board information. ATCO acknowledges it is useful to have all pipelines listed on the register including being able to visualise the Australian gas pipeline network through the AEMC website. However, detailed up to date capacity information should be obtained directly from pipeline operators at the time required by retailers and end users. It is also questionable whether historical information required in rule 133(3) provides any benefit to consumers.
112. If the Commission seeks to retain rule 134, ATCO considers that the extension or capacity expansion information updates need to distinguish between transmission pipelines and distribution pipelines. For distribution pipelines rule 134 should be amended to allow for annual updates, say 3 months after financial year end or otherwise as specified in an access arrangement. The timing specification relating to new pipelines in draft rule 134(2) is more suitable for a transmission pipeline than a continuously evolving distribution pipeline network.

7. Implementation of rules

- 113. It is expected that effective date of the final rule determination will be 21 March 2019.
- 114. The Commission has recognised that ATCO is currently subject to an access arrangement revision process and as such the implementation of the amended rules has made allowances for the access arrangement revision process that is currently underway for the Mid-West and South-West Gas Distribution Systems. ATCO supports draft rule 61 in schedule 5.
- 115. ATCO is seeking for further delay to the implementation of rule 112 and rules 112A to 112D.

Rule 112

- 116. ATCO considers that the implementation of Rule 112 from March 2019 would require ATCO to vary its access arrangement (in particular section 5) to comply with the rule, by making an application for variation under rule 65. However, as ATCO is currently going through a revision process with the ERA (which was commenced in September 2018), under rule 65(2), ATCO cannot submit a variation proposal. ATCO would be adversely affected by having to incur the cost and likely procedural delay impacts of taking steps during a current access arrangement review period to comply with the new rule by making substantial amendments to the access arrangement proposal during the process – the draft decision from the ERA is due on or after a date from mid-March 2019.
- 117. Instead ATCO would prefer to implement the necessary changes to section 5 of its Access Arrangement as part of ATCO's response to the ERA's draft decision in mid-2019, to take effect from the commencement of the new access arrangement period, 1 January 2020.
- 118. ATCO seeks for the Commission to delay the implementation of the changes to Rule 112 to 1 January 2020 for ATCO's Mid-West and South-West Gas Distribution Systems.

Rules 112A to 112D

- 119. Should the Commission proceed with the draft Rules 112A, 112B, 112C and 112D as drafted ATCO requests that it be exempt from the requirements of these rules until July 2020 so the requirements may be included in existing IT projects included in its capital expenditure programme submitted as part of its current access arrangement review. This would be more efficient than creating new IT projects to meet the requirements in the interim and then making those systems redundant due to the implementation of the more customer focussed systems planned.