

South Australia

National Gas Rules 2007

under the *National Gas Law*

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Part 1—Preliminary

1—Citation

These rules may be cited as the *National Gas Rules 2007*.

2—Commencement

These rules come into operation on ****

3—Interpretation

In these rules—

decision includes a determination or recommendation;

the Law means the NGL, these rules, and the regulations under the NGL.

the NGL means the National Gas Law;

Part 2—AER to provide information, and promote informed discussion, on regulatory issues

4—Interpretation

In this Part—

regulatory issues means matters concerning any aspect of the AER's powers or functions under the NGL or these rules.

5—AER's public information role

- (1) The AER may prepare, for public information or discussion, papers on regulatory issues.
- (2) The papers are to be published—
 - (a) on the AER's website; and
 - (b) in other way the AER considers appropriate.

[Note: Compare section 2.1 of the Code.]

6—Submissions, comments and public discussions

- (1) The AER may invite written comments or submissions from the public on particular regulatory issues.
- (2) The AER may—
 - (a) appoint a time and place for public discussion of particular regulatory issues between representatives of the AER and the public; and
 - (b) invite public participation in the discussion.
- (3) Comments or submissions may be invited, or a public discussion held, whether or not the relevant issues have been the subject of a paper published under this Part.
- (4) An invitation under this section is to be published—
 - (a) on the AER's website; and
 - (b) in any other way the AER considers appropriate.

[Note: Compare section 2.1. of the Code.]

Part 3—Competitive tendering**7—Application for approval of tender process as a competitive tender process (Section 98(2)(c) of the NGL)**

An application for the AER's approval of a tender process as a competitive tender process under section 98(2)(c) of the NGL must—

- (a) set out the applicant's contact details; and
- (b) contain a description of the proposed pipeline; and
- (c) state whether the pipeline is to be a market carriage pipeline or a contract carriage pipeline; and
- (d) describe the proposed tender process including—
 - (i) the rules and procedures to be followed; and
 - (ii) the minimum requirements with which a tender will be required to comply; and
 - (iii) the proposed date for calling tenders and the proposed closing date for submission of tenders; and
- (e) the criteria to be applied in selecting the successful tender; and
- (f) the proposed expiry date for the access arrangement that is to be based on the results of the tender process.

8—Requirements to be satisfied if tender process is to be approved as a competitive tender process (Section 99(2)(b) of the NGL)

- (1) The AER must be satisfied that the tender process meets the following requirements under section 99(2)(b) of the NGL before it approves a tender process as a competitive tender process:
 - (a) the tender process must be for the construction of a new pipeline conforming with the description in the application for approval; and
 - (b) the tender process must be an appropriate mechanism for determining terms and conditions of access having regard to—
 - (i) the national gas objective and the revenue and pricing principles; and
 - (ii) the expiry date for the proposed access arrangement that is to be based on the results of the tender process; and
 - (iii) the requirements of procedural fairness, probity and fair dealing; and
 - (c) the specifications for the proposed tender—
 - (i) must not limit the kind of services to which access may be sought; and
 - (ii) must not impose conditions or requirements that the AER considers would, or would be likely to, prevent or discourage the submission of a tender that would not be liable to exclusion under the selection criteria referred to in paragraph (d); and
 - (d) the selection criteria must require the exclusion of a tender from consideration if—
 - (i) it does not contain any of the essential elements for inclusion in a tender specified in subrule (2);
 - (ii) it contains terms or conditions of a kind specified by the AER as unacceptable; or
 - (iii) it does not comply with reasonable requirements imposed in the tender specification; or
 - (iv) it does not meet reasonable prudential or technical standards; and
 - (e) the selection criteria must not provide for the exclusion of a tender from consideration on a ground other than a ground specified in paragraph (d).
- (2) The essential elements for inclusion in a tender are—
 - (a) a description of the services proposed to be provided; and

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- (b) the proposed terms and conditions of access including, for each service to be provided, a statement of the price, or the method for determining the price; or
 - (c) the proposed expiry date for the proposed access arrangement to be based on the results of the tender process; or
 - (d) terms and conditions of a kind the AER requires the tender to contain.

9—Report on the conduct of the tender process (Section 101(2)(b) of the NGL)

A report on the conduct of the tender process under section 101 of the NGL must include the following information—

- (a) information showing that the tender was conducted in accordance with the approved process and, in particular, that the successful tender was selected in accordance with the approved selection criteria; and
- (b) the terms and conditions proposed in the successful tender including—
 - (i) a statement of the services to be provided and, for each service, the price or the method for determining the price; and
 - (ii) the proposed expiry date for the access arrangement to be based on the results of the tender process;
- (c) information showing that the terms and conditions are consistent with the national gas objective and the revenue and pricing principles; and
- (d) information establishing compliance with any other relevant requirements imposed by the AER.

Part 4—Access arrangements

10—Queuing requirements

- (1) Queuing requirements must be sufficiently detailed to enable prospective users of spare or developable capacity to understand the basis on which an order of priority between them has been, or will be, determined.
- (2) Queuing requirements must provide that the order of priority between prospective users of spare capacity or developable capacity is to be determined—
 - (a) on a first-come-first-served basis; or

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- (b) on the basis of a publicly notified auction in which all prospective users of the relevant spare capacity or developable capacity are able to participate.
 - (3) The order of priority established, or to be established, under the queuing requirements must have been, or must be, established on the basis of a process in which all prospective users (whether associates of, or unrelated to, the service provider) are treated on a fair and equal basis.

11—Extension and expansion requirements

- (1) The following are examples of the kind of provision that may be made by way of extension and expansion requirements—
 - (a) the requirements may state a basis for determining whether an extension or expansion is, or is not, to be treated as part of the covered pipeline or may allow the service provider, with the AER's consent, to elect at some later time whether an extension or expansion is to be treated as part of the covered pipeline;
 - (b) if the extension or expansion is to be treated as part of a covered pipeline, the requirements—
 - (i) may deal with the effect of an extension or expansion on tariffs and may provide, subject to the Law, for the levying of a surcharge on incremental users; or
 - (ii) may provide that a review of the access arrangement is to take place on, or before, the commissioning of the extension or expansion.
- (2) The extension and expansion requirements may not require the service provider to provide funds for work involved in making an extension or expansion unless the service provider agrees.

[Note: Compare section 3.16 of the Code.]

Part 5—Facilitation of, and request for, access**12—Availability of applicable access arrangement and other information
(section 189 of the NGL)**

- (1) A copy of an access arrangement must be provided to a person who requests it under section 189(1)(a) of the NGL within 14 days after the date of the request.
- (2) Information to be provided to a user or prospective user under section 189(1)(b) of the NGL must be provided—
 - (a) within the time specified by the AER in its notice under section 189(3) of the NGL; or

- (b) if the notice does not specify a time for compliance—within 7 days after the user or prospective user requests the information.
- (3) A copy of an applicable access arrangement, or other information, may be provided—
 - (a) by giving or sending it to the recipient in documentary form; or
 - (b) by faxing it to the recipient's fax address; or
 - (c) by transmitting it, in electronic form, to the recipient's email address.

13—Information to be provided by users (section 190 of the NGL)

- (1) Information to be provided by a user, under section 190 of the NGL, about unutilised contracted capacity must be provided within 14 days after the date of the request.
- (2) The information—
 - (a) must state whether unutilised contracted capacity is, or is likely to become, available; and
 - (b) if so—
 - (i) must state the quantity of the unutilised contracted capacity that is, or is likely to become, available; and
 - (ii) must state the nature of the unutilised contracted capacity (ie whether it is firm or interruptible and whether it is forward or backhaul); and
 - (iii) must state as specifically as the circumstances reasonably allow when the unutilised contracted capacity will be, or is likely to become, available nominating, if possible, a specific date; and
 - (iv) must state terms and conditions (which may include price) on which the user would be prepared to transfer the unutilised capacity; and
 - (c) must comply with any other requirements notified to the user by the AER.
- (3) On providing information under section 190, a user must immediately notify the service provider of the provision of information under that section—
 - (a) stating the name and contact details of the person to whom the information was provided; and
 - (b) giving full details of the information provided.

14—Public registers of capacity (section 191 of the NGL)

- (1) A register of spare capacity that a service provider is required under section 191 of the NGL to establish and maintain must include the following information:
 - (a) information about the spare capacity that the service provider reasonably believes exists for the haulage of natural gas between defined receipt and delivery points; and
 - (b) information about spare capacity that the service provider reasonably believes will exist for the haulage of natural gas between defined receipt and delivery points including information about planned developable capacity and expected additions to spare capacity; and
 - (c) information (which must be as specific as the circumstances reasonably allow) about when the spare capacity is, or will become, available; and
 - (d) information notified to the service provider by a user about unutilised contracted capacity including—
 - (i) the quantity and type of the unutilised contracted capacity and when it will be available; and
 - (ii) proposed terms and conditions (which may include the price) for the sale of the unutilised contracted capacity.
- (2) If a covered pipeline consists of a trunk or mains pipeline and a subordinate pipeline, the information contained in the register may be confined to the trunk or mains pipeline.
- (3) The receipt and delivery points defined in the register must be likely to be commercially significant for a significant number of prospective users and as numerous as is commercially and technically reasonable.
- (4) Information about planned developable capacity or other expected additions of spare capacity need not be included in the register if disclosure of the information would be unduly harmful to the legitimate business interests of the service provider or of a user or prospective user.

[See section 5.9 (c),(d) and (e) of the Code.]

15—Facilitation of, and request for, access (section 192 of the NGL)

- (1) A request under section 192(1) of the NGL to be provided with a pipeline service by means of a covered pipeline must—
 - (a) state the time or times when the pipeline service will be required and the capacity that is to be utilised; and

- (b) identify the entry point where natural gas is to be introduced to the pipeline or the exit point where natural gas is to be taken from the pipeline; and
 - (c) state the relevant technical details (including the proposed gas specification) for the connection to the pipeline, and for ensuring safety and reliability of the supply of natural gas to, or from, the pipeline.
- (2) The service provider must, within 30 days after the date of the request, respond to the request as required under section 192(2) of the NGL.
- (3) Information to be given by a service provider under section 192(3) of the NGL about when a prospective user's request may be met must—
 - (a) be as specific as the circumstances reasonably allow and, if possible, nominate a date when capacity to provide the requested service is expected to become available; and
 - (b) comply with requirements notified to the service provider by the AER.

Part 6—Access disputes

16—Safety of operation notification (Section 197(3)(b) of the NGL)

A safety of operation notification (under section 197 of the NGL) must include the name of the independent expert from whom the service provider proposes to obtain a report (under section 199 of the NGL) on whether the requested pipeline service can be provided consistently with the safe operation of the pipeline and prudent pipeline practices in the gas industry.

17—Service provider to obtain independent expert report (Section 199(2) of the NGL)

- (1) If the user or prospective user raises reasonable objections to the service provider's choice of independent expert from whom the expert report is to be obtained, the service provider must (if possible) engage an independent expert who is acceptable to both parties.
- (2) The service provider must, in seeking the independent expert's report, ask the expert to have regard to all relevant statutory or regulatory requirements or restrictions (including those imposed under the conditions of a licence).

Part 7—Decision-making model**18—Consultative decision making model**

- (1) If the AER or any other authority or person (the *decision maker*) is to make a decision under the Law, and these rules provide that the decision maker is to follow the model of consultative decision making prescribed by this Part, the decision maker is to follow the following procedures:
 - (a) the decision maker must, after such consultation (if any) as the decision maker considers appropriate, make a draft decision; and
 - (b) the decision maker must give copies of the draft decision to the parties to the administrative process in which the decision is to be made; and
 - (c) the decision maker must publish, on its website and in any other way the decision maker considers appropriate, the draft decision together with a notice—
 - (i) stating why the decision is required; and
 - (ii) giving reasonable details of the context in which the draft decision has been made, the issues involved and the possible effects of the decision; and
 - (iii) inviting submissions and comments on the draft decision within 21 days from the date of the notice;
 - (d) the decision maker must, within 28 days after the end of the period allowed for making submissions and comments on the draft decision, consider all submissions and comments made within the time allowed and make its final decision.
- (2) The final decision must—
 - (a) be in writing; and
 - (b) state the terms of the decision and the reasons for it; and
- (3) The decision maker must, without delay—
 - (a) if the decision is in the nature of a recommendation—deliver the final decision to the authority or person to whom the recommendation is addressed; and
 - (b) give copies of the final decision to the parties to the administrative process in which the decision is made; and
 - (c) publish the final decision on the decision maker's website; and
 - (d) make the final decision available for inspection during business hours at the decision maker's offices.

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- (4) Subject to the Law, a decision made in accordance with this rule takes effect on the date provided for its commencement under the terms of the decision or, if no date is so provided, 14 days after the date of the decision.

Part 8—Price and revenue regulation

Division 1—Preliminary

19—Interpretation

In this Part—

access arrangement period means the period between the commencement and the expiry of an applicable access arrangement;

capital base, in relation to a pipeline, means the capital value to be attributed, in accordance with this Part, to pipeline assets;

conforming capital investment means capital expenditure that complies with the new capital investment criteria;

depreciation means depreciation of the capital base;

new capital investment criteria mean the criteria that are to be satisfied if capital expenditure is to be rolled into the capital base under rule 27;

non-conforming capital investment means capital expenditure that does not comply with the new capital investment criteria;

operating expenditure means operating, maintenance and other recurrent expenditure incurred in providing reference services and includes expenditure incurred in increasing long-term demand for reference services and otherwise developing the market for reference services;

[Note: Compare section 8.36 of the Code.]

pipeline assets, in relation to a pipeline, means capital assets that constitute the pipeline or are otherwise used by the service provider to provide services;

regulatory year means each period fixed in an applicable access arrangement as a regulatory year for the purposes of the access arrangement.

20—Assessment of compliance

- (1) In determining whether capital or operating expenditure is efficient and complies with other criteria prescribed by these rules, the AER may, without embarking on a detailed investigation, infer compliance from the operation of an incentive mechanism or on any other basis the AER considers appropriate.

- (2) This does not, however, relieve the AER from the obligation to consider, and give appropriate weight to, submissions and comments received when the question of whether the access arrangement should be approved is submitted for public consultation.

[Note: Compare section 8.49 of the Code.]

Division 2—Access arrangement information relevant to price and revenue regulation

21—Access arrangement information

Access arrangement information must include the following—

- (a) if the access arrangement is to commence on the expiry of an earlier applicable access arrangement—
 - (i) capital expenditure (by asset class) over the earlier access arrangement period; and
 - (ii) operating expenditure (by function and input type) over the earlier access arrangement period; and
 - (iii) usage of the pipeline over the earlier access arrangement period showing minimum and maximum demand, seasonal variations in minimum and maximum demand, and customer numbers in total and by customer type;
- (b) how the capital base is arrived at and, if the access arrangement is to commence on the expiry of an earlier applicable access arrangement, a demonstration of how the capital base increased or diminished over the previous access arrangement period;
- (c) a projection of the capital base over the access arrangement period, including—
 - (i) a forecast of capital expenditure and the justification for the forecast; and
 - (ii) the proposed depreciation method and a demonstration of its calculation; and
- (d) a forecast of operating expenditure over the access arrangement period and the justification for the forecast;
- (e) the proposed rate of return, the assumptions on which the rate of return is calculated and a demonstration of how it is calculated;
- (f) the proposed method for dealing with taxation, and a demonstration of how the allowance for taxation is calculated;

- (g) if the previous applicable access arrangement contained an incentive mechanism—the proposed carry-over of increments for efficiency gains or decrements for efficiency losses in the last access arrangement period and a demonstration of how allowance is to be made for any such increments or decrements;
- (h) the proposed approach to the setting of prices including—
 - (i) the method used to allocate costs and a demonstration of the relationship between costs and prices; and
 - (ii) the lower and upper bounds to prices that were considered when developing the pricing proposal and estimates of the marginal cost of supply; and
 - (iii) costs that are to be directly passed through to prices and a demonstration of the operation of the proposed pass through clause; and
 - (iv) a description of any pricing principles employed but not otherwise disclosed under this rule;
- (i) the form of price control proposed;
- (j) the service provider's justification for the form of price control proposed, for any proposed incentive mechanism, and for the pass through clause.

22—Basis on which financial information is to be provided

- (1) Financial information may be provided on—
 - (a) a nominal basis; or
 - (b) a real basis; or
 - (c) any other recognised basis for dealing with the effects of inflation.
- (2) The basis on which financial information is provided must be stated in the access arrangement information.
- (3) All financial information must be provided, and all calculations made, consistently on the same basis.

23—Forecasts and estimates

- (1) Information in the nature of a forecast or estimate must be supported by a statement of the basis of the forecast or estimate.
- (2) A forecast or estimate—
 - (a) must be arrived at on a reasonable basis; and
 - (b) must represent the best forecast or estimate possible in the circumstances.

24—Inferred or derivative information

Information in the nature of an extrapolation or inference must be supported by the primary information on which the extrapolation or inference is based.

Division 3—Building block approach**25—Target revenue**

- (1) An applicable access arrangement must state the target revenue to be derived from reference services for each regulatory year of the access arrangement period.
- (2) The target revenue is to be based on the building block approach in which the building blocks are—
 - (a) the capital base; and
 - (b) a return on capital for the year; and
 - (c) depreciation for the year; and
 - (d) the estimated cost of corporate income tax for the year; and
 - (e) if the AER has approved the inclusion in the previous applicable access arrangement of an incentive mechanism to encourage gains in productivity—increments or decrements resulting from the operation of the relevant mechanism; and
 - (f) a forecast of operating expenditure for the year.

Division 4—The Capital base**26—Capital base**

- (1) When a pipeline first becomes a covered pipeline, the initial capital base for the first applicable access arrangement is to be as follows—
 - (a) if the pipeline was commissioned before the commencement of these rules, the initial capital base is to be determined by reference to the relevant provisions of the Gas Code;
 - (b) if the pipeline was commissioned after the commencement of these rules, the initial capital base is to be—
 - (i) the cost of construction of the pipeline (including the cost of acquiring easements and other interests in land necessary for the establishment and operation of the pipeline);
plus—
 - (ii) the amount of capital expenditure since the commissioning of the pipeline;
- less—

- (iii) depreciation; and
 - (iv) the value of pipeline assets disposed of since the commissioning of the pipeline.
- (2) When a pipeline becomes subject to an applicable access arrangement that takes effect on the expiry of an earlier access arrangement, the initial capital base for the later access arrangement is to be—
- (a) the capital base as at the commencement of the earlier access arrangement period;
- plus—
- (b) conforming capital expenditure made during the earlier access arrangement period;
- less—
- (c) depreciation over the earlier access arrangement period; and
 - (d) redundant capital identified during the course of the earlier access arrangement period; and
 - (e) the value of pipeline assets disposed of during the earlier access arrangement period.
- (3) When a pipeline becomes subject to an applicable access arrangement that takes effect after an earlier access arrangement (but not immediately on the expiry of the earlier access arrangement), the initial capital base for the later access arrangement is to be—
- (a) the capital base determined in accordance with these rules for a notional access arrangement taking effect at the end of the access arrangement period for the last applicable access arrangement (the *relevant date*);
- plus—
- (b) the amount of capital expenditure since the relevant date;
- less—
- (c) depreciation since the relevant date; and
 - (d) the value of pipeline assets disposed of since the relevant date.

27—New capital investment criteria

- (1) Capital expenditure made during an access arrangement period may, subject to this rule, be rolled into the initial capital base for the next access arrangement period.

- (2) The following criteria must be satisfied—
- (a) the amount of the expenditure must not exceed the amount that would be invested by a service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of providing services; and
 - (b) one of the following conditions must be satisfied—
 - (i) the expected incremental revenue generated as a result of the investment exceeds the amount of the capital expenditure; or
 - (ii) the investment has system-wide benefits that justify the approval of a higher reference tariff for all users; or
 - (iii) the investment is necessary to maintain or improve the safety and integrity of services or to maintain the service provider's capacity to meet contractual obligations or provide services.

[Note: Compare section 8.16(a) of the Code.]

- (3) In deciding whether the criteria in subrule (2) are satisfied, the AER must consider:
- (a) whether the investment exhibits economies of scale or scope and, in particular, where it adds to the service provider's capacity to provide services, whether the addition of incremental capacity exhibits economies of scale or scope; and
 - (b) whether the investment is consistent with the objective of meeting reasonably foreseeable demand for services at the lowest sustainable cost; and
 - (c) whether the investment is of a kind that a prudent service provider might be expected to make.

[Note: Compare section 8.17 of the Code.]

28—AER's power to make advance determination with regard to future capital expenditure

- (1) The AER may, at its discretion, make a determination to the effect that, if capital expenditure is made in accordance with conditions specified in the determination, the expenditure will meet the new capital investment criteria.
- (2) The AER may (but is not required to) engage in public consultation before making a determination under subrule (1).
- (3) A determination under subrule (1) is binding on the AER but a decision not to make such a determination creates no presumption that future expenditure will not meet the relevant criteria.

[Note: Compare section 8.21 of the Code.]

29—Capital contributions by users to new capital investment

- (1) A user may make a capital contribution towards a service provider's capital expenditure.
- (2) Capital expenditure, although made wholly or in part from contributions made by a user or users, may subject to these rules be rolled into the capital base for the pipeline in the same way as if made entirely from capital provided by the service provider.

[Note: Compare sections 8.23 and 8.24 of the Code.]

30—Non-conforming capital investment

A service provider may make, during an access arrangement period, capital expenditure that is, in whole or in part, a non-conforming capital investment.

[Note: Compare section 8.18 of the Code.]

31—Surcharges

- (1) When the service provider makes a non-conforming capital investment, it may notify the AER that it elects to recover the amount, or part of the amount, of the investment by means of a surcharge.
- (2) A surcharge is a charge, approved by the AER, in addition to a reference tariff (or other tariff)—
 - (a) to be levied on users; and
 - (b) designed to recover the cost of a non-conforming capital investment or a specified portion of the cost of a non-conforming capital investment.
- (3) To the extent that a non-conforming capital investment is, or is to be, recovered by means of the surcharge, it can never be rolled into the capital base.

[Note: Compare section 8.25 of the Code.]

- (4) Before the AER approves a surcharge, it must be satisfied that the amount to be recovered from the surcharge does not exceed (in present value terms) the amount that would be invested in the non-conforming capital investment by a service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of providing services.
- (5) The AER may (but is not required to) engage in public consultation before approving a surcharge.
- (6) The AER's approval of a surcharge is binding on an arbitrator in an access dispute.

[Note: Compare section 8.26 of the Code.]

32—Speculative investment account

- (1) An applicable access arrangement may provide that the amount of a non-conforming capital investment, to the extent that it is not to be recovered through a surcharge on users, is to be added to a notional fund (the *speculative investment account*).
- (2) The balance of the speculative investment account increases annually by compound interest at a rate, approved by the AER, which may, but need not, be the rate of return implicit in a reference tariff.
- (3) If at any time the type or volume of services provided by a new facility changes so that capital expenditure that did not, when made, comply with the new capital investment criteria becomes compliant, the relevant portion of the speculative investment account (including the return referable to that portion of the account) is, in accordance with the access arrangement, to be withdrawn from the account and rolled into the capital base.

[Note: Compare section 8.19 of the Code.]

33—Capital redundancy

- (1) An applicable access arrangement may include (and the AER may require it to include) a mechanism to ensure that assets that cease to contribute in any way to the delivery of services (*redundant assets*) are not reflected in the capital base.
- (2) A reduction of the capital base under such a mechanism may only take effect from the commencement of an access arrangement period.
- (3) An applicable access arrangement may include a mechanism for sharing costs associated with a decline in demand for services between the service provider and users.
- (4) Before requiring or approving a mechanism under this rule, the AER must take into account the uncertainty such a mechanism would cause and the effect the uncertainty would have on the service provider, users and prospective users.

[Note: Compare section 8.27.]

34—Re-use of redundant assets

- (1) Subject to the new capital investment criteria, if, after the reduction of the capital base by the value of assets identified as redundant, the assets later contribute to the delivery of services, the assets may be treated as new capital expenditure of an amount calculated by taking their value as at the time of their removal from the capital base and increasing it by interest, compounded annually, at the rate of return implicit in the reference tariff.

- (2) To the extent the new capital investment criteria allow, the amount arrived at under subrule (1) will be returned to the capital base in accordance with those criteria.

[Note: Compare section 8.28 of the Code.]

Division 5—Rate of return

35—Rate of return

- (1) The return on capital is to be determined having regard to prevailing market conditions and the risks to which the service provider is exposed.
- (2) In determining a rate of return on capital, a well accepted financial model, such as the Capital Asset Pricing Model, is to be used.

Division 6—Depreciation

36—Depreciation schedule

- (1) The depreciation schedule sets out the basis on which the pipeline assets constituting the capital base are to be depreciated for the purpose of determining a reference tariff.
- (2) The depreciation schedule may consist of a number of separate schedules, each relating to a particular asset or class of assets.

[Note: Compare section 8.32 of the Code.]

37—Depreciation criteria

- (1) The depreciation schedule should be designed—
 - (a) so that reference tariffs will vary, over time, in a way that promotes efficient growth in the market for reference services; and
 - (b) so that each asset or group of assets is depreciated over the economic life of that asset or group of assets; and
 - (c) so as to allow, as far as reasonably practicable, for adjustment reflecting changes in the expected economic life of a particular asset, or a particular group of assets; and
 - (d) so that (subject to the rules about capital redundancy), an asset is depreciated only once (ie that the amount by which the asset is depreciated over its economic life does not exceed the value of the asset at the time of its inclusion in the capital base (adjusted, if the accounting method approved by the AER permits, for inflation)).
- (2) Compliance with subrule (1)(a) may involve deferral of a substantial proportion of the depreciation, particularly where—
 - (a) the present market for services is relatively immature; and

- (b) the reference tariffs have been calculated on the assumption of significant market growth; and
 - (c) the pipeline has been designed and constructed so as to accommodate future growth in demand.
- (3) If it is necessary to assign a residual value to the capital base as at the end of an access arrangement period, the value is to reflect notional depreciation of the relevant pipeline assets over the access arrangement period in accordance with the above principles.

[Note: Compare section 8.33 and 8.34 of the Code.]

38—Cash flow

In formulating a depreciation schedule, regard must be had to the service provider's reasonable needs for cash flow to meet financing, non-capital and other costs.

[Note: Compare section 8.35 of the Code.]

Division 7—Operating expenditure

39—Criteria governing operating expenditure

- (1) A forecast of operating expenditure is to be assessed in accordance with the following criteria:
 - (a) the proposed expenditure must be such as an efficient service provider acting in accordance with accepted good practice in the industry, and with the objective of achieving the lowest sustainable cost of delivering services, would be expected to incur; and
 - (b) the expenditure must be in other respects prudent.
- (2) The AER must withhold its approval from an access arrangement if it appears that the service provider is seeking to recover, through a reference tariff, operating expenditure that does not meet the above criteria.

[Note: Compare section 8.37 of the Code.]

Division 8—Control mechanisms

40—Control mechanism over prices and revenue

- (1) An applicable access arrangement must include a mechanism for the control of prices and revenues.
- (2) The control mechanism is to consist of one or more of the following—
 - (a) a schedule of fixed prices;
 - (b) caps on the prices of individual services;

- (c) caps on the revenue to be derived from a particular combination of services;
- (d) tariff basket price control;
- (e) revenue yield control.

41—Level of control

The control is to be set at a level designed to equalise (in terms of present values) forecast and target revenue from reference services.

Division 9—Incentive mechanisms

42—Incentive mechanism

- (1) The AER may, if it considers appropriate, determine an incentive mechanism for an access arrangement to encourage efficiency in the provision of services by the service provider.
- (2) The incentive mechanism will provide for carrying over increments for efficiency gains and decrements for losses of efficiency from one access arrangement period to the next.

Division 10—Fixed principles

43—Fixed principles

- (1) An applicable access arrangement may include a principle declared in the access arrangement to be fixed for a stated period.
- (2) A principle may be fixed for a period extending over 2 or more access arrangement periods.
- (3) A fixed principle—
 - (a) is (despite the expiry of the access arrangement in which it is included) binding on the AER and the service provider for the period for which the principle is fixed; and
 - (b) cannot, during that period, be varied or revoked without the service provider's consent.

[Note: Compare sections 8.47 and 8.48 of the Code.]

Division 11—Variation of reference tariff

44—Variation of reference tariff

- (1) An applicable access arrangement may include provision for a variable reference tariff.

- (2) Variation may occur (for example)—
- (a) as a result of mechanisms included in the access arrangement for the control of prices or revenue; or
 - (b) as a result of a cost pass through for a defined event (such as a change in a particular tax).
- [Note: Compare sections 8.3 to 8.3G of the Code.]

Schedule 1—Consultative decision making model

The following table sets out the provisions under which decisions are to be made in accordance with the model for consultative decision making prescribed in Part 7 of these rules:

Provision	Nature of decision
section 120	Determination imposing additional ring fencing requirements.
section 121	Exemptions from minimum ring fencing requirements
section 191	Determination by AER that service provider who operates a covered distribution pipeline must establish and maintain register of spare capacity