
Australian Energy Market Commission

RULE DETERMINATION

NATIONAL GAS AMENDMENT (REGULATION OF COVERED PIPELINES) RULE 2019

PROPONENT

COAG Energy Council

14 MARCH 2019

RULE

INQUIRIES

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ABOUT THE AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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SUMMARY

- 1 The Australian Energy Market Commission (AEMC or Commission) has made a final rule determination to amend the National Gas Rules (NGR) to make improvements to the economic regulatory framework that applies to covered transmission and distribution natural gas pipelines across Australia.
- 2 The final rule will improve market information, support effective negotiations and improve access to covered pipelines. The amendments are also expected to assist the regulators (the Australian Energy Regulator and the Economic Regulation Authority of Western Australia) to make better informed decisions on reference services, access arrangements and the efficient allocation of costs.
- 3 The final rule has been made in response to the rule change request submitted by the Council of Australian Governments Energy Council Senior Committee of Officials (COAG Energy Council). This request was based on recommendations from the Commission's Review into the scope of economic regulation applied to covered pipelines (review).
- 4 The final rule is largely consistent with the proposed rule submitted by the COAG Energy Council and the draft rule published in December 2018. Following consultation with stakeholders, minor drafting amendments were made to clarify and improve the operation of the final rule. This has not altered the Commission's policy positions as outlined in the draft rule determination.
- 5 The Commission carried out its assessment of the rule change request under a fast track process. This has resulted in the Commission making this final rule within eight months after the publication of the review's final report and five months after receiving the rule change request, inclusive of an extended eight-week consultation period on the draft rule determination.

Implementing the final rule

- 6 The majority of the final rule will come into effect on 21 March 2019 (see Table 2.1 in this determination). This will enable the new rules to be in place for the regulators' assessment of revised access arrangement proposals as they become due. The Commission has included specific transitional arrangements for those full regulation pipelines that are currently, or will soon be, engaged in an access arrangement revision process (see Table 8.1 in this determination).
- 7 Access arrangement proposals submitted after June 2020 will be subject to all of the new access arrangement requirements made in this final rule.
- 8 Many of the new requirements on information disclosure also commence on 21 March 2019. However, a number of these rules specifically allow time for parties to put in place processes to enable compliance with the new rules. Details on the implementation of all of the components of the final rule are set out in Chapter 8.

The final rule

9

The final rule amends the NGR to:

- Reduce the ability for service providers to exercise market power over pipeline expansions. This will be achieved by treating all future pipeline expansions as part of the relevant scheme pipeline, and so applying either light or full regulation (as relevant to the original pipeline) to the expansion. These changes will also reduce regulatory burden and support improved decision-making by regulators.
- Introduce a new approach to determine which pipeline services should be specified as reference services in a full access arrangement, which is expected to result in additional services being specified as reference services. The new approach includes new criteria for determining appropriate reference services. It also provides users with greater opportunity for meaningful input during the reference service determination process.
- Provide for greater stakeholder engagement in the access arrangement assessment process. Adjustments to the access arrangement assessment process will provide more time for stakeholder engagement and thorough consideration of proposals in order to enable the regulator to make more informed decisions in the long-term interest of consumers.
- Improve regulatory decision-making through the removal of the limitations on regulatory discretion applied to certain elements of an access arrangement.
- Clarify the assessment criteria for capital expenditure, cost allocation requirements and non-tariff terms and conditions. This will enable regulators to determine more efficient tariffs and non-tariff terms and conditions set in access arrangements so that risks can be appropriately allocated and so that users do not pay for assets or services that they do not use.
- Strengthen information reporting obligations on full and light regulation pipeline service providers. These changes apply many of the information provision obligations that already apply to Bulletin Board pipelines and non-scheme pipelines under Part 23 of the NGR to light regulation pipelines and covered distribution pipelines. The amendments will result in more relevant, timely and accessible information for users and prospective users to inform their negotiations with service providers.
- Improve the access negotiation framework between prospective users and service providers in order to support more timely negotiations and provide greater clarity on the triggers for arbitration.

10

While the final rule is largely consistent with the proposed rule submitted by the COAG Energy Council, there are some differences. The key differences are:

- Enabling existing pipeline extensions, with the agreement of the pipeline service provider, to be included in access arrangements. While this change was proposed by the COAG Energy Council, specific amendments to the NGR were not included in the proposed rule. The Commission has determined that the policy objective can be achieved by amendments to rules 77 and 104 of the NGR which will provide a process for service

providers to identify existing extensions and enable a value for such extensions to be set and added to the capital base of the relevant pipeline. This is reflected in the final rule.

- Speculative capital expenditure account. Consistent with the Commission's final report, the COAG Energy Council proposed that the rule regarding the speculative capital expenditure account be amended such that the rate of return for that account would be determined by the regulator at a rate that is at least equal to the rate of return used in the calculation of reference tariffs. However, since the submission of the rule change request, amendments to the NGL and consequential NGR changes to require the regulators to make a rate of return instrument that applies a single rate of return to all regulated electricity service providers and all full regulation gas pipelines have been made.¹ As a result, the proposed policy objective is unable to be met and an amendment to the speculative capital expenditure account rule has not been made in this final rule.
- Clarify that the regulator must have regard to risk sharing arrangements when approving an access arrangement proposal. The final rule differs in wording to the COAG Energy Council's proposed rule to better achieve the stated policy objective. Specifically, to clarify that in regard to achieving general consistency within an access arrangement, the regulator must be satisfied that the non-tariff elements are consistent with the risk sharing arrangements implicit in the reference tariffs.
- Improve the workability of the information provisions that apply to distribution pipeline service providers. These changes include amendments to terminology, removing information reporting duplication, changes to time frames and enabling service providers to charge for carrying out certain work required by prospective users.
- A number of other minor policy and drafting changes have also been made to improve the final rule, including adopting a number of changes suggested by stakeholders in submissions on the draft rule.
- Transitional provisions have also been included as noted above.

Context

- 11 On 5 May 2017 the COAG Energy Council requested that the AEMC review the economic regulatory framework that currently applies to covered transmission and distribution pipelines. The review covered Parts 8 to 12 of the NGR. This framework had not been comprehensively reviewed since the inception of the National third party access code for natural gas pipeline systems in 1997.
- 12 On 3 July 2018 the AEMC published its final report for the review which included 32 recommendations to improve the economic regulatory framework. The AEMC also recommended that implementation be carried out in two stages: the first a set of rule changes to be actioned immediately through a rule change request process, and the second, a few changes to the NGL that would trigger subsequent further amendments to the NGR. This rule change process has covered the first set of rule changes.

¹ National Gas (Binding Rate of Return Instrument) Amendment Rule 2019.

CONTENTS

| | | |
|----------|--|------------|
| 1 | COAG Energy Council rule change request | 1 |
| 1.1 | The rule change request | 1 |
| 1.2 | Current arrangements | 2 |
| 1.3 | Rationale for the rule change request | 4 |
| 1.4 | Solution proposed in the rule change request | 4 |
| 1.5 | Relevant background | 8 |
| 1.6 | The rule making process | 11 |
| 2 | Final rule determination | 12 |
| 2.1 | The Commission's final rule determination | 12 |
| 2.2 | Rule making test | 12 |
| 2.3 | Assessment framework | 14 |
| 2.4 | Summary of reasons | 15 |
| 2.5 | Other requirements under the NGL | 16 |
| 2.6 | Implementation of the final rule | 17 |
| 3 | Extensions and expansions | 20 |
| 3.1 | Current framework for extensions and expansions | 20 |
| 3.2 | Assessment of extensions | 22 |
| 3.3 | Assessment of expansions | 25 |
| 4 | Reference services | 30 |
| 4.1 | Defining pipeline and reference services | 30 |
| 4.2 | Process for determining reference services | 39 |
| 5 | Access arrangement process | 49 |
| 5.1 | Reference tariff setting: use of consistent financial models | 49 |
| 5.2 | Reference tariff setting: tariff variation mechanism | 54 |
| 5.3 | Non-tariff terms and conditions: risk sharing arrangements | 57 |
| 5.4 | Access arrangements process: revision period | 60 |
| 5.5 | Access arrangement process: interval of delay | 62 |
| 5.6 | Regulatory discretion | 66 |
| 6 | Determining efficient costs | 71 |
| 6.1 | Capital expenditure: speculative investment | 72 |
| 6.2 | Capital expenditure: prudence criterion | 74 |
| 6.3 | Capital base: including extensions in the capital base | 76 |
| 6.4 | Cost allocation | 79 |
| 6.5 | Rebateable services | 82 |
| 7 | Negotiation and information | 85 |
| 7.1 | Pipeline capacity and usage information | 85 |
| 7.2 | Pipeline financial and offer information | 106 |
| 7.3 | Access negotiation process | 110 |
| 7.4 | Key performance indicators | 114 |
| 7.5 | Scheme register | 115 |
| 8 | Implementation of final rule | 118 |
| 8.1 | Draft implementation arrangements | 118 |
| 8.2 | Stakeholder views | 120 |
| 8.3 | Assessment | 120 |

| | | |
|-----|-----------------------------------|-----|
| 8.4 | Final implementation arrangements | 121 |
| 8.5 | Commencement dates | 121 |

| | |
|----------------------|------------|
| Abbreviations | 125 |
|----------------------|------------|

APPENDICES

| | | |
|----------|--|------------|
| A | Summary of other issues raised in submissions | 126 |
|----------|--|------------|

| | | |
|----------|---|------------|
| B | Legal requirements under the NGL | 127 |
|----------|---|------------|

| | | |
|-----|-----------------------------|-----|
| B.1 | Final rule determination | 127 |
| B.2 | Power to make the rule | 127 |
| B.3 | Commission's considerations | 127 |
| B.4 | Civil penalties | 128 |
| B.5 | Conduct provisions | 128 |

TABLES

| | | |
|------------|--|-----|
| Table 1.1: | Components of the COAG Energy Council's rule change request | 5 |
| Table 1.2: | Stakeholder consultation during the review | 10 |
| Table 2.1: | Components and implementation of the final rule | 17 |
| Table 3.1: | Current approach to extensions and expansions | 22 |
| Table 3.2: | Proposed approach for extensions to covered pipelines | 22 |
| Table 3.3: | Proposed approach for future expansions to covered pipelines | 26 |
| Table 4.1: | AEMC responses to JGN submission | 46 |
| Table 8.1: | Access arrangement submission dates | 118 |
| Table 8.2: | Implementation of rules — access arrangement amendments | 122 |
| Table 8.3: | Implementation of rules — non-access arrangement amendments | 123 |
| Table A.1: | Summary of other issues raised in submissions | 126 |

FIGURES

| | | |
|-------------|--|-----|
| Figure 1.1: | Overview of pipeline classification | 2 |
| Figure 4.1: | Proposed reference service process | 42 |
| Figure 4.2: | Proposed amended access arrangement process | 43 |
| Figure 6.1: | Simplified calculation of a reference tariff | 71 |
| Figure 7.1: | Proposed access negotiation process | 111 |

1

COAG ENERGY COUNCIL RULE CHANGE REQUEST

1.1

The rule change request

On 5 October 2018, the COAG Energy Council Senior Committee of Officials (COAG Energy Council) made a request to the Australian Energy Market Commission (AEMC or Commission) to amend the National Gas Rules (NGR) in order to improve the economic regulatory framework that applies to covered transmission and distribution natural gas pipelines (rule change request).

The rule change request is based on many of the recommendations made by the Commission's Review into the scope of economic regulation applied to covered pipelines (review).²

On 10 August 2018, the COAG Energy Council considered the Commission's final report for the review (final report). It agreed that most of the recommended amendments to the NGR that were identified in the final report as "package 1" would assist pipeline users and prospective users to negotiate lower prices and better terms for their gas transportation agreements.³ The COAG Energy Council further agreed that these recommendations could be progressed immediately through changes to the NGR. Consequently, the COAG Energy Council rule change request seeks to:⁴

- update extension and expansion requirements (AEMC recommendations 2 & 4) (see Chapter 3)
- describe reference and pipeline services and introduce a reference service setting process (AEMC recommendations 5 to 8) (see Chapter 4)
- improve the access arrangement process (AEMC recommendations 9 to 14) (see Chapter 5)
- clarify provisions relating to the calculation of efficient costs (AEMC recommendations 15 to 20) (see Chapter 6)
- improve information provision by service providers (AEMC recommendations 21 to 26) (see Chapter 7)
- improve the access negotiation framework (AEMC recommendation 27) (see Chapter 7).

The exception is the Commission's recommendation regarding the setting of an initial capital base for light regulation pipelines.⁵ The COAG Energy Council agreed in principle to this recommendation but has decided not to progress it at this time.⁶

² The review is discussed further in section 1.5 of this final rule determination.

³ COAG Energy Council, *Gas market reform bulletin No.3*, August 2018.

⁴ COAG Energy Council, *rule change request*, 5 October 2018, p. 1.

⁵ This recommendation was referenced as recommendation 17 in AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 151-153.

⁶ COAG Energy Council, *Gas market reform bulletin No.3*, August 2018, attachment, p. 2.

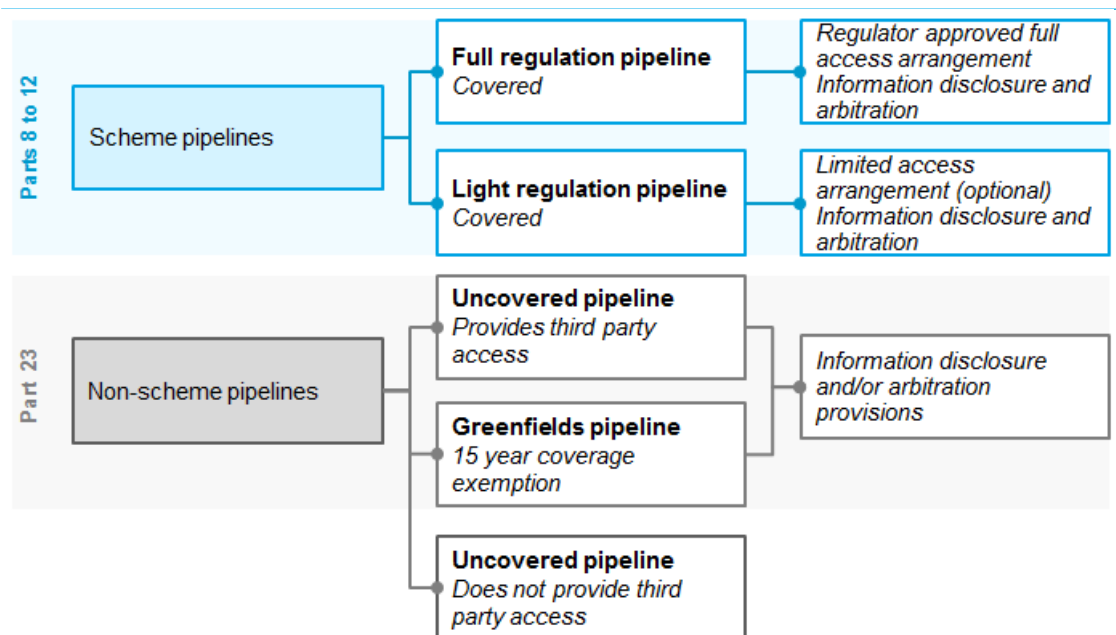
In its statement responding to the Commission's review, the COAG Energy Council indicated that it expected the rule change request be considered using the expedited process. The Commission determined that the fast track process was more appropriate.⁷

1.2

Current arrangements

The regulatory framework applied to covered pipelines is incentive-based, with an underlying reliance on the use of negotiation and arbitration. Pipeline service providers and prospective users negotiate the tariff and non-tariff terms and conditions for access to pipeline services provided by covered pipelines. These negotiations are informed by access arrangements for full regulation pipelines and published pipeline information (for light regulation pipelines, or pipelines regulated by Part 23 of the NGR). The different key regulatory classifications of pipelines are illustrated in the figure below.

Figure 1.1: Overview of pipeline classification



Source: AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. ii.

This framework recognises the importance of contractual negotiations, specifically in relation to the provision of pipeline services. As indicated in the figure, the regulatory arrangements for full and light regulation pipelines are primarily located within Parts 8 to 12 of the NGR.

The key distinguishing feature of full regulation is that the regulator (the Australian Energy Regulator (AER) or Economic Regulation Authority of Western Australia (ERA)) undertakes an

⁷ COAG Energy Council, *Gas market reform bulletin No.3*, August 2018. The COAG Energy Council requested an expedited process (s. 304 of the NGL). However, an expedited process is used for a non-controversial or urgent rule, as defined in s. 290 of the NGL. Instead, the Commission decided that the rule change request met the fast track criteria (s. 305 of the NGL) as the rule change request has been made on the basis of "a recommendation for the making of a Rule contained in a MCE directed review", that "the request reflects, or is consistent with, the relevant recommendation contained in the MCE directed review" and that there was "adequate consultation with the public".

assessment of, and subsequently approves, a full access arrangement or revisions to a full access arrangement. The access arrangement determines at least one reference service, and the corresponding reference tariff and non-tariff terms and conditions. Reference tariffs and reference services act as a direct constraint on a service provider's ability to price reference services monopolistically (or deliver a lower service standard). More importantly, however, within the negotiate-arbitrate framework, the primary rationale of reference services and reference tariffs is to inform negotiations between service providers and users, in reference to the access arrangement.

Light regulation pipelines do not have full access arrangements and there are no pre-determined reference services or reference tariffs. Nor are light regulation pipelines required to have a capital base set. Instead, pipelines subject to light regulation are required to publish certain information. Users and prospective users that are unsatisfied with negotiations with a service provider have access to the same arbitration framework as users and prospective users of full regulation pipelines.

The components of the regulatory framework for full and light regulation pipelines that are relevant to this rule change request can be outlined as follows:

- The regulatory framework for extensions and expansions⁸ currently depends on the form of regulation that applies to the original pipeline that is being extended or expanded.⁹
 - The NGR require a full access arrangement and a limited access arrangement for a light regulation pipeline to include extension and expansion requirements. These requirements may state whether the applicable access arrangement will apply to services to be provided as a result of an extension to, or an expansion of the capacity of, the pipeline.
 - For a light regulation pipeline with no limited access arrangement, an extension or expansion is covered unless the regulator decides otherwise.
- Full access arrangements are the defining feature of the economic regulatory framework for full regulation pipelines under the National Gas Law (NGL) and NGR. Tariff and non-tariff terms and conditions of access to services on full regulation pipelines are regulated by reference to reference services. As a result, the reference services included in an access arrangement are key to the success in applying economic regulation to the services of the pipeline.
- All full regulation pipelines are required to have a full access arrangement which sets out reference tariff and non-tariff terms and conditions for each reference service on that pipeline. A full access arrangement is revised for each access arrangement period through a public consultation process conducted by the regulator. The starting point of this revision process is the service provider's access arrangement revision proposal. The regulator must assess and make a decision on all the constituent parts — financial and

⁸ Expansions of gas pipelines are augmentations of capacity (the addition of compressors or looping), while extensions increase the geographic footprint of the pipeline.

⁹ Extension and expansion requirements are dealt with together for covered pipelines in both the NGL (ss. 2, 18, 19, 33, schedule 1) and the NGR (rules 122, 323, 324, 329).

non-financial — to enable it to make a decision on the whole “package” contained in the access arrangement.

- In relation to the financial aspects of an access arrangement, the accurate determination of efficient costs is fundamental to the setting of efficient reference tariffs. Tariffs that reflect efficient costs are required to enable the efficient use and provision of reference services as well as efficient investment in the pipeline. The revenue and pricing principles in the NGL state that a service provider should be provided with a reasonable opportunity to recover at least the efficient costs of providing the reference services.¹⁰ The revenue and pricing principles also state that the service provider should be provided with incentives to promote economic efficiency with respect to reference services, which includes efficient investment, efficient provision of pipeline services and efficient use of the pipeline.
- The NGL and NGR provide a negotiate-arbitrate regime for third party access to natural gas pipelines. Effective access negotiations are underpinned by information on the availability and cost of the services to which the user is seeking access. Up to date capacity and usage information is required by prospective users in order to decide whether to seek access and in negotiations for access. Bulletin Board pipeline service providers are required to publicly disclose up to date capacity and usage information. In the absence of reference tariffs, up to date financial information is required by prospective users in order to determine whether the tariff and non tariff terms and conditions being offered are reasonable. Under the current regulatory framework, very little financial information needs to be disclosed for light regulation pipelines.

1.3 Rationale for the rule change request

In the rule change request, COAG Energy Council has sought to make amendments to Parts 1, 3, 7 to 11, 15 and 18 of the NGR in order to implement most of the Commission’s package 1 recommendations. These changes, if implemented in full, are expected to assist pipeline users and prospective users to negotiate lower tariffs, prices and better terms and conditions for their gas transportation agreements.

The COAG Energy Council considers that the proposed amendments to the NGR will:¹¹

place greater constraint on the use of market power by pipeline owners and, as gas shippers seek to negotiate new gas transport contracts, make it easier and less costly to move gas on regulated pipelines, placing downward pressure on gas prices

1.4 Solution proposed in the rule change request

To achieve the expected outcome noted above, the COAG Energy Council proposed a number of amendments to the NGR. These are outlined in the table below which also identifies the corresponding Commission recommendation.

¹⁰ Section 24 of the NGL.

¹¹ COAG Energy Council, *Gas market reform bulletin No.3*, August 2018.

Table 1.1: Components of the COAG Energy Council's rule change request

| COAG ENERGY COUNCIL PROPOSAL AND AEMC RECOMMENDATION | COAG ENERGY COUNCIL PROPOSED AMENDMENTS TO THE NGR |
|---|---|
| Extensions and expansion arrangements | |
| Include all new expansions in an access arrangement (recommendation 2) | Amendments to rule 104. |
| Enable existing extensions to be included in access arrangements (recommendation 4) | Amendments to rule 104 and any other changes necessary to provide a mechanism by which a capital base can be determined for any existing extension or expansion which a service provider wishes to include in the access arrangement. |
| Reference services | |
| Clarify the requirements for describing pipeline services (recommendation 5) | Insert new rule 47A and amend rule 45. |
| Clarify the requirements for describing reference services (recommendation 6) | Insertion of new rule 47A, amendments to rule 48 and omission of rule 101. |
| Update the test for determining a reference service (recommendation 7) | Insertion of new rule 47A, amendments to rule 48 and omission of rule 101. |
| Introduce a reference service proposal process and improve the access arrangement review process (recommendation 8) | Insertion of new rule 47A, the omission of rules 13 and 57 and the amendments to rules 41, 50, 59 and 62. |
| Access arrangements | |
| Develop financial models to be used by service providers (recommendation 9) | Insertion of new rules 75A and 75B. |
| Clarify the operation of revenue caps (recommendation 10) | Amendment to rule 92 |
| Clarify that the regulator is to have regard to risk sharing arrangements (recommendation 11) | Amendments to rules 97 and 100. |
| Extend the revision period (recommendation 12) | Amendment to rule 59. |
| Clarify the process for equalising revenue during the interval of delay (recommendation 13) | Amendments to rules 3 and 92. |
| Remove the limited and no discretion regulatory framework (recommendation 14) | Omission of rule 40 and amendments to rules 41, 50, 79, 89, 91, 94 and 95. |
| Efficient costs | |
| Provide guidance on the allowed return for speculative capital expenditure | Amendments to rule 84. |

| COAG ENERGY COUNCIL PROPOSAL AND AEMC RECOMMENDATION | COAG ENERGY COUNCIL PROPOSED AMENDMENTS TO THE NGR |
|--|---|
| (recommendation 15) ^(a) | |
| Clarify the application of the new capital expenditure criteria (recommendation 16) | Amendments to rule 79. |
| Enable addition of existing extensions and expansions to the opening capital base (recommendation 18) | Amendment to rule 77. |
| Require allocation of expenditure between covered and uncovered parts of a pipeline (recommendation 19) | Amendments to rules 79 and 91. |
| Amend definition of rebateable services and rebate methodology (recommendation 20) | Amendments to rule 93 and 97. |
| Information and negotiation | |
| Require transmission pipeline service providers to disclose Bulletin Board information (recommendation 21) | Omission of rule 111 and amendments to rules 141, 145, 177. |
| Require distribution pipeline service providers to disclose capacity and usage information (recommendation 22) | Proposed rules 35B, 36A to 36C in Part 7, 112A, 112B, 112C and 112D in Division 2 of Part 11. |
| Clarify the role of the regulator in passing on information requests to service providers (recommendation 23) | Amendments to rule 107. |
| Introduce a financial and offer information disclosure regime for light regulation pipelines (recommendation 24) | Proposed rules 35B, 36A, 36D to 36F, in Division 2 of Part 11 and amendments to rule 36. |
| Remove the requirement to provide KPIs as part of the access arrangement (recommendation 25) | Amendments to rules 45 and 72. |
| Improve the Scheme Register (recommendation 26) | Amendments to rules 133 to 135 and insertion of new rule 135A. |
| Improve the access negotiation process (recommendation 27) ^(b) | Amendments to rule 112. |

Source: COAG Energy Council, *rule change request*, 5 October 2018, table 1.

Note: The amendments in the final rule are not identical to COAG Energy Council's proposed amendments above. Some changes have been made either to correct rule numbering and other minor errors or to better match the proposals and recommendations. Table 2.1 of this final rule determination also provides references to amendments contained in the final rule.

(a) This recommendation was not implemented in the final rule. See the discussion on the speculative capital expenditure account in Chapter 2 of this final rule determination.

(b) This recommendation was not included in table 1 of the COAG Energy Council rule change request, but was included in the accompanying proposed NGR amendments.

As indicated by the table above, most of the recommendations made by the Commission are reflected in the COAG Energy Council's rule change request. The exception is in regard to the Commission's recommendation that a capital base be determined for light regulation pipelines by the relevant regulator.¹²

In the review, the Commission concluded that the benefits of developing an initial capital base for light regulation pipelines (of increased certainty and potentially enable a faster outcome in the event of a dispute) would outweigh the costs of making such a determination. As a result, it recommended amending the NGR to require the regulator to determine an initial opening capital base for those light regulation pipelines without an initial capital base. In practice, this new requirement would be immediately relevant to the Carpentaria Gas Pipeline and the Kalgoorlie to Kambalda Pipeline.

The COAG Energy Council has indicated that it agrees in principle with the Commission's recommendation. It is anticipated that this issue will be considered in the context of further work by the Senior Committee of Officials (SCO) on light regulation, Part 23 and the coverage test:¹³

Council have tasked the SCO to commence development of a COAG Regulation Impact Statement (RIS) to consider and develop further options for rule and law changes. It will draw on the large amount of existing material examining pipeline regulation and the tests and governance arrangements used to determine whether a pipeline should be regulated and the form of regulation that should apply. The timing and scope of the RIS is to be developed by the end of 2018 by the Gas Major Project Implementation Team. The RIS will also aid in informing a review of the Part 23 Information Disclosure and Arbitration Framework (commencing August 2019). If required, a further package of law and rule changes will be provided to the Council as soon as possible after completion of the RIS and Part 23 Review.

Stakeholder submissions in response to the draft rule determination did not raise the matter of determining an initial capital base for light regulation pipelines. Consequently, this issue has not been considered as part of the final rule determination.

In regard to the Commission's review recommendations that the operation of the coverage test and forms of regulation be reviewed, and that the regulators set a capital base value for light regulation pipelines, the COAG Energy Council has commenced a regulation impact statement process to consider these issues.¹⁴

¹² AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 151-152.

¹³ COAG Energy Council, *Gas market reform bulletin no.3*, August 2018, p. 1 & attachment.

¹⁴ COAG Energy Council, meeting communique, 19 December 2018, p. 2.

1.5 Relevant background

As noted previously, the COAG Energy Council's rule change request is based on the package 1 recommendations contained in the Commission's final report for the Review into the scope of economic regulation applied to covered pipelines.¹⁵

The review 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 Australian Competition & Consumer Commission (ACCC) and the AEMC.¹⁶ Both reports found that improvements to the regulatory framework for gas transportation were required in order to:

- prevent the opportunity for monopolistic behaviour and pricing
- improve the function of the gas transportation market
- achieve the COAG Energy Council's gas market vision:¹⁷

The Council's vision is for the establishment of a liquid wholesale gas market that provides market signals for investment and supply, where responses to those signals are facilitated by a supportive investment and regulatory environment, where trade is focused at a point that best serves the needs of participants, where an efficient reference price is established, and producers, consumers and trading markets are connected to infrastructure that enables participants the opportunity to readily trade between locations and arbitrage trading opportunities.

As part of a package of reforms responding to these findings, the COAG Energy Council requested that the AEMC review the economic regulatory framework as it currently applies to covered transmission and distribution natural gas pipelines across Australia. The terms of reference for the review asked the AEMC to:¹⁸

make recommendations on any amendments it considers necessary to Parts 8-12 of the NGR to address concerns that pipelines subject to full regulation are able to exercise market power to the detriment of economic efficiency and the long term interests of consumers.

1.5.1 Review into the scope of economic regulation applied to covered pipelines

On 3 July 2018, the Commission published its final report for its review into the scope of economic regulation applied to covered pipelines. It set out 32 recommendations to improve the economic regulation applied to full and light regulation transmission and distribution gas pipelines. The Commission's key recommendations from the review included:¹⁹

¹⁵ The package 1 recommendations include amendments to the NGR for immediate consideration through a rule change request and do not require legislative changes to the NGL. In contrast, 'package 2' includes amendments to the NGL by the South Australian Parliament on the recommendation of the COAG Energy Council and amendments to the NGR either by the COAG Energy Council on recommendation of the South Australian Minister, or through a rule change request to the AEMC.

¹⁶ ACCC, *Inquiry into the east coast gas market*, April 2016; AEMC, *East coast wholesale gas market and pipeline framework review*, stage 2, final report, May 2016.

¹⁷ COAG Energy Council, *Australian gas market vision*, December 2014.

¹⁸ COAG Energy Council, *Review into the scope of economic regulation applied to covered pipelines, terms of reference*, 5 May 2017.

¹⁹ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. ii-v.

- A new approach to determining which pipeline services should be specified as reference services in a full access arrangement.
- Strengthened information reporting obligations on full and light regulation pipeline service providers.
- Requiring the regulators to calculate an initial capital base for light regulation pipelines, where a valuation does not already exist.
- Making arbitration a more credible threat to constrain the use of market power by clarifying the bases for access determinations, improving the arbitration process and enhancing its transparency.
- Reducing the ability for service providers to exercise market power over pipeline expansions.
- Enabling regulators to determine more efficient tariffs and non-tariff terms and conditions set in access arrangements so that users do not pay for services or terms and conditions that they do not use.
- Facilitating greater stakeholder engagement in the access arrangement assessment process.
- Improving regulatory decision-making through the removal of the limitations on regulatory discretion applied to certain elements of an access arrangement so that it is clear that the regulator has the power to make decisions that best contribute to the national gas objective in relation to all aspects of an access arrangement.

In addition, the Commission concluded that the current order and construction of the tests which determine the form of regulation that applies to a particular pipeline are not consistent with good regulatory practice. The Commission recommended that it carry out a review into these issues in 2019, at the same time as or part of the review into the operation of Part 23 of the NGR.²⁰

The Commission found that if its recommendations were to be implemented in full, the reforms would assist users and prospective users to negotiate lower prices and better terms for their gas transportation agreements. A broader range of pipeline services would be subject to access arrangements, prices for services would be set at more efficient and cost-reflective levels and contract terms would be more balanced. In addition, greater information would be provided to the pipeline users to aid their negotiations, and arbitration would act as a more credible back-stop if negotiations fail.

Recommended implementation plan

In the final report, the Commission also set out a plan for the implementation of its recommendations into two packages of reforms. These were:²¹

- Package 1: Amendments to the NGR for immediate consideration through a rule change request to the AEMC.

²⁰ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. v.

²¹ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 224-225.

- Updating extension and expansion requirements (recommendation 2)
- Describing reference and pipeline services and introducing a reference service setting process (recommendations 5 to 8)
- Improvements to the access arrangement process (recommendations 9 to 14)
- Clarifying the provisions relating to the calculation of efficient costs (recommendations 15 to 20), which includes a:
 - transitional rule on the calculation of an initial opening capital base for light regulation pipelines (recommendation 17)²²
 - transitional rule on the calculation of an initial opening capital base for an existing uncovered expansion or extension that the service provider elects to cover and rolling it into the opening capital base of the pipeline (recommendations 4 and 18)
- Information provision by service providers (recommendations 21 to 26).
- Package 2: Amendments to the NGL by the South Australian Parliament on the recommendation of the COAG Energy Council, and amendments to the NGR either by the COAG Energy Council on recommendation of the South Australian Minister or through a rule change request to the AEMC.
 - Dispute resolution (NGL amendments) (recommendations 27 to 32)
 - Consequential amendment to create an access negotiation process with clear dispute resolution proceeding triggers (NGR amendment) (recommendation 27)
 - Consequential amendments on the treatment of expansions and extensions for covered pipelines (NGL and NGR amendments) (recommendations 2 to 3).

Stakeholder consultation during the review

Over the course of the 13-month review, the Commission released four papers and received 38 submissions. In addition, the AEMC staff met more than 25 stakeholders including gas pipeline service providers, users, and relevant jurisdictional bodies. A stakeholder workshop was held on 14 December 2017 to discuss the interim report. Regular meetings with the ACCC, AER, ERA, and Gas Market Reform Group (GMRG) were also held.

Table 1.2: Stakeholder consultation during the review

| REVIEW STAGE | DATE | SUBMISSIONS RECEIVED |
|----------------|------------------|----------------------|
| Issues paper | 27 June 2017 | 20 |
| Interim report | 31 October 2017 | Not applicable |
| Draft report | 27 February 2018 | 18 |
| Final report | 3 July 2018 | Not applicable |

Source: COAG Energy Council, *rule change request*, p. 19.

²² The COAG Energy Council has not proposed rules to implement this recommendation. While it agrees in principle, it intends to consider the issue after further work by the Senior Committee of Officials. COAG Energy Council, *Gas market reform bulletin no.3*, August 2018.

1.6 The rule making process

On 1 November 2018, the Commission published a notice advising of its intention to commence the rule making process in respect of the COAG Energy Council's rule change request.²³

As noted above, the Commission decided to fast-track this rule change request. Accordingly, the Commission did not publish a consultation paper upon initiation of the rule change process and there has been no consultation carried out prior to the draft rule determination being published on 6 December 2018. The Commission received eight submissions on the draft rule determination. It has also consulted with a number of stakeholders individually.

The Commission considered all issues raised by stakeholders during that consultation period. Many of these issues are discussed and responded to in the relevant sections of this final rule determination. Issues that are not discussed in the body of this document have been summarised and responded to in Appendix A.

²³ This notice was published under s. 303 of the National Gas Law (NGL). South Australian Government Gazette no. 65, 1 November 2018, Notice under National Gas Law, p. 3927.

2 FINAL RULE DETERMINATION

2.1 The Commission's final rule determination

The Commission has made a final rule determination to make a final rule as proposed by the COAG Energy Council with some amendments and the inclusion of consequential transitional arrangements. The final rule will improve the economic regulatory framework that applies to covered transmission and distribution natural gas pipelines across Australia. It will also improve the transparency of market information, support effective negotiations and improve access to covered pipelines. The amendments will assist regulators to make better informed decisions on reference services, access arrangements and the efficient allocation of costs.

The Commission's reasons for making this final rule determination, and the key features of the final rule, are set out in section 2.4. More details on the Commission's reasons are included in Chapters 3 to 7.

This chapter outlines:

- the rule making test for changes to the NGR
- the assessment framework for considering the rule change request
- the Commission's consideration of the final rule against the national gas objective.

Further information on the legal requirements for making this final rule determination is set out in Appendix B.

2.2 Rule making test

2.2.1 Achieving the NGO

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 national gas objective (NGO).²⁴

The NGO is:²⁵

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.

2.2.2 Changes from the proposed rule

In making its draft rule determination and draft rule, the Commission made a number of changes to the proposed rule. Following consultation with stakeholders on the draft rule and other information relevant to the regulation of covered pipelines, the Commission has made some further changes in making the final rule.

These changes do not materially alter the intent or policy position reflected in the proposed rule and rule change request, and thus do not represent a more preferable rule under s. 296 of the NGL.

²⁴ Section 291(1) of the NGL.

²⁵ Section 23 of the NGL.

The changes made to the proposed rule are summarised below.

Enabling existing pipeline extensions to be included in access arrangements.

While this change was proposed by the COAG Energy Council, specific amendments to the NGR were not included in the proposed rule. The Commission has determined that the policy objective can be achieved by amendments to rules 77 and 104 of the NGR. These changes will, if the service provider agrees, enable existing extensions to be included in an access arrangement as well as provide for a value for such extensions to be made and added to the capital base of the relevant pipeline. This is reflected in the final rule.

Speculative capital expenditure account

In its proposed rule change the COAG Energy Council drew on the recommendations and rule contained in the final report from the Commission's Review into the scope of economic regulation applied to covered pipelines.

Recommendation 15 of the final report aimed to provide guidance on the allowed return for speculative capital expenditure, and this recommendation was reflected in proposed amendments to rule 84.

However, on 13 August 2018 a Bill (the Bill) containing legislative amendments on binding rates of return was introduced into the South Australian Parliament.²⁶ The legislative amendments, supported by the COAG Energy Council and developed through a process external to the Commission, remove heads of power for the Commission to make rules regarding the determination of a rate of return.²⁷ These amendments implement a binding instrument that sets out a single approach to the calculation of rate of return parameters for all regulated electricity service providers and all full regulation gas pipelines; and which is developed through a single, industry-wide process every four years. The Bill was passed by the Legislative Council on 13 November 2018 and commenced on 13 December 2018. The rule changes required as a consequence of this law change were made by the South Australian Minister and commenced operation on 1 February 2019. These rule changes included an amendment to rule 84 in relation to the rate of return applied to speculative capital expenditure.

As a result, the Commission's final rule does not include any amendment to rule 84. The policy objective recommended by the Commission and proposed by the COAG Energy Council has not been met.

Clarify that the regulator have regard to risk sharing arrangements.

The final rule (rule 100) differs in wording to the COAG Energy Council's proposed rule to better achieve the stated policy objective. Specifically, the wording of the rule now more closely matches the recommendation in the Commission's final report clarifying that, in deciding whether the non-tariff terms and conditions of an access arrangement are

²⁶ Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Bill 2018.

²⁷ COAG Energy Council, *Bulletin — Binding rate of return guideline*, June 2018.

appropriate, the regulator must have regard to the risk sharing arrangements implicit in the reference tariff.

Other changes

In addition, the final rule includes a number of the changes made to the draft rule in response to submissions. These include:

- deletion of two pipeline service characteristics in draft rule 47A(2)(b) and (d) (direction of the pipeline and direction of flow of natural gas through the pipeline) (see section 4.1 of this final rule determination)
- require, rather than allow, the regulator to take into account the revenue equalisation rule (rule 92(3)) when fixing reference tariffs for the new access arrangement period following an interval of delay (see section 5.5)
- remove information reporting duplication for distribution pipeline service providers where certain information is already provided by another party (see section 7.1)
- allow that, where the service provider needs more than the 25 business days to carry out further investigations within an access negotiation process under rule 112, or requires more than 15 business days to respond to amendments requested by the prospective user within the negotiation process, then the service provider can request an extension from the prospective user (see section 7.3)
- allow the service provider to recover its reasonable and efficient costs for investigations carried out in an access negotiation process under rule 112 (see section 7.3)

A number of other minor policy and drafting changes have also been made to improve the final rule, including adopting a number of changes recommended by stakeholders in submissions on the draft rule.

2.3 Assessment framework

In making its review recommendations, the Commission considered the following questions in its NGO assessment of the current framework:²⁸

- Do the NGR provide for an efficient and effective regulatory framework that is consistent with the NGO?
- Do the NGR support efficient investment in gas transmission and distribution pipelines?
- How do the requirements under the NGR affect the efficient operation and use of gas transmission and distribution pipelines?
- Do the NGR provide appropriate incentives to service providers to provide access to pipeline services for users?
- Do the requirements under the NGR influence the tariff and non-tariff terms and conditions of access to pipeline services for the long term interests of gas consumers?

Having made its recommendations against these criteria, the Commission has assessed the rule change request against the NGO and has considered the following principles:

²⁸ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 3-5.

- Monopoly pricing: whether a service provider, unconstrained by competition, could increase prices materially beyond those required in order to support efficient costs.
- Efficient allocation of costs: whether users of one service could be inefficiently subsidising users of other services provided on a pipeline by the service provider.
- Regulatory and administrative complexity: whether regulation is unnecessarily complex, such as when a single pipeline is unnecessarily subject to multiple regulatory regimes, the cost of which is likely to flow to end gas users.
- Regulatory discretion: whether the regulator's discretion is in line with the national gas objective of economic efficiency and the long term interests of gas consumers.

The Commission also considered the proposed rule and the final rule in the terms of best practice regulation in relation to:

- Transparency: sufficient information should be available and relevant for users to negotiate access to a pipeline as well as to enable effective regulatory decision-making.
- Proportionality: the context of the issue identified and the potential benefits that may result from changes to the regulation of pipelines should be assessed such that an appropriate balance between the costs and benefits of regulation can be found.
- Consistency and fit-for-purpose: while a regulatory framework should apply consistently, it should also accommodate differences in particular requirements where this is necessary and appropriate.
- Adverse and unintended consequences: while regulation does have an impact on stakeholders, consideration should be had as to whether any adverse or unintended consequences arise.
- Market resilience: amendments to the framework should aim to be flexible and resilient to future market developments.

2.4 Summary of reasons

Having regard to the issues raised in the rule change request and during consultation, the Commission is satisfied that the final rule will, or is likely to, contribute to the achievement of the NGO. The final rule made by the Commission is attached to and published with this final rule determination. The key features of the final rule and the relevant reasons are:

- Extensions and expansions: reduce the ability for service providers to exercise market power over pipeline expansions and extensions, enable more efficient allocation of costs, reduce the regulatory burden and support improved decision-making by regulators (see also Chapter 3). This will be achieved by:
 - Treating all new pipeline expansions as part of the relevant scheme pipeline, and so applying either light or full regulation (as applicable to the original pipeline) to the expansion.
 - Permitting service providers to elect for existing extensions to a full regulation pipeline to become part of the covered pipeline and incorporated into the access arrangement.

- **Reference services:** introduce a new approach to determine which pipeline services should be specified as reference services in a full access arrangement. This is expected to result in additional services being specified as reference services. The new approach includes new criteria for determining appropriate reference services, as well as providing users with greater opportunity for engagement regarding the decision to determine reference services. This is expected to result in greater transparency of services and their costs relevant to users and lower the likelihood of monopoly pricing (see Chapter 4).
- **Access arrangements:** facilitate greater stakeholder engagement in the access arrangement assessment process. Adjustments to the access arrangement assessment process will provide more time for stakeholder engagement in order to enable the regulator to make more informed decisions in the long-term interest of consumers (in addition to the introduction of the separate reference service process noted above). The final rule also supports improved regulatory decision-making through the removal of the limitations on regulatory discretion applied to certain elements of an access arrangement. These changes clarify that the regulator has the power to make decisions that best contribute to the national gas objective in relation to all aspects of an access arrangement (see Chapter 5).
- **Efficient costs:** enable the regulator to more effectively determine efficient reference tariffs and non-tariff terms and conditions set in access arrangements so that tariffs are consistent with the level of risk borne by pipeline service providers and users, and so that users do not pay for services or terms and conditions that they do not use. This will be achieved by amendments and clarifications in rules regarding the assessment criteria for capital expenditure, cost allocation requirements and non-tariff terms and conditions (see Chapter 6).
- **Information and negotiation:** strengthen information reporting obligations on full and light regulation pipeline service providers. These final rules apply many of the information provision obligations that already apply to Bulletin Board pipelines and non-scheme pipelines under Part 23 of the NGR to light regulation pipelines and distribution pipelines. The amendments are expected to result in more relevant, timely and accessible information for users and prospective users to inform their negotiations with service providers. Amendments have also been made to improve the negotiation process for access to covered pipelines (see Chapter 7).

2.5 Other requirements under the NGL

In applying the rule making test, the Commission has also had regard to the revenue and pricing principles.²⁹ In particular, regard has been given to whether the final rule provides a service provider with a reasonable opportunity to recover at least the efficient costs in providing reference services and complying with its regulatory obligations and requirements. Further, consideration has also been given to the effectiveness of incentives to promote economic efficiency with regard to the:

- efficient investment in, or in connection with, a pipeline

²⁹ Section 24 of the NGL.

- efficient provision of pipeline services
- efficient use of the pipeline.

Consideration has also been given to the revenue and pricing principles in relation to the economic costs and risks of the potential for under and over investment by a service provider in a pipeline with which the service provider provides pipeline services, as well as the economic costs and risks of the potential for under or over utilisation of a pipeline with which a service provider provides pipeline services.

2.6 Implementation of the final rule

Table 2.1 sets out the final rule amendments to Parts 1, 3, 7 to 11, 15 and 18 of the NGR and the implementation date for each component.

The final rule will commence on 21 March 2019, subject to the transitional arrangements set out in Chapter 8.

Table 2.1: Components and implementation of the final rule

| COMPONENT | FINAL RULE | IMPLEMENTATION DATE |
|---|--|--|
| Extensions and expansions | | |
| Include all new expansions in an access arrangement | Amend rule 104 | 21 March 2019 |
| Enable existing extensions to be included in access arrangements | Amend rule 104 | 21 March 2019 |
| Reference services | | |
| Clarify the requirements for describing pipeline and reference services | Insert new rule 47A, amend rules 45 and 48, omit rule 101 | 21 March 2019 |
| Update the test for determining a reference service, introduce a reference service proposal process and improve the access arrangement review process | Insert new rule 47A, amend rules 3, 46, 47, 48, 50, 51, 58, 59, 62 and 64 and omit rules 13 and 57 | 21 March 2019 (including a transitional rule to exempt certain pipelines with access arrangement revisions due on or before 1 January 2020: transitional provisions, final rules 61, 62) |
| Access arrangements | | |
| Develop financial models to be used by service providers | Insert new rules 75A and 75B, amend rules 72 and 73 | 21 March 2019 |
| Clarify the operation of revenue caps | Amend rule 92 | 21 March 2019 |
| Clarify that the regulator is to have regard to risk sharing arrangements | Amend rules 97 and 100 | 21 March 2019 |
| Extend the revision period | Amend rule 59 | 21 March 2019 |

| COMPONENT | FINAL RULE | IMPLEMENTATION DATE |
|--|--|---|
| Clarify the process for equalising revenue during the interval of delay | Amend rules 3 and 92 | 21 March 2019 |
| Remove the limited and no discretion regulatory framework | Omit rule 40 and amend rules 41, 50, 79, 89, 91, 94 and 95 | 21 March 2019 |
| Efficient costs | | |
| Clarify the application of the new capital expenditure criteria | Amend rule 79 | 21 March 2019 |
| Enable the addition of existing extensions and expansions to the opening capital base | Amend rule 77 | 21 March 2019 |
| Require allocation of expenditure between covered and uncovered parts of a pipeline | Amend rules 79 and 91 | 21 March 2019 |
| Amend definition of rebateable services and rebate methodology | Amend rule 93 and 97 | 21 March 2019 |
| Negotiation and information | | |
| Require transmission pipeline service providers to disclose Bulletin Board information | Omit rule 111 and amend rules 141, 145, 175 | 21 March 2019 except as follows: Make all transmission scheme pipelines Bulletin Board pipelines (amend rule 141): 21 April 2019 Extend outlook of uncontracted primary capacity from 12 months to 36 months (amend rule 175): 21 June 2019 |
| Require distribution pipeline service providers to disclose capacity and usage information | Insert new rules 35A, 36A-36C, 112A—112D | 21 March 2019 (note that the application date defined in amended rules 35A and 112A is 3 months after the date the rule is made, 21 June 2019) |
| Clarify the role of the regulator in passing on information requests to service providers | Amend rule 107 | 21 March 2019 |
| Introduce a financial and offer information disclosure regime for | Insert new rules 35A, 35B, 36B, 36D-36F, | 21 March 2019 except as follows: |

| COMPONENT | FINAL RULE | IMPLEMENTATION DATE |
|--|--|--|
| light regulation pipelines | schedule 1 rules 60, 62, 63 and amend rule 36 | Financial reporting guidelines prepared by 31 October 2019: transitional provisions, final rule 63 Financial information and weighted average price information to be published for financial years ending after (but not including) 31 December 2019: transitional provisions, final rule 64 |
| Remove the requirement to provide KPIs as part of the access arrangement | Amend rules 45 and 72 | 21 March 2019 |
| Improve the Scheme Register | Amend rules 133-135 and insert new rules 134A, schedule 1 rules 60, 65 | 21 July 2019 except as follows: Service providers for non-scheme pipelines must provide information to the AEMC within 6 weeks of the date the rule is made: transitional provisions, final rule 65 |
| Improve the access negotiation process | Amend rule 112 | 21 March 2019 |

3 EXTENSIONS AND EXPANSIONS

Over the course of a pipeline's life, a service provider may build extensions or expansions to the pipeline.

Extensions to a pipeline increase the geographic range of the pipeline to new locations. A lateral that connects to the original pipeline and has the same service provider as the original pipeline is regarded as an extension. A lateral that connects to the original pipeline but is not owned by the original pipeline service provider is not an extension but a separate pipeline, and would be treated as such for regulatory purposes.

Expansions are augmentations of a pipeline's capacity that are generally achieved through the addition of compressors or looping. Both enable more gas to be transported through the pipeline. The geographic reach of the pipeline is not altered by an expansion.

This chapter first sets out the NGR requirements regarding the regulatory treatment of extensions and expansions to a covered pipeline. It then discusses stakeholder views and the Commissions conclusions regarding these requirements in turn.

3.1 Current framework for extensions and expansions

The current regulatory framework for extensions and expansions to pipelines is dependent upon the form of regulation that applies to the original pipeline that is being extended or expanded.

Section 18 of the NGL states that an extension or expansion to a covered pipeline must be taken to be part of a covered pipeline if, by operation of the extension and expansion requirements under an applicable access arrangement, the applicable access arrangement will apply to pipeline services provided by means of the covered pipeline as extended or expanded. The NGR requires a full access arrangement³⁰ (for a full regulation pipeline) and a limited access arrangement³¹ (optional for a light regulation pipeline) to include extension and expansion requirements. Extension and expansion requirements are defined in the NGL as:³²

- (a) The requirement contained in an access arrangement, that, in accordance with the Rules, specify –
 - (i) The circumstances when an extension to, or expansion of the capacity of, a covered pipeline is to be treated as forming part of the covered pipeline; and
 - (ii) Whether the pipeline services provided or to be provided by means of, or in connection with, spare capacity arising out of an extension to, or expansion of the capacity of, a covered pipeline will be subject to the applicable access arrangement applying to the pipeline services to which that access

³⁰ Rule 48 of the NGR.

³¹ Rule 45 of the NGR.

³² Section 18 of the NGL.

arrangement applies; and

(iii) Whether an extension to, or expansion of the capacity of, a covered pipeline will affect a reference tariff, and if so, the effect on the reference tariff; and

(b) Any other requirements specified by the Rules as extension requirements.

As part of a full or limited access arrangement, these requirements must be approved by the regulator. Rule 104 of the NGR states that the extension and expansion requirements:

- may state whether the applicable access arrangement will apply to services to be provided as a result of an extension to, or an expansion of the capacity of, the pipeline
- may outline the basis to later determine whether the applicable full access arrangement will apply to services to be provided as a result of a pipeline extension or expansion
- for a full access arrangement, must specify the impact on tariffs in cases where the access arrangement applies to incremental services as a result of an extension or expansion.

The effect of s. 18 of the NGL is that a full regulation pipeline service providers have the ability to propose an approach to the treatment of extensions and expansions in an access arrangement proposal through the proposed extension and expansion requirements. In assessing the proposal, the regulator may decide not to approve the proposed approach and decide that an alternative approach must be included in the access arrangement.

For light regulation pipelines that do not have a limited access arrangement, s. 19 of the NGL states that an extension or expansion of the pipeline must be taken to be part of the covered pipeline unless the regulator determines otherwise in writing.

Extensions or expansions that have not been included in a full or limited access arrangement for a covered pipeline will not be part of that covered pipeline, and will therefore be a non-scheme pipeline under the NGL. For this reason, Part 23 of the NGR will apply to these parts of a relevant pipeline (subject to the exemption categories in rule 585 of the NGR).³³

If a pipeline extension or expansion is uncovered, any person can apply to the National Competition Council (NCC) for its coverage. The NCC applies the coverage criteria to make a coverage recommendation for the relevant Minister to then make a coverage determination.³⁴

The current regulatory approach to extensions and expansions is illustrated in Table 3.1.

³³ The exemption categories under rule 585 of the NGR are: Category 1: exemption from arbitration of access disputes (the pipeline does not provide third party access), Category 2: exemption from information disclosure provisions (either the pipeline does not provide third party access, or the pipeline is a single shipper pipeline), and Category 3: exemption from publishing service usage information, service availability information and financial information (at any time, the average daily injection of natural gas into the non-scheme pipeline calculated over the immediately preceding 24 months is less than 10TJ/day).

³⁴ The pipeline coverage criteria are set out in s. 15 of the NGL.

Table 3.1: Current approach to extensions and expansions

| FORM OF REGULATION APPLIED TO PIPELINE | COVERAGE OF EXTENSION AND EXPANSION |
|--|--|
| Full regulation Light regulation (with limited access arrangement) ^(a) | The access arrangement, as approved by the regulator, specifies if an access arrangement applies to the services provided by an extension or expansion. If the access arrangement applies, then the extension or expansion is part of the covered pipeline and the same form of regulation will apply to it (s. 18 of the NGL). If the access arrangement does not apply, Part 23 applies. |
| Light regulation (no limited access arrangement) | Extension and expansions are included as part of the covered pipeline and light regulation will apply to those services, unless the regulator determines otherwise (s. 19 of the NGL). |
| Non-scheme pipeline | Part 23 also applies to extensions and expansions of the pipeline. |

Source: AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 61.

Note: (a) None of the service providers of light regulation pipelines have submitted a limited access arrangement under rule 45 of the NGR.

3.2

Assessment of extensions

3.2.1

Draft rule determination

The COAG Energy Council proposed an amendment to rule 104 of the NGR that would permit service providers to include existing extensions to a covered pipeline in the relevant access arrangement (as shown in Table 3.2 below). The COAG Energy Council also sought to amend the NGR in order to allow for the inclusion of the value of the existing uncovered extension in the capital base. This is discussed further in Chapter 6 of this final rule determination.

Table 3.2: Proposed approach for extensions to covered pipelines

| FORM OF REGULATION APPLIED TO PIPELINE | TREATMENT OF EXISTING EXTENSIONS | TREATMENT OF FUTURE EXTENSIONS |
|---|--|---|
| Full regulation Light regulation (with limited access arrangement) | An existing extension included in the current access arrangement will remain included and be treated as part of the covered pipeline. The form of regulation applied to the pipeline applies | A new extension: <ul style="list-style-type: none"> may be included in the access arrangement in accordance with the access arrangement's extension requirements approved by the |

| FORM OF REGULATION APPLIED TO PIPELINE | TREATMENT OF EXISTING EXTENSIONS | TREATMENT OF FUTURE EXTENSIONS |
|--|---|--|
| | <p>to the extension.</p> <p>An existing extension that is not included in the current access arrangement:</p> <ul style="list-style-type: none"> may be included in the access arrangement from the next access arrangement period if sought by the service provider and approved by the regulator. The form of regulation applied to the pipeline will apply to the extension may become a covered pipeline as the result of a successful coverage application by the service provider or a third party. | <p>regulator. The form of regulation applied to the pipeline will apply to the extension</p> <ul style="list-style-type: none"> may become a covered pipeline as the result of a successful coverage application by the service provider or a third party. |
| Light regulation (no limited access arrangement) | <p>An existing extension that is treated as part of the covered pipeline will remain treated as part of that pipeline. Light regulation applies to the extension.</p> <p>An existing extension that the regulator has determined to not be treated as part of the covered pipeline will remain as such. A third party can then submit an application to the NCC to cover the extension.</p> | <p>A new extension will be treated as part of the covered pipeline and light regulation will apply to that extension, unless the regulator determines that the extension should not be part of the covered pipeline. A third party can then submit an application to the NCC to cover the extension.</p> |

Source: AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 72.

The draft rule determination regarding extensions reflected the assessment made by the Commission earlier in its review. In the review the Commission found that the issues around the application of an access arrangement to pipeline extensions are different to those for expansions. By virtue of its different geographic reach, a pipeline extension may face a

different market landscape than the pipeline itself. For example, a pipeline may transport gas to a town with a variety of end users while an extension to the pipeline may be built to service a gas fired generator or mine. In this case, the pipeline and the extension may have different degrees of market power, different risks reflecting the different end use customers, different vertical integration issues and potentially different competitors. For these reasons, the inclusion of an extension in the access arrangement should be considered in light of the particular circumstances.

Consequently, the Commission concluded that:

- For new extensions: the extensions should continue to be treated on a case by case basis, as they may, for example, constitute laterals that face sufficiently different market landscapes from the covered pipelines themselves. This promotes efficiency in balancing the cost and benefit of regulation in each case.
- For existing uncovered extensions: two options should be available:
 - The service provider can propose to include the extension as part of the covered pipeline at the time of revising an access arrangement.
 - If an extension is not included in the access arrangement, then a third party can apply to the NCC for coverage of the extension. If covered, the form of regulation test would then determine which form of regulation should apply to that extension.

The Commission notes that second of these options for existing uncovered extensions (that a coverage determination could be sought) was already permissible under the NGL and NGR and so no further amendments to the framework would be required.³⁵

However, the first of the above options (to incorporate an existing extension into an existing access arrangement) is not currently achievable under the NGR.³⁶

Consequently, the Commission's draft rule determination was to amend the NGR to permit a service provider to seek existing extensions to a covered pipeline be included in the relevant access arrangement. The draft rule included amendments to rule 104(1) and (3) of the NGR.

3.2.2

Stakeholder views

Very few comments were received regarding the draft rule. The Australian Pipelines and Gas Association (APGA) commented that it had no concerns regarding the draft rule for extensions.³⁷

AGL was the only stakeholder who provided any specific comment regarding extensions. AGL stated that although it appreciated the policy position of the Commission, it considered that the default position should be for extensions to be covered by the access arrangement unless the regulator determines otherwise. In its view, it would be more appropriate for the

³⁵ From a regulatory perspective, the extension subject to a coverage application would be treated as a separate covered pipeline. However, under rule 53 of the NGR, access arrangements can be consolidated by direction of the regulator.

³⁶ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 69-73.

³⁷ APGA submission, p.2.

regulator to consider whether there are sufficient constraints on a service provider's ability to exercise market power rather than using the coverage test.³⁸

3.2.3

Assessment

The Commission's analysis of the points raised by AGL does not change its policy position as published in the draft rule determination. The Commission does not agree that the draft rule establishes a default position of "no coverage" for an extension to a covered pipeline. Instead, the draft rule does not provide a "default" treatment of extensions at all. As discussed above, the draft rule is consistent with the current policy position of the NGR that the regulatory treatment of extensions to covered pipelines is to be considered in accordance with the relevant access arrangement approved by the regulator. This will enable each access arrangement to accommodate the particular circumstances of the pipeline and extensions to it.

The Commission has concluded that the final rule should remain unchanged from the draft rule and continue to treat extensions on a case by case basis, as an extension may face sufficiently different market landscape from the original pipeline.

3.2.4

Final rule

The Commission has made a final rule that amends rule 104 of the NGR.

It is satisfied that the flexibility to be provided by the final rule will promote efficiency in balancing the cost and benefit of regulation in each case. This fit for purpose approach to the development of extension requirements for an access arrangement, provides for the final rule coupled with the existing coverage processes, to be consistent with the NGR. Extension requirements specified in this way are expected to support well-informed decision-making on investment in, and use of, a pipeline.

3.3

Assessment of expansions

3.3.1

Draft rule determination

The COAG Energy Council sought to amend rule 104 of the NGR to clarify that if a pipeline is covered, then any expansion of that pipeline should also be covered and included in either the full or limited access arrangement as relevant to the covered pipeline.³⁹ This proposal is summarised in the table below.

³⁸ AGL submission, p. 1.

³⁹ In its review, the Commission also recommended that existing expansions of covered pipelines that are not included in existing access arrangements also be included in the relevant access arrangements. It also recommended removing the regulators' discretion to exclude an expansion from light regulation and to treat any expansions that have been excluded from a light regulation pipeline without a limited access arrangement to become treated as part of that pipeline. These recommendations are not included in the current rule change request. The implementation of these recommendations requires legislative change to ss. 2, 18 and 19 of the NGL and is included in package 2 of the review's recommendations. The COAG Energy Council has indicated its in principle agreement to these recommendations; the Commission understands the implementation of which will be considered following further work by the SCO on light regulation, Part 23 and the coverage test.

Table 3.3: Proposed approach for future expansions to covered pipelines

| FORM OF REGULATION APPLIED TO PIPELINE | TREATMENT OF FUTURE EXPANSIONS |
|--|--|
| Full regulation | A new expansion will be included in the access arrangement of the relevant pipeline and be treated as part of that covered pipeline. The form of regulation applied to the pipeline will apply to the expansion. |
| Light regulation (with limited access arrangement) | |
| Light regulation (no limited access arrangement) | A new expansion will be treated as part of the covered pipeline and light regulation will apply to that expansion. |

Source: AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 67.

The draft rule determination drew on the Commission's assessment carried out in its review. In the review, the Commission found that the discretion available under the current rules relating to the regulatory treatment of expansions provides flexibility, but that flexibility has resulted in inconsistent regulatory treatment across pipelines. For example, it was noted that 46 per cent of the capacity of the Goldfields Gas Pipeline is uncovered,⁴⁰ while for the Central Ranges Pipeline access arrangement for 2005-2019, the service provider had no discretion to exclude expansions from being part of the covered pipeline.⁴¹

In its review, the Commission concluded that the preferable regulatory arrangement would be for expansions to a pipeline to be subject to the same regulatory treatment as the original pipeline. For a covered pipeline, any expansion to its capacity should be treated as part of that covered pipeline.⁴² This is because uncovered capacity on a covered pipeline may lead to:

- Difficulty for regulators in responding to proposed access arrangements that exclude coverage of expansions, particularly where those proposals utilise the coverage criteria.⁴³
- Service providers potentially having an opportunity to exert monopoly power over both the uncovered and covered parts of the pipeline where an expansion to a covered pipeline is outside the access arrangement. Consequently, the Commission recommended amendments to the NGR to enable consistent treatment of both the original pipeline and the expansion in order to reduce the likelihood of monopolistic pricing over the expansions and to improve the cost allocation between original and expanded capacity.⁴⁴
- The reference tariff including costs associated with the uncovered capacity. An expansion leverages off the existing pipeline infrastructure. Having uncovered capacity on a full regulation pipeline makes cost allocation more complex and could result in users of the

40 ERA, *Final decision on proposed revisions to the access arrangement for Goldfields Gas Pipeline*, June 2016, p. 5.

41 Access arrangement for Central Ranges Pipeline, November 2005, p. 28.

42 And similarly for pipelines subject to Part 23 of the NGR as currently provided.

43 ERA, *Issues paper, Goldfields Gas Transmission's proposed expansion of the Goldfields Gas Pipeline*, 3 November 2014, pp. 13-14

44 AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 64.

covered pipeline paying for costs that are not relevant to the services they use. This is not in the interest of gas consumers.⁴⁵

Including expansions in access arrangements would remove some regulatory costs and complexity that arise from having parts of the same pipeline subject to different regulatory requirements. For example, in preparing an access arrangement for the original pipeline and also complying with Part 23 information obligations for the uncovered expansion of that pipeline. While the Commission acknowledged that the extent of such additional regulatory costs may not be significant, it concluded there will be costs that pipeline users and ultimately gas consumers will pay without obtaining any benefit.

In addition, the Commission concluded that it is very likely that a pipeline expansion faces substantially the same market landscape as the pipeline itself, and that as such it should be subject to the same form of regulation. In making this finding, the Commission noted stakeholder concerns that its recommendation to cover existing expansions could increase sovereign risk and dampen investment incentives. It made the following observations:⁴⁶

- A feature of the current regulatory framework is that the NGR are dynamic and the AEMC is expected to review and change rules over time, with any changes only made following consultation.
- The gas pipeline economic regulation framework allows for coverage of a pipeline to be revisited by application at any time (except for 15 years for pipelines that have been granted a 15-year no-coverage determination). Accordingly, the ability of the regulatory status of a pipeline to change over time should have been taken into account when making an investment decision.
- Moreover, proposals made by service providers to the regulator not to include an expansion in an access arrangement have been made after the expansion has been built. As such, the investment decision to build the expansion could not have been driven by the knowledge that the expansion would be an uncovered asset as that would not have been guaranteed at the time of investment.

The Commission 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). This was reflected in draft amendments to rule 104(1)-(3) of the NGR.

3.3.2

Stakeholder views

ATCO was the single stakeholder opposed to the draft rule and provided separate comments in regard to distribution and transmission pipelines.⁴⁷ ATCO submitted that the draft rule relating to expansions for distribution pipelines is unnecessary and may limit future flexibility

⁴⁵ The COAG Energy Council has also proposed to amend the cost allocation rules (rules 79 and 91 of the NGR) in order to clarify that proposed forecast capital and operating expenditures refer to costs after an allocation of costs between the covered and uncovered parts of a pipeline has occurred. See Chapter 6.

⁴⁶ AEMC, *Review into the scope of economic framework applied to covered pipelines*, final report, 3 July 2018, pp. 64-65.

⁴⁷ ATCO submission, pp. 5-6.

for distribution pipelines although, if made, the draft rule would allow for ATCO's current form of extensions and expansions policy to continue.

In regard to transmission pipelines, ATCO also commented that the draft rule was unnecessary and may limit future flexibility to provide services in different markets. ATCO considered that the Commission has incorrectly concluded that consistent regulatory arrangements for expansions of pipelines are necessary. In particular, that the Commission has not taken into account the specific market dynamics underpinning investment decisions by transmission service providers in Western Australia which are materially different to those in the east coast. In its view, flexibility is needed to respond to the dynamics of different mining businesses that use transmission pipelines.

No other stakeholder raised similar concerns to ATCO about either differentiating market dynamics between the east and west coast or limiting future flexibility for service providers. APGA noted that work is currently being conducted on uncovered expansions to covered pipelines through the COAG Regulatory Impact Statement process to consider and develop further options for rule and law changes in this area.⁴⁸

3.3.3

Assessment

In response to ATCO's submission that the changes set out in the draft rule are unnecessary and may limit future flexibility for service providers, the Commission remains of the view that expansions generally face substantially the same market landscape as the original pipeline itself. As a result, expansions should be subject to the same form of regulation as the original pipeline.⁴⁹ There may be some circumstances, as suggested by ATCO, where a single pipeline services different mining businesses. To the extent that these situations may arise, the Commission considers that there will still be sufficient common features between the pipeline and any expansion of it such that the potential market power of the service provider is the same. In this case, the cost of different regulatory treatment between the pipeline and an expansion would be unlikely to outweigh the expected benefits of consistent regulatory treatment that have been previously identified.

The Commission considers that the regulatory treatment of pipeline expansions should be consistent with the original pipeline and that this approach remains relevant and appropriate for transmission pipelines, and more particularly for distribution pipelines.⁵⁰ For this reason, the Commission is satisfied that its draft rule determination remains appropriate.

3.3.4

Final rule

The Commission has made a final rule that adds new rule 104(3) to specify that the extension and expansion requirements of an access arrangement must state that the access arrangement will apply to the incremental services provided by the expansion. The extension and expansion requirements must also set out the effect of the expansion on pipeline tariffs.

⁴⁸ APGA submission, p. 2.

⁴⁹ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 64-65; AEMC, *Regulation of covered pipelines*, draft rule determination, 6 December 2018, pp. 22-23.

⁵⁰ The Commission observes that the inclusion of expansions in access arrangements for distribution pipelines is a common approach that has been approved by the regulators.

The Commission considers that the implementation of the final rule will provide greater certainty on the coverage status of future expansions of covered pipelines, providing a clear framework under which investment decisions can be made. The final rule is also expected to reduce the prospect of service providers exercising monopoly pricing over the services provided by an expansion, which is in the long term interests of consumers.

4 REFERENCE SERVICES

Reference services are the cornerstone of full access arrangements, which are the defining feature of the economic regulatory framework for full regulation pipelines.

Tariff and non-tariff terms and conditions of access to all services on full regulation pipelines are negotiated by reference to reference services. The reference services included within an access arrangement are key to applying economic regulation to the services of pipelines. Defining the reference service performs the following functions:

- The statement of reference service sets the parameters of the service.
- The reference service provides the basis for full access arrangement reference tariff and non-tariff terms and conditions, efficient cost and revenue requirements, and cost allocation.
- The terms and conditions and reference tariffs for reference services set out within full access arrangements aid negotiations and arbitration.

A prospective user seeking access can refer to the reference tariff and reference terms and conditions, as well as the information disclosed in the process of setting them, in access negotiations. Consequently, a reference tariff directly constrains the use of market power of a service provider in the provision of the reference service itself. Moreover, the determination of a reference tariff, through a transparent access arrangement process by a regulator assists parties that are seeking access to services similar to the reference service in their negotiations or in arbitration.

This chapter discusses the Commission's final determination for:

- how pipeline services and reference services are defined
- the process used to determine reference services for an access arrangement.

It then sets out the final rules relating to these issues.

4.1 Defining pipeline and reference services

4.1.1 Current framework

For each reference service provided by a full regulation pipeline, a reference tariff and reference terms and conditions are proposed by the service provider as part of an access arrangement for approval by the regulator. The access arrangement provides a starting point for negotiation and arbitration. In contrast, pipelines subject to light regulation or the access regime for non-scheme pipelines do not have reference services.

A reference service defines a specific service offered by a service provider, in respect of which the regulator has approved tariff and non-tariff terms and conditions. Subject to capacity constraints, a service provider must offer its reference services to any user or prospective user. The user can accept the reference service and reference tariffs, and the associated non-tariff terms and conditions, or negotiate for access to other pipeline services, with associated tariff and non-tariff terms and conditions.

A reference service acts as an aid to the negotiation process between prospective users and a service provider. It narrows points of contention and provides greater predictability of arbitration outcomes. The inclusion of reference services in an access arrangement should reduce the prospect of negotiation leading to arbitration, and reduce the cost of arbitration in the event that it is necessary. To be clear, services that are not reference services (including all services on light regulation pipelines) are still subject to economic regulation through information provision and binding arbitration (if required).

Section 2 of the NGL defines a reference service as:

a pipeline service specified by, or determined or approved by the AER under, the Rules as a reference service.

Section 2 of the NGL defines a pipeline service as follows:

pipeline service means -

- (a) a service provided by means of a pipeline, including—
 - (i) a haulage service (such as firm haulage, interruptible haulage, spot haulage and backhaul); and
 - (ii) a service providing for, or facilitating, the interconnection of pipelines; and
- (b) a service ancillary to the provision of a service referred to in paragraph (a), but does not include the production, sale or purchase of natural gas or processable gas.

Rule 48 of the NGR states that:

- (1) A full access arrangement must: ...
 - (b) describe the pipeline services the service provider proposes to offer to provide by means of the pipeline; and
 - (c) specify the reference services; and
 - (d) specify for each reference service:
 - (i) the reference tariff; and
 - (ii) the other terms and conditions on which the reference service will be provided.

In addition, rule 101 of the NGR states that a full access arrangement must contain a statement of reference services, and provides the basis on which reference services are determined in full access arrangements:

- (1) A full access arrangement must specify as a reference service:
 - (a) at least one pipeline service that is likely to be sought by a significant part of

the market; and

- (b) any other pipeline service that is likely to be sought by a significant part of the market and which the AER considers should be specified as a reference service.

- (2) In deciding whether to specify a pipeline service as a reference service, the AER must take into account the revenue and pricing principles.

The NGL allows for a service provider to enter into an agreement with a user or prospective user for access to the pipeline under terms and conditions that are different from the applicable access arrangement.⁵¹

4.1.2

Draft rule determination

The determination of a reference tariff through a transparent access arrangement process by a regulator assists parties seeking access to the reference service or similar services in their negotiation or arbitration. However, in the review, the Commission noted that most access arrangements for transmission pipelines have contained a single reference service, typically a forward haul service. In some cases this reference service may not provide a useful basis for negotiations for other pipeline services that are not closely related to the reference service. For example, a forward haul reference service may provide little information on negotiations or arbitrations for backhaul, as available, storage or park and loan services.

The Commission concluded that the inclusion of additional reference services in an access arrangement may place further limits on a service provider's use of its market power, through assisting users and prospective users in negotiation and arbitration.⁵²

In order to encourage the inclusion of additional reference services in an access arrangement, the COAG Energy Council proposed amendments to the NGR to address ambiguities within the framework relating to the definition of pipeline and reference services, specifically in relation to:

- the relationship between pipeline services and reference services
- the degree of specificity required to describe or identify a pipeline service and a reference service
- the purpose of the reference service.

Describing pipeline and reference services

The Commission observed in its final report that interpretation of the term "pipeline services" is not aided by the definition in s. 2 of the NGL and the description of pipeline services in an access arrangement in rule 48 of the NGR.⁵³ The definitional scope of a pipeline service could be interpreted in one of two ways:

⁵¹ Section 322 of the NGL.

⁵² AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 76.

⁵³ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 80-83.

- that the access arrangement needs only to include a description of the services that the pipeline proposes to offer, or
- that the access arrangement should set out a list of all services that the pipeline offers or can offer and that a user or prospective user can seek access to.

This suggests that different levels of specificity used in describing pipeline services in an access arrangement may equally satisfy the requirements of the NGR. For example, a pipeline service could be described or identified:

- relatively broadly, such as firm forward haul, or
- more specifically, such as firm forward haul between points A and B.

The Commission found that covered pipeline service providers tend to only provide a general description of services on the pipeline as part of an access arrangement proposal. Service providers have often not provided a more detailed list of pipeline services in response to rule 48. Additionally, the regulators themselves have not required such a list from service providers.

The NGR require a reference service to be a pipeline service that is likely to be sought by a significant part of the market.⁵⁴ The Commission found that under the current framework, if a pipeline service is broadly defined (for example, firm forward haul), then it is not clear how a reference service should be subsequently described or identified so that it is relevant to contract negotiations.

Relatedly, the Commission also concluded that the current definition of a reference service in the NGL and its application in the NGR is ambiguous as there is no stated purpose of the reference service, nor does it clearly distinguish what a reference service is compared to the detailed terms and conditions upon which the service is provided. Rule 101 of the NGR requires a “statement of reference service” although it is not clear what is to be included in such a statement, nor its purpose. For example, it is ambiguous whether the detail of entry and delivery points is part of the statement of a reference service or a term and condition relevant to the reference service.⁵⁵ As a result, users and prospective users may fail to engage effectively in the access arrangement process to determine reference services for a pipeline.

The Commission observed this lack of clarity also creates uncertainty around both negotiation and arbitration. This may in turn provide the opportunity (or perceived opportunity) for service providers to exploit market power by charging monopoly prices for services that cannot be benchmarked against a reference service.

In making this observation, the Commission considered the application of Part 23 of the NGR (the access regime for non-scheme pipelines). Part 23 has sought to address the application of the definition of pipeline service through the following provisions:⁵⁶

⁵⁴ Rule 101 of the NGR.

⁵⁵ Note that a distinction can generally be made between what the reference service is and the terms and conditions on which the service is provided. See the wording in rule 48(1)(c) and (d) of the NGR.

⁵⁶ Rule 549 of the NGR.

- (3) For the purposes of this Part, a pipeline service is to be treated as distinct from another pipeline service having regard to matters including service type (for example, forward haul, backhaul, park and loan) and the priority of the service relative to other pipeline services of the same type.
- (4) For the purposes of this Part, in relation to a prospective user, a pipeline service is also to be treated as distinct from another pipeline service having regard to the service term and the capacity sought by the prospective user.

Part 23 also provides clarity in relation to pipeline service information:⁵⁷

- (3) The pipeline service information for a pipeline comprises a list of the pipeline services available on the pipeline and for each pipeline service:
 - (a) a description of the service and any locational limitations on availability; and
 - (b) the priority ranking of the service in relation to the other pipeline services including when scheduling and in the event of curtailment.

On this basis, the Commission concluded that improving and clarifying the requirements for describing pipeline and reference services would be beneficial to the policy intent of the current framework.⁵⁸

Following on from these recommendations, the COAG Energy Council proposed to amend the NGR in order to address the lack of clarity and guidance provided in the NGR for service providers and regulators on:

- the relationship between pipeline services and reference services
- the degree of specificity required to describe or identify a pipeline service and a reference service
- the purpose of the reference service.

The Commission accordingly made a draft rule that required a pipeline service provider to provide to the regulator a list of the pipeline services that are available on the pipeline. The list was to include services that a service provider may not currently offer, but may be the subject of negotiations (past or continuing) with prospective users or that it can reasonably provide, if requested.⁵⁹

The draft rule amended rule 48 in the NGR to provide additional guidance on the requirements used to define pipeline and reference services, particularly for the following:

- the service provider in proposing reference services and a list of pipeline services
- regulators in the determination of reference services

⁵⁷ Rule 553 of the NGR.

⁵⁸ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 83.

⁵⁹ Consultation periods for reference service and access arrangement processes provide an additional opportunity for users to seek pipeline services (as discussed in Chapter 5).

- users and prospective users in understanding reference services, effectively engaging in the access arrangement review process and negotiating tariffs and non-tariff terms and conditions in reference to reference tariffs and non-tariff terms and conditions
- the access arrangement in defining a reference tariff and reference terms and conditions that can be attributed to a distinct service.

Test for determining reference services

In the review, the Commission observed that determining an appropriate set of reference services is a trade-off between:⁶⁰

- The benefits that reference services provide to prospective users. A reference service acts as an aid to the negotiation process, by narrowing the points of contention and providing greater predictability of the outcomes of arbitration. This should constrain the use of market power of a service provider in its negotiations, reduce the prospect of negotiation leading to arbitration, and reduce the cost of arbitration in the event that it is necessary.
- The cost and regulatory burden of the ex ante determination of reference services and corresponding reference tariff and non-tariff terms and conditions (for the service provider, the regulator and other stakeholders through the access arrangement assessment process).

However, the Commission found this trade-off is not explicitly recognised in the NGR. As a result, it does not provide sufficient guidance to the regulator in making this trade-off when deciding on the reference services for an access arrangement. As a consequence, the Commission concluded that the test for specifying pipeline services as reference services should be changed so the regulator can assess proposed reference services against a list of criteria that reflect the above trade-off.

The COAG Energy Council's proposed amendments to the NGR reflect the Commission's recommendations on this issue. Specifically, to require the regulator to have regard to the following factors in order to determine reference services:

- Actual and forecast demand for the service and the number of prospective users: Services with historical or forecast high demand are likely to be useful to a larger number of users and prospective users. Consequently, the benefits of making such services reference services are likely to be relatively high. Conversely, for rarely demanded services, the cost of an ex ante determination of the reference service and reference tariff and non-tariff terms and conditions may be relatively high. Should a user or prospective user and service provider be unable to negotiate access for such a service, the tariff and non-tariff terms and conditions for the service would be determined at that time through arbitration. As a result, direct regulatory costs are only incurred in the less likely event of the service being brought to arbitration.
- The extent to which the service is substitutable with other pipeline services: Multiple substitutable reference services increase the regulatory burden for little additional benefit. Instead, only one service of a group of services may be specified as the

60 AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 84.

reference service if this service provides a sufficiently good basis to aid the negotiation process for all other services that can be substituted with it. Conversely, two services that are not substitutable are each unlikely to be useful reference points for one another in the negotiation process. Therefore, it may be appropriate for both to be reference services.

- The feasibility of allocating costs to the pipeline service: Identifying the cost of providing a reference service and allocating it to the service enables the regulator to determine a meaningful reference tariff. A meaningful reference tariff and tariffs negotiated or arbitrated by reference to it reduces inefficiencies such as the under-utilisation of, or under-investment in, pipelines. It is also consistent with the cost allocation requirements set out in rule 93 of the NGR. Therefore, a reasonable prospect of allocating costs to the service in a manner that satisfies the NGL and NGR should be a reference service factor.
- The usefulness of the service in supporting access negotiations and dispute resolution for other pipeline services: Reference services assist access negotiations by narrowing the points of contention and providing greater predictability of the outcomes of any arbitration. By replacing services sought by a “significant part of the market” with a test of usefulness in supporting negotiations, regulators have discretion to consider whether the reference service will assist multiple users seeking similar or the same service on the pipeline.
- The likely regulatory cost for all parties in specifying the pipeline service as a reference service.

The COAG Energy Council considered the introduction of this test should enable reference services to better reflect the variety of different services that have become more common due to recent changes in the dynamics of the east coast gas market (such as bi-directional services, and park and loan services).⁶¹

The Commission’s new draft rule 47A introduced a requirement to describe pipeline services in an access arrangement such that:

- A pipeline service is to be stated or identified in terms of parameters including type, location and priority (firmness of service), consistent with the provisions for the distinction between pipeline services under rule 549(3) of the NGR for non-scheme pipelines.
- The service provider of a covered pipeline is to provide, as part of an access arrangement proposal, a full list of available pipeline services. This list of pipeline services can be referenced to existing gas transportation agreements for that pipeline.

In addition, draft rule 47A specified that the reference service proposal must be drawn from the list of pipeline services and must be described having regard to the reference service factors. This amendment was also reflected in amendments to rule 48 and the omission of rule 101.

The draft rule also required the regulator to determine one or more pipeline services to be reference services, having regard to the following factors (the reference service factors):

⁶¹ COAG Energy Council, *rule change request*, p. 16.

- actual and forecast demand for the pipeline service and the number of prospective users of the service
- the extent to which the service is substitutable with other pipeline services
- the feasibility of allocating costs to the pipeline service
- the usefulness of specifying the service as a reference service in supporting access negotiations and dispute resolution for other pipeline services, by providing a point of reference or benchmark for:
 - negotiating access
 - tariffs
 - terms and conditions
- the likely regulatory cost for all parties in specifying the pipeline service as a reference service.

These requirements were reflected in new draft rule 47A, amendments to rule 48 and the omission of rule 101.

4.1.3

Stakeholder views

The majority of the small number of comments received were supportive of the new draft rule 47A. AGL expressed support for the inclusion of the new draft rule 47A, noting that it should “aid the regulator in setting more efficient reference tariffs”.⁶²

AGIG and AusNet also expressed support for the new draft rule. AGIG also sought clarification and further explanation as to the purpose of rules 47A(2)(b) and (d) given the characteristics listed in sub-rules (a), (b) and (e).⁶³

ATCO commented that the proposed reference service provisions in draft rule 47A were “unworkable for distribution pipelines as the characteristics detailed in draft rule 47A(2) appear to apply exclusively to gas transmission services”.⁶⁴ ATCO further asserted that requiring a list of pipeline services to be published on a service provider’s website would result in duplication of information that is published under the Retail Market Procedures (WA) and would provide no additional useful information to retailers. For these reasons, ATCO suggested that draft rule 47A be amended to only apply to transmission pipelines. Failing that, ATCO suggested the Commission either amend draft rule 47A so that it also accommodates distribution pipelines or that a separate rule be drafted for this purpose.

4.1.4

Assessment

The Commission has considered the submission by AGIG that draft rules 47A(2)(b) and (d) are not clear. Draft rule 47A(2) sets out characteristics of pipeline services. Draft rule 47A(2)(b) identifies “the direction of the pipeline” as a pipeline service characteristic while draft rule 47A(2)(d) specifies “the direction of flow of natural gas through the pipeline” as

⁶² AGL submission, p. 2.

⁶³ Submissions: AGIG, p. 2. AusNet Services, p. 1. AusNet Services also identified a typographical error in draft rule 48(1)(b).

⁶⁴ ATCO submission, p. 8.

another pipeline service characteristic. The Commission acknowledges that these two sub-rules are not clear and has concluded that they are superfluous given the characteristics listed in draft rules 47A(2)(a), (c) and (e).⁶⁵ In addition, upon further analysis of the draft rule the Commission considers that sub-rules (b) and (d) are not characteristics of a pipeline service; rather they are characteristics of a pipeline. For these reasons, the Commission has concluded that both sub-rules (b) and (d) should be removed from rule 47A(2).

In regard to ATCO's submission that the characteristics of pipeline services (in draft rule 47A(2)) are not relevant for distribution pipelines, the Commission notes the rule is inclusive and does not prevent a service provider or the regulator from considering other characteristics or features of pipeline services that may be relevant in the particular circumstances of a pipeline. The Commission understands that service providers may describe pipeline services in different ways for a number of reasons. Nevertheless, it does not agree that the characteristics of service type, priority and receipt and delivery points are always exclusive to transmission pipelines. In addition, as ATCO has stated that it already lists its services, the Commission considers that the cost of complying with new rule 47A should be minimal. For these reasons, the Commission has decided not to make the changes suggested by ATCO to specifically reference distribution pipeline services in the list of pipeline service characteristics.

4.1.5

Final rule

The Commission has made a final rule that establishes how pipeline and reference services are to be described and distinguished from each other. It addresses concerns that not all service providers have proposed appropriate or sufficient reference services in an access arrangement proposal in the past. These rules intend to guide service providers, users and regulators on defining services provided by a pipeline. This is part of a new reference service process (as discussed further below).

The final rule introduces rule 47A(1), (2) and (15). It also amends rules 45(1)(b), (c), 45(2) and 48(1)(b), (c) and (d)(ii) and inserts a new rule 48(1)(c1). Rule 101 has also been omitted. The final rule differs from the draft rule in that draft rule 47A(2)(b) and (d) have been omitted and an error in rule 48(1)(b) has been corrected.

The Commission considers the final rule will benefit regulators, users, prospective users and consumers by:

- providing transparency about the pipeline services provided by a pipeline
- specifying appropriate reference services in an access arrangement to guide negotiation and arbitration.

It also considers that the final rule will facilitate the inclusion of additional reference services in an access arrangement. Additional reference services will limit a service provider's use of its market power by assisting users and prospective users in negotiation and arbitration. This will ultimately contribute to the achievement of the NGO by promoting access to, and the efficient pricing of, pipeline services.

⁶⁵ Which are service type, priority of the service, and receipt and delivery points respectively.

4.2 Process for determining reference services

4.2.1 Current framework

Under the NGR full regulation pipeline service providers are to submit to the regulator, for approval, a full access arrangement proposal or a full access arrangement revision proposal.⁶⁶

The regulator assesses the access arrangement proposal under Parts 8 to 11 of the NGR. The regulator seeks submissions on the proposal, issues a draft decision for consultation, and then makes a final decision that either approves or refuses to approve the access arrangement proposal. Prior to submitting the access arrangement proposal, a service provider may request a pre-submission conference in order to discuss questions affecting the proper formulation of the proposal.⁶⁷

If the regulator approves the access arrangement proposal it approves all elements in the proposal, including the non-tariff terms and conditions on which the reference service will be provided.⁶⁸

Rule 62(7) of the NGR requires the regulator to make an access arrangement final decision within six months of receiving the proposal, and rule 62(8) states that this time cannot be extended by more than two months.⁶⁹ The regulator will “stop the clock” in the decision-making process when additional information or consultation is required.⁷⁰ Rule 13(1) provides an absolute overall time frame of 13 months between the date the service provider submits a full access arrangement proposal and the date that the regulator makes a final decision. Although decisions made outside this absolute time frame are not invalid.⁷¹

4.2.2 Draft rule determination

In its final report, the Commission noted that the time period provided under the NGR is insufficient to fully consider, consult and decide on an access arrangement proposal. This is a significant issue if there has been a material change between the draft access arrangement and the final access arrangement to the reference services offered (increased or varied reference services) and to the non-tariff terms and conditions relevant to each reference service.⁷²

The Commission concluded that the introduction of a preliminary process (prior to the lodgement of the full access arrangement proposal) that is restricted to the determination of reference services for full regulation pipelines would support the ability of the regulator, users and prospective users to introduce additional reference services where the service provider does not. This is important because the inclusion of additional reference services in an access arrangement is expected to address concerns about monopoly pricing by providing additional

⁶⁶ Access arrangement proposal refers to the initial access arrangement. Access arrangements are then periodically revised. Access arrangements generally do not expire.

⁶⁷ Rule 57 of the NGR.

⁶⁸ Rule 41 of the NGR.

⁶⁹ However, it should be noted that under s. 332 of the NGL a regulator’s decision made after the specified date is not an invalid decision.

⁷⁰ Rule 11 of the NGR; AER, *Access arrangement guideline*, March 2009, pp. 17-18.

⁷¹ Rule 14 of the NGR and s. 332 of the NGL.

⁷² AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 90-91.

reference points (including tariff and non-tariff terms and conditions) on which to base access negotiations. In addition, the Commission anticipated that an upfront process to set reference services would improve customer engagement in the access arrangement assessment process. Constructive engagement between service providers, the regulator, users and consumers increases the likelihood that the reference services will align with the long term interests of consumers.

The COAG Energy Council subsequently proposed a new reference service process in the NGR. This proposed process is to commence 24 months prior to the revision commencement date of the next access arrangement period for a pipeline.

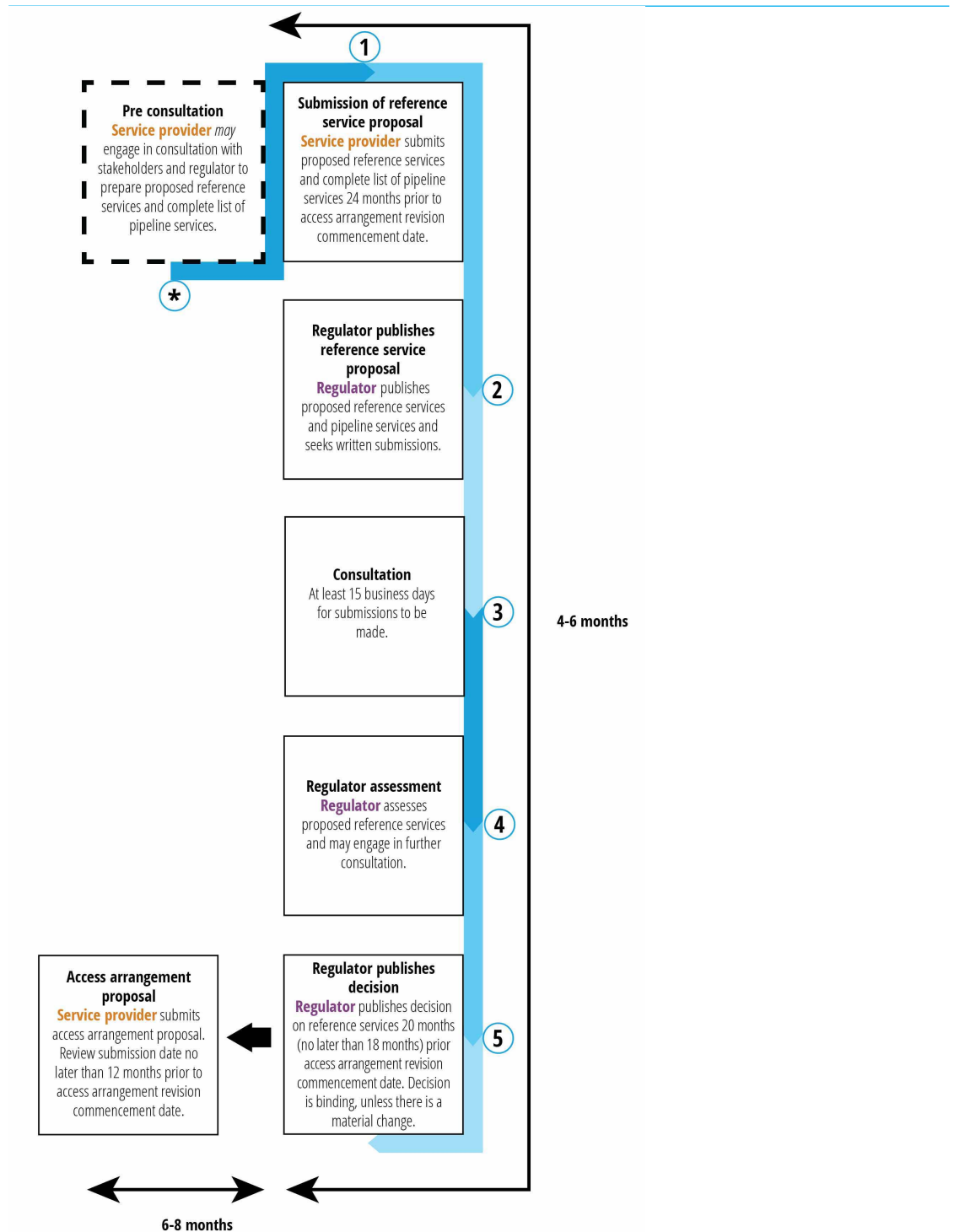
The Commission made a draft rule consistent with the COAG Energy Council's rule change request. The process in new draft rule 47A included the following features:

- Pre-consultation: the service provider may engage with consumers, users and other stakeholders and the regulator in order to prepare the list of pipeline services and proposed reference services.
- Pipeline service list and reference service proposal submission: the service provider submits the list of available pipeline services and its reference service proposal no later than 12 months prior to the review submission date.
 - In the event that the service provider fails to submit the list of pipeline services and reference service proposal by 11 months prior to the revision submission date, the regulator will propose reference services for that pipeline and commence consultation on its reference service proposal. (This is similar to rule 63 of the NGR allowing the regulator to make or revise an access arrangement on failure by service provider to submit an access arrangement proposal.)
 - In the event that the service provider submits a deficient list of pipeline services and reference service proposal, the regulator will set a date for resubmission of the reference service proposal at its discretion.
- Publication: the regulator publishes the service provider's reference service proposal and list of pipeline services and seeks written submissions from stakeholders on the proposal (including whether additional reference services are required), with a consultation period of at least 15 business days.
- Assessment: the regulator makes its assessment of the reference service proposal having regard to, among other things, the reference service factors and any pre-consultation with its pipeline users and end users. In making its assessment, the regulator has the discretion to undertake further consultation, if required.
- Decision: the regulator publishes the reference service decision no later than six months prior to the review submission date.
 - In the event the regulator refuses to approve the service provider's reference service proposal, the regulator may make or revise a reference service proposal and make a final decision on that proposal. (This is similar to rule 64 of the NGR allowing the regulator to make or revise an access arrangement on refusing to approve an access arrangement proposal.)

- The regulator would not change the approach set out in this decision as it progresses to other elements of the access arrangement, unless there is a material change in circumstances that warrants a departure.

These key features of the proposed reference service process are shown in the figure below.

Figure 4.1: Proposed reference service process

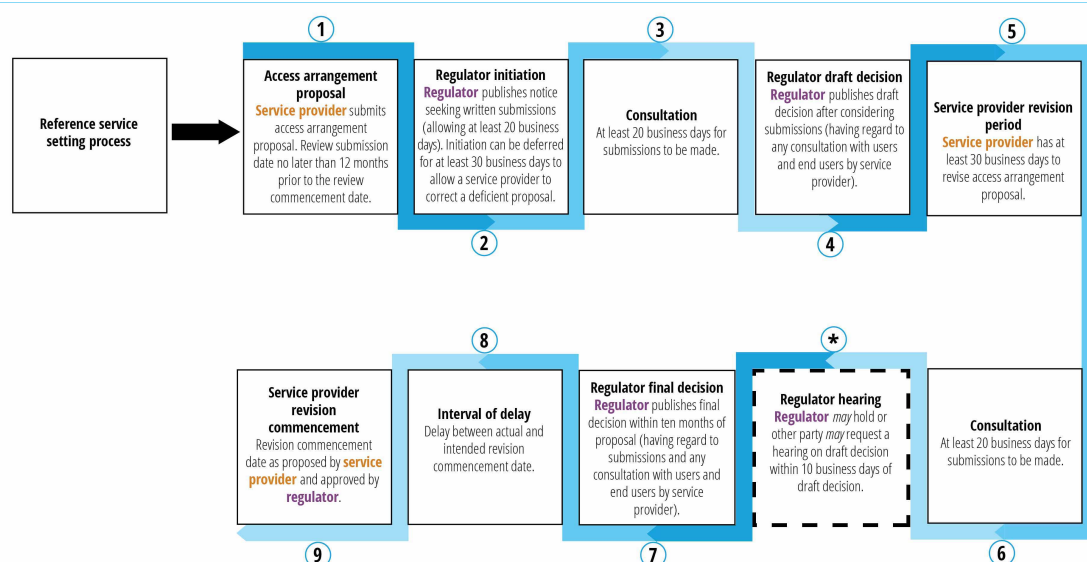


Source: AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 95.

Following the regulator's decision on the reference service proposal, the service provider would be expected to submit the full access arrangement proposal based on the regulator's reference service decision. The access arrangement proposal is due to the regulator on the review submission date (which will be at least 12 months prior to the revision commencement date for the next access arrangement period). This is expected to be between six and eight months after the regulator's decision on the reference service proposal. It is not expected that the service provider would wait for a final decision on the reference services before commencing its preparation of its access arrangement proposal.⁷³

The interaction between the proposed reference service process and the access arrangement revision process⁷⁴ is shown in the figure below.

Figure 4.2: Proposed amended access arrangement process



Source: AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 97.

The draft rule also:

- Removed the pre-submission conference in rule 57 of the NGR as the new reference service setting process, together with the access arrangement process, will provide sufficient opportunity for the service provider and regulator to engage on the proper formulation of the proposal, without the need for a formal request for a pre-submission conference.
- Allowed service providers more flexibility to set the review submission date and revision commencement date (with the approval of the regulator) as appropriate to the circumstances of the particular pipeline, while retaining the minimum of 12 months

⁷³ A number of access arrangement elements are not contingent on the determination of the reference services by the regulator. These elements include the service provider's ongoing operational and capital expenditure (notwithstanding additional expenditure that may be associated with the addition of new reference services) and standard terms and conditions.

⁷⁴ Including the COAG Energy Council's proposed amendments to the access arrangement process, discussed in Chapter 5.

between the review submission date and the revision commencement date (see amendments to rule 50).

- Omitted the requirements for the regulator to make its draft and final decisions available for inspection at its offices and for the notice of publication of those decisions to be made in a national newspaper (see amendments to rules 59(5) and 62(5) of the NGR). The draft rule similarly amended rules 58(1) and 64(5).
- Removed rule 13 (absolute time limit for an access arrangement process).

4.2.3

Stakeholder views

AusNet Services expressed support for the new draft rule but sought clarification and further explanation on why the AER is not required to publish its reference service proposal decision (under draft rule 47A(12)) at the same time as it publishes a revised reference service proposal under draft rule 47A(11). It submitted that the documents should be published contemporaneously as this would remove any ambiguity regarding the status and effect of the revised proposal in the interim period between publication and the making of the reference service proposal decision.⁷⁵

JGN provided a detailed response on new draft rule 47A:⁷⁶

- rule 47A(2)(a): that “connection” should be removed as a service type as it implies that a pipeline service could include a National Energy Customer Framework (NECF) connection service, which is not regulated under the NGR Parts 8-11
- rule 47A(9): it is ambiguous how the timing for approving a reference service proposal is intended to apply as there are two possible reference service proposal decisions which could be made — one in accordance with draft rule 47A(9) and another, following an initial refusal to approve a proposed reference service proposal, in accordance with draft rule 47A(12)
- rules 47A(11) and (12): a different approach should be applied to the process where the AER refuses to approve reference service proposal proposed by a service provider. It provided three alternatives:
 - The rules provide opportunity for the AER to seek submissions on the AER’s revised reference service proposal for the final decision to approve the reference service proposal.
 - Process should be streamlined by providing that the AER must make the decision to approve its own revised reference service proposal at the time it publishes that revised proposal.
 - The rules should provide for the AER to be consistent with AER’s decisions under rule 47A(10) to refuse to approve the reference service proposal submitted by the service provider.
- rule 47A(13): This rule provides for the AER to take into account “any other matters the AER considers relevant”. However, JGN proposed that if the reference service proposal

⁷⁵ AusNet Services submission, p. 1.

⁷⁶ JGN submission, attachment c, pp. 1-3.

complies with the relevant requirements then it should be approved. JGN submitted that this would be a consistent approach with the regime under rule 64 in relation to access arrangements. To address this, JGN suggested an amendment to rule 47A(13(d)) so that it refers to "the matters that these rules require a reference service proposal to include (as per 47A(11)(a))."

- rule 47A(15): the reference service factors should include the revenue and pricing principles and be specified in this rule.

JGN also submitted that draft rule 48(1)(b) be amended so that the reference service proposal decision is also binding on the regulator. In its view, this would be consistent with the Commission's policy intent that the regulator would not change the approach set out in the reference service proposal decision, unless there is a material change in circumstance that warrants departure.

APA opposed the proposed omission of rule 13, which provides an absolute overall time limit of 13 months between the date that the service provider submits a full access arrangement proposal and the date that the regulator makes a final decision. APA submitted that the Commission did not provide any reason for the removal of rule 13. It commented that rule 13 was introduced in version 1 of the NGR because there were concerns by policy-makers that regulatory decision-making was taking too long. APA observed that omitting rule 13 was "packaged" with the introduction of draft rule 47A although the two are not related. In its view, rule 13 should be retained in the NGR.⁷⁷

APA also commented that new draft rule 47A:⁷⁸

effectively extends the time for decision making on access arrangement revisions, by bringing forward a part of the process to a prior review of reference services. That, and the promulgation of the binding rate of return instrument, should dramatically reduce the time required for decisions on access arrangement revision proposals.

ATCO submitted that the benefits of the introduction of the new process do not mitigate the regulatory cost and therefore are not likely to contribute to the achievement of the NGO. In its view, the process is likely to duplicate the consultation already carried out by distribution pipeline service providers. It also argued that the new process is unnecessary for distribution pipelines given the "increasing contestable nature of energy services".⁷⁹ In addition, ATCO commented that the time-frame proposed for reference service proposal is insufficient for service providers to prepare an access arrangement proposal. It suggested that the regulator's decision on a reference service proposal should be at least 12 months prior to the access arrangement review submission date.⁸⁰

⁷⁷ See also section 5.5.3 of this final rule determination.

⁷⁸ APA submission p. 1.

⁷⁹ ATCO submission, p. 8.

⁸⁰ ATCO submission, p. 9.

4.2.4

Assessment

AusNet Services raised a question about the timing of publishing documents in the reference service process set out in draft rule 47A on the occasion where the regulator does not approve a reference service proposal. It suggested that contemporaneous publication of the regulator's revised reference service proposal and its decision on that revised proposal would be desirable. JGN also commented on this issue, making three alternative suggestions to amend the draft rule.

In response to both stakeholders, the Commission notes that draft rules 47A(11) and (12), which place obligations on the AER with regard to revising a reference service proposal and publishing a revised reference service proposals respectively, are similar to rule 64 when the regulator does not approve an access arrangement and must publish its own revised access arrangement. Under rule 64, specific provision is made for consultation on the regulator's revised access arrangement. In the case of a regulator's revised reference service proposal, the Commission considered in the draft rule determination that while specific provision for consultation was not necessary, some flexibility in the rules to allow this to occur was warranted. This would enable, but not require, the regulator to consult as it considers appropriate on its revised reference service proposal. However, the Commission does not anticipate extensive or prolonged consultation at this point, as reflected in the use of "as soon as practicable" in rule 47A(12).

While the Commission understands that some stakeholders would value concurrent publication of the revised reference service proposal and the decision to give effect to it, its preference is to allow some flexibility for regulators to best manage the publication of these documents in the circumstances.

In regard to the other points raised by JGN, the Commission has set out its responses below.

Table 4.1: AEMC responses to JGN submission

| JGN COMMENT | AEMC RESPONSE |
|---|--|
| rule 47A(2)(a): that "connection" should be removed as a service type as it implies that a pipeline service could include a NECF connection service | "Connection" is one example of a service that may be reasonably provided by a pipeline. It does not override any obligations regarding NECF connection services. The Commission has not made the suggested change. |
| rule 47A(9): it is ambiguous how the timing for approving a reference service proposal is intended to apply | The Commission and the regulators are satisfied that the draft rule is workable. No change to the draft rule has been made. |
| rule 47A(13): This rule provides for the AER to take into account "any other matters the AER considers relevant". However, JGN proposed that if the reference service proposal complies with the relevant requirements then it should be approved | The Commission is satisfied that some discretion should be provided to the regulator in this instance to allow consideration of relevant information from the service provider, stakeholders, or the market. The Commission has not made the suggested |

| JGN COMMENT | AEMC RESPONSE |
|--|---|
| | change. |
| rule 47A(15): the reference service factors should include the revenue and pricing principles | The regulator is already able to take into account the revenue and pricing principles when making a decision on reference services. The Commission has not made the suggested change. |
| draft rule 48(1)(b): should be extended so that the reference service proposal decision is also binding on the regulator | Under the draft rule, the regulator is bound by the same criteria as the service provider. The Commission has not made the suggested change. |

Source: JGN submission, attachment c, pp. 1-3.

The Commission acknowledges APA's observation that the reasoning for the removal of rule 13 (which specifies an overall time limit for assessing an access arrangement proposal) was not included in the draft rule determination. The Commission retains its view that this amendment is appropriate. As suggested by APA, the introduction of the binding rate of return instrument will impact on the assessment process carried out by the regulator. However, rather than reducing the time periods for stakeholder consultation and the regulator's assessment, the Commission has preferred to provide time periods that will enable thorough consideration of access arrangement proposals by stakeholders and the regulator. In light of the issues raised by users of pipelines, the amendments made to the access arrangement assessment process and the introduction of the reference service process, the Commission has concluded that rule 13 does not provide any significant benefit to carrying out an assessment process for an access arrangement proposal.⁸¹

ATCO expressed concern that the reference service process has been drafted without consideration to distribution pipelines and does not reflect the consultation already carried out by these service providers. In regard to the creation of the reference service process, the positive response from many other stakeholders during the review indicated to the Commission that such a process was sought and valued. The application of the process to distribution pipelines was specifically considered and discussed with stakeholders during the review, including at a stakeholder workshop that ATCO attended. Being aware that some service providers were already successfully engaging in public and user consultation to assist in the development of their access arrangement proposals, the Commission created a process that is not highly prescriptive. In doing so, it anticipated that while some service providers may need to adjust their internal processes as a result, the rule does not prescribe any particular consultation process for service providers, and may not represent a significant change to the processes already undertaken by some service providers.⁸²

⁸¹ Nor does the Commission accept APA's suggestion that rule 13 is relevant when there is an interval of delay.

⁸² See draft rule 47A(1)(d) and (13)(c).

The Commission has created a framework which will allow constructive engagement between service providers, the regulator, users and consumers to increase the likelihood that the reference services will align with the long-term interest of consumers. It aims to capture where some service providers may be deficient in consultation and provide a harmonised approach for service providers regarding engagement processes. In this regard, the Commission considers that the new process for determining reference services does not create duplication but instead brings into the NGR a recognition that consultation on reference services is desirable and beneficial for the service provider, users and the regulator.

4.2.5

Final rule

The Commission has made a final rule to implement a new reference service process. This is implemented through the introduction of rules 46(1A), 47A(3)-(14), 47(1A), and 48(1)(c1). The final rule also amends rules 3 (by including new definitions of reference service factors and reference service proposal), 46(1), 46(2), 47(2)(a), 50, 51, 58(1), 59(2), 59(5), 62(5), 62(7) and 64(5)(b).

In addition, rules 13 (absolute time limit) and 57 (pre submission conference) have been omitted from the NGR.

The Commission considers the introduction of an upfront reference service process should contribute to the achievement of the NGO:

- An upfront process will provide the regulator with additional time to carefully consider and determine the most appropriate reference service (or set of services) outside the reference tariff and non-tariff terms and conditions determination process. In doing so, the regulator may expand the number and type of reference services. This will enable users to better negotiate with pipeline service providers for the services they seek and provide greater certainty in the event of arbitration.
- Pipeline users and prospective users are expected to be better informed about their preferences than the regulator. As such, constructive engagement between service providers, the regulator, users and consumers increases the likelihood that the reference services will align with the long term interests of the consumer. Further, improved user and consumer engagement with the regulatory process helps reduce the risk of regulators making sub-optimal decisions because of poor information on user and consumer preferences.

5 ACCESS ARRANGEMENT PROCESS

Every pipeline subject to full regulation is required to have a full access arrangement which sets out reference tariff and non-tariff terms and conditions for each reference service provided by that pipeline.

A full access arrangement is revised for each access arrangement period through a public consultation process conducted by the regulator.

The starting point of this revision process is the service provider's access arrangement revision proposal.

As noted by the Commission in its review, stakeholders had significant concerns in relation to key elements of the full access arrangement process, including: the process for reviewing access arrangements; tariff setting (including aspects of the tariff variation mechanism); the allocation of risk in non-tariff terms and conditions; the process for equalising revenue during an interval of delay between access arrangement periods; and the regulatory discretion framework.

In the course of its review, the Commission identified opportunities to amend the NGR in order to provide clarity and certainty around these key aspects of the access arrangement process and also to reduce regulatory and administrative burden and facilitate better outcomes for pipeline users, and ultimately gas consumers.

The COAG Energy Council accepted all the recommendations made by the AEMC in relation to improvements to the access arrangement process.

This chapter provides an overview of the key issues with the current regulatory framework and the final rules that the Commission has made to address them, covering the following topics:

- reference tariff setting: consistent financial models and tariff variation mechanism
- non-tariff terms and conditions
- the access arrangement process: revision period and interval of delay
- regulatory discretion.

5.1 Reference tariff setting: use of consistent financial models

5.1.1 Current framework

Reference services, reference tariffs, and non-tariff terms and conditions inform access negotiation and dispute resolution processes for services on a full regulation pipeline.

It is important that reference tariffs are set at a level that reflects efficient costs and that costs are correctly allocated across pipeline services. In order to set reference tariffs the regulator must first determine the efficient costs of providing the reference service(s) using

the building block approach and the cost allocation methodology set out in Part 9 of the NGR.⁸³

Total revenue is required to be allocated between reference and other services in the ratio in which costs are allocated between reference and other services.⁸⁴

Reference tariffs are then set as follows:

- Transmission pipelines: the NGR require that the tariffs are set in order to generate from the provision of each reference service the portion of total revenue referable to that reference service.⁸⁵
- Distribution pipelines: the NGR require that customers for reference services provided by means of a distribution pipeline must be divided into tariff classes. For each tariff class, the revenue expected to be recovered should lie between an upper bound representing the stand-alone cost of providing the reference service to customers who belong to that class, and a lower bound representing the avoidable cost of not providing the reference service to those customers.⁸⁶

The NGR do not currently specify the use of financial models.

5.1.2

Draft rule determination

Service providers use different financial models to prepare and submit access arrangement proposals.⁸⁷ During the review, the Commission found that this inconsistency has resulted in significant resources being invested by regulators, users and prospective users and their representatives in understanding the operation of these models, and in making comparisons between different access arrangements and access arrangement periods.

The Commission noted that most east coast service providers submit access arrangement revision proposals using modified versions of the AER's financial models (post-tax revenue model (PTRM) and roll forward model (RFM))⁸⁸ published as required by the National Electricity Rules (NER).

Some concerns raised by stakeholders during the review included:⁸⁹

- the financial models used by service providers are varied and prone to errors from both the service providers and the regulator
- it can be difficult for regulators and stakeholders to compare the inputs and results between access arrangement revisions

⁸³ See Chapter 6 for discussion on total revenue and cost allocation.

⁸⁴ Rule 93 of the NGR.

⁸⁵ Rule 95 of the NGR.

⁸⁶ Rule 94 of the NGR.

⁸⁷ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 101.

⁸⁸ The PTRM calculates the annual revenue requirement for each year of a regulatory control period using the building block approach (clauses 6.4.1(a) and 6A.5.2(a) of the NER). The RFM is used to calculate the closing regulatory asset base (RAB) for the regulatory period, which becomes the opening RAB in the next regulatory control period (clauses 6.5.1(b) and 6A.6.1(b) of the NER).

⁸⁹ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 103.

- possible development of new financial models for different revisions of access arrangements may result in additional costs for service providers and generate process inefficiencies
- interested stakeholders may face difficulty in understanding and interpreting the inputs and results generated by the varied models
- regulators may find working with various financial models challenging, possibly reducing the efficiency of the access arrangement review process.

The Commission concluded that amending the NGR to mandate the use of regulator developed financial models by service providers (where a model exists) is likely to assist in assessing efficient costs, total revenue and reference tariffs by:

- reducing the opportunity for errors both by the service provider and the regulator
- making it easier for stakeholders to engage in the assessment of total revenue and its constituent components.

However, the NGR should provide a degree of flexibility on whether the regulators develop and publish financial models, the type of models and the contents of those models, including indexation of the capital base. Nevertheless, in the event models are developed and published, their use by service providers to prepare access arrangement proposals should be mandatory.⁹⁰

The COAG Energy Council rule change request includes a proposal to amend the NGR as recommended by the Commission.⁹¹ The Commission subsequently made a draft rule consistent with the COAG Energy Council's proposal.

5.1.3

Stakeholder views

AusNet Services noted that "where the effect of the draft rule 73(3) is to require a service provider to use a particular financial model published by the AER, the service provider should not be required to convert financial information collected and recorded before the date the model is published".⁹² AusNet Services suggested that this could be made clear in the NGR or by the AER when it publishes its financial models.

ATCO recognised the potential benefits of using consistent financial models but, in this case it considered that the benefits of draft rules 75A and 75B do not outweigh the costs. ATCO considered that continuing to allow for flexibility in the modelling assumptions and parameters is in the long term interest of consumers and that draft rules 75A and 75B should be removed to enable financial models to continue to suit local conditions and preferences.⁹³

In addition, on the basis that the Commission does decide to retain the draft rules, ATCO provided the following drafting suggestions:

⁹⁰ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 103-105.

⁹¹ COAG Energy Council, *rule change request*, p. 11.

⁹² AusNet Services submission, p. 1.

⁹³ ATCO submission, p. 10.

- Indexation of the capital base — The final rule should provide flexibility on the modelling assumptions associated with the indexation of the capital base and must not require a particular modelling assumption. This is because modelling assumptions are best determined by the regulators as part of developing the financial models. To provide clarity in this regard, draft rule 75B(2) (and possibly also draft rule 75B(3)) should be amended to include a new sub-rule:⁹⁴
 - (f) the accounting method assumption for dealing with the effects of inflation and the indexation of the capital base.
- Transmission and distribution models — The final rule must allow for the regulators to develop separate models, assumptions and parameters for transmission and distribution pipelines similar to the case in the National Electricity Rules (NER). This could be achieved by a new sub-rule to draft rule 75A:⁹⁵
 - (1a) The AER must prepare and publish separate financial models to apply to each of a transmission pipeline and a distribution pipeline.

5.1.4

Assessment

As noted by AusNet Services, the introduction of draft rules that enabled the regulators to develop financial models also included an amendment to the rules regarding the basis under which service providers provide financial information to the regulator. Specifically, rule 73(3) was amended so that rather than requiring financial information and calculations to be “made consistently on the same basis”, the draft rule required financial information and calculations to be made on the same basis “and using any applicable financial models published by the AER”.⁹⁶ AusNet Services expressed concern that the amended rule 73(3) may require “converting” past information into a form that can be used by a regulator’s financial model.

As suggested by AusNet Services itself, the details of the financial models and the interaction of the models with other financial information provision requirements can be determined by the regulator rather than including such prescription in the NGR. This approach is appropriate as it provides flexibility in the details of the financial models as they change over time. Accordingly, the Commission has not amended rules 73(3) or 72(3) as suggested by AusNet Services.⁹⁷

ATCO was concerned that the financial models may not be able to take into account local circumstances. The Commission considers that the draft rules do provide for local circumstances by providing discretion to the regulator in developing financial models. If the regulator considers that a common financial model would be unlikely to produce the desired procedural and decision-making benefits, then it could elect not to make a financial model. In this case, the relevant service providers would continue to make access arrangement

⁹⁴ ATCO submission, p. 10.

⁹⁵ ATCO submission, p. 11.

⁹⁶ Similarly, draft rule 72(3) was introduced to require access arrangement information to be provided in accordance with draft rule 75B which specifies the contents of the financial models.

⁹⁷ However, rule 72(3) has been amended to refer to the financial models rather than refer to the requirements of rule 75B.

proposals using the financial models of their choice or as agreed with the regulator, enabling them to accommodate their specific circumstances.

ATCO also suggested that if draft rules enabling the regulators to make financial models (draft rules 75A and 75B) were to be retained then two changes should be made:

- that a new sub-rule be included to specify that the financial models include the assumptions for inflation and indexation of the capital base
 - Such issues were discussed in the draft report of the review where the Commission observed that the NGR did not prevent the regulator specifying its approach to inflation and capital base indexation. The Commission considers that this view is still appropriate and has therefore not made the suggested change to the final rule.⁹⁸
- that a new sub-rule be included to specify that the regulator must create separate models for transmission and distribution pipelines
 - The Commission considers that a rule to this effect may be unnecessarily prescriptive. Consistent with the overall approach of the NGR, the Commission considers that the NGR should provide a regulatory framework that can be applied to any relevant pipeline. The detailed application of rules to a particular pipeline is provided in the access arrangement or in guidance from the regulator if required. In terms of financial models, the Commission does not consider that the needs of transmission pipelines differ so greatly from distribution pipelines that the NGR must specify different financial models be created. As a result, it has not made the suggested change in the final rule.

The Commission has concluded that to address the inconsistency of financial models that has occurred to date, and to enable stakeholders to better engage in the financial aspects of an access arrangement proposal, there is benefit in making new rules that will enable the regulators to develop financial models for service providers. The Commission notes that the introduction of these new rules have been welcomed by the regulators and pipeline users.

5.1.5

Final rule

The final rule allows, but does not require, the regulators to develop and publish financial models that are consistent with price and revenue regulation requirements in Part 9 of the NGR and the revenue and pricing principles in s. 24 of the NGL.

The new final rule 75A (preparation and amendment of financial models) states that the regulator may prepare and publish a revenue model and/or a capital base roll forward model (financial models). If one or both of the models are developed and published, service providers must use them to construct the capital base, and the total expected revenue from the building block approach.

The new final rule 75A also states that these models should be developed (and in the future, modified or replaced) and published in line with:

⁹⁸ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, draft report, 27 February 2018, pp. 110-111.

- a consultation period of no less than 30 business days from publication of the proposed models
- the publication of issues, consultation and discussion papers, and the holding of conferences and information sessions, as appropriate
- the publication of a final decision within 80 business days.

The final rule also inserts new rule 75B (which sets out the contents of the financial models). This rule requires the models to be consistent with the total revenue building block approach, opening capital base and any other financial element of the access arrangement contained in Part 9 of the NGR.

New rule 72(3) and amended rule 73(3) have also been made to reflect the introduction of financial models.

These amendments in the final rule are largely the same as in the draft rule, noting a minor wording change to rule 72(3). They are expected to enable the development and use of consistent financial models where there is benefit in doing so. The use of these models should facilitate greater stakeholder engagement in the access arrangement assessment process. Using consistent financial models should also enable the regulator to make quicker, lower cost and more informed decisions in the long-term interest of consumers.

5.2

Reference tariff setting: tariff variation mechanism

5.2.1

Current framework

Rule 97 of the NGR provides a mechanism for varying approved reference tariffs within an access arrangement period. This is referred to as a reference tariff variation mechanism.

Under rule 97, reference tariffs may vary in accordance with a fixed schedule (for example, annually), as a result of a cost pass through for a defined event (such as changes in taxation arrangements), or in accordance with a formula set out in the access arrangement, or a combination of these.

In regard to the formula to vary a reference tariff, rule 97(2) provides examples of:

- variable caps on revenue
- tariff basket control
- revenue yield control.

In addition, rule 97(5) states that “except as provided by a reference tariff variation mechanism, a reference tariff is not to vary during the course of an access arrangement period.”

Rule 92 of the NGR (revenue equalisation) also provides guidance to the operation of a reference tariff variation mechanism:

- (1) *A full access arrangement must include a mechanism (a reference tariff variation mechanism) for variation of a reference tariff over the course of an access arrangement period.*

- (2) The *reference tariff variation mechanism* must be designed to equalise (in terms of present values):
 - (a) forecast revenue from reference services over the access arrangement period; and
 - (b) the portion of total revenue allocated to reference services for the access arrangement period.

5.2.2

Draft rule determination

In the final report, the Commission observed that the general approach of the NGR is for an access arrangement to provide clarity and detail on the operation of the tariff variation mechanism for a particular pipeline. This applies to any specific method of tariff variation mechanism employed by a service provider.⁹⁹

As noted above, under the NGR the regulator is able to approve a revenue target control mechanism (namely, variable revenue cap or revenue yield control). In general, under a revenue control approach revenue is determined for each year of the access arrangement and the service provider is able to adjust reference tariffs (as approved by the regulator) in order to achieve that revenue.

Tariffs are calculated based on forecast demand, while actual revenues can only be observed after the conclusion of an access arrangement year.

In practice, as forecast and actual demand are unlikely to reconcile over the period, the service provider can reasonably be expected to under or over recover revenue year to year and over the access arrangement period generally. Therefore, revenue yield controls and variable revenue caps should generally include a mechanism to account for the over or under recovery of revenue across years and access arrangement periods. However, the NGR does not specify such a requirement.

In contrast, the NER does provide guidance on the use of revenue caps in rules relating to the building blocks for distribution network service providers. The under or over recovery of revenue arising from the application of a control mechanism in the previous period is included as part of the building blocks.¹⁰⁰

(a) Building blocks generally

The annual revenue requirement for a Distribution Network Service Provider for each regulatory year of a regulatory control period must be determined using a building block approach, under which the building blocks are:

...

- (6) the other revenue increments or decrements (if any) for that year arising from the application of a control mechanism in the previous *regulatory*

⁹⁹ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 108.

¹⁰⁰ Clauses 6.4.3(a)(6) and 6.4.3(b)(6) of the NER.

control period - see paragraph (b)(6).

...

(b) Details of the building blocks

For the purposes of paragraph (a):

...

- (6) the other revenue increments or decrements referred to in paragraph (a)(6) are those that are to be carried forward to the current *regulatory control period* as a result of the application of a control mechanism in the previous *regulatory control period* and are apportioned to the relevant year under the distribution determination for the current *regulatory control period*.

During the review the AER observed that, while providing for a variable revenue cap and revenue yield controls in the tariff variation mechanism provisions, the NGR do not recognise that there must also be a mechanism to account for over or under recovery of revenue across access arrangement periods. To address this issue, the AER suggested changes to rules 76 (which specifies the components of total revenue) and 92 (requirements on revenue equalisation) of the NGR, to specifically provide for the operation of a revenue cap, in a manner similar to that under the NER.¹⁰¹

In the final report, the Commission noted that there are no access arrangements currently in place with a variable revenue cap or a revenue yield control tariff variation mechanism.¹⁰² However, a revenue yield control mechanism had been used in the past under the code.¹⁰³ This suggested to the Commission that these tariff control mechanisms may be approved by a regulator and used for a pipeline provided the access arrangement clearly establishes the operation of the mechanism.

As a result, the Commission concluded that the operation of rule 92 of the NGR does not unambiguously prevent the successful use of a variable revenue cap or revenue yield tariff variation mechanism as the AER suggested. Nevertheless, the Commission concluded that greater guidance could be afforded to service providers, pipeline users and regulators if the NGR was amended. It recommended changes to clarify that if a variable revenue cap or a revenue yield control mechanism is approved for an access arrangement, then the tariff variation mechanism should accommodate any over or under recovery of total revenue related to one access arrangement period to operate in the following access arrangement period.

The COAG Energy Council rule change request included a proposal to amend the NGR as recommended by the Commission.¹⁰⁴ The draft rule made was consistent with this proposal.

¹⁰¹ AER email to the AEMC, 31 January 2018.

¹⁰² AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 107.

¹⁰³ *National third party access code for natural gas pipeline systems*, 1997.

¹⁰⁴ COAG Energy Council, *rule change request*, p. 11.

5.2.3 Stakeholder views

No stakeholders provided any specific comments on this issue.

5.2.4 Assessment

No further information has been raised in relation to this issue. The Commission is satisfied that its assessment made in the draft rule determination remains appropriate. It has made a final rule that is the same as the draft rule.

5.2.5 Final rule

The Commission has made a final rule that clarifies 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. This has been achieved by amending rule 92(2)(a) of the NGR by changing the word “over” to “for”.

This amendment is expected improve regulatory decision-making by making it clear that the regulator has the power to make decisions in regard to the reference tariff variation mechanism and the use of revenue caps.

5.3 Non-tariff terms and conditions: risk sharing arrangements

5.3.1 Current framework

In approving the reference services and reference tariffs for a full access arrangement, the regulator must also assess the proposed non-tariff terms and conditions.

As provided by rule 100 of the NGR, all provisions in an access arrangement should be consistent with the NGL, NGR and any procedures in force when the terms and conditions of the access arrangement are determined or revised.

This requirement is illustrated in practice in recent regulatory decisions. For example, in assessing reference service terms and conditions, the AER considered:¹⁰⁵

- risk allocation: risks are allocated to the party best placed to control or mitigate that risk, as effective risk mitigation is likely to reduce the total cost of providing the reference service(s) to the consumers in the long-term
- legal consistency and clarity: terms and conditions must be clear and legally certain as they are used as the basis for commercial negotiations and in resolving any access dispute
- consistency with the relevant requirements in the NGL, NGR and the relevant procedures in force.

Further, in making a decision on the terms and conditions of the Goldfields Gas Pipeline access arrangement, the ERA stated:¹⁰⁶

¹⁰⁵ AER, *Draft decision, Roma to Brisbane Gas Pipeline access arrangement 2017-22*, Attachment 12, pp. 19-20 (note, this attachment forms part of the reasons for the AER, *Final decision, Roma to Brisbane Gas Pipeline access arrangement 2017-22*, as stated on page 2 of the overview); see also AER, *Draft decision, Australian Gas Networks Victoria and Albury Gas access arrangement 2018-22*, July 2017, p. 48.

¹⁰⁶ ERA, *Final decision on proposed revisions to the access arrangement for the Goldfield Gas Pipeline*, 30 June 2016, p. 541.

The Authority considered it important that the terms and conditions for a reference service included in the access arrangement are presented so they can be readily accepted by a prospective user “as is” (without requiring any further changes), if a prospective user wishes to enter a contract for the reference service.

5.3.2

Draft rule determination

In the final report, the Commission acknowledged stakeholder concerns that the regulators had not always given adequate attention to the assessment of the non-tariff terms and conditions contained in access arrangements. As a result, some non-tariff terms and conditions may not have appropriately allocated risk.

However under the NGR, the allowed rate of return applied to the capital base to determine total revenue and reference tariffs (including through the reference tariff variation mechanism) should be set to account for the degree of risk in providing the reference service.

The Commission concluded that while the NGR implicitly require consideration of the allocation of risk, the NGR could be clarified in order to explicitly 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.

In addition, the allowed rate of return that is applied to the capital base to determine total revenue and reference tariffs is set to account for a degree of risk in providing the reference service. Rule 87(3) of the NGR stated:¹⁰⁷

The allowed rate of return objective is that the rate of return for a service provider is to be commensurate with the efficient financing costs of a benchmark efficient entity with a similar 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).

However, there is no explicit corresponding link made to:

- rule 100: the allowed rate of return is not referenced in relation to the assessment of terms and conditions for appropriate risk allocation
- rule 97(3): which sets out the criteria for the regulator to assess a proposed tariff variation mechanism. These criteria do not include the allowed rate of return as a criterion in assessing the risk underlying a tariff variation mechanism.¹⁰⁸

On this basis, the Commission concluded in its final report that the NGR should be clarified in order to explicitly require the regulator to have regard to the risk sharing arrangements of the access arrangement when determining the non-tariff terms and conditions and the reference tariff variation mechanism.

¹⁰⁷ Since the draft rule determination, this provision been deleted under the binding rate of return law and rule changes. Nevertheless, the AEMC’s approach to this issue remains as described: the degree of risk implicit in the reference tariff should be reflected in the non-tariff terms and conditions as an access arrangement must be internally consistent.

¹⁰⁸ For example, one of the formulas for tariff variation listed under rule 97(2) allows for revenue yield control. A revenue yield control effectively allows the service provider to change the reference tariff in response to the difference between actual and forecast demand.

The COAG Energy Council rule change request included a proposal to amend the NGR as recommended by the Commission.¹⁰⁹ The draft amendments made to rule 100 differed in wording to the COAG Energy Council's proposed rule to better achieve the stated policy objective. Specifically, draft rule 100 clarified that in regard to achieving general consistency within an access arrangement, the regulator must have regard to the risk sharing arrangements implied in the reference tariffs when making a decision on the non-tariff elements of an access arrangement.

5.3.3 Stakeholder views

AGL supported the draft rule to explicitly direct regulators to have regard to risk sharing arrangements in an access arrangement and commented that this "will go some way to redressing the imbalance between asset owners and users." In addition, AGL considered that some standardisation of non-tariff terms and conditions and a reference tariff setting mechanism will reduce regulatory costs over time.¹¹⁰

APA was of the view that the new draft rule 100(2) seemed to "place the cart before the horse", arguing that the risk sharing effected by the access arrangement will, to a greater or lesser extent, determine the capital and operating costs forecast to be incurred by the service provider. These costs are then to be taken into account in the setting of reference tariffs. When deciding on the non-tariff terms and conditions, the AER should have regard to the risk sharing arrangements "implicit in the access arrangement".¹¹¹

5.3.4 Assessment

In response to APA's comments, the Commission notes that consideration of non-tariff terms and conditions are relevant to the determination of reference tariffs just as consideration of reference tariffs are relevant to the determination of non-tariff terms and conditions. In other words, the relationship is two-way and a balance must be sought to establish an internally consistent access arrangement that satisfies the NGO and revenue and pricing principles.

The Commission is satisfied that its assessment made in the draft rule determination remains appropriate; it is important to address pipeline user concerns that all components of an access arrangement proposal are addressed by the regulator. For this reason, the Commission has made changes to both rules 100 and 97 to reflect the relationship between tariff and non-tariff elements of an access arrangement.

5.3.5 Final rule

The Commission has made a final rule which clarifies that the regulator is to have regard to the risk sharing arrangements implicit:

- in the reference tariff when determining the non-tariff terms and conditions (amend rule 100)

¹⁰⁹ COAG Energy Council, *rule change request*, p. 11.

¹¹⁰ AGL submission, p. 2.

¹¹¹ APA submission, p. 3.

- in the access arrangement when determining the reference tariff variation mechanism (new rule 97(3)(d1)).

The intent of the final rule is to highlight the importance of the link between the tariff and non-tariff elements of an access arrangement. Together, all of these elements must appropriately reflect the nature of the reference services in the access arrangement. This final rule, which is the same as the draft rule, has been made to support clarity of regulatory decision-making consistent with achieving the NGO.

5.4

Access arrangements process: revision period

5.4.1

Current framework

The timeframe for submitting a revised access arrangement proposal in response to the regulator's draft decision is at least 15 business days, as set out in rule 59(3) of the NGR:

If an access arrangement draft decision indicates that revision of the access arrangement proposal is necessary to make the proposal acceptable to the AER, the decision must fix a period (at least 15 business days) for revision of the proposal (the revision period).

The NGR also provide a consultation period of at least 20 business days for stakeholders to make submissions on the service provider's revised proposal.¹¹²

In relation to recent draft decisions the AER has set the revision periods as:

- 35 business days for the Roma to Brisbane Pipeline 2017-2022
- 27 business days for AusNet Services 2018-2022
- 30 business days for Multinet Gas 2018-2022
- 30 business days for Australian Gas Networks (Victoria and Albury) 2018-2022 and for the APA Victorian Declared Transmission System 2018-2022.

Similarly, the ERA set the revision periods on the Dampier to Bunbury Natural Gas Pipeline and the Goldfields Gas Pipeline as two months following its draft decisions for the current access arrangements on these pipelines.¹¹³

5.4.2

Draft rule determination

As observed by the Commission, revising an access arrangement proposal can be complex and time is required for service providers to digest and respond to a regulator's draft decision. Furthermore, 15 business days may not provide adequate time to allow service providers to engage with stakeholders on any required changes.¹¹⁴

The current framework provides the regulator discretion to set the revision period and consultation period. As noted above, in recent times, both the AER and ERA have set revision

¹¹² Rule 59(5)(c)(iii) of the NGR.

¹¹³ The revision period included the Christmas-New Year holiday period 2015-2016.

¹¹⁴ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 115.

periods of between 27 and approximately 40 business days and consultation periods of between 20 and 25 business days.

Even though the existing access arrangement process already provides an opportunity for stakeholder feedback on the revised proposal ahead of a final decision, the Commission considered that a longer revision period should encourage service providers to work collaboratively with the regulator and stakeholders to resolve the areas of contention and make necessary changes. An extended revision period should also improve the likelihood that the revised proposal would be acceptable to the regulator, and align with user preferences.

Further, while regulators have set longer revision periods in practice, a service provider cannot rely on a longer period in its planning for managing the access arrangement process if the decision on extending the revision period beyond 15 business days is only made at the time the draft decision is made.

A change to the NGR to make a longer revision period would enable service providers to rely on that specified period in making their response to the draft decision. This would make resourcing and planning work over access arrangement process more straightforward.

The Commission also noted that under the NER, network service providers have 45 business days to submit a revised regulatory proposal in response to the regulator's draft determination.¹¹⁵

As a consequence of extending the revision period, the regulator would have less time to consider the revised proposal and issue its final decision without further changes being made. However, the introduction of a separate process to determine reference services is expected to provide capacity for the regulator to assess the remaining elements of the access arrangement proposal within the access arrangement assessment timeframe (as discussed in Chapter 4).

The COAG Energy Council rule change request included a proposal to amend the NGR as recommended by the Commission.¹¹⁶ The draft rule made reflected the COAG Energy Council's proposal.

5.4.3

Stakeholder views

AGL, Jemena and ATCO expressed support to the draft rule to extend the access arrangement revision period from at least 15 to at least 30 days to afford service providers more time to consult with stakeholders and the regulator when responding to the regulator's draft decision.¹¹⁷

5.4.4

Assessment

No further information has been raised in relation to this issue. The Commission is satisfied that its assessment made in the draft rule determination remains appropriate.

¹¹⁵ Clauses 6.10.3(a) and 6A.12.3(a) of the NER.

¹¹⁶ COAG Energy Council, *rule change request*, p. 11.

¹¹⁷ Submissions: AGL, p. 2; Jemena, p. 18; ATCO, p. 12.

5.4.5

Final rule

The Commission has made a final rule, which is the same as the draft rule, that amends rule 59(3) to extend the revision period from at least 15 business days to at least 30 business days.

This final rule has been made to facilitate greater stakeholder engagement in the access arrangement assessment process. It will provide more time for stakeholder engagement, enabling the regulator to make more informed decisions in the long-term interest of consumers.

5.5

Access arrangement process: interval of delay

5.5.1

Current framework

The NGR provide that where there is a delay between the intended commencement of a revised access arrangement and its actual commencement, the tariffs in force in the previous access arrangement will continue until the revised access arrangement commences. This delay between the two dates is referred to as the "interval of delay".

Rule 92 of the NGR states:

- (3) However, if there is an interval (the interval of delay) between the revision commencement date stated in a full access arrangement and the date on which revisions to the access arrangement actually commence:
 - (a) reference tariffs, as in force at the end of the previous access arrangement period, continue without variation for the interval of delay; but
 - (b) the operation of this subrule may be taken into account in fixing reference tariffs for the new access arrangement period.

In addition, rule 3 of the NGR include six different meanings of the term "access arrangement period", each of which could apply at varying times of the access arrangement process.

access arrangement period for an applicable access arrangement means any of the following periods that may be applicable to the access arrangement:

- (a) the period between the commencement of the access arrangement and the commencement of the first revision of the access arrangement;
- (b) if the first revision of the access arrangement has not yet taken effect - the period between the commencement of the access arrangement and the revision commencement date for the access arrangement;
- (c) if revision of the access arrangement prior to its expiry is not contemplated - the period between the commencement of the access arrangement and the *expiry date* for the access arrangement period;
- (d) the period between the actual commencement of successive revisions of the access arrangement;

- (e) the period between the commencement of the last revision of the access arrangement and the revision commencement date for the access arrangement;
- (f) if the access arrangement has been revised but further revision prior to its expiry is not contemplated - the period between the commencement of the last revision of the access arrangement and the *expiry date* for the access arrangement.

5.5.2

Draft rule determination

As noted in the final report, the effect of rule 92(3)(a) of the NGR is that during an interval of delay, the applicable reference tariffs are not derived using the approved tariff variation mechanism set out in rule 92(2). Instead, the reference tariffs applying at the end of the access arrangement period continue to apply unchanged until such time that the revisions made to the access arrangement come into effect. As a consequence, reference tariffs may not reflect an assessment of efficient forecast costs of providing the reference services after the revision commencement date for the duration of the interval of delay.¹¹⁸

As discussed above, the NGR include six different definitions of access arrangement period. Consequently, the Commission considered that there was some ambiguity in the NGR in relation to the definition of access arrangement, and the process for equalising revenue during an interval of delay. The Commission also noted that this issue was the subject of a judicial review by the Supreme Court of Western Australia and had previously been considered by the Australia Competition Tribunal.

The box below provides an overview of previous interpretations of rule 92(3) of the NGR.

BOX 1: PRECEDENTS ON THE INTERPRETATION OF RULE 92(3)

The Commission has previously considered the role of rule 92(3) of the NGR in its final rule determination of the *Economic regulation of network service providers and price and revenue regulation of gas services* in 2012.^(a) Specifically in relation to the operation of rule 92(3) of the NGR to true-up revenue during any interval of delay, the Commission stated:^(b)

...the reference tariffs prevailing at the end of the previous access arrangement period continued for the duration of the delay and a NPV [net present value] neutral true-up was carried out on a smoothed basis when the new reference tariffs were approved.

...the Commission is satisfied that rule 92(3) can be relied upon to deal with the effect of any delay between:

- the revision commencement date specified in the ... access arrangements;
- and
- the date the revisions actually take effect for these two pipelines.

¹¹⁸ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 117.

Following the 2012 rule change process, the ERA assessed proposed revisions to the Goldfield Gas Pipeline (GGP) 2015-2019 access arrangement. Specifically, the ERA relied on rule 92(3) of the NGR to determine the reference tariffs for this period by taking account the tariffs that applied during the 18 month period between the intended and actual commencement dates of the access arrangement (that is, the interval of delay). The ERA considered that rule 92(3) of the NGR allowed it to set tariffs for the 2015-2019 access arrangement by taking into account that the forecast revenue during the interval of delay was higher than the total revenue that would have been received using the building block approach in rule 79.^(c)

However, the GGP service provider applied for judicial review of this decision on the basis that the NGR do not permit an inter-period true-up or correction for a perceived windfall in a prior access arrangement period. In its assessment of the case, the Supreme Court of Western Australia found the ERA “did not make an error of law in construing NGR r 92(3) and the application should be dismissed.”^(d)

It is worth noting that the Australian Competition Tribunal had previously considered the ERA’s application of rule 92(3) of the NGR to true-up the reference tariffs of ATCO Gas following an interval of delay. In that instance, the Australian Competition Tribunal found that the ERA had not erred in its interpretation of rule 92(3) of the NGR.^(e)

Note: (a) AEMC, *Economic regulation of network service providers and price and revenue regulation of gas services*, final determination, 29 November 2012.

(b) AEMC, *Economic regulation of network service providers and price and revenue regulation of gas services*, final determination, 29 November 2012, p. 276.

(c) ERA, *Goldfields Gas Pipeline access arrangement final decision*, 30 June 2016, p. 449.

(d) *Goldfields Gas Transmission Pty Ltd v ERA* [2018] WASC 104, para. 6.

(e) *Application by ATCO Gas Australia Pty Ltd* [2016] ACompT10.

Relevantly, in the decision regarding ATCO Gas Australia the Supreme Court of Western Australia said that “Rule 92(3) is relevantly ambiguous or obscure.”

Based on previous interpretations of rule 92(3) of the NGR and the most recent decision from the Supreme Court of Western Australia regarding Goldfields Gas Pipeline, the Commission concluded that the operation of the NGR in respect of the interval of delay warranted clarification for future access arrangements.

In order to address the issues identified by the Commission, the COAG Energy Council proposed to amend the NGR as recommended by the Commission. The Commission made a draft rule consistent with the COAG Energy Council’s proposal.

5.5.3

Stakeholder views

APA was of the view that the rule on determining reference tariffs following an interval of delay (rule 92(3)) should be amended to clarify that when there is an interval of delay, the equalisation of net present values is to result in a service provider being no better off or no worse off, as a result of the delay. APA noted that:¹¹⁹

¹¹⁹ APA submission, p. 1.

The application of rule 92(3) to the Goldfields Gas Pipeline has resulted in a proposed increase in the reference tariff of about 26%. This increase is not driven by an increase in costs, but by the unwinding of the adjustment for the previous interval of delay. If there had been no interval of delay, the proposed tariff would have been around 6% lower than the reference tariff which would have applied during the previous access arrangement period.

For pipeline customers who prefer relative stability in the tariffs they pay, avoidance of instability caused by delays is likely to be important.

APA also suggested that to avoid the large changes in reference tariffs brought about solely by intervals of delay, rule 13, which imposes an absolute limit on the time for a decision on a full access arrangement proposal, should not be removed.¹²⁰

ATCO supported the draft rule determination to amend rules 3 and 92(3) to clarify the determination of reference tariff following an interval of delay. However, it suggested that the draft rule could provide 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. It stated that using forecast information rather than actual data:¹²¹

- (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.

In addition, ATCO proposed rule 92(3)(b) to be amended as follows:¹²²

- (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.

5.5.4

Assessment

Section 4.2 of this final rule determination includes a discussion on the operation of the rule that specifies an absolute time frame for the access arrangement assessment process carried out by a regulator (rule 13 of the NGR). In relation to rule 13 and the interval of delay, the Commission notes that if a regulator made a decision after the overall 13-month time limit specified, the decision is not invalid according as provided by s. 332 of the NGL. Accordingly, rule 13 does not impact on decision-making where an interval of delay arises.

¹²⁰ See section 4.2 of this final rule determination for further discussion on rule 13 of the NGR.

¹²¹ ATCO submission, p. 12.

¹²² ATCO submission, p. 12.

ATCO has made two drafting suggestions in relation to the determination of reference tariffs when an interval of delay occurs (rule 92):

- ATCO suggested that the use of forecast revenue be specified in the rule. The Commission observes that the use of forecast revenue has been established by the regulators in practice. It is consistent with operation of the current rule and the draft rule did not make any changes in this regard. Accordingly, the suggested specification is not required.
- ATCO suggested the use of “must” rather than the current “may” in draft rule 92(3)(b) which states “the operation of this subrule may be taken into account...”. The Commission agrees the use of “must” is preferable as suggested by ATCO. It provides clarity that the regulator must consider the matter of revenue neutrality when an interval of delay occurs and it may make an adjustment for any under- or over-recovery that has occurred during that period. This change is consistent with the policy objective that where an interval of delay arises, rule 92 is the relevant rule to manage the impact on revenue that an interval of delay creates.

5.5.5

Final rule

The Commission has made a final rule to clarify that:

- the process for equalising revenue during an interval of delay is to result in a service provider being no better or worse off as a result of the interval of delay (amendment to rules 92(2), 92(3) and inserting new rule 92(4))
- the definition of the access arrangement period includes the period known as the interval of delay (amendment to rule 3).

The final rule differs from the draft rule to reflect a change from “may” to “must” in rule 92(3)(b) as suggested by ATCO.

These amendments work together to recognise the interval of delay and the key purpose of the regulator’s revenue equalisation decision in this context: that the service provider is not to be better or worse off for having experienced an interval of delay. The clarifications made by the final rule are expected to allow for improved regulatory decision-making without unnecessary prescription.

5.6

Regulatory discretion

5.6.1

Current framework

Regardless of the level of discretion allowed under the NGR, the regulator’s ability to make decisions or exercise its functions remains constrained by the application of administrative law.¹²³ As the regulators (the ERA and AER) are government bodies, they are subject to the requirements of administrative law and this imposes a form of constraint on the regulators’ exercise of discretion when making decisions.¹²⁴

¹²³ Administrative law is a set of principles contained in both court decisions and legislation. It sets out how administrative decision makers must make decisions and provides affected parties with a way to challenge those decisions.

¹²⁴ Criteria for making a valid decision include: where does the power to make the decision come from (head of power); appropriate

In addition, the NGL requires the regulator, in performing or exercising an economic regulatory function or power, to perform or exercise that function or power in a manner that will or is likely to contribute to the achievement of the NGO.¹²⁵ Specifically,

- (1) The AER must, in performing or exercising an AER economic regulatory function or power -
 - (a) perform or exercise that function or power in a manner that will or is likely to contribute to the achievement of the national gas objective;
 - (b) if the AER is making a designated reviewable regulatory decision -
 - ...
 - (iii) if there are 2 or more possible designated reviewable regulatory decisions that will or are likely to contribute to the achievement of the national gas objective -
 - (A) make the decision that the AER is satisfied will or is likely to contribute to the achievement of the national gas objective to the greatest degree (the preferable designated reviewable regulatory decision); and
 - (B) specify reasons as to the basis on which the AER is satisfied that the decision is the preferable designated reviewable regulatory decision.

Further, under the NGR, there are more detailed factors, criteria and principles that place a constraint on how the regulator can make decisions regarding specific elements of an access arrangement proposal.

Rule 40 of the NGR sets out three levels of discretion that apply to the regulator when making a decision on specified elements of the access arrangement proposal:

- No discretion: The regulator's discretion is entirely excluded in regard to that element of the access arrangement if the proposal meets the requirements of the relevant provision. This applies to the access arrangement review date and access arrangement revision date (rule 50(2)).
- Limited discretion: The regulator may not withhold its approval of an element of the access arrangement if the regulator is satisfied that the element complies with the requirements of the NGL and NGR and is consistent with any applicable criteria in the NGL and NGR. The regulator's discretion is limited in relation to:
 - conforming capital expenditure (rule 79)
 - the depreciation schedule (rule 89)
 - operating expenditure (rule 91)

exercise of discretion; authorisation to make the decision; procedural fairness; preconditions to a decision; consideration of all relevant matters and evidence; correctly recorded decisions (Law Institute of Victoria, *A user's guide to administrative decision making*, 2013).

¹²⁵ Section 28(1) of the NGL.

- for distribution pipelines, the setting of tariff classes to allow service providers to recover the expected revenue (rule 94)
- for transmission pipelines, the reference tariffs set to recover the portion of total revenue referable to the reference service (rule 95).
- Full discretion: The regulator may withhold its approval to the access arrangement element if in its opinion, a preferable alternative exists that complies with the requirements of the NGL and NGR and is consistent with any applicable criteria in the NGL and NGR. This applies to the remaining elements of an access arrangement not noted above.

5.6.2

Draft rule determination

In its review, the Commission concluded that there may be some ambiguity surrounding the link between the regulatory discretion framework in the NGR and the manner in which the regulator must perform or exercise its regulatory functions or powers under the NGL.¹²⁶ In addition, the Commission expressed concern that the regulatory discretion framework may prevent the making of decisions on access arrangement proposals that best promote the NGO.

As noted above and discussed in the final report, s. 28 of the NGL provides that in making an access arrangement decision where there are two or more decisions that will or are likely to contribute to the NGO, the regulator must make the decision that it is “satisfied will or is likely to contribute to the achievement of the NGO to the greatest degree.”¹²⁷

However, it is difficult for the regulator to make a more preferable designated reviewable regulatory decision on the overall access arrangement under s. 28(1)(b)(iii) of the NGL where it is prevented under the NGR, in respect of an element of the access arrangement, from making a decision that better meets the NGO.

The Commission noted in its final report that while there may not be a direct conflict between rules 40(1) and (2) of the NGR and s. 28(1)(b)(iii) of the NGL, the limited discretion framework created by rule 40 does not sit well with the operation of s. 28(1)(b)(iii) of the NGL. In other words, a tension arises because it is difficult for the regulator to give full effect to s. 28 (that is to make a preferable designated reviewable regulatory decision on the overall access arrangement) if it is hampered in its discretion to make decisions on the individual elements of the access arrangement.

Under the NGR, for full discretion provisions, rule 40(3) provides that the regulator has discretion to withhold its approval to an element of an access arrangement proposal, if in the regulator’s opinion, a preferable alternative exists that:

- complies with the applicable requirements of the NGL and NGR
- is consistent with any applicable criteria (if any) prescribed in the NGL and NGR.

¹²⁶ Section 28(1)(b)(iii)(A) of the NGL.

¹²⁷ Section 28(1)(b)(iii)(A) of the NGL.

As a result, the tension that arises between the NGL and the NGR's limited and no discretion provisions does not arise in relation to full discretion provisions, as an alternative decision can clearly be contemplated by the regulator.

In practice, however, the regulator's discretion is always limited in the sense that its decision-making, even for full discretion provisions, is guided by some set of factors or principles that ultimately place a form of constraint on its decision-making power. For example, even for full discretion provisions, there are specific criteria set out in the relevant rules, as well as the overarching requirement to have regard to the NGO, that operate to "limit" the regulator's discretion. As many aspects of approving an access arrangement proposal are full discretion provisions, this approach of specific criteria applying to specific requirements is relevant for many elements of an access arrangement.

In its final report, the Commission concluded that:¹²⁸

- As a matter of principle, the regulator should not be prevented from making a decision on an access arrangement proposal that best promotes the NGO, having regard to all the relevant factors, criteria and principles in the NGL and NGR.
- The effect of the current regulatory discretion framework is unclear and confusing and could impede regulatory decisions to best promote the NGO.

On this basis, the Commission considered that no individual rules in the NGR should be identified as "no" or "limited" discretion provisions. All decisions made by the regulators in regard to the elements of an access arrangement proposal, and the access arrangement proposal in total, should be "full" discretion decisions subject to any relevant requirements. This provides a consistent decision-making approach where the regulator is to assess any element of an access arrangement with reference to particular criteria relevant to the element.

The Commission considered that this is consistent with a propose-respond model of decision-making that is part of the NGR's regulatory framework for gas pipelines. It provides that the regulator will only refuse to approve a proposal if it does not satisfy the NGO and the relevant rules.

The subsequent COAG Energy Council rule change request included a proposal to amend the NGR as recommended by the Commission.¹²⁹ The draft rule made was consistent with the proposed rule.

5.6.3

Stakeholder views

AGL expressed support for the draft rule regarding the proposal to remove the limited and no discretion regulatory framework.¹³⁰ No other specific comments on this issue were made.

¹²⁸ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 127.

¹²⁹ COAG Energy Council, *rule change request*, p. 12.

¹³⁰ AGL submission, p. 2.

5.6.4 Assessment

No further information has been raised in relation to this issue. The Commission is satisfied that its assessment made in the draft rule determination remains appropriate.

5.6.5 Final rule

The Commission has made a final rule that removes the limited discretion and no discretion framework from the NGR. This has been achieved by the omission of rule 40 of the NGR. In addition, each reference to limited or no discretion has been omitted in rules 50(3), 79(6), 89(3), 91(2), 94(6) and 95(4) of the NGR. A consequential amendment to rule 41 has also been made with the insertion of new rule 41(3).

The Commission considers that these changes should improve and clarify the regulatory decision-making framework and permit the regulators to make decisions in regard to all elements of an access arrangement that best achieve the NGO.

6 DETERMINING EFFICIENT COSTS

The accurate determination of efficient costs is fundamental to the setting of efficient reference tariffs. Efficient, cost reflective reference tariffs are required to enable the efficient use and provision of reference services as well as efficient investment in the pipeline.

The revenue and pricing principles in the NGL state that a service provider should be provided with a reasonable opportunity to recover at least the efficient costs of providing the reference services.¹³¹ The revenue and pricing principles also state that the service provider should be provided with incentives to promote economic efficiency with respect to reference services, which includes efficient investment, efficient provision of pipeline services and efficient use of the pipeline.

Reference tariffs are set based on the efficient costs of a prudent service provider acting in accordance with good industry practice and forecast demand to deliver efficient total revenue that is calculated using the building block approach.¹³² The simplified steps in calculating a reference tariff are set out in the figure below, noting the relevant rules.¹³³

Figure 6.1: Simplified calculation of a reference tariff

Step 1: calculate total revenue

Total revenue = (rate of return x *projected capital base*) + depreciation on *projected capital base* + estimated income tax + increments/decrements from incentive mechanism + forecast operating expenditure
(see rules 76, 87, 87A, 88-90, 91, 98)

given that:

Projected capital base = *opening capital base* + conforming forecast capital expenditure – forecast depreciation for the period – forecast disposals
(see rules 78, 79, 88-90)

and

Opening capital base = *opening capital base* of previous access arrangement period + approved capital expenditure + adjustments for capital contributions, speculative capital expenditure and former redundant assets – depreciation over the previous access arrangement period – redundant assets – disposals
(see rules 77, 79, 82, 84, 86)

Step 2: allocation

Allocate *total revenue* between reference services and non-reference services (see rule 93).

Step 3: reference tariffs

Calculate reference tariffs by dividing relevant *total revenue* by forecast demand for the relevant reference service.

Source: AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 129.

¹³¹ Section 24 of the NGL.

¹³² Rules 76, 79(1)(a), 83(4), 91(1) of the NGL.

¹³³ This example is simplified as it assumes a single reference tariff for a single year (the first year of an access arrangement period) for a pipeline that has a previous access arrangement period. In reality, regulators may approve reference tariffs for multiple services over multiple years and in cases where there may or may not be an access arrangement already in place.

A reference tariff is calculated by dividing the total revenue allocated to the reference service by the forecast demand for the reference service. Total revenue is calculated as the sum of the allowed return on the projected capital base, depreciation, estimated corporate income tax and operating expenditure, plus or minus any adjustments for the incentive mechanism as approved by the regulator.¹³⁴

This chapter discusses the following elements in the determination of efficient costs in relation to the rule change request, the draft rule and the final rule made by the Commission. These are, in turn:

- speculative investment
- prudence criterion for capital expenditure
- including extensions and expansions in the capital base
- cost allocation
- rebateable services.

6.1

Capital expenditure: speculative investment

6.1.1

Current framework

The NGR allows for the creation of a speculative capital expenditure account.¹³⁵ In assessing capital expenditure against the criteria in rule 79 of the NGR, the regulator may conclude that a certain amount does not satisfy the criteria and is speculative in nature. Under these circumstances, the non-conforming capital expenditure can be allocated to a notional speculative capital expenditure account. The access arrangement would reflect this decision.

During the period the capital expenditure is in the speculative capital expenditure account, it attracts a rate of return. Until recently, rule 84 provided that this rate of return would be determined by the regulator and may differ to the rate of return used in the calculation of reference tariffs for the pipeline. The rule did not provide any further guidance to the calculation of this rate of return.

However, the rule amendments made by the South Australian Minister on 1 February 2019 following the legislative amendments on introducing a binding rate of return instrument also amended rule 84 and changed the discretion that had previously been provided to the regulator.¹³⁶ Rule 84(2) of the NGR now states:

- (2) The balance of the speculative capital expenditure account must be adjusted annually by applying to the balance a rate that is the same as the *allowed rate of return* for the regulatory year in which the adjustment is made.

The term “allowed rate of return” is defined in rule 3 of the NGR to be the “rate of return calculated in the way stated in the “applicable rate of return instrument”.

¹³⁴ Rule 76 of the NGR.

¹³⁵ Rule 84 of the NGR.

¹³⁶ Statutes Amendment (National Energy Laws)(Binding Rate of Return Instrument) Bill 2018.

Nevertheless, the function of the rule remains as it was; to manage speculative capital expenditure. If as a result of changes to demand or services experienced by the pipeline the capital expenditure would meet the rule 79 criteria, the relevant portion of the speculative capital expenditure account (including the return) can be rolled into the capital base at the commencement of the next access arrangement period. This would then allow that capital cost to be reflected in reference tariffs in the future.¹³⁷

This rule has not been utilised since the NGR commenced.

6.1.2

Draft rule determination

At the time of the Commission's review the key issue for the speculative capital expenditure account rule was the lack of clarity on the rate of return that would apply. Rule 84(2) allowed the return to be above or below the rate of return used to determine the reference tariff.

In its final report, the Commission observed that given the speculative nature of the investment project, the allowed rate of return (the rate of return applied to the capital base) would be unlikely to provide a return sufficient for the service provider to undertake the investment because of the additional risk for the service provider that the capital may not be rolled into the capital base.

Accordingly, the Commission recommended that the NGR be amended to provide greater certainty on the rate of return that can be applied to speculative capital expenditure while still allowing the regulator the flexibility to reflect, where appropriate, the specific circumstances of speculative investment.¹³⁸

As such, the COAG Energy Council proposed that rule 84 be clarified such that the rate of return under rule 84(2) is at a minimum the return used to calculate the reference tariff but that this could be adjusted upwards if the regulator deemed it was appropriate having regard to the speculative nature of the particular investment.

However, in making the draft rule determination, the Commission observed that on 2 August 2018 a Bill (the Bill) containing legislative amendments on binding rates of return had been passed in the South Australian Parliament.¹³⁹ The legislative amendments removed heads of power for the Commission to make rules regarding the determination of a rate of return. The amendments implemented a binding instrument that sets out a single approach to the calculation of rate of return parameters for all regulated electricity service providers and all full regulation pipelines; and which is developed through a single, industry-wide process every four years.¹⁴⁰

By the time the draft rule determination was made on 6 December 2018, the COAG Energy Council had published its proposed rules to support the introduction of the binding rate of return legislation. These proposed rules indicated that the Commission would not be able to

¹³⁷ With the rate of return applicable to the capital base generally now being relevant to this former speculative capital amount.

¹³⁸ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 138-139.

¹³⁹ Statutes Amendment (National Energy Laws)(Binding Rate of Return Instrument) Bill 2018

¹⁴⁰ COAG Energy Council Senior Committee of Officials, *Bulletin — Binding rate of return guideline: Senior Committee of Officials response to submissions on binding rate of return legislation*, June 2018, p. 1.

achieve the policy intent for the speculative capital expenditure account rule that it had previously recommended.

6.1.3 Stakeholder views

No stakeholders commented on this issue.

6.1.4 Assessment

Since the publication of the draft rule determination, the *Statutes Amendment (National Energy Laws) (Binding Rate of Return Instrument) Act 2018* (Binding Rate of Return Act) commenced on 13 December 2018. The rule changes required as a consequence of this law change commenced operation on 1 February 2019 and were published in the South Australian Government Gazette on 7 February 2019. These new rules made by the South Australian Minister specify that the rate of return to be used in relation to the speculative capital expenditure account must be the rate of return calculated under the rate of return instrument. No discretion is provided to the regulator.

On this basis, the final rule does not include any amendment to the speculative capital expenditure account provisions in rule 84.

6.1.5 Final rule

In light of the binding rate of return rules made by the South Australian Minister, no other amendments related to the speculative capital expenditure account rules have been made. The Commission has not made any amendment to rule 86 (re-use of redundant assets).

6.2 Capital expenditure: prudence criterion

6.2.1 Current framework

Capital expenditure is assessed ex ante and ex post by the regulator:

- ex-ante: At the beginning of an access arrangement period, the regulator determines whether projected capital expenditure for that period is “conforming”.
- ex-post: Prior to the start of the next access arrangement period, the regulator determines whether actual capital expenditure for the current period is “approved”. Approved capital expenditure is rolled into the opening capital base and is included in the calculation of total revenue and reference tariffs for the next and subsequent access arrangement periods.

To be assessed as conforming or approved by the regulator, capital expenditure must satisfy the criteria that are set out in rule 79 of the NGR. This test has multiple limbs.

First, the capital expenditure in question must be that which would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of providing pipeline services.¹⁴¹

¹⁴¹ Rule 79(1)(a) of the NGR.

Second, projected and actual capital expenditure must be “justifiable” under one of the following criteria to be assessed as either “conforming” or “approved”:¹⁴²

- the overall economic value of the expenditure is positive; or
- the present value of the expected incremental revenue to be generated as a result of the expenditure exceeds the present value of the capital; or
- the capital expenditure is necessary to:
 - maintain and improve the safety of services
 - maintain the integrity of services
 - comply with a regulatory obligation or requirement, or
 - maintain the service provider’s capacity to meet levels of demand for services existing at the time the capital expenditure is incurred.

This rule is currently applied by the regulator with limited discretion.¹⁴³

6.2.2

Draft rule determination

During the Commission’s review, the regulators commented that the new capital expenditure criteria constrained their ability to address the efficiency of capital expenditure if it meets the safety criterion in rule 79(2)(c)(i) of the NGR.¹⁴⁴

For capital expenditure to be conforming, it must be expenditure that:

- would be incurred by a prudent service provider acting efficiently (under rule 79(1)(a) of the NGR)
- must also be justifiable (under rule 79(1)(b) of the NGR) in that it meets at least one of the criteria in rule 79(2) (that is, overall economic value is positive; net present value is positive; safety, integrity, regulatory requirement; or to meet demand).

Although neither “and” nor “or” is used between sub-rules (1)(a) and (1)(b), the Commission commented in its draft report for the review that the proper interpretation of rule 79(1) would be read to include both requirements given the lead in words in (1) “conforms with the following criteria.”

Nonetheless, in its final report the Commission recommended removing any doubt on this issue. Accordingly, the COAG Energy Council’s rule change request sought to be clear that all new capital expenditure must be such that would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of providing services.

The Commission made a draft rule consistent with that proposed by the COAG Energy Council.

¹⁴² Rules 79(1)(b) and 79(2) of the NGR.

¹⁴³ Rule 79(6) of the NGR. See Chapter 5 for amendments to the regulatory discretion arrangements.

¹⁴⁴ For example, see the ERA process for the Mid West to South West Distribution Systems 2014-2019 access arrangement and in particular the submissions from Energy Safety WA. See <https://www.erawa.com.au/gas/gas-access/mid-west-and-south-west-gas-distribution-systems/access-arrangements/access-arrangement-for-period-2014-2019>.

6.2.3 Stakeholder views

ATCO expressed support for the draft rule regarding the prudence criterion for capital expenditure.¹⁴⁵ No other stakeholders commented on this issue.

6.2.4 Assessment

No further information has been raised in relation to this issue. The Commission is satisfied that its assessment in the draft rule determination as set out above remains appropriate.

6.2.5 Final rule

The Commission has made a final rule (which is the same as the draft rule) that amends rule 79 of the NGR to insert the word “and” in rule 79 between sub-rules 79(1)(a) and 79(1)(b) to make it clear that regardless of which sub-rule (2) criteria are relevant for the purposes of sub-rule 79(1)(b), the expenditure in question must also meet the prudence criterion under rule 79(1)(a). This amendment is expected to support the regulators in making decision on service providers’ investments in the safety of pipelines that will also promote the NGO.

The Commission has also determined to remove the limited regulatory discretion framework created by rule 40 of the NGR. Consequently, the final rule also amends rule 79(6) of the NGR. This is discussed further in Chapter 5.

6.3 Capital base: including extensions in the capital base

6.3.1 Current framework

The initial opening capital base for a newly covered full regulation pipeline is determined under rule 77(1) of the NGR and is dependent on the date of commissioning of the pipeline:

- For a covered pipeline commissioned before the commencement of the NGR in 2008: the initial opening capital base is determined with reference to section 8.10 of the code, which states that the regulator should take into account, among a number of other factors “the basis on which tariffs have been (or appear to have been) set in the past, the economic depreciation of the Covered Pipeline and the historical returns to the Service Provider from the Covered Pipeline.”¹⁴⁵
- For a covered pipeline commissioned after the commencement of the NGR: the opening capital base is determined as the cost of construction of the pipeline and pipeline assets incurred before commissioning of the pipeline (including easement and real property costs), plus the amount of capital expenditure since the commissioning of the pipeline, less depreciation and disposed assets.

For a full regulation pipeline, the initial capital base calculation occurs only once. The NGR does not accommodate any revaluation of the capital base. Instead, under rule 77 there is an ongoing regulatory process where the initial opening capital base is rolled forward and an opening capital base is calculated at the beginning of each access arrangement period. The approach is set out in rule 77(2) as:

¹⁴⁵ ATCO submission, p. 13.

¹⁴⁶ *National third party access code for natural gas pipeline systems*, November 1997.

- the opening capital base as at the commencement of the earlier access arrangement period
- plus approved capital expenditure made during the earlier access arrangement period plus any amounts to be added to the capital base due to speculative expenditure account, capital contributions and surcharges
- less depreciation over the earlier access arrangement period and redundant and disposed assets.

Rule 77(3) deals with the situation where there is not a continuous series of full access arrangements in place for a pipeline. It sets the opening capital base for an access arrangement period to be:

- the opening capital base determined in accordance with the NGR for a notional access arrangement taking effect at the end of the access arrangement period for the last full access arrangement ("the relevant date")
- plus the amount of capital expenditure from the relevant date
- less depreciation from the relevant date
- less disposals since the relevant date.

6.3.2

Draft rule determination

In its draft rule determination, the Commission noted that as a result of its decision to allow for the inclusion of existing extensions in access arrangements, some existing assets associated with extensions can be expected to be rolled into capital bases for full regulation pipelines as part of future access arrangement review processes.¹⁴⁷

However, these changes are limited to permitting existing extensions to be incorporated into an access arrangement; they do not provide for the calculation of a value for such assets which is required to enable the assets to be included in the capital base.

In considering this issue in the review, the Commission concluded that the appropriate approach for these valuations is to apply the methods contained in rules 77(1) and 77(3) of the NGR. As outlined above, rules 77(1) and 77(3) apply when either a pipeline first becomes covered or after a period intervenes between access arrangement periods respectively. However, the Commission considered that the valuation methods could equally apply to extension assets that are to be included in a capital base for the first time.¹⁴⁸

In the review, the Commission concluded that the application of the provisions of rule 77(1) would treat the pipeline assets (for example, the pipeline extension) as if they were a separate pipeline for the calculation of the initial capital base. The outcome would be an initial capital base determination for the specific pipeline assets. This value would then be "rolled forward" and then added to the opening capital base for the next access arrangement period for the relevant pipeline under an amended rule 77(3).

¹⁴⁷ See Chapter 3 for more details on this change to the NGR.

¹⁴⁸ The same rules can be used for valuing existing expansions when the relevant NGL provisions are amended in the future. COAG Energy Council, *rule change request*, p. 6.

This approach was proposed by the COAG Energy Council in its rule change request.

The Commission subsequently made a draft rule to implement the policy outcome sought in the proposal although it differed in drafting to that described in the review's final report. The draft rule amended rules 77(2) and (3).

6.3.3

Stakeholder views

APGA stated that it had "no concerns" with the draft rule to allow extensions to be included in an access arrangement.¹⁴⁹ AGL also commented on the policy approach to extensions, suggesting that the default should be that extensions are included in an access arrangement unless otherwise determined by the regulator.¹⁵⁰

APA provided some drafting suggestions to draft rule 77 (on the method of valuing the extension to be included in the capital base). Specifically, that draft rule 77(2)(c1)(ii) should read "capital expenditure on the extension since construction of the extension" and draft rule 77(2)(c1)(iii) should read "depreciation of the extension since the date the extension was commissioned". APA also suggested that draft rule 77(3)(b1) be similarly amended.¹⁵¹

6.3.4

Assessment

No further information has been raised in relation to the policy position set out by the Commission in the draft rule determination. The Commission is satisfied that its assessment made in the draft rule determination remains appropriate.

In relation to the drafting changes to rule 77(2) and (3), the Commission has considered APA's submission and agrees that these changes would be beneficial to clarify the operation of the rule on valuing an existing extension that will be included in the capital base. The suggestions are consistent with the Commission's policy intent.

6.3.5

Final rule

The Commission has made a final rule that adds rules 77(2)(c1) and (3)(b1). The final rule differs from the draft rule to the extent that the calculation of capital expenditure and depreciation is specifically referenced to the relevant extension as suggested by APA.

These amendments made to the calculation of the opening capital base for an access arrangement period insert an additional step: to add to the opening capital base the value of an existing extension that satisfies the amended requirements of rule 104. The method to value such an extension mirrors the method used to value the capital base generally: the cost of construction plus additional capital expenditure (related to that extension) since that time, less depreciation (of the extension) and disposals.

The Commission is satisfied that the final rule will enable existing extensions to be included in a relevant access arrangement and valued through an existing, well understood methodology. As a result, one regulatory approach will apply to assets that may be regarded

¹⁴⁹ APGA submission, p. 2.

¹⁵⁰ AGL submission, p. 1. See section 3.2.3 for the Commission's assessment.

¹⁵¹ APA submission, p. 3.

as a single unit, under a fit for purpose approach at the discretion of the service provider. The Commission considers this outcome is consistent with the NGO.

6.4

Cost allocation

6.4.1

Current framework

Rules 93(1) and (2) of the NGR require the allocation of total revenue across reference services and other services to reflect the allocation of costs directly attributable to reference services and other costs across reference services and other pipeline services that are not reference services:

- cost directly attributable to providing reference services are allocated to those reference services, and the costs directly attributable to providing non-reference services are allocated to those non-reference services
- other costs are allocated between reference services and non-reference services on a basis that is determined or approved by the regulator, in line with the revenue and pricing principles.

6.4.2

Draft rule determination

In order to calculate efficient costs, all costs should be allocated between covered and uncovered parts of a pipeline. If this does not occur, then a reference tariff will potentially not reflect the efficient costs of providing the reference service and could include costs associated with providing services utilising uncovered parts of the pipeline. As a result, users may pay more than the efficient cost of providing the service that they use.

The Commission observed in its draft rule determination that while rule 93 of the NGR provides for the allocation of “total revenue” across reference services and other services, it does not specify that there is an allocation of costs between covered and uncovered parts of a pipeline. This is because “total revenue” calculated by the building block approach under rule 76 of the NGR applies only to covered assets.

As a result of the Commission’s draft rule on extensions and expansions requirements, there will remain instances where uncovered extensions and expansions of covered pipelines exist.¹⁵² These situations will require cost allocation to be applied across covered and uncovered assets. This raises practical difficulties for service providers and regulators in determining and assessing costs for an access arrangement.

In the final report for its review, the Commission noted that under the current cost allocation arrangements in the NGR there is potential that the reference tariff will not reflect the efficient costs of providing the reference service. This could occur if a service provider allocates all (or a disproportionately large proportion of) joint pipeline costs to the covered capacity, rather than the apportioning the costs across covered and uncovered assets appropriately. If this is the case, the reference tariff will be higher than would otherwise be if

¹⁵² This is because this rule change request did not seek existing expansions to be included in the relevant access arrangements. While this change was recommended by the AEMC, it requires amendments to the NGL. (AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 61-68.) The COAG Energy Council has indicated it will consider further legislative changes in the context of further work carried out in 2019.

the appropriate amount of joint costs had been allocated to the uncovered expansion capacity. For these reasons, the Commission recommended that the access arrangement proposal must provide the basis and methodology used to calculate the proposed forecast operating and capital expenditure and the allocation of that expenditure between the covered and uncovered parts of a covered pipeline.¹⁵³

In the rule change request, the COAG Energy Council has proposed that both rules 79 and 91 be amended to clarify that proposed forecast capital and operating expenditures refer to costs after an allocation of costs between the covered and uncovered parts of a pipeline has occurred. To support this change, it is proposed that the NGR should also be amended so that the service provider details the basis for the total costs and the cost allocation method that it has used.

The Commission made a draft rule that amended rules 79 and 91 that is consistent with the proposed rule.

6.4.3

Stakeholder views

In its submission, APGA stated that while it is “comfortable” with the draft rule amendments to the cost allocation of operating and capital costs, there will be “significant commercial implications for transmission service providers”.¹⁵⁴

AusNet Services submitted that the use of the term “properly allocate” in draft rules 79(1)(b) and (6) and 91(2) lacks the required specificity and may create uncertainty for service providers. AusNet Services suggested that use of the term “directly attributable”, as already used in rule 93(2), would be preferable.¹⁵⁵

ATCO also commented on the draft rule amendments to the cost allocation rules. In general, it expressed support for the draft rule. However, in its view, the draft rule did not explicitly reflect the Commission’s stated intent that service providers are to provide details of the basis and methodology of their proposed forecast capital and operating expenditure. ATCO noted that the relevant provisions of the NER are explicit. It suggested an additional sub-rule to rule 72(1) be made for this purpose:¹⁵⁶

- (ea) the methodology adopted to allocation 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.

¹⁵³ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July, pp. 158-159.

¹⁵⁴ APGA submission, p. 2.

¹⁵⁵ AusNet Services submission, pp. 1-2.

¹⁵⁶ ATCO submission, pp. 13-14.

6.4.4

Assessment

No further information has been raised in relation to the policy position set out in the draft rule determination to clarify the cost allocation requirements for operating and capital expenditure. The Commission is satisfied that its assessment made in the draft rule determination, as set out above, remains valid.

In regard to the drafting suggestion made by AusNet Services, the Commission agrees that the term “directly attributable” provides greater direction on the approach to cost allocation than the term “properly allocate” as used in the draft rule. However, rather than the specific drafting suggested by AusNet Services, the Commission has decided that the intent can be better achieved by amending rules 79 and 91 to require forecast capital and operating expenditure allocation to be carried out in accordance with the allocation of total revenue and cost requirements set out in rule 93. This change provides the same effect suggested by AusNet Services by utilising the existing reference to “directly attributable” in rule 93.

In addition, references to full access arrangement and access arrangement revision proposal have been removed on the basis that these are not necessary and may suggest a limitation to the cost allocation tasks that was not intended. The Commission intends that any proposal made by a service provider would include operating and capital expenditure costs that have been allocated between services such that the direct costs of providing each service are allocated to each service. This applies not only to reference services, but also to non-reference services (even if they are provided by an uncovered part of the pipeline). In addition, the Commission intends that the regulator’s assessment and decision regarding such costs also complies with these provisions.

ATCO suggested that an explicit requirement on service providers to include information on cost allocation in the access arrangement information be included in rule 72(1) of the NGR. The Commission acknowledges ATCO’s point that the requirement to provide an explanation of the cost allocation approach for a pipeline can be inferred from the relevant rules but is not explicit. Nevertheless, the Commission is satisfied with the drafting of the rules in this regard: it considers that the cost allocation rules do oblige a service provider to provide explanatory material to the regulator on its proposed cost allocation methodology to indicate its compliance with the NGR. The Commission considers this is generally understood and carried out by service providers. Accordingly, the Commission has not included ATCO’s suggested drafting for rule 72(1).

6.4.5

Final rule

The Commission has made a final rule that adds a new rule 79(1)(c) and amends rules 79(1)(b), 79(6) and 91(2) of the NGR. It differs from the draft rule in order to accommodate the intent of the drafting suggestions made by AusNet Services. The effect of the amendments made by the final rule is to:

- require an access arrangement proposal or revision proposal to include proposed forecast capital and operating expenditures that refer to costs after an allocation of expenditure between the covered and uncovered parts of a covered pipeline

- clarify that the cost allocation approach is to result in costs that are directly attributable to a service to be allocated to that service.

It considers that these amendments should contribute to the NGO by:

- assisting the regulator to assess the reasonableness of the cost allocation and make an informed decision on the proposal, thereby making decisions that best promote the NGO
- ensuring the reference tariff reflects only the efficient cost of providing the reference service.

The final rule also amends rules 79 and 91 to remove the limited regulatory discretion that had applied to these rules, consistent with the omission of rule 40 of the NGR as discussed in Chapter 5 of this final rule determination.

6.5 Rebateable services

6.5.1

Current framework

Rule 93(3) permits the regulator to allocate costs of rebateable services to reference services as long as the regulator is satisfied that the service provider will later apply an appropriate portion of the revenue generated from the sale of rebateable services to provide price rebates (or refunds) to the users of reference services. Rule 93(4) defines rebateable services as non-reference services for which:

- the markets are substantially different from markets for reference services
- demand, or the revenue to be generated from the service, is substantially uncertain.

6.5.2

Draft rule determination

Two issues in regard to rebateable services were explored in the review:

- the requirement related to the market
- the ability to refund rebateable services revenue.

During the review, the regulators expressed concern about the requirement for a rebateable service to be in a different market to the market for reference services. In particular, because it is complex to define a market and ascertain that it is different from another market (in this case, the market for the reference services).

Accordingly, the Commission recommended that the separate market requirement for rebateable services be removed from rule 93(4) of the NGR. The recommended removal of the requirement to define a market for a service in this rule was consistent with the recommended removal of the market definition concept from the reference service test in the NGR.¹⁵⁷

On the second issue, it was noted that rule 93(3) allows for the costs associated with rebateable services to be allocated to reference services. The rule provides for an ex post re-allocation of these costs through a refund to users of reference services. However, the rule does not provide any guidance on how this could be practically implemented, particularly as

¹⁵⁷ See Chapter 4 of this final rule determination.

it specifies price rebates or refunds be provided to the “users of reference services” rather than simply that the rebate is to be applied to reference tariffs, for example. As noted in the final report, this is a problem because in practice there may be few, if any, users of the reference service, as the reference service operates as a benchmark under the framework and users may have negotiated to receive a slightly different service. Moreover, the term “users of the reference service” is not defined.¹⁵⁸

This aspect of rule 93 of the NGR is also an issue as the intent of the current rebateable service provisions is to restrict the ability of service providers to monopoly price so that new services using covered assets are not cross subsidised by the reference tariffs. However, the ambiguity and insufficient guidance in the rule impacts on achieving this policy intent.

The Commission observed that the rebate is similar in some ways to other adjustments to reference tariffs that take place through the operation of the tariff variation mechanism under rule 97 of the NGR. As the tariff variation mechanism is a process that is understood and applied by service providers and regulators, the Commission recommended that rebates from rebateable services occur through this existing mechanism. It considered that this approach would be achievable in practice and consistent with the overall objective of allocating costs appropriately between services. The application of a rebate to a reference service would decrease the reference tariff. Accordingly, the reference tariff would more appropriately reflect the efficient cost of providing the reference service.¹⁵⁹

It was noted that the recommended approach was similar to the outcome achieved in the Roma to Brisbane Pipeline final decision where the AER accepted an adjustment for rebateable services through a tariff amendment rather than direct rebates to users.¹⁶⁰

Accordingly, the COAG Energy Council proposed to amend rules 93 and 97 of the NGR to allow for the reduction in reference tariffs to occur where there has been revenue generated from the sale of rebateable services.

The Commission made a draft rule consistent with the proposed rule.

6.5.3 Stakeholder views

No stakeholders specifically commented on this issue.

6.5.4 Assessment

No further information has been raised in relation to this issue. The Commission is satisfied that its assessment made in the draft rule determination remains appropriate.

6.5.5 Final rule

The Commission has made a final rule, which is the same as the draft rule, that adds rule 97(1)(c1), amends rules 93(3)(a) and 94(4)(b) and omits rule 93(4)(c)) of the NGR to:

¹⁵⁸ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 161.

¹⁵⁹ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 160-162.

¹⁶⁰ AER, *Final decision, Roma to Brisbane Gas Pipeline access arrangement 2017-2022*, overview, November 2017.

- remove the requirement that rebateable services must be in a different market to reference services
- enable the reduction of reference tariffs in accordance with rebateable service revenue to occur through the reference tariff variation mechanism.

It considers that these amendments will enable the regulators to more readily identify services as rebateable services as the criteria are whether the service is not a reference service and whether there is substantial uncertainty regarding the demand for, or revenue from, that service. In addition, if a rebateable service is identified, then the amendments to rule 97 provide that the reference tariff variation mechanism is to include how reference tariffs will reduce as a result of revenue generated from a rebateable service.

As a result of these changes, users should only pay for the services they use rather than other services that they do not use. This supports the efficient use of pipeline services and is in the long term interest of pipeline users and consumers of gas.

7 NEGOTIATION AND INFORMATION

In the gas pipeline negotiate-arbitrate regime for full and light regulation pipelines, information is required for the following purposes:

- by the regulator, in order to:
 - approve or amend access arrangements
 - monitor and report on compliance
 - monitor and report on financial and operational performance
 - benchmark service providers.
- by users and prospective users, to:
 - determine whether spare capacity exists or will exist (for example, through an expansion)
 - understand how tariffs and non-tariff terms and conditions are determined.

Currently there are considerable differences in the level of reporting between full and light regulation pipelines, and between light regulation and non-scheme pipelines, notwithstanding the common needs of users and prospective users.

Users and prospective users also need to be able to initiate arbitration within a reasonable period where they are unable to negotiate access on reasonable terms.

This chapter discusses issues, draft rules and final rules for covered pipelines in relation to:

- pipeline capacity and usage information
- pipeline financial and offer information
- the access negotiation process
- key performance indicators
- the Scheme Register.

7.1 Pipeline capacity and usage information

7.1.1 Current framework

Published capacity and usage information

Full and light regulation pipeline service providers for all transmission pipelines and some distribution pipelines, as determined by the regulator,¹⁶¹ are required to establish and maintain a public register of spare capacity for their trunk or main pipeline or pipelines. The information on the register must include:¹⁶²

- information about the spare capacity that the service provider reasonably believes currently exists for the haulage of natural gas between defined receipt and delivery points

¹⁶¹ Under rule 111(2) of the NGR, for a distribution pipeline, the regulator must have regard to whether it is technically feasible and commercially reasonable for the service provider to maintain a register of spare capacity.

¹⁶² Rule 111(4) of the NGR.

- information about spare capacity that the service provider reasonably believes will exist in the future for the haulage of natural gas between defined receipt and delivery points, including information about planned developable capacity and expected additions to spare capacity
- information (which must be as specific as the circumstances reasonably allow) about when the spare capacity is, or will become, available
- information notified to the service provider by a user about unutilised contracted capacity including:
 - the quantity and type of the unutilised contracted capacity and when it will be available
 - proposed terms and conditions (which may include the price) for the sale of the unutilised contracted capacity.

For full regulation pipelines an access arrangement must also be in place. An access arrangement contains, among other things, capacity trading requirements.¹⁶³ Access arrangement information, which must be submitted with an access arrangement proposal,¹⁶⁴ must also include usage of the pipeline over the earlier access arrangement period showing minimum, maximum and average demand, along with customer or user numbers. To the extent it is practicable, a forecast of pipeline capacity utilisation over the forthcoming access arrangement period and the basis on which the forecast has been derived must also be provided.¹⁶⁵

Some pipeline information is also contained within the Scheme Register. All pipelines that are, or have been, subject to any form of regulation or exemption from regulation under the NGL or the old scheme (that is, the code) must be included on the Scheme Register, which the AEMC maintains.¹⁶⁶ When the description of a full regulation or light regulation pipeline is affected by an extension or capacity expansion, the service provider must give the AEMC a revised description of the pipeline, incorporating the extension or expansion, for inclusion in the register.¹⁶⁷

Unpublished capacity and usage information

A full or light regulation pipeline service provider must, on request and free of charge, inform a prospective user whether it can provide a requested service and if so, the terms and conditions on which it is prepared to provide the service. Users may be required to meet costs if further investigations are required. The service provider must provide reasons if it cannot provide the requested service.¹⁶⁸

¹⁶³ Rule 48(1)(f) of the NGR.

¹⁶⁴ Rule 43(1) of the NGR.

¹⁶⁵ Rules 72(1)(a)(iii) and 72(d) of the NGR.

¹⁶⁶ See section 7.4 for further discussion on the Scheme Register.

¹⁶⁷ Rule 134 of the NGR.

¹⁶⁸ Rule 112 of the NGR.

Full and light regulation pipeline users must, on request and within 10 business days, disclose unutilised contracted capacity and whether it is, or is likely to become available.¹⁶⁹

A prospective user may request, through the regulator, the pipeline service provider to provide (free of charge) specified information that the prospective user reasonably requires in order to decide whether to seek access and, if so, how to go about applying for access.¹⁷⁰

Published capacity and usage information – Bulletin Board pipelines

Transmission pipelines that have an impact on the broader market are Bulletin Board pipelines and have an obligation to provide information to AEMO. AEMO must publish this information on the Natural Gas Services Bulletin Board (Bulletin Board), subject to certain aggregation, confidentiality and timing requirements.¹⁷¹ Most transmission pipelines are Bulletin Board pipelines.¹⁷² Bulletin Board pipelines that are lateral gathering pipelines may also be exempt from information disclosure obligations, and some participants may be exempt from providing information if the information is provided to AEMO by another person.¹⁷³

The information that Bulletin Board pipeline service providers must provide to AEMO includes:¹⁷⁴

- nameplate rating information
- detailed facility information
- information about shippers
- secondary trade data
- capacity outlooks
- 12 month outlook of uncontracted primary capacity
- linepack/capacity adequacy indicator
- nominated and forecast delivery information
- actual pipeline gas receipt and delivery information.

The above information disclosures are underpinned by more detailed requirements within the NGR and also in the Bulletin Board procedures. A Bulletin Board pipeline may notify other Bulletin Board users that it has spare capacity available for purchase or capacity requirements.¹⁷⁵

¹⁶⁹ Rule 110 of the NGR.

¹⁷⁰ Rule 107 of the NGR.

¹⁷¹ Part 18, Divisions 2 and 7 of the NGR. This applies to all jurisdictions except Western Australia. AEMO also maintains the WA Gas Bulletin Board established by the *Gas Services Information Act 2012* (WA).

¹⁷² Exceptions apply to pipelines that are below the reporting threshold of 10TJ/day and remote pipelines. See rules 141, 144 and 151 of the NGR.

¹⁷³ Rules 164(1) and 164(2) of the NGR.

¹⁷⁴ Part 18, Division 5 of the NGR. West Australian Bulletin Board pipelines are subject to similar requirements as set out in Part 3, Division 2 of Western Australia's Gas Services Information Rules.

¹⁷⁵ Rules 176 and 177 of the NGR and Part 18, Division 6 of the NGR.

Published capacity and usage information – non-scheme pipelines

Non-scheme pipeline service providers must, unless exempted,¹⁷⁶ publish the following information, defined together as being “service and access information”:¹⁷⁷

- pipeline information for a transmission pipeline:
 - the pipeline’s nameplate rating
 - details of all receipt and delivery points and key facilities to which those points connect
 - a schematic map showing the location of each receipt or delivery point and other key facilities
- pipeline information for a distribution pipeline:
 - the quantity of natural gas that can be transported through each gate station on the distribution pipeline in any 24 hour period
 - the details of all points on the pipeline where the service provider takes delivery of natural gas
 - a schematic map of the pipeline that shows the location on the pipeline of the points on the pipeline where the service provider takes delivery of natural gas and the geographic limits of the areas served by the pipeline
- pipeline information (for a transmission or a distribution pipeline):
 - any technical or physical characteristics that may affect access or price
 - policies that may affect access or pricing including queuing, changes to receipt and delivery points and metering and measurement
- pipeline service information including a list of services available on the pipeline and for each pipeline service:
 - a description of the service and locational limitations on availability
 - the priority ranking of the service in relation to other services, including in the event of curtailment
- service usage information for each month including:
 - the quantity of gas injected into the pipeline
 - the quantity of gas withdrawn from the pipeline
 - the quantity of gas scheduled for injection
 - the quantity of gas scheduled for withdrawal
 - for scheduled quantities, the quantities attributable to each service
- service availability information including:
 - the firm capacity outlook (and the amount available and projected for sale) each month in the following 36-month period

¹⁷⁶ Rule 585 of the NGR.

¹⁷⁷ Rule 553 of the NGR.

- information on any matters that may affect the capacity of the pipeline for each month in the following 12-month period.

The service availability information that service providers must publish for non-scheme pipelines is similar in nature to the information that service providers for full and light regulation pipelines are required to publish in their public register of spare capacity, as described earlier in this section 7.1.1. However, for full and light regulation pipelines the outlook periods (that is, for what outlook period the information must be provided) are not specified.

The service and usage information for non-scheme pipelines is updated every month. In contrast, the similar access arrangement information for full regulation pipelines is updated only when a new access arrangement proposal is submitted. Where the information is also required to be provided to AEMO for publication on the Bulletin Board, the non-scheme pipeline service provider may instead make the information available by providing a link on its website to the part of the Bulletin Board where the information is located.

7.1.2

Draft rule determination

The capacity and usage information required to be published by service providers for Bulletin Board pipelines described in Part 18 of the NGR,¹⁷⁸ and for non-scheme pipelines described in rules 552 and 553 of the NGR, is more comprehensive and prescriptive than the information published for those full and light regulation pipelines that are not Bulletin Board pipelines. Further, the information is updated more frequently. While some additional information on capacity and usage of full regulation pipelines is published through the access arrangement process, this information is updated less frequently.

In its final report the Commission noted that prospective users require access to sufficient up to date capacity and usage information for them to form a view on available capacity in order to facilitate access, regardless of whether pipelines are full or light regulation.

Transmission pipelines

Noting the differences between the current covered pipeline information framework and the information requirements for Bulletin Board pipelines, the Commission considered that the differences should be minimised where possible. It noted that most transmission pipelines are Bulletin Board pipelines, meeting more onerous information disclosure requirements than those required by the full and light regulatory frameworks. To resolve this, the Commission recommended that the Bulletin Board be extended to cover all full and light regulation transmission pipeline service providers, so that all transmission pipelines are required to disclose Bulletin Board information.¹⁷⁹ The Commission considered that the recommended approach would provide comprehensive capacity and usage information at the least cost. It would leverage the existing framework, provide consistency and oversight and also allow the Bulletin Board to move further towards being a “one stop shop” for information, as intended

¹⁷⁸ West Australian Bulletin Board pipelines are subject to similar requirements as set out in Part 3, Division 2 of Western Australia’s Gas Services Information Rules

¹⁷⁹ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 174-175.

by the reforms recommended in the AEMC's East coast gas review. The majority of full and light regulation transmission pipelines would incur only the small additional costs associated with the Commission's proposed Bulletin Board enhancement.¹⁸⁰

In addition, to achieve further uniformity, the Commission recommended enhancing Bulletin Board reporting by extending the outlook of uncontracted primary pipeline capacity for all Bulletin Board pipelines from 12 months to 36 months. This amendment to Part 18 of the NGR was recommended in order to address a stakeholder concern that users required more notice in order to support timely negotiations.

The COAG Energy Council proposed rule amendments consistent with the Commission's recommendations in its final report.

The Commission made a draft rule consistent with the proposed rule.

Distribution pipelines

The Bulletin Board does not apply to distribution pipelines and the recommendation in the Commission's draft report was for full and light regulation distribution pipeline service providers to publish the same set of capacity and usage information as non-scheme distribution pipeline service providers. In its draft report for the review, the Commission recommended adopting the existing Part 23 framework for full and light regulation distribution pipelines because:

- the existing level of disclosure for full and light regulation pipelines is inadequate
- users, consumer representatives and regulators supported extending the information disclosure requirements under Part 23 of the NGR to full and light regulation pipelines
- Part 23 reporting requirements already apply to non-scheme distribution pipelines
- requiring pipeline service providers to report using an existing framework would result in lower costs compared to requiring reporting of similar information under a new reporting framework
- capacity and usage reporting for full and light regulation pipelines is required for the same reasons as for non-scheme pipelines: to facilitate negotiation and decisions to trigger dispute resolution.

However, through its consultation on the draft report it became apparent that the relevant Part 23 requirements had not been implemented in practice for non-scheme distribution pipelines as all existing non-scheme distribution pipelines met one or more of the exemption criteria in the NGR.

Further investigation revealed that some capacity and usage reporting requirements under Part 23 of the NGR were problematic for distribution pipelines. In particular, for the reasons set out in the Commission's final report, reporting required under rules 553(4)(b)-553(5) could not be provided on most gas distribution pipelines.

¹⁸⁰ Relatedly, the Commission also recommended that rule 111 of the NGR be omitted as the publication of spare capacity would be more appropriately part of the Bulletin Board arrangements. AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 175.

The Commission therefore adjusted its recommendation for its final report in order to create a workable reporting regime for full and light regulation distribution pipelines by modifying the additional reporting requirements in rules 553(4)(b) to 553(4)(e) of the NGR.

The Commission also considered that these modified reporting requirements, along with the reporting requirements under rule 553(5), should only apply to large or trunk distribution pipes. This was because large or trunk distribution pipelines perform a similar function to transmission pipelines. Indeed, they sometimes compete directly with transmission pipelines.¹⁸¹ These are the pipes that shippers may use to move bulk quantities of gas or to bypass lower levels of the distribution network. They are also pipes that large users, such as gas fired electricity generators, producers and storage facility operators connect to where they are located within a distribution pipeline area.¹⁸²

While there is no clear dividing line delineating trunk and non-trunk distribution pipes, the Commission understood that the relevance of, and ability to report, certain information is reduced at lower levels of the distribution network because:

- pipes become more interconnected with other elements of the same network
- flow optimisation and capacity augmentation at lower levels of gas distribution networks tends to be in response to general load growth within a geographic area
- interrelationships between load and demand elements, as well as multiple options for augmenting and reconfiguring the network, make spare capacity metrics less meaningful inside these areas of integrated pipes.

The Commission understood that real time measured information on flows through individual pipes deep within distribution networks is also scant, with flow measurements tending to be restricted to some pressure reduction points and some large customer connections. Network monitoring, augmentation and management is instead focussed on maintaining pressures, which are monitored more broadly.

With these operational considerations in mind, the Commission considered that a practical threshold would be to require detailed capacity and usage reporting for pipes with a capacity of greater than 10 TJ/day and an operating pressure of greater than 4 MPa.¹⁸³

As noted in the final report, the Commission understood that gas flows across almost all entry and exit points from these major ("trunk") distribution pipes are metered but that, except where revenue metering is installed, the measurement accuracy is well below revenue metering standards. However, real time data is collected from these metering points and that data could be exported to an accessible file. Making this data available to users would be a cost effective means of meeting users' requests for capacity and usage information for distribution pipelines. In addition, pressure is monitored at the same locations and the capacity of the entry or exit point is dependent on the pressure in the pipe(s) at the time. Lower pressure means lower capacity. It is therefore not possible to infer spare capacity solely from flow data in the absence of contemporaneous pressure data.

181 For example, Jemena's distribution pipeline between Port Kembla and Horsley Park runs in parallel to the Eastern Gas Pipeline.

182 For example, Snowy Hydro's Colongra power station, AGL's Camden gas project and Tomago storage facility.

183 AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 176-177.

Given these practical considerations, the Commission's final report recommended the following reporting be required for large pipes within distribution networks:

- For each entry and exit point:
 - daily flow data (as defined in Part 18 of the NGR)
 - the daily pressure profile, being the pressure, averaged over the shortest reasonably practical period, reported by period
 - a static table showing the maximum flow rate of the entry or exit point against pressure.
- For metered entry and exit points:
 - the daily flow profile, being the gas flow rate, averaged over the shortest reasonably practical period, reported by period.

The Commission recommended that this detailed capacity and usage information be published on the service provider's own website.

Consequently, the COAG Energy Council proposed amendments to the NGR reflecting the Commission's recommendations.

The Commission made a draft rule that reflected the COAG Energy Council's proposal.

The role of the regulator in passing on information requests to service providers

As noted in section 7.1.1, the NGR also allows a prospective user to request, through the regulator, the pipeline service provider to provide (free of charge) specified information that the prospective user reasonably requires in order to decide whether to seek access and, if so, how to go about applying for access.

In its final report, the Commission stated that the regulator should be provided with the discretion to decide whether it is appropriate to pass on all or part of an information request. The final report included recommended changes to clarify the regulator's role as a backstop for users, rather than a potential first port of call, if users and prospective users have sought but not received the information from a service provider and where the information is genuinely required.

Specifically, the Commission recommended that rule 107(2) of the NGR be altered to make it clear that the regulator may decline to issue a notice to the scheme pipeline service provider for all or part of the prospective user's requested information if, in the regulator's reasonable opinion:

- the prospective user has not previously requested the information from the pipeline service provider
- the information is otherwise already available to the prospective user
- the pipeline service provider has not had sufficient time to provide the information requested to the prospective user, or
- the information is not reasonably required by the prospective user in order to decide whether to seek access to a service provided by the service provider, or to apply for access.

The COAG Energy Council's subsequent rule change request included rule amendments in line with those recommended in the final report.

The Commission made a draft rule consistent with the proposed rule.

7.1.3

Stakeholder views

Transmission pipelines

While most stakeholders did not specifically single out this aspect of the draft rule, many implied general support for the Commission's proposal to require all full and light regulation transmission pipelines to become Bulletin Board pipelines and to extend uncontracted capacity outlooks to 36 months as part of their more general comments, or did not comment on this component of the draft rule determination.

ATCO specifically supported the Commission's position:¹⁸⁴

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. 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.

APGA provided general support, while noting that it may be disproportionately more costly for smaller pipelines. It stated that:¹⁸⁵

For example, the draft amendments extend Bulletin Board reporting to all covered transmission pipelines ...

APGA is in general agreement with these proposals which help to improve reporting consistency between Part 23 and light and full regulation pipelines.

AGL broadly supported all the Commission's proposed amendments, without singling out the capacity and usage components, that support better negotiations.¹⁸⁶

Distribution pipelines

APGA noted "that the draft rule includes measures to strengthen information reporting obligations on full and light regulation pipelines" and commented that "APGA is in general agreement with these proposals, which help to improve reporting consistency between Part 23 and light and full regulation pipelines."¹⁸⁷

¹⁸⁴ ATCO submission, p. 19.

¹⁸⁵ APGA submission, pp. 2-3.

¹⁸⁶ AGL submission, p. 1.

¹⁸⁷ APGA submission, pp. 2-3.

AGIG was “supportive of the Draft Rule Determination, which should improve market information availability, support effective negotiations and enhance the engagement of pipeline operators with their users.”¹⁸⁸

While JGN acknowledged the benefit of most of the information disclosure requirements, it considered that “the draft Rules proposed for Part 11 Division 2 should be amended to require information to be published only where it is not included in an Access Arrangements and/or there is particular benefit identified from the publication of that additional information.” JGN also suggested some clarifications in parts of rule 112D, which relates only to large distribution pipelines, and suggested that the interval data in draft rule 112D(5)(ii)-(iv) should only be published if the AER determined that it was technically feasible and commercially significant.¹⁸⁹

In addition, JGN suggested that “an exemption to reporting be available in instances where publishing information could result in a detrimental commercial impact. For example, where an exit point is a single large industrial customer, provision of daily flow data would effectively make that customer’s consumption data available”.¹⁹⁰

AusNet Services limited their comments to “form in the drafting of the proposed rules”, making some specific drafting suggestions.¹⁹¹

ATCO made a robust submission on the draft rule, touching on many issues raised a year ago in the draft report for the Commission’s review. In contrast, while ATCO did make a submission on the draft report and the draft recommendations at the time, in relation to negotiation and information it stated only the following:¹⁹²

ATCO has no substantive comments on Draft Recommendations 21, 23, 24 and 26.

In respect of Draft Recommendation 22, there is an existing requirement for capacity and utilisation information to be included in the Access Arrangement Information under rule 72(d) of the NGR. The rule recognises the practical difficulties faced by gas distribution network operators through the inclusion of the wording ‘to the extent it is practicable’. ATCO appreciates that while the intent is to align the reporting requirements of the non-scheme pipelines with fully regulated pipelines, further consideration should be given to the practical differences relating to the operation of distribution pipelines.

Draft recommendation 22 was that full and light regulation distribution pipeline service providers publish the same set of capacity and usage information as non-scheme distribution pipeline service providers.

188 AGIG submission, p. 1.

189 JGN submission, attachment B.

190 JGN submission, attachment B, p. 4.

191 AusNet Services submission, p. 1.

192 ATCO submission, attachment 2 on AEMC, *Review into the scope of economic regulation applied to covered pipelines*, draft report, 27 February 2018.

In its final report the Commission acknowledged ATCO's submission and identified some practical difficulties with the reporting requirements under Part 23 of the NGR. With assistance from JGN, the Commission created a workable reporting regime for distribution pipelines to recommend to the COAG Energy Council. In particular, the additional reporting requirements in rules 553(4)(b) to 553(4)(e) of the NGR were modified for inclusion in Parts 7 and 11 of the NGR to suit distribution pipelines. These modified reporting requirements were only applied to large or trunk distribution pipes, which may perform a similar function to transmission pipelines.¹⁹³

ATCO's submission on the draft rule now states 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."¹⁹⁴ ATCO provided some argument in support of this contention. The relevant key points in ATCO's submission were that, for covered distribution pipelines:

- Pipelines are subject to an increasingly competitive environment, meaning that the case for increasing the regulatory burden is weak, as demonstrated by the fact that all distribution pipelines have met one or more of the exemption criteria in Part 23 of the NGR.¹⁹⁵
- "Information regarding gas flows 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."
- Information regarding technical and physical characteristics of the pipeline are not useful for a retailer acting on behalf of an end user because:
 - all reference services are available across the entire network, albeit subject to reinforcement or user specific extensions
 - stating restrictions on service availability may discourage network use
 - prices for reference services are fixed
 - prices for non-reference services are published
 - where prices are not published then a process exists to provide a quotation to retailers.
- While it has not been able to quantify them there will be costs, including setup, data storage and system costs, and that since no retailers or customers have raised concerns the costs are unlikely to outweigh the benefits.
- Some information, such as gas distribution pipeline maps are already published, meaning that legislation is not required to force publication of information that is useful to end users.¹⁹⁶

¹⁹³ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 173, 176-177.

¹⁹⁴ ATCO submission, p. 15.

¹⁹⁵ ATCO submission, pp. 1-2.

¹⁹⁶ ATCO submission, p. 19.

- Licence conditions, as well as ATCO's customer focus, means that planned outages are already advised to users.¹⁹⁷
- Rules 112A to 112D have been drafted with applicability to transmission pipelines.¹⁹⁸
- If the draft rules are maintained for distribution pipelines then the following information requirements should be deleted:
 - Gate station information required under draft rule 112D(2)(a), because it is already reported by the transmission pipeline service provider and because gate station information does not provide useful information to a retailer or potential end user.
 - 36 month outlook of firm capacity (for large distribution pipes) under draft rule 112D(5)(a), as an outlook of firm capacity 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.¹⁹⁹
- Information regarding the location of critical infrastructure such as gate stations, high pressure pipelines and regulators raises a risk of intentional damage or interference, and may be "protected information" under the Security of Critical Infrastructure Act 2018.²⁰⁰

The Commission notes that a number of these issues were raised by others and considered during the review.²⁰¹

ATCO also provided some useful comments on definitions.²⁰²

No users or regulators made a submission on the review's draft rule determination and draft rule in regard to information requirements. However, users and regulators did make submissions on the draft report. The ACCC supported use of the Part 23 disclosure requirements, the AER generally supported changes that increase information disclosure. Origin Energy and EnergyAustralia were also both supportive of the draft recommendations on capacity and usage information.

The Commission understands from discussions with other stakeholders, including regulators and some consumer representatives, that they chose not to make a submission on the draft rule because they were comfortable with the draft rule and the process that led to its development.

The role of the regulator in passing on information requests to service providers

JGN proposed some minor rule and definition improvements to draft rule 107(2a).

¹⁹⁷ ATCO submission, p. 17.

¹⁹⁸ ATCO submission, p. 16.

¹⁹⁹ ATCO submission, p. 16.

²⁰⁰ ATCO submission, p. 18.

²⁰¹ For example, see JGN's 27 March 2018 submission, pp. 4-6 on AEMC, *Review into the scope of economic regulation applied to covered pipelines*, draft report, 27 February 2018.

²⁰² ATCO submission, p. 16.

7.1.4

Assessment

Transmission pipelines

Stakeholders generally supported the Commission's draft rule as it relates to transmission pipelines and, apart from some minor drafting improvements, no changes have been made.

Distribution pipelines

While some submissions were supportive, ATCO and, to a lesser extent JGN, raised a number of issues in their submissions. Each of these is dealt with in turn below.

Benefits and costs

Competition

As noted above, ATCO suggested that distribution pipelines are subject to an increasingly competitive environment, meaning that the case for increasing the regulatory burden is weak.²⁰³

The level of competition is assessed as part of both the pipeline coverage criteria and the form of regulation factors used to determine whether a pipeline is covered and, if so, whether light or full regulation should apply.²⁰⁴ It is not the AEMC's role under the NGL to determine the level of competition that a pipeline faces. If a pipeline service provider considers that its pipeline no longer meets the coverage criteria, it can apply to have coverage revoked. Similarly, if a pipeline service provider considers that the pipeline should be regulated as a light regulation pipeline, having regard to the form of regulation factors and the NGL, then it can apply for a light regulation determination from the NCC.

The extent of regulation applied to a pipeline should be commensurate with the form of regulation applied to the pipeline. Full regulation should be more rigorous in addressing monopoly behaviour than light regulation and light regulation should in turn be more rigorous than non-scheme pipeline regulation. The draft changes on information provision addressed the fact that this currently isn't the case, with light regulation and some aspects of full regulation currently being less rigorous than non-scheme pipeline regulation under Part 23 of the NGR.

ATCO has also argued that the fact that all non-scheme distribution pipelines have met one or more of the exemption category in Part 23 of the NGR demonstrates the weakness of the case for information disclosure.²⁰⁵ However, the only Part 23 exemption category that would, if applied, be likely to have relevance to a covered distribution pipeline is the partial exemption allowed where average injections are less than 10 TJ/day. The other two exemption categories apply to pipelines that are not third party access pipelines or to single user pipelines.²⁰⁶ A similar 10 TJ/day threshold applies under the final rule.

²⁰³ ATCO submission, pp. 1-2.

²⁰⁴ NGL ss. 15, 16, Chapter 3.

²⁰⁵ ATCO submission, p. 2.

²⁰⁶ Rule 585(4) of the NGR.

For these reasons the Commission does not consider that there is a substantive case for considering the level of competition when making a more robust information provision regime for covered pipelines.

Value of information to consumers

ATCO stated that information regarding gas flows is not useful for a retailer acting on behalf of an end user and that 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 pipeline where that is economically viable.

The Commission notes that, except for reporting total gas injected for the month, the gas flow information is only required for a large distribution pipeline — that is, parts of the distribution network >10 TJ/day and >4 MPa. As noted in the Commission's draft rule determination and in the final report, the Commission decided that this information disclosure requirement should only apply to large or trunk distribution pipes because these pipelines perform similar functions to, and sometimes compete with, transmission pipelines.²⁰⁷ In its final report the Commission acknowledged that the reporting at lower levels of the gas distribution network, inside areas of integrated pipes, was less meaningful. The Commission also noted that it is not possible to infer spare capacity solely from flow data, in the absence of contemporaneous pressure data. The Commission therefore recommended reporting of both daily pressure and flow profiles at each entry and exit point.²⁰⁸

Unlike users of most covered transmission pipelines, users of covered large distribution pipes do not have the benefit of regular online capacity and usage reporting through AEMO's Bulletin Boards. The level of contracted capacity, and by corollary the level of capacity available for contract, is of primary importance to users and prospective users, and the 36-month available firm capacity outlook is designed to assist in this regard. However, directly contracting capacity with the pipeline service provider is not the only avenue for accessing capacity. For example, unused but contracted capacity could be purchased from existing contracted parties. Alternatively, knowledge of pipeline usage may facilitate users negotiating for non-firm capacity on an informed basis. Simply stated, transparency on pipeline utilisation helps to facilitate more efficient interaction between contracted parties, and the degree to which parties other than the pipeline service provider can trade capacity.

In light of ATCO's submission the Commission sought further feedback from user representatives on their views. The Major Energy Users supported the disclosures, notwithstanding the additional costs, noting that:

- Retailers have little incentive to negotiate better pipeline access deals for their customers, as all retailers will face the same pipeline charges. Instead, retailers benefit most by focusing on areas where they can achieve competitive advantage. Users need to be able to look through the retailer to the underlying cost and usage information.

²⁰⁷ AEMC, *Regulation of covered pipelines*, draft rule determination, 6 December 2018, p. 77; AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 176-177.

²⁰⁸ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 177-178.

- Public disclosure of capacity and usage information supports a more disciplined approach on the pipeline service providers in their dealings with users, as users have access to the same information as the pipeline service providers.

The Commission understands that the Australian Energy Council surveyed their members and that their views were that the information should be published, but the obligations imposed to require distribution pipeline service providers to do so should not be so burdensome that they impose significant costs or time requirements.

As noted in the Commission's final report, the information requirements have been crafted to create a workable reporting regime. The final rule requires the storage and publication of information that is already available to service providers. The Commission is unable to quantify the costs that will be incurred but, as the information is already available, the Commission considers that the efficient costs flowing to consumers of simply storing and reporting this data will not be significant. While questioning the benefit of these draft rules, ATCO also considered "that draft rules 112A to 112D can largely be practically implemented".²⁰⁹

The Commission therefore considers that, on balance, the benefits to pipeline users and consumers of the information disclosures required under rules 112A to 112D will outweigh those costs to service providers of providing the information that may flow through to gas consumers.

Confidentiality

JGN suggested that "an exemption to reporting be available in instances where publishing information could result in a detrimental commercial impact. For example, where an exit point is a single large industrial customer, provision of daily flow data would effectively make that customer's consumption data available".²¹⁰

The Commission has previously considered a similar issue and received submissions, as part of its East coast review. In that review the Commission found that:²¹¹

While confidentiality concerns were raised by some stakeholder submissions, further discussions with individual large users have indicated that the publication of actual gas flows would not impact competition in other markets. In addition, several large users stated that they were not concerned with the publication of actual gas flows and are more concerned with minimising any reporting burden.

Amendments to the Bulletin Board rules subsequently made by the Commission manage potential confidentiality of information by delaying the publication of certain data.²¹²

The final rule provides for publication of usage information in the following month.

²⁰⁹ ATCO submission, p. 17.

²¹⁰ JGN submission, attachment B, p. 4.

²¹¹ AEMC, *East coast wholesale gas market and pipeline frameworks review: information provision*, stage 2 final report, 23 May 2016, pp. 74-75.

²¹² For example, see rules 187 and 194 of the NGR.

The Commission is not aware of circumstances that would change the view it formed in its East coast review. The Commission has therefore not provided an exemption in relation to the possible detrimental commercial impact of publishing daily flow data.

ATCO also submitted that publication of locational data such as gate stations may raise a risk of intentional damage or interference, and may be “protected information” under the Security of Critical Infrastructure Act 2018. ATCO suggested that “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.”²¹³

“Protected information” is defined as:²¹⁴

a document or information that:

- (a) is obtained by a person in the course of exercising powers, or performing duties or functions, under this Act; or
- (b) records or is the fact that an asset is declared under section 51 to be a critical infrastructure asset; or
- (c) was a document or information to which paragraph (a) or (b) applied and is obtained by a person by way of an authorised disclosure

...

The Commission observes that:

- detailed pipeline maps are already published by ATCO on its website²¹⁵
- transmission pipeline maps are also available online through the two gas Bulletin Boards.²¹⁶

The Commission considers that the Security of Critical Infrastructure Act does not appear to prevent the disclosure of locational information as suggested by ATCO. It has therefore not amended the final rule in relation to potential confidentiality issues regarding the publication of capacity and usage information.

Minor rule and definition suggestions

Gate stations

Both JGN and ATCO noted that pipeline information under draft rule 112D(2)(a) includes the quantity of natural gas that can be transported through each gate station on the distribution pipeline in any 24 hour period, and that this information is available from the transmission pipeline service provider, who typically own and operate the gate station.²¹⁷ In the case of

²¹³ ATCO submission, p. 18.

²¹⁴ *Security of Critical Infrastructure Act 2018 (Cth)*, s. 5.

²¹⁵ <http://www.atcogas.com.au/About-Us/Coverage-Maps> accessed 20 February 2019.

²¹⁶ <https://www.aemo.com.au/Gas/Gas-Bulletin-Board>; <https://gbbwa.aemo.com.au/#home> accessed 20 February 2019.

²¹⁷ Submissions: JGN, attachment B, p. 3; ATCO, p. 16.

JGN's pipeline these are the Eastern Gas Pipeline (EGP) and the Moomba Sydney Pipeline (MSP), both of which are Bulletin Board pipelines.

ATCO also noted that gas flows at gate stations are available from transmission pipeline service providers.²¹⁸

The Commission observes that, for transmission pipelines that are Bulletin Board pipelines, gate station information is published on the Bulletin Board, albeit in a slightly different form. It accepts that there is limited value in publishing gate station information more than once. The Commission has therefore made a new rule 112D(6) which provides an exemption to the publication of gate station information under rules:

- 112D(2)(a) — where the nameplate rating is reported to AEMO for publication on the Bulletin Board under rule 168 of the NGR
- 112D(4)(b) — where entry points are gate stations and where gate station daily flow data is reported to AEMO under rule 187 of the NGR.

For the same reasons these changes have also been made to the equivalent rule 36C for light regulation distribution pipelines.

Facilities not owned by the distribution pipeline service provider

JGN suggested that the NGR should make it clear that the service provider's obligation under Part 11 Division 2 to publish information should apply to facilities owned by the service provider or, provide that where the facility is not owned by the service provider, the service provider should use reasonable endeavours to obtain that information and must publish the information where it is provided to the service provider. JGN recognised that this may mean that information is not published where the relevant facility is owned by a party which is not the service provider, but considered it inappropriate to address this risk by imposing obligations on service providers under draft rules 112D(2)(a) and 112D(5)(d) which they may not be able to comply with.²¹⁹

The Commission understands JGN's concern; it does not wish to make a rule that a service provider cannot comply with. The Commission notes however that:

- ownership is not necessarily the correct test, as control or operation is arguably more relevant
- even if the pipeline service provider doesn't own or control a metering facility, it may still have information related to gas exiting its own pipeline.

This issue is not unique. A similar issue arises for gate station nameplate information on Bulletin Board pipelines under rule 168(2) of the NGR. This rule stipulates that the Bulletin Board reporting entity is only obliged to provide the nameplate rating of a gate station if it owns, controls or operates that asset.

²¹⁸ ATCO submission, p. 17.

²¹⁹ JGN submission, attachment B, p. 3.

In order to address JGN's concern the Commission has adopted a similar approach for information required under draft rule 112D(4)(b) and, for the same reasons, draft rule 36C(4)(b) by amending those rules in the final rule.

Duplication of information contained in the access arrangement

Both JGN and ATCO stated that information similar to pipeline service information under draft rule 112D(3) is provided as part of the access arrangement process.²²⁰ In particular JGN noted that the draft amendments to Part 8 of the NGR, which set out the process for determining reference services, require a description of all pipeline services that the service provider can reasonably provide on the pipeline.

The Commission is aware that the access arrangement provides similar pipeline service information. However, as acknowledged by JGN, draft rule 112D requires the provision of up to date information, rather than information at the time of the access arrangement proposal. Nonetheless, the Commission recognises that the list of the pipeline services available on the pipeline to be provided in response to draft rule 112D(3) is likely to change infrequently, and is also conscious of the slightly different way that similar information is presented in draft rule 47A(1)(b) which, as part of the reference service setting process, requires the full regulation pipeline service provider to set out a list of pipeline services that it can reasonably provide.

In order to provide consistency and minimise re-work, the Commission has amended draft rule 112D(3) to make the wording consistent with rule 47A(2).

The Commission notes that draft rule 112C(3) only requires the information to be published on the service provider's website. It does not prescribe how the information is to be published. A cross-reference to the service provider's reference service proposal could be provided if the information remains up to date.

JGN and ATCO also suggested that the requirements of draft rule 112D(2)(e) relating to policies that may affect access to or use of the pipeline and, in the case of JGN's submission, draft rule 112(2)(d) relating to technical or physical characteristics of the pipeline, are covered off in the access arrangement. The Commission notes that some, but not all, of this information is provided through the access arrangement. To the extent that this information is available and up to date, the Commission considers that the draft rule would not preclude simply cross-referencing it.

Specific comments on rule wording and definitions

In regard to wording and definitions, JGN:²²¹

- Queried whether the requirements under draft rule 112D(5)(d)(ii) were targeted at providing a historical profile of the "peak" flow in the large distribution pipeline over the previous month. This is not the case. As stated above, in its final report, the Commission noted that it is not possible to infer spare capacity solely from flow data, in the absence

²²⁰ Submissions: JGN, attachment B, p. 2; ATCO, p. 17.

²²¹ JGN submission, attachment B.

of contemporaneous pressure data. The Commission therefore proposed reporting of both daily pressure and flow profiles at each entry and exit point.

- Suggested using hourly flow data where peak flow data was not available. The Commission notes that this would make the measurements consistent with the metering installation requirements under rule 295 of the NGR. The Commission has therefore adopted JGN's suggested wording of "hourly flow data" as replacement wording in draft rule 112D(4)(b)(ii) and also in the equivalent draft rule 36C(4)(b)(ii).
- Noted the intent of the pressure data reporting in draft rule 112D(4)(b)(iii) is to provide users or potential users with a means for estimating what capacity may be available in a large distribution pipeline. JGN's suggested wording of "minimum inlet and minimum outlet pressures over each hour" has therefore also been adopted to replace the wording of draft rule 112D(4)(b)(iii) and also in the equivalent draft rule 36C(4)(b)(iii).
- Observed that the static table serves the same purpose as a pressure:flow plot, which is to allow a prospective user to make an estimate of remaining capacity. However, the Commission felt that the wording in the draft rule better describes the underlying information. As there appears to be no disadvantage in providing the information as a chart rather than a table, draft rule 112D(4)(b)(iv) has been amended to allow this option, as has the equivalent draft rule 36C(4)(b)(iv).
- Noted also that the period applicable to draft rule 112D(5)(c), relating to limitations on pipeline availability, is ambiguous. Draft rule 112D(5)(c) logically follows on from draft rule 112D(5)(b) and should have the same timing. Draft rule 112D(5)(c) has been amended accordingly, as has the equivalent draft rule 36C(5)(c).
- Commented that the data being reported under rule 112D(5)(d) is retrospective measurement data, but the reporting time frames under draft rule 112C(2) infer that the data can only be prospective. Draft rule 112D(5)(d) has therefore been moved to rule 112D(4)(b), recognising it as retrospective data. Similarly, draft rule 36C(5)(d) has been moved to rule 36C(4)(b).
- Suggested that defined terms in relation to information provision should be consistent across Parts 11, 18 and 23 unless there is a specific reason for difference — for example: access information standard, service and access information, daily flow, pipeline information, service usage information, service availability information. The Commission notes that the drafting of the information provision rules are designed to achieve consistency between the new divisions and Part 23 to the extent appropriate. Consequently, further changes have not been made in the final rule.
- Pointed out that "business day" is defined in the NGL. JGN suggested that including a specific definition in draft rule 112A means the same term will have a different meaning in Part 11 Division 2 from its meaning in the NGL and other parts of the NGR. The Commission notes that definition in draft rule 112A is consistent with the definition in Part 23 of the NGR. The key difference between the two definitions is simply the treatment of public holidays. In the NGL a business day is a day that is not a public holiday in all participating jurisdictions, whereas in rule 112A and Part 23 a business day is a day that is not a public holiday in any participating jurisdiction (apart from Western Australia). The Commission has therefore not amended the draft rule.

- Stated that the definition of “information” in draft rules 35A and 112A, which defines information to include data, is not included in other parts of the NGR and that the inclusion of the definition in Part 11 may imply that in other parts, “information” does not include data. JGN suggested either deleting the definition, or including it in the general definitions section in the NGL or NGR. The Commission notes however that the definition does already exist in rule 549 of Part 23 of the NGR. The Commission has adopted the same definition for consistency. Consequently, no change has been made from the draft rule.
- Recommended that draft rule 112D(4) be amended to allow for good faith estimates of gas injected into the pipeline during the month as an alternative to metered data. This is more consistent with draft rule 112A, which applies to daily flow data. The Commission has determined that estimates should be allowed in the absence of appropriate metered data, as this provides users with more information than they would otherwise have and avoids service providers unintentionally breaching rule requirements. The draft rule has been amended accordingly but, instead of requiring “good faith” estimates, relies on the requirements for estimates under the access information standard in rules 36A(2) and 112B(2).
- Noted that Part 23 of the NGR provides that a service provider can seek an exemption from certain information requirements if the average daily injections are less than 10 TJ/day. In Part 11, the threshold for publication is the capacity/pressure of the distribution pipeline under normal operating conditions — that is, regardless of actual flows. JGN suggested that it would be appropriate for this Part 23 concept to be reflected in the rules in relation to large full regulation distribution pipes, to increase consistency between the information regimes applying to different categories of distribution pipelines. The Commission notes that the definition adopted in the draft rule is similar to the reporting threshold in Part 18 of the NGR. It acknowledges the benefit of consistency with Part 23. However, the Commission considers that the capacity, including spare capacity, is likely to be most relevant to prospective users. The Commission has therefore decided, on balance, to retain the 10 TJ/annum threshold as expressed in the draft rule.
- Pointed out that there is an inconsistency between the reporting of measured gas flows between light and full regulation pipelines. For light regulation pipelines (draft rule 36C(5)(d)(ii)) the flows (averaged over the shortest reasonably practical period) are only to be reported where meters are installed. For full regulation pipelines (draft rule 112D(5)(d)(ii)) the same reporting is required regardless of whether metering data is available. This difference was not intentional; flows over short periods are only to be reported where meters are installed.²²² Draft rule 112D(5)(d)(ii) has been amended accordingly and the change reflected in rule 112D(4)(b)(ii) of the final rule. This change has also been made in rule 36C(4)(b)(ii).

The Commission has also modified the wording of draft rule 107 to address JGN’s concerns by clarifying that the regulator has discretion to not pass on an information request if the information is not reasonably required by the prospective user in order:

²²² AEMC, *Regulation of covered pipelines*, draft rule determination, 6 December 2018, p. 78.

- to decide whether to seek access, or
- to know how to apply for access.

ATCO made the following comments:²²³

- **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. In the Commission's view the use of the term is clear in the new division and is consistent with Part 23 of the NGR.
- **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. The Commission accepts that this term is not defined in the Bulletin Board rules and the term "primary pipeline capacity" in Part 18 seems similar. However, in the Commission's view the language used in the new division is consistent with Part 23 and the ordinary meaning of the term is clear.
- **Distribution pipeline definition:** The definition of distribution pipeline should be re-stated at rule 112A to align with s. 2 of the NGL so that it is clear the same definition applies. In particular, that a reference to a pipeline, other than a large distribution pipeline, is a reference to the distribution network as a whole. In response to this, the Commission observes that the term "distribution pipeline" when used in the NGR has the same meaning as in the NGL by virtue of s. 13 of Schedule 1 of the NGL. The NGL definition encompasses either a pipe or system of pipes.
- **Metering and measurement policy definition:** The elements of a metering and measurement policy are undefined. The Commission does not consider the term needs to be defined as its ordinary meaning is clear.
- **Form of information provision:** It should be made clear that where large amounts of data are required such as envisaged by draft 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.

The Commission notes that the language is consistent with the language used in Part 23 of the NGR which, in its view, would accommodate the use of hyperlinks as suggested by ATCO.

Accordingly, the Commission has decided not to adopt the above definition suggestions.

The Commission received no comments on the draft rule's omission of rule 111 which removes the requirement for scheme pipeline service providers to establish and maintain a public register of spare capacity. Accordingly, it has not changed its position from the draft rule determination.

²²³ ATCO submission, p. 16.

7.1.5

Final rule

The Commission has made a final rule that amends the NGR in order to:²²⁴

- require all full and light regulation transmission pipelines to become Bulletin Board pipelines (amendments to rule 141(1))
- augment Bulletin Board reporting for transmission pipelines so that the outlook of uncontracted primary pipeline capacity for Bulletin Board pipelines is extended from 12 months to 36 months (amendment to rule 175)
- clarify that the Bulletin Board also supports negotiations for access to Bulletin Board pipelines (insert new rule 145(c))
- remove the requirement for scheme pipeline service providers to establish and maintain a public register of spare capacity (omit rule 111)
- require all full and light regulation distribution pipelines to publish capacity and usage information (insert new rules 35A, 36A to 36C, 112A to 112D)
- provide the regulator with the ability to decide whether to pass on all or part of an information request, subject to guidance (insert new rule 107(2a), amendment to rule 107(2)).

The Commission has not changed any of its policy objectives regarding the provision of capacity and usage information by covered pipelines. Nevertheless, the final rule differs from the draft rule to reflect a number of drafting suggestions made by stakeholders as outlined above.

As expressed in its final report for the review, the Commission considers that access to sufficient up to date capacity and usage information is necessary in order for users to form a view on available capacity in order to facilitate access negotiations.

The Commission also considers that providing the regulator with the ability to pass on part or all of an information request will encourage prospective users and pipeline service providers to exchange sufficient information in an efficient and timely manner, further supporting access negotiations.

Efficient access negotiations ultimately assist in minimising costs and optimising capacity, which is in the long term interests of consumer.

7.2

Pipeline financial and offer information

7.2.1

Current framework

Financial and offer information – full regulation pipelines

Negotiation of tariff and non-tariff terms and conditions for full regulation pipelines is informed by the applicable access arrangement, including tariff and non-tariff terms and conditions for reference services. The financial information published with a full access arrangement proposal is also comprehensive. The Commission concluded in its final report

²²⁴ The application of changes to the Bulletin Board in Western Australia will require an amendment to rule 56 of the Gas Services Information Rules (WA).

for the review that additional financial information reporting was not required for full regulation pipelines.²²⁵

Financial and offer information – light regulation pipelines

The published financial information available to prospective users of light regulation pipelines is minimal by comparison with full regulation pipelines. Part 9 of the NGR does not apply to light regulation pipelines, so there is no obligation to publish information on revenues, costs and information underpinning the allocation of costs to particular tariffs.²²⁶

Light regulation pipeline service providers are required to publish prices on offer for light regulation services and other terms and conditions of access to those services.²²⁷

As with full regulation pipelines, a light regulation pipeline service provider must, on request, fix and notify a tariff to a prospective user where a tariff for a particular service is not published.²²⁸

The service provider is also required to report at least annually to the regulator on access negotiations and the regulator may, from time to time, publish an assessment of such information reported to it by service providers.²²⁹ Light regulation pipeline service providers can choose to submit a limited access arrangement to the regulator for approval.²³⁰ However, no service providers have done so to date.

The regulators' functions and powers include the preparation and publication of reports on the financial and operational performance of service providers²³¹ and such reports, if prepared, would be available to prospective users.

Financial and offer information – non-scheme pipelines

By contrast, a service provider for a non-scheme pipeline must publish the following information:²³²

- standing terms:
 - standard terms and conditions
 - standing price for the service
 - other relevant pricing and charging information, for example charging structure, minimum charges and other additional charges such as imbalance or overrun charges
- certified financial information about each pipeline in accordance with the financial reporting guidelines, including:²³³

225 AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 182-185.

226 Rule 70 of the NGR.

227 Rule 36(1) of the NGR.

228 Rule 108 of the NGR.

229 Rule 37 of the NGR.

230 Section 116 of the NGL.

231 Section 27(1)(f) of the NGL.

232 Rules 554 – 556 of the NGR.

233 Rule 557 of the NGR.

- financial statements
- asset values
- depreciation allowances
- cost allocations
- financial performance metrics
- weighted average price.

The AER's financial reporting guideline prescribes:²³⁴

- the form and content of the financial information required to be published
- the methodology, principles and inputs used to calculate the financial information
- the form and content of the weighted average price information to be published
- the manner in which the above information must be certified by an independent auditor.

7.2.2

Draft rule determination

In its review the Commission observed that light regulation pipeline service providers are currently required to publish minimal financial information which is substantially less than non-scheme pipeline service providers. It noted that there appeared to be no basis for this distinction. Given the very limited information that light regulation pipelines are required to disclose and the submissions received, the information available to prospective users of light regulation pipelines did not generally appear to be sufficient for them to negotiate on an informed basis. The Commission concluded that it would be appropriate for users to be provided with greater support in their negotiations by light regulation pipeline service providers publishing the same type of information as published by non-scheme pipeline service providers.

In a number of instances, the financial information reporting recommended for light regulation pipeline service providers was the same as that specified under Part 23 of the NGR. However, some differences were recommended by the Commission. The Commission considered that reporting on capital base values and cost allocation for light regulation pipelines should be on a basis consistent with the price and revenue regulation framework for full regulation pipelines.²³⁵

In addition, the final report included a recommendation that, consistent with Part 23 of the NGR, light regulation pipeline service providers would need to disclose information to assist users assessing whether prices are reasonable. Relatedly, the Commission recommended that the regulators be required to consult on the development of financial reporting guidelines that would set out the detailed reporting requirements for light regulation pipelines.

The Commission also commented in its final report that while financial reporting could be required of service providers, it was important for users and prospective users to be able to make an assessment of the reasonableness of the information. It noted that rule 554 in Part 23 of the NGR requires standing terms and prices to be reported for non-scheme pipelines,

²³⁴ AER, *Financial reporting guidelines for non-scheme pipelines*, December 2017, p. 1.

²³⁵ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 184-185.

and rule 36 of the NGR requires prices on offer, along with terms and conditions to be reported for light regulation pipelines. These two rules appeared to the Commission to be broadly equivalent, with one material exception. Specifically, that rule 554 requires the methodology used to calculate the standing price to be disclosed, but rule 36 does not. Determining whether a price being offered is reasonable would be difficult in the absence of knowing the methodology used to calculate it. Consequently, the Commission recommended that rule 36 be amended to also require the pricing methodology to be disclosed for light regulation pipelines in order to assist users and prospective users in determining whether the price that they are being offered is reasonable.²³⁶

The COAG Energy Council proposed amendments to the NGR consistent with the final report recommendations. The Commission consequently made a draft rule to implement the COAG Energy Council's proposal.

7.2.3

Stakeholder views

APGA was in general agreement with the draft rule, including the application of parts of the financial reporting on non-scheme pipelines regime, which "help to improve reporting consistency between Part 23 and light and full regulation pipelines."²³⁷

ATCO considered that the Commission needed to "take care in imposing additional burden on service providers for little or no benefit" and cited as an example the option for the regulator to include "financial performance metrics" in their financial reporting guideline.²³⁸

7.2.4

Assessment

The Commission's review examined the issue of financial information disclosure on light regulation pipelines. Based on its own assessment and on substantial user feedback the Commission considered "that users and prospective users of light regulation pipelines need comprehensive financial information in order to address information asymmetry and to facilitate negotiation with service providers on an informed basis."²³⁹ The Commission has not changed its view.

The Commission's findings were consistent with the ACCC's finding that "the limited availability of information on the costs pipeline owners incur in providing services and the relationship between these costs and the prices charged for services, may also be limiting the ability of shippers to determine whether the prices they are offered are cost reflective and to negotiate effectively with pipeline operators."²⁴⁰

Accordingly, the Commission does not accept that there is little or no benefit in enhanced financial disclosure, including the example cited by ATCO.

²³⁶ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 184-185.

²³⁷ APGA submission, pp. 1-2.

²³⁸ ATCO submission, pp. 19-20 and draft rule 36F(2)(a)(iii).

²³⁹ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 184.

²⁴⁰ ACCC, *Inquiry into the east coast gas market*, April 2016, p. 11.

7.2.5

Final rule

The Commission has made a final rule to require light regulation pipeline service providers to publish certain financial and offer information. In addition, the regulator will be required to publish a guideline for the reporting regime. Accordingly, the final rule includes inserting new rules 35A, 36(1)(c), 36B and 36D-36F.

The Commission considers that requiring financial and offer information disclosure for light regulation pipelines should enable users and prospective users to negotiate prices, terms and conditions on an informed basis, mitigating potential monopoly power and leading to better prices flowing through to consumers, consistent with achieving the NGO.

7.3

Access negotiation process

7.3.1

Current framework

Section 2 of the NGL defines the dispute resolution body for scheme pipelines as the AER. Under the National Gas Access (WA) Act 2009 (NGL (WA)), the Western Australian Energy Disputes Arbitrator (EDA) is the dispute resolution body for Western Australian scheme pipelines.²⁴¹

Chapter 6 of the NGL sets out the dispute resolution process for scheme pipelines as follows:²⁴²

- the prospective user or service provider notifies the dispute resolution body of an access dispute
- the dispute resolution body informs the other party of the access dispute
- the dispute resolution body can terminate the dispute, or otherwise must make a determination on access in writing with clearly stated reasons²⁴³
- the dispute resolution body may require the parties to mediate, conciliate or engage in another alternative dispute resolution process
- the dispute resolution body must, in making an access determination, give effect to the access arrangement that applies to the services of the access dispute pipeline
- each party bears its own costs in a dispute hearing.

7.3.2

Draft rule determination

The Commission's final report noted that s. 181 of the NGL defines the trigger for arbitration as the inability of parties to agree.

The Commission noted that a trigger such as the inability to agree may raise some ambiguity. While it may be easy to establish that the parties have not agreed, it is another matter to prove that they are unable to agree. An ambiguous trigger for dispute resolution may mean that even where parties are disputing access, it would be difficult to start the dispute

²⁴¹ Section 9 of Schedule 1 to the *National Gas Access (WA) Act 2009*.

²⁴² Sections 181-207 of the NGL.

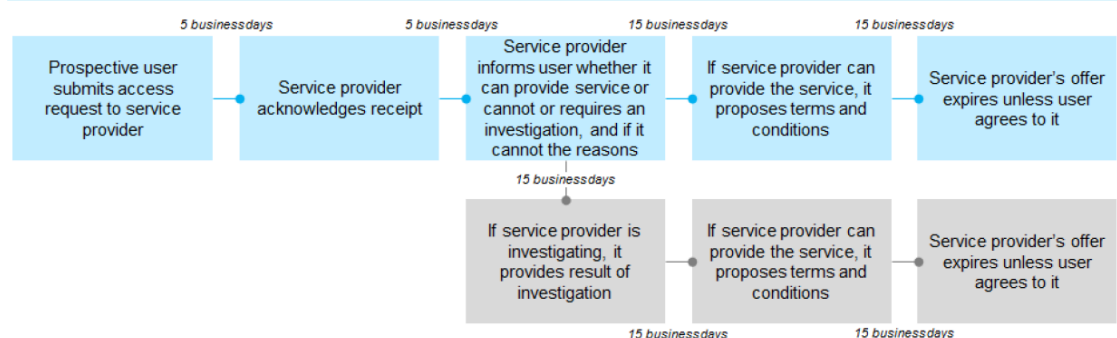
²⁴³ Under s. 186 of the NGL the dispute resolution body may terminate an access dispute in accordance with specified circumstances.

resolution process. The consequence would be that this extends the timeframe for negotiations and reduces the credibility of the threat of arbitration, as it minimises the likelihood that dispute resolution would be triggered. This lessens the constraint on market power and increases the probability of inefficient consumer outcomes.

The Commission considered that it would be more appropriate to enable a dispute to be triggered if parties have not agreed within a prescribed timeframe. It considered that guidance on the process for negotiation and agreement between the parties would allow the dispute resolution body to make such a decision more readily. The Commission therefore considered that the NGR should lay out a clearer access negotiation process with binding timeframes on both parties.

Following consultation the Commission recommended an overall access negotiation timeframe of 55 days, broken down as follows:

Figure 7.1: Proposed access negotiation process



Source: AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, p. 202.

The Commission also considered that complementary changes, defining circumstances that may constitute an access dispute, should be made to the NGL and NGR at a later date, as part of the second package of reforms.²⁴⁴

The COAG Energy Council proposed rule amendments consistent with the Commission's recommendations.

The Commission made a draft rule consistent with the proposed rule.

7.3.3

Stakeholder views

JGN raised concerns about the access negotiation timeframe, which applies binding timeframes on the parties after which an access dispute can be triggered. It raised concerns about the potential inability the service providers to meet the specified timeframes in the event of an unusual request for access.²⁴⁵

²⁴⁴ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, Table 10.1, p. 228; AEMC, *Drafting instructions for NGL amendments*, 3 July 2018, section 2.6.

²⁴⁵ JGN submission, attachment A, pp. 1-3.

JGN also suggested that potential users may in some instances have insufficient time to respond to the service provider's access proposal.²⁴⁶ As a result, JGN suggested that a similar regime to that in NGR Part 23 should apply under Part 11.²⁴⁷

JGN also recommended that the service provider be able to recover costs of investigating and responding to an access request as well as suggesting a number of small drafting changes.²⁴⁸

AGIG expressed concern over the timeframes allowed for access requests under draft rule 112, and suggested that the timeframe for investigations be extended and that a provision be added to enable prospective users and operators to agree to timeframes outside of those set out in the NGR.²⁴⁹

APA observed that the process assumed in draft rule 112(1) does not reflect the way negotiations between a pipeline service provider and a prospective user commence. APA advised that there is typically a preliminary exploration of options, which can proceed over an extended period during which time the users requirements and options are progressively firmed up, and that draft rule 112 is not particularly accommodative of this process.²⁵⁰

7.3.4

Assessment

Negotiation timeframe

The Commission understands JGN's concern regarding the potential time that could be taken in dealing with a particularly complex or difficult access request, especially where a number of scenarios require modelling.

APA cited similar issues, noting that investigations often require external advice and detailed modelling that cannot be undertaken in two weeks.

In coming to a view on the appropriate timeframes and negotiation processes the Commission examined a number of access negotiation frameworks, including those applying to the:²⁵¹

- National Broadband Network (NBN)
- Australian Rail Track Corporation (ARTC)
- New South Wales rail
- electricity networks
- non-scheme natural gas pipelines.

The Commission still considers the access request process set out in its final report and draft rule determination to be the most appropriate one. However, the Commission also

²⁴⁶ JGN submission, attachment A, p. 4.

²⁴⁷ JGN submission, attachment A, p. 2.

²⁴⁸ JGN submission, attachment A, pp. 4-6.

²⁴⁹ AGIG submission, attachment A, pp. 1-2.

²⁵⁰ APA submission, p. 2.

²⁵¹ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, draft report, 27 February 2018, pp. 140-160; AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 192-223.

recognises the impact of special circumstances that may arise, particularly with large, complex or difficult access requests.

To accommodate special circumstances the Commission has amended draft rule 112 to allow for the service provider and prospective user to mutually agree to alternative timeframes once the service provider has informed the user whether it can provide the service, or that it is unable to provide the service, or whether it needs to carry out further investigations. In the absence of agreement parties will retain the ability to enforce the timeframes within the rule. However, parties have an incentive to behave reasonably in negotiating timeframes as there is little benefit in triggering arbitration where the other party is also acting reasonably and expeditiously.

Costs of investigating and responding to an access request

JGN contended that the service provider should be able to recover costs of investigating and responding to an access request, as the NGR provides for in other circumstances.

The Commission is mindful that, in the absence of cost recovery, there is a lack of any incentive for prospective users to constrain the costs that they impose on service providers, which may ultimately flow through to other users. This could, for example, lead to complex access requests being made on a purely speculative basis, which would not be in the long term interests of consumers. In addition, imposing at least some costs on prospective users who have complex access requests provides an incentive for prospective users to engage with pipeline service providers in the manner described by APA, with preliminary inquiries that progressively firm up towards a well-informed access request.

The Commission has therefore amended the draft rule to provide that the service provider can recover its reasonable costs for investigations under rule 112(6) of the final rule.

The Commission has not extended this cost recovery to routine access requests that do not require further investigations, or to administrative and legal tasks such as drafting of terms and conditions, as the consequences of speculative access requests are lower and these more routine services are likely to be used by all users. These costs would typically not be charged to users in a competitive market. Having the service provider undertake the work and be responsible for the costs provides an incentive to standardise and to drive down costs.

Minor rule changes suggestions

JGN made some minor drafting suggestions related to draft rule 112. The Commission considered these suggestions and has made changes to the final rule.

7.3.5

Final rule

The Commission has made a final rule that amends the NGR in order to provide guidance on the process for negotiation and agreement between the parties, through changes to rule 112 of the NGR.

The final rule differs from the draft rule by:

- allowing specified time periods for access requests and responses to be extended when agreed in writing by the service provider and the prospective user
- allowing a service provider to recover its reasonable costs where the service provider needs to carry out further investigation
- clarifying that the access request date is the date on which the access request is received by the service provider.

New rule 106A also clarifies that, where there is a conflict between the process for negotiation and agreement in the final rule and in an existing access arrangement, then the final rule prevails.

The Commission maintains the views expressed in its final report: that ambiguous arbitration triggers reduce the effectiveness of the negotiation and arbitration process. Efficient access to arbitration provides a credible threat and backstop, assisting to minimise negotiation and arbitration costs, which is in the long term interests of consumers, consistent with achieving the NGO.

7.4 Key performance indicators

7.4.1 Current framework

The NGR provides that access arrangement information must include KPIs for the pipeline.²⁵² In the case of full access arrangements, the NGR state that the KPIs are “to be used by the service provider to support expenditure to be incurred over the access arrangement period”.²⁵³ No further guidance is given on the purpose or choice of KPIs.

7.4.2 Draft rule determination

The requirements of the NGR has led to a divergent set of KPIs being adopted across pipeline service providers. During the review, many stakeholders commented that a more prescriptive approach would facilitate obtaining performance information that is comprehensive and consistent across pipelines. They considered that this would be more useful for users and regulators.

The Commission considered that consistency across pipelines and over time along with comprehensiveness was critical to KPI usefulness and that this is best achieved by the regulator setting out, following relevant consultation, the information that is to be collected, reported and published. In the draft report the Commission concluded that regulatory information notices (RINs) and regulatory information orders (RIOs) were appropriate instruments for this purpose. As a result, a draft recommendation was made to remove KPIs from the access arrangement information requirements.²⁵⁴

This issue was considered further in the final report in light of stakeholder submissions. However, on balance the Commission maintained its conclusion expressed in its draft report and recommended the removal of KPIs from the access arrangement information for full and

²⁵² Rules 45(2)(b), 72(1)(f) and 129(2)(b) of the NGR.

²⁵³ Rule 72(1)(f) of the NGR.

²⁵⁴ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, draft report, 27 February 2018, pp. 135-137.

light regulation pipelines as RIN and RIO were more appropriate mechanisms to achieve the outcomes sought by users.

Consistent with this recommendation, the COAG Energy Council proposed an amendment to the access arrangement information requirements specified in the NGR. The Commission made a draft rule consistent with the proposed rule.

7.4.3 Stakeholder views

No submissions opposed, and ATCO explicitly supported, the draft rule determination to remove the requirement to include KPIs in the access arrangement information.²⁵⁵

7.4.4 Assessment

No changes to the draft rule were suggested and the Commission considers that its reasons outlined in the draft rule determination remain appropriate.

7.4.5 Final rule

The Commission has made a final rule that omits rules 45(2)(b) and 72(1)(f) of the NGR to remove the requirements on service providers to include KPIs in access arrangement information for full and light regulation pipelines. The final rule is the same as the draft rule.

The Commission made a final rule to this effect as it considered that consistency and comprehensiveness of information enhances its value to regulators and users, which is ultimately in the long term interests of consumers, consistent with achieving the NGO.

7.5 Scheme register

7.5.1 Current framework

The AEMC maintains a public Scheme Register on its website in accordance with the requirements of Part 15 of the NGR.²⁵⁶ The Scheme Register is a register of all pipelines that are, or have been, subject to any form of regulation or exemption from regulation under the NGL and the NGR, or the old scheme.²⁵⁷

The Scheme Register includes, for each pipeline, a description of the pipeline and the pipeline's classification and regulatory history under the NGL and the code. The Scheme Register is also required to include various decisions relating to pipelines that are currently or were formerly covered, or that are or were subject to greenfields pipeline incentives.²⁵⁸

²⁵⁵ ATCO submission, p. 20.

²⁵⁶ The Scheme Register is part of the AEMC website: <https://www.aemc.gov.au/energy-system/gas/gas-scheme-register>.

²⁵⁷ Rules 3 and 133(2) of the NGR. An old scheme transmission or distribution pipeline is defined in s. 2 of the NGL as a transmission or distribution pipeline that was, at any time before the repeal of the old access law, a transmission or distribution pipeline as defined in that law and a covered pipeline as defined in the code.

²⁵⁸ Rule 133(4) of the NGR.

7.5.2

Draft rule determination

The making of the National Gas (Pipelines Access — Arbitration) Amendment Rules 2017 (Part 23 of the NGR) brought non-scheme pipelines within the remit of the Scheme Register as these pipelines became subject to a form of regulation under the NGR.

The Commission noted in its final report that the Scheme Register was originally designed to capture information relevant to scheme pipelines. As a result, the information required by the NGR to be captured was not optimal for non-scheme pipelines. For example, only scheme pipelines were required to notify the AEMC of extensions or capacity expansions, and while information related to the pipeline's regulatory history as a scheme pipeline was included, information related to its regulatory history as a non-scheme pipeline was not.

The Commission therefore recommended improvements to the Scheme Register in order to provide a central repository of key regulatory information for pipelines, to minimise search costs for users and service providers, and to provide a more useful resource for regulators and policy-makers. At the same time, the Commission recommended changing the register's name to "Pipeline Register" to reflect the expansion of its coverage to non-scheme pipelines, and some minor administrative updates.²⁵⁹

The proposed rule changes submitted by the COAG Energy Council were the same as the rule changes recommended by the Commission, except in regard to the requirement to include initial opening capital base determinations for light regulation pipelines, as set out in the Commission's recommended rule 133(4)(i). The proponent excluded the calculation of an initial capital base for light regulation pipelines (identified as AEMC recommendation 17 in the final report) from its rule change request, and the removal of recommended rule 133(4)(i) from the proposed rule flows from that decision.

The Commission made a draft rule that was consistent with that proposed by the COAG Energy Council.

7.5.3

Stakeholder views

While acknowledging that it is useful to have all pipelines on the same register, ATCO considered that some information required for the Scheme Register is duplicative of the information required in draft rules 112A to 112D. ATCO also stated that it was questionable that the historical information required in draft rule 133(3) provides benefit to consumers.

7.5.4

Assessment

The Scheme Register is a central repository of pipeline descriptions, ownership and regulatory history. The Commission considers that the requirement to notify it if the description of the pipeline changes is not overly onerous as pipeline descriptions change infrequently.

The regulatory history provides a point of reference for previous regulatory decisions and information that may have relevance to users undertaking a negotiation or seeking access.

²⁵⁹ AEMC, *Review into the scope of economic regulation applied to covered pipelines*, final report, 3 July 2018, pp. 189-191.

For example, historical asset base assessments may provide a useful starting point for a roll forward, while regulatory submissions and decisions typically provide a wealth of data and information about the pipeline physical and financial history.

The Commission maintains the position it held at the time of the draft rule determination and considers that its assessment remains appropriate.

The Scheme Register is extensively accessed. The different pages of the Scheme Register have been accessed a total of around 20,000 times in the last 12 months.²⁶⁰

7.5.5

Final rule

The Commission has made a final rule that amends Part 15 of the NGR such that:

- service providers for non-scheme pipelines will be required to provide the AEMC with a description of the pipeline upon commencement of the relevant rule. Subsequently, both scheme and non-scheme pipeline service providers should be required to provide a description of the pipeline for inclusion in the register whenever a new pipeline is built or when it is affected by an extension or expansion
- the Scheme Register's contents will be expanded to include published information about:
 - access determinations made under Division 4 of Part 23 of the NGR
 - exemption decisions made under Division 6 of Part 23 of the NGR
- the name "Scheme Register" will be changed to "Pipeline Register"
- the current requirement for the Scheme Register to be made available for inspection at the AEMC's public offices during business hours will be removed from the NGR.²⁶¹

Specifically, the final rule (which is the same as the draft rule) amends rules 133 to 135 and inserts new rule 134A in the NGR.

The Commission is satisfied that providing a central repository of regulatory information provides value to regulators, users, and other interested parties which is ultimately in the long term interests of consumers, consistent with achieving the NGO.

²⁶⁰ 21,647 page views and 18,596 unique page views.

²⁶¹ The register will continue to be available on the AEMC website.

8 IMPLEMENTATION OF FINAL RULE

This chapter outlines the approach included in the final rule to manage its implementation. The chapter sets out:

- the implementation arrangements proposed for certain pipelines that will be participating in an access arrangement review process at the time, or soon after, this final rule determination is published (March 2019)
- the implementation arrangements for transmission and distribution pipelines that are currently expected to be lodging proposed access arrangement revisions with the relevant regulator in or after June 2020
- the implementation arrangements set out in the final rule for non-access arrangement provisions of the NGR that are included in this rule change process such as information provision requirements and the pipeline register.

8.1 Draft implementation arrangements

8.1.1 Interaction with access arrangements

The draft rule (other than amendments to the Bulletin Board and Scheme Register), if made, was proposed to commence one week after publication of the final rule determination. Transitional arrangements were included in the draft rule to deal with full regulation pipeline service providers that would have been unable to submit a reference service proposal 12 months prior to the access arrangement revision submission date.

However other rules relating to the assessment of elements within an access arrangement proposal and the access arrangement assessment process are likely to be relevant for all pipelines, including those with transitional reference service proposal arrangements, and should commence as soon as possible. On balance, the Commission considered that it would be beneficial for the new rules to start as soon as practicable where it is possible to do so.

Access arrangement review submission dates and the dates that reference service proposals would have had to have been submitted under the draft rule are shown in the table below for all full regulation pipelines:

Table 8.1: Access arrangement submission dates

| PIPELINE | ACCESS ARRANGEMENT REVIEW SUBMISSION DATE | REFERENCE SERVICE PROPOSAL SUBMISSION DATE |
|--|---|--|
| Mid West and South West Gas Distribution Systems | 1 September 2018 | Not applicable |
| Goldfields Gas Pipelines | 1 January 2019 | Not applicable |
| Jemena Gas Networks | 30 June 2019 | Not applicable |
| Dampier to Bunbury Natural Gas Pipelines | 1 January 2020 | Not applicable |

| PIPELINE | ACCESS ARRANGEMENT REVIEW SUBMISSION DATE | REFERENCE SERVICE PROPOSAL SUBMISSION DATE |
|-------------------------------|---|--|
| Evoenergy | 30 June 2020 | 30 June 2019 |
| Amadeus Gas Pipelines | 1 July 2020 | 1 July 2019 |
| AGN SA | 1 July 2020 | 1 July 2019 |
| Roma Brisbane Pipeline | 1 January 2021 | 1 January 2020 |
| AGN Victoria and Albury | 1 December 2021 | 1 December 2020 |
| Multinet | 1 December 2021 | 1 December 2020 |
| Ausnet | 1 December 2021 | 1 December 2020 |
| Victorian Transmission System | 1 December 2021 | 1 December 2020 |

Source: Access arrangements, AER and ERAWA websites

The Commission considered that access arrangements with scheduled review submission dates on or after 30 June 2020 would be able to comply with the full suite of new rules arising from the Commission's final rule determination in March 2019.

The Commission therefore made draft transitional rules to exempt service providers for the Goldfields Gas Pipeline, Jemena Gas Networks and the Dampier to Bunbury Natural Gas Pipeline, which have review submission dates falling prior to June 2020, from having to comply with the new reference service proposal requirements in their forthcoming reviews. The draft transitional arrangement rules also amended the access arrangement process to reflect this change for these particular pipelines.

The Commission also made a draft transitional rule to exempt the service provider (ATCO) of the Mid West and South West Gas Distribution Systems from the amendments set out in Parts 8, 9 and 10 of the draft rule, relating to the access arrangement for the next access arrangement period because its access arrangement review submission date fell in 2018.

A table, setting out the impact of the draft rule on the access arrangement processes for full regulation pipelines and the proposed date for making the relevant components of the rule, was provided in the draft rule determination.

8.1.2

Implementation of non-access arrangement amendments

A table, setting out the proposed implementation approach for draft amendments to the NGR that were not related to an access arrangement process, was also included in the draft rule determination. The Commission proposed delayed commencement dates for certain rules to allow for preparations required by stakeholders to enable compliance. For example, under the draft rule the new information reporting requirements would not commence until six months after the rule is made.

8.2 Stakeholder views

8.2.1 Requests for access

ATCO considered that a March 2019 implementation of draft rule 112, which relates to the process for requesting access, would require ATCO to vary its access arrangement by making an application for variation under rule 65 in order to comply with the rule, as some provisions of its access arrangement may be inconsistent with rule 112. However, as ATCO's access arrangement is currently subject to a revision process with the ERA, ATCO stated that it could not submit a variation application. It suggested that it would be adversely affected by having to incur the costs and likely procedural delay of taking steps during a current access arrangement review process to comply with the new rule by making substantial amendments to the access arrangement proposal during the process.

ATCO requested that the Commission delay the implementation of the changes to draft rule 112 to 1 January 2020 for ATCO's Mid-West and South-West Gas Distribution Systems, so that the changes would take effect from the commencement of the new access arrangement period, 1 January 2020.²⁶²

8.2.2 Information disclosure

ATCO also requested that it be exempted from the requirement to publish capacity and usage information in draft rules 112A to 112D (as applying to the Mid-West and South-West Gas Distribution Systems) until July 2020, so that the requirements can be included in existing IT projects that are part of its current access arrangement review.²⁶³

8.3 Assessment

8.3.1 Requests for access

The Commission recognises that there could be potential inconsistencies between draft rule 112 and the access arrangement in place for ATCO's pipelines. In some cases it may be possible to comply with both requirements (that is, requirements in the access arrangements and requirements under rule 112) by simply complying with the more onerous obligation, but in other cases there may be contradictions.

The Commission considered ATCO's request to delay the implementation of rule 112 but on balance has decided on a different approach. The final rule instead now makes clear that amendments in Division 1 of Part 11 (which includes rule 112) prevail over inconsistent provisions in an access arrangement.

The Commission has concluded that this approach is preferable because:

- users should have the benefit of the new rules as early as is practicable, and
- there may be similarly problematic provisions in other access arrangements which have different expiry dates and would not be addressed by ATCO's proposed approach.

²⁶² ATCO submission, p. 21.

²⁶³ ATCO submission, p. 21.

8.3.2

Information disclosure

The Commission notes ATCO's concerns about integrating its IT expenditure on information disclosure within existing IT projects included as part of its forecast capital expenditure program submitted as part of its current access arrangement review process. However, the Commission is not persuaded to change its approach for two reasons.

Firstly, the Commission considers the disclosure obligations to be modest. The Commission acknowledges that some changes may be needed to store and publish data but, as discussed in Chapter 7, expects that this data is generally already available to the service provider. Electronically storing and publishing the data does not seem to be an overly onerous requirement, even if integration with a larger project cannot be achieved. The timeframes are also consistent with those that applied when Part 23 was implemented, and the issue has not been raised by other service providers in their submissions. This suggests to the Commission that the implementation time for this requirement is workable for service providers.

Secondly, the fact that the capital expenditure was not in a bottom up efficient costs analysis prepared for the current or previous access arrangement does not constrain service providers from undertaking it, including bringing forward expenditure on larger IT projects if that is more efficient. The regulator does not "approve" individual projects, or their timing.

The regulatory regime is incentive based, not cost of service based, and is intended to drive efficient investment decisions even when circumstances change. Accordingly, ATCO is not constrained on commencing or preparing for a major IT project simply because an access arrangement determination process is on foot.

For these reasons, the Commission has not made a change to its draft implementation plan to specifically change the date on which ATCO is required to comply with final rules 112A to 112D.

8.4

Final implementation arrangements

For the reasons discussed above, the Commission has made a final rule that adopts the same implementation arrangements as the draft rule through the commencement dates set out in the final rule, and through new rules 60 to 65 in Schedule 1 of the NGR. The Commission has also provided additional clarity, through new rule 106A, that amendments in Division 1 of Part 11 prevail over inconsistent provisions in an access arrangement.

8.5

Commencement dates

The implementation tables provided in the draft rule determination, updated to reflect the final rule and cross-referenced against the final rule determination, are provided below. Access arrangement submission dates remain as set out in Table 8.1.

Table 8.2: Implementation of rules – access arrangement amendments

| AMENDMENT | FINAL RULE | COMMENCE- MENT DATE^(A) | DETERMI- NATION REFERENCE |
|---|--|--|--|
| Include all new expansions in an access arrangement | New rule 104(3) | 21 March 2019 | 3.3.4 |
| Enable existing extensions to be included in access arrangements | Amend rule 104 | 21 March 2019 | 3.2.4 |
| Clarify the requirements for describing pipeline and reference services | New rules 47A(1),(2)&(15), 48(1)(c1); amend rules 45(1)(b)&(c), 45(2), 48(1)(b),(c)&(d)(ii); omit rule 101; new transitional rules schedule 1, rules 61 and 62 | 21 March 2019 | 4.1.5, 8.4 |
| Update the test for determining a reference service, introduce a reference service proposal process and improve the access arrangement review process | New rule 46(1A), 47(1A), 47A(3)-(14) and 48(1)(c1); amend rules 3, 46(1)&(2), 47(2)(a), 50, 51, 58(1), 59(2), 59(5), 62(5)&(7), 64(5)(b); omit rules 13 and 57; new transitional rules schedule 1, rules 61 and 62 | 21 March 2019 ^(b) | 4.2.5, 8.4 |
| Develop financial models to be used by service providers | New rules 75A, 75B and 72(3); amend rule 73(3) | 21 March 2019 ^(c) | 5.1.5 |
| Clarify the operation of revenue caps | Amend rule 92(2)(a) | 21 March 2019 | 5.2.5 |
| Clarify that the regulator is to have regard to risk sharing arrangements | New rule 97(3)(d1); amend rule 100 | 21 March 2019 | 5.3.5 |
| Extend the revision period | Amend rule 59(3) | 21 March 2019 | 5.4.5 |
| Clarify the process for equalising revenue during the interval of delay | New rule 92(4); amend rules 3 (definition), 92(2)&(3) | 21 March 2019 | 5.5.5 |
| Remove the limited and no discretion regulatory framework | New rule 41(3); omit rules 40, 50(3), 79(6), 89(3), 91(2), 94(6) and 95(4) | 21 March 2019 | 5.6.5 |
| Clarify the application of the new capital expenditure criteria | Amend rule 79(1)(a) | 21 March 2019 | 6.2.5 |

| AMENDMENT | FINAL RULE | COMMENCE- MENT DATE ^(A) | DETERMI- NATION REFERENCE |
|---|---|--|---------------------------------|
| Enable the addition of existing extensions and expansions to the opening capital base | New rules 77(2)(c1) and 77(3)(b1) | 21 March 2019 | 6.3.5 |
| Require allocation of expenditure between covered and uncovered parts of a pipeline | New rule 79(1)(c); amend rules 79(1)(b), 79(6) and 91(2) | 21 March 2019 | 6.4.5 |
| Amend definition of rebateable services and rebate methodology | New rule 97(1)(c1); amend rule 93(3)(a), 93(4)(b); omit rule 93(4)(c) | 21 March 2019 | 6.5.5 |
| Provide guidance on the process for negotiation and agreement between the parties | Amend rule 112, new rule 106A | 21 March 2019 | 7.3.5, 8.4 |
| Remove the requirement to provide KPIs as part of the access arrangement | Amend rules 45(2)(b) and 72(1)(f) | 21 March 2019 | 7.4.5 |

Note: (a) Not applicable to the Mid West and South West Gas Distribution Systems access arrangement. Transitional rules apply.
(b) Transitional rules apply to the Goldfields Gas Pipeline, Jemena Gas Networks and Dampier to Bunbury Natural Gas Pipeline.
(c) Will apply to service providers if and once financial models have been made.

Table 8.3: Implementation of rules – non-access arrangement amendments

| AMENDMENT | FINAL RULE | COMMENCE- MENT DATE | DETERMINATION REFERENCE |
|---|--|---|----------------------------|
| Require transmission pipeline service providers to disclose Bulletin Board information, remove requirement to establish and maintain a public register of spare capacity, extend uncontracted capacity outlooks | New rule 145(c); amend rules 141(1) (BB pipeline definition), 175; omit rule 111 | Rules commence 21 March 2019 except: Rule 141 commences 21 April 2019 Rule 175 commences 21 June 2019 | 7.1.5 |
| Require distribution pipeline service providers to disclose | New rules 35A, 36A to 36C, 112A to 112D | Rules commence 21 March 2019. Application date 21 | 7.1.5 |

| AMENDMENT | FINAL RULE | COMMENCE- MENT DATE | DETERMINATION REFERENCE |
|--|--|--|----------------------------|
| capacity and usage information | | June 2019 | |
| Clarify the role of the regulator in passing on information requests to service providers | New rule 107(2a); amend rule 107(2) | Rules commence 21 March 2019 | 7.1.5 |
| Introduce a financial and offer information disclosure regime for light regulation pipelines | New rules 35A, 35B, 36(1)(c), 36B, 36D to 36F, transitional rules schedule 1 rules 60, 63 and 64 | Rules commence 21 March 2019 Financial reporting guidelines prepared by 31 October 2019 Financial information and weighted average price information to be published for financial years ending after (but not including) 31 December 2019 | 7.2.5 |
| Improve the Scheme Register | New rule 134A; amend rules 133 to 135; new transitional rules schedule 1 rules 60 and 65 | Rules commence 21 July 2019 except: Schedule 1 (transitional rules) commences on 21 March 2019. Service providers for non scheme pipelines must provide information to the AEMC by 2 May 2019 | 7.5.5 |

ABBREVIATIONS

| | |
|--------------|--|
| ACCC | Australian Competition & Consumer Commission |
| AEMC | Australian Energy Market Commission |
| AEMO | Australian Energy Market Operator |
| AER | Australian Energy Regulator |
| APGA | Australian Pipelines and Gas Association |
| AGIG | Australian Gas Infrastructure Group |
| COAG | Council of Australian Governments |
| Code | National third party access code for natural gas pipeline systems |
| Commission | See AEMC |
| ERA | Economic Regulation Authority of Western Australia |
| Final report | AEMC review into the scope of economic regulation applied to covered pipelines, final report |
| JGN | Jemena Gas Networks |
| KPI | key performance indicators |
| NCC | National Competition Council |
| NER | National Electricity Rules |
| NGL | National Gas Law |
| NGL(WA) | National Gas Law (WA) Act 2009 |
| NGO | National gas objective |
| PIAC | Public Interest Advocacy Centre |
| Review | AEMC review into the scope of economic regulation applied to covered pipelines |
| RIN | regulatory information notice |
| RIO | regulatory information order |

A SUMMARY OF OTHER ISSUES RAISED IN SUBMISSIONS

This appendix sets out issues raised in submissions that have not otherwise been discussed in this document.

Table A.1: Summary of other issues raised in submissions

| STAKEHOLDER | ISSUE | AEMC RESPONSE |
|----------------|---|---|
| AGL, p. 2. | If a service provider does not go ahead with a project that has had the forecast capital expenditure approved, or it substitutes a lower cost solution, then a clawback mechanism should apply. Otherwise, it is difficult to see how costs can be efficient. | The treatment of unspent capital expenditure was discussed in the review's final report (pp. 136-137). The AEMC does not consider a clawback mechanism to be consistent with the incentive framework for access arrangements. |
| PIAC, pp. 1-2. | The draft rule determination does not address the issues regarding the test for the application of regulation to pipelines. | The review's final report recommendation 1 that the coverage test and forms of regulation be reviewed has been actioned by the COAG Energy Council who is currently conducting a review process on these issues. |
| ATCO, p. 5. | The draft rule regarding expansions may limit the development of ATCO's "development rebate scheme" or similar schemes in the future. | This proposal by ATCO for its access arrangement is a matter to be assessed through the access arrangement assessment process conducted by the ERA. |
| ATCO, p. 1. | The case for increasing regulatory burden on distribution pipelines is weak in the increasingly contestable energy market. | This rule change process is focussed on improving the regulation applied to covered pipelines. The question of contestability and consequent market power is a matter that can be considered by the NCC in an application for light regulation or revocation of coverage. |

B LEGAL REQUIREMENTS UNDER THE NGL

This appendix sets out the relevant legal requirements under the NGL for the AEMC to make this final rule determination.

B.1 Final rule determination

In accordance with s. 311 of the NGL the Commission has made this final rule determination in relation to the rule proposed by the COAG Energy Council. In addition, the Commission has made a final rule in accordance with s. 313 of the NGL.

The key features of the final rule, and the reasons for making this final rule determination, are described in section 2.4. Further details are provided in Chapters 3 to 7.

A copy of the final rule is attached to and published with this final rule determination.

B.2 Power to make the rule

The Commission is satisfied that the final rule falls within the subject matter about which the Commission may make rules. The final rule falls within s. 74(1)(a)(i) and (ii) of the NGL as it relates to regulating access to, and the provision of, pipeline services. Further, the final rule falls within the matters set out in Schedule 1 to the NGL as it relates to items:

- 17-26 in relation to access to pipeline services of a scheme pipeline
- 27-36 regarding the requirements and content of access arrangements, regulator decisions regarding access arrangements
- 43-46 on determining a capital base, investment in pipelines, and incentives to make efficient operating and investment decisions
- 49-50 regarding the regulator's economic regulation functions and powers
- 58-59 on the type of information to be provided to AEMO for the Bulletin Board
- 69 on the specification of pipeline services as reference services
- 75-76 regarding the establishment and maintenance of a register by the AEMC of regulatory decisions
- 77(b) regarding time periods in which the regulator must make a decision.

B.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NGL to make the rule
- the rule change request
- submissions received during consultation
- the Commission's analysis as to the ways in which the proposed rule will or is likely to, contribute to the NGL
- the revenue and pricing principles

- the findings and recommendations of the Commission's Review into the scope of regulation applied to covered pipelines.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.²⁶⁴

The Commission may only make a rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed rule is compatible with the proper performance of the Australian Energy Market Operator (AEMO)'s declared system functions.²⁶⁵ The final rule is compatible with AEMO's declared system functions because it does not impact on these.

B.4 Civil penalties

The Commission cannot create new civil penalty provisions. However, it may recommend to the COAG Energy Council that new or existing provisions of the NGR be classified as civil penalty provisions.

The Commission's final rule amends rules 36, 46, 107, 112 of the NGR which are currently classified as civil penalty provisions under Schedule 3 of the National Gas (South Australia) Regulations. The Commission considers that these rules should continue to be classified as civil penalty provisions.

The final rule omits rule 111 of the NGR which is currently classified as a civil penalty provision. The Commission proposes to recommend that rule 111 be removed from the list of civil penalty provisions in the National Gas (South Australia) Regulations.

The Commission does not consider any other provisions of the final rule should be classified as civil penalty provisions.

B.5 Conduct provisions

The Commission cannot create new conduct provisions. However, it may recommend to the COAG Energy Council that new or existing provisions of the NGR be classified as conduct provisions.

The Commission's final rule amends rules 36, 107, 112 of the NGR. These rules are currently classified as a conduct provisions under NGL Schedule 4 of the National Gas (South Australia) Regulations. The Commission proposes to recommend to the COAG Energy Council rules 36, 107, 112 continue to be classified as a conduct provisions.

The final rule omits rule 111 of the NGR which is currently classified as a conduct provision. The Commission proposes to recommend that rule 111 be removed from the list of conduct provisions in the National Gas (South Australia) Regulations.

²⁶⁴ Under s. 73 of the NGL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy. On 1 July 2011, the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. The amalgamated council is now called the COAG Energy Council.

²⁶⁵ Section 295(4) of the NGL.