

NATIONAL GAS RULES 2007

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Subordinate Legislation No. [ ] of 2007

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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:

*access arrangement information* – See rule 41.

*access arrangement period* for an applicable access arrangement means the period between:

- (a) the commencement of the access arrangement or the last revision of the access arrangement; and
- (b) the revision commencement date stated in the access arrangement or, if there is no revision commencement date, the expiry date for the access arrangement.

Note:

One should bear in mind that the actual date on which a revision takes effect may differ from a revision commencement date stated in the access arrangement (which is a date fixed some time in advance as the intended date for the revision to take effect). The reference in paragraph (a) to "the commencement of .... the last revision of the access arrangement" is to be construed as a reference to the actual date of commencement.

*access arrangement proposal* means:

- (a) a full or limited access arrangement submitted for the AER's approval; or
- (b) an access arrangement revision proposal submitted for the AER's approval; or
- (c) an access arrangement variation proposal submitted for the AER's approval.

*access arrangement revision proposal* means a proposal for the revision of an access arrangement submitted for the AER's approval under rule 53.

*access arrangement variation proposal* means a proposal for the variation of an access arrangement submitted for the AER's approval under rule 55.

**approved CTP process** means a tender process approved by the AER under Part 5 as a competitive tender process.

**contact details** of a person means:

- (a) the street address of the person's place of residence or business; and
- (b) the person's postal address; and
- (c) the person's telephone number; and
- (d) the person's fax number; and
- (e) if the person has a website – the website address; and
- (f) the person's email address.

**CTP access arrangement** means the access arrangement based on the result of an approved CTP process.

**CTP pipeline** means a pipeline to which an irrevocable tender approval decision relates.

**decision** includes a recommendation, determination or order.

**downstream location** means a location to which natural gas is delivered by means of a pipeline and includes a location to which natural gas from the pipeline is delivered by means of a branch pipeline (a *lateral*).

**element** of an access arrangement proposal includes a part or provision of the access arrangement proposal.

**expedited consultative procedure** means the procedure for consultative decision making laid down in rule 9.

**full access arrangement proposal** means an access arrangement proposal consisting of, or relating to, a full access arrangement.

**Law** means the NGL and these rules.

**light regulation pipeline** means a pipeline by which light regulation are provided.

**limited access arrangement proposal** means an access arrangement proposal consisting of, or relating to, a limited access arrangement.

**NGL** means the National Gas Law.

***non-delegable duty*** means a duty that a service provider cannot carry out through the instrumentality of another service provider under section 9 of the NGL.

***receipt or delivery point*** means a point on a pipeline at which a service provider takes delivery of natural gas, or delivers natural gas.

***reclassification application*** means an application under section 122 of the NGL for reclassification of a pipeline.

***revision commencement date*** for an applicable access arrangement means the date fixed in the access arrangement as the date on which revisions resulting from a review of an access arrangement are intended to take effect.

***serve*** – a pipeline serves a particular location or point if there is a receipt or delivery point at that location or point into which natural gas is injected, or from which natural gas is delivered.

***standard consultative procedure*** means the procedure for consultative decision making laid down in rule 8.

***standard regulation pipeline*** means a covered pipeline other than a light regulation pipeline.

***tender approval decision*** means a decision by the AER under Part 5 approving a tender process as a competitive tender process;

***upstream location*** means a location at which natural gas is injected into a pipeline.

## **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 Law.

### **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 any 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 – DECISION-MAKING UNDER THE LAW**

### *Division 1 – Preliminary*

## **7. Definitions**

In this Part:

*decision maker* means:

- (a) the AEMC; or
- (b) the NCC; or
- (c) the AER.

*overall time limit* means the time within which a decision maker is required by the Law to make a final decision on a proposal.

*proponent* means a person who makes or submits a proposal.

*proposal* means:

- (a) an application; or
- (b) an access arrangement, access arrangement revision proposal, or an access arrangement variation proposal submitted for approval under the rules; or
- (c) a proposal that a decision maker itself initiates for making a decision of a particular kind under the Law.

***Division 2 – Decision making models***

**8. Standard consultative procedure**

- (1) If the Law requires a decision maker to deal with a proposal in accordance with the standard consultative procedure, the decision maker must proceed in accordance with this rule.
- (2) The decision maker must proceed as follows:
  - (a) the decision maker must publish a notice on its website and in a newspaper circulating generally throughout Australia:
    - (i) describing the proposal and giving the address of a website at which the proposal can be inspected; and
    - (ii) inviting written submissions on the proposal within 21 days of the date of the notice; and
  - (b) the decision maker must, after considering relevant submissions made within the time allowed in the notice and other matters the decision maker considers relevant, make a draft decision; and
  - (c) if the draft decision identifies desirable changes to the proposal that should, in the decision maker's opinion be made, the decision maker must:
    - (i) if itself the proponent – modify its proposal accordingly; or
    - (ii) if someone else is the proponent – give the proponent a reasonable opportunity to modify its proposal in the light of the draft decision;
  - (d) the decision maker must then publish, on its website and in any other way the decision maker considers appropriate:
    - (i) the draft decision; and
    - (ii) any modification of the proposal made in the light of the draft decision; and

- (iii) a notice inviting written submissions and comments on the draft decision, and (if applicable) the modified proposal, within 21 days from the date of the notice;
  - (e) 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.
- (3) The final decision must:
  - (a) be in writing; and
  - (b) state the terms of the decision and the reasons for it.
- (4) 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.
- (5) 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.

## **9. Expedited consultative procedure**

- (1) If the Law requires a decision maker to deal with a proposal in accordance with the expedited consultative procedure, the decision maker must proceed in accordance with this rule.
- (2) The decision maker must proceed as follows:
  - (a) the decision maker must, after such consultation (if any) as the decision maker considers appropriate (and any revision of the proposal that results from that consultation), 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 written 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.
- (3) The final decision must:
- (a) be in writing; and
  - (b) state the terms of the decision and the reasons for it.
- (4) 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.
- (5) 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.

*Division 3 – Summary rejection of certain proposals*

**10. General power to reject non-compliant or frivolous proposals**

- (1) A decision maker may, despite any other provision of these rules, reject a proposal on the ground that:
  - (a) the proposal has not been made in accordance with the Law; or

- (b) relevant information or materials have not been provided as required by the Law; or
  - (c) the proposal is frivolous or vexatious.
- (2) A decision to reject a proposal under this rule must be made within 14 days after receipt of the proposal by the decision maker.
- (3) A decision to reject a proposal under this rule must:
- (a) be made in writing; and
  - (b) set out the reasons for the decision; and
  - (c) be given to the proponent without delay.

***Division 4 – Time limits***

**11. Calculation of time**

If the Law fixes a time limit within which a decision maker must make a decision on a proposal, then for the purpose of calculating elapsed time, the following periods are to be disregarded:

- (a) any period allowed the proponent for correction or revision of the proposal;
- (b) any period taken by the proponent to provide information, relevant to the decision maker's decision on the proposal, in response to a notice or requirement issued or made by the decision maker under the Law;
- (c) any period allowed for public submissions on the proposal or on a draft decision on the proposal;
- (d) the period between commencement and conclusion of court proceedings initiated by the proponent to determine questions arising from the proposal or the decision maker's handling of the proposal.

**12. Power to extend time limits**

- (1) Subject to limitations fixed by the Law, a decision maker may extend the time within which:
- (a) a proponent is required by the Law to take a particular step in a decision making process; or
  - (b) the decision maker is required by the Law to make a decision on a proposal.

- (2) The decision maker cannot, however, extend an overall time limit unless:
  - (a) the proposal involves questions of unusual complexity or difficulty;  
or
  - (b) the extension of time has become necessary because of circumstances beyond the decision maker's control.
- (3) If a decision maker extends an overall time limit, the decision maker must:
  - (a) give notice of the extension to the proponent (unless the decision maker is itself the proponent); and
  - (b) publish notice of the extension on its website and in a newspaper circulating generally throughout Australia.
- (4) The notice must:
  - (a) specify the extent of the extension; and
  - (b) give reasons for the extension.

### **13. Decisions made out of time**

- (1) If a decision maker fails to make a decision within an overall time limit, the decision maker must report on its failure to the MCE.

Note:

Non-compliance with a time limit does not invalidate the decision maker's decision: See section 311 of the NGL.

- (2) The report must:
  - (a) state the extent the decision was (or will be) out of time; and
  - (b) describe the decision maker's handling of the proposal; and
  - (c) give reasons for the decision maker's failure to make the decision within the relevant time limit.
- (3) A report under this rule must be published on the decision maker's website as soon as practicable after it is given to the MCE.

**PART 4 – COVERAGE**

*Division 1 – Coverage determination*

**14. Application for coverage determination (Section 86(2) of the NGL)**

- (1) An application for a coverage determination must:
  - (a) state the applicant's name and contact details; and
  - (b) identify the pipeline for which coverage is sought; and
  - (c) give details of the pipeline's classification or, if there is no classification, the classification the applicant considers appropriate; and
  - (d) state the applicant's reasons for seeking coverage of the pipeline (including a demonstration of how coverage of the pipeline would give effect to the pipeline coverage criteria); and
  - (e) include any information or documents on which the applicant relies in support of the application.
- (2) An application for a coverage determination for a pipeline to which a voluntary access arrangement applies may only be made if the coverage sought in the application is to commence from, or after, the expiry of that arrangement.

Note:

A pipeline is regarded as a covered pipeline for the duration of a voluntary access arrangement. (See section 121 of the NGL.)

**15. Making of coverage recommendation (Sections 88 and 89 of the NGL)**

- (1) The NCC must deal with an application for a coverage determination in accordance with the standard consultative procedure.
- (2) The NCC must make its final recommendation on the application within 120 days after receiving the application.
- (3) The time limitation fixed by subrule (1) cannot be extended by more than a further 60 days.
- (4) A coverage recommendation must:–
  - (a) be in writing; and
  - (b) identify the pipeline to which the recommendation relates; and

- (c) include a reference to a website at which a full description of the pipeline can be inspected; and
- (d) state the terms of the recommendation and the reasons for it.

Note:

A light regulation determination or a decision not to make a light regulation determination must be attached to the coverage recommendation (unless the pipeline is a designated pipeline) – See section 104(3)(b) of the NGL.

**16. Relevant Minister's determination of the application (Section 93 of the NGL)**

- (1) A coverage determination, or a decision not to make a coverage determination, must –
  - (a) be in writing; and
  - (b) identify the pipeline to which the determination or decision relates; and
  - (c) include a reference to a website at which a full description of the pipeline can be inspected; and
  - (d) state the terms of the determination or decision and the reasons for it.
- (2) A copy of the determination or decision:
  - (a) must be given without delay to:
    - (i) the service provider; and
    - (ii) the applicant (if not the service provider); and
    - (iii) the NCC; and
    - (iv) the AEMC; and
  - (b) must be published on the NCC's website.

***Division 2 – Coverage revocation determination***

**17. Application for coverage revocation determination (Sections 96 of the NGL)**

- (1) An application for a coverage revocation determination must:
  - (a) state the applicant's name and contact details; and

- (b) state whether the application is for revocation of coverage for the whole, or part only, of the covered pipeline; and
  - (c) state the applicant's reasons for the application (including a demonstration of how the coverage revocation determination would give effect to the pipeline coverage criteria); and
  - (d) include information, and be accompanied by the documents, on which the applicant relies in support of the application.
- (2) The application must also include the following information:
- (a) the capacity of the pipeline and the extent to which that capacity is currently utilised; and
  - (b) a description of:
    - (i) all locations served by the pipeline (i.e. all locations at which receipt or delivery points for natural gas carried by the pipeline exist); and
    - (ii) all pipelines that currently serve the same locations; and
    - (iii) all pipelines that currently pass within 100 km of any location served by the pipeline; and
  - (c) a description of the pipeline services provided, or to be provided, by the pipeline; and
  - (d) an indication of any other sources of energy available to consumers of gas from the pipeline; and
  - (e) the identity of the parties with an interest in the pipeline and the nature and extent of each interest; and
  - (f) a description of any relationship between the following:
    - (i) the owner and the operator of the pipeline; and
    - (ii) the owner or operator of the pipeline and a user of pipeline services or a supplier or consumer of gas in any of the locations served by the pipeline; and
    - (iii) the owner or operator of the pipeline and the owner or operator of any other pipeline serving any one or more the same locations; and
  - (g) an estimate of the annual cost to the service provider of regulation; and

- (h) any other information the applicant considers relevant to the application of the National Gas Objective or the pipeline coverage criteria in the circumstances of the present case.

**18. Making of coverage revocation recommendation (Sections 97 and 98 of the NGL)**

- (1) The NCC must deal with an application for a coverage revocation determination in accordance with the standard consultative procedure.
- (2) The NCC must make its final recommendation on the application within 120 days after receiving the application.
- (3) The time limitation fixed by subrule (1) cannot be extended by more than a further 60 days.
- (4) A coverage revocation recommendation must:
  - (a) be in writing; and
  - (b) identify the covered pipeline to which the recommendation relates; and
  - (c) include a reference to a website at which a full description of the pipeline can be inspected; and
  - (d) state the terms of the recommendation and the reasons for it.

**19. Relevant Minister's determination of the application (Section 100(5) of the NGL)**

- (1) A coverage revocation determination, or a decision not to make a coverage revocation determination, must:
  - (a) be in writing; and
  - (b) identify the pipeline to which the determination or decision relates; and
  - (c) include a reference to a website at which a full description of the pipeline can be inspected; and
  - (d) if there is a coverage determination for the pipeline, refer to the determination; and
  - (e) state the terms of the determination or decision and the reasons for it.
- (2) A copy of the determination or decision:

- (a) must be given without delay to:
  - (i) the service provider; and
  - (ii) the applicant (if not the service provider); and
  - (iii) the NCC; and
  - (iv) the AEMC; and
- (b) must be published on the NCC's website.

#### **PART 5 – COMPETITIVE TENDERING**

#### **20. Application for approval of tender process as a competitive tender process**

- (1) A person (the *proponent*) may apply to the AER for approval of a proposed tender process as a competitive tender process if:
  - (a) the tender is for the provision of pipeline services to or from a particular locality; and
  - (b) the tender envisages the construction and operation of a new pipeline by the person who submits the successful tender.
- (2) An application for the AER's approval under this rule must:
  - (a) set out the proponent's name and contact details; and
  - (b) contain a description of the pipeline services sought through the tender process; and
  - (c) 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
  - (d) the criteria to be applied in selecting the successful tender; and
  - (e) the proposed term (not exceeding 15 years) of the CTP access arrangement.
- (3) A proponent may, by notice to the AER, withdraw its application at any time before the AER decides the application.

**21. Approval of process as competitive tender process**

- (1) The AER must, within 60 days after it receives an application under this Part, approve or refuse to approve the tender process as a competitive tender process.
- (2) The time limitation fixed in subrule (1) cannot be extended by more than a further 30 days.
- (3) The AER must approve a proposed tender process as a competitive tender process if the AER is satisfied that the tender process complies with the following requirements:
  - (a) the tender process must be for the construction and operation of a new pipeline to provide pipeline services of the kind described in the application for the tender approval decision; 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
    - (ii) the requirements of procedural fairness, probity and fair dealing; and
  - (c) the specifications contained in the request for tender:
    - (i) must not limit the kind of pipeline 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 any tender that is consistent with the selection criteria; and
  - (d) the selection criteria must require the exclusion of a tender from consideration if it does not contain any of the essential elements for inclusion in a tender specified in subrule (4).
- (4) The essential elements for inclusion in a tender are:
  - (a) a description of the proposed pipeline; and
  - (b) a description of the services to be offered; and
  - (c) the proposed reference services and, for each reference service, the terms and conditions of access, including the proposed reference tariff; and

- (d) the proposed queuing requirements; and
- (e) the proposed extension and expansion requirements; and
- (f) the proposed term (not exceeding 15 years) of the CTP access arrangement.

**22. Time limit for completion of tender process**

- (1) If the AER approves the proposed tender process as a competitive tender process, it may, in the tender approval decision, fix a time limit for completion of the tender process.
- (2) The AER may, however, extend the time limit from time to time.

**23. Report on the conduct of the tender process**

- (1) When the successful tender is selected, the proponent must give the AER a written report (the *compliance report*) on the conduct of the tender process.
- (2) The compliance report must include the following information:
  - (a) the reasons for the selection of the successful tender; and
  - (b) 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
  - (c) the terms and conditions proposed in the successful tender including:
    - (i) a description of the proposed pipeline; and
    - (ii) a description of the pipeline services to be offered; and
    - (iii) the proposed reference services and, for each reference service, the terms and conditions of access, including the proposed reference tariff; and
    - (iv) the proposed queuing requirements; and
    - (v) the proposed extension and expansion requirements; and
    - (vi) the proposed term (not exceeding 15 years) of the CTP access arrangement; and

- (d) information showing that the terms and conditions are consistent with the national gas objective.

**24. Lapse or revocation of tender approval decision**

- (1) A tender approval decision lapses if:
  - (a) the time limit for completion of the tender process expires before the proponent submits a compliance report in accordance with this Part; or
  - (b) the proponent fails to submit a compliance report in accordance with this Part within 60 days after the selection of the successful tender.
- (2) The AER may revoke its tender approval decision if, after consideration of the compliance report, it is not satisfied that all aspects of the tender process were in accordance with the approved process.
- (3) If the AER proposes to revoke its tender approval decision under subrule (2), the AER must, within 30 days after receiving the compliance report, give the proponent a written notice:
  - (a) stating that the AER is proposing to revoke the tender approval decision and the reasons for the proposed revocation; and
  - (b) inviting the proponent to make submissions to the AER on the proposed revocation; and
  - (c) stating that submissions must be made within 30 days after the date of the notice.
- (4) The AER may, after considering any submissions made in accordance with a notice under subrule (3), revoke its tender approval decision.
- (5) Unless a tender approval decision lapses or is revoked within 90 days after the proponent gives the AER its compliance report, the decision becomes irrevocable at the end of that period.

**25. Classification of tender approval pipeline**

- (1) When the tender approval decision becomes irrevocable:
  - (a) the proposed pipeline described in the successful tender selected in accordance with the approved process becomes a CTP pipeline; and
  - (b) the AER must ask the NCC to classify the pipeline in accordance with the pipeline classification criterion.

- (2) The AER must provide the NCC with information the NCC reasonably requires to classify the pipeline.
- (3) The NCC must make an initial classification decision:
  - (a) classifying the pipeline as a transmission pipeline or a distribution pipeline; and
  - (b) if the pipeline is classified as a transmission pipeline – determining whether the pipeline is also a cross-boundary transmission pipeline; and
  - (c) if the pipeline is classified as a distribution pipeline – determining whether the pipeline is also a cross-boundary distribution pipeline; and
  - (d) if the pipeline is a cross-boundary distribution pipeline – determining, with regard to the jurisdictional determination criteria, the participating jurisdiction with which the pipeline is most closely connected.
- (4) The NCC must notify the AEMC and the AER of an initial classification decision under this rule.

## **26. CTP access arrangement**

- (1) The terms and conditions for an access arrangement as proposed in the successful tender (the *relevant access arrangement proposals*) may be amended, with the AER's approval, by agreement between the proponent and the service provider before the submission of an access arrangement for the pipeline.
- (2) The service provider must, at least 180 days before a CTP pipeline is commissioned, submit to the AER for approval an access arrangement for the pipeline (the *CTP access arrangement*).
- (3) If the AER is satisfied that the proposed CTP access arrangement reasonably reflects the relevant access arrangement proposals (including any amendment approved under this rule), the AER must approve the access arrangement.
- (4) The approved CTP access arrangement must be published on the service provider's website.
- (5) An approved CTP access arrangement may be amended, with the AER's approval, by the service provider.

**27. Notification of AEMC**

- (1) The AER must notify the AEMC of:
  - (a) every tender approval decision under this Part; and
  - (b) every decision to revoke a tender approval decision under this Part.
- (2) When a tender approval decision becomes irrevocable under this Part, the AER must notify the AEMC of that fact.

**28. Non-application of Parts 8 and 9**

Parts 8 and 9 do not apply to a CTP access arrangement.

**PART 6 – RING FENCING**

**29. Imposition of additional ring fencing requirement (Section 137 of the NGL)**

A proposal by the AER to impose an additional ring fencing requirement under section 137 of the NGL is to be dealt with in accordance with the expedited consultative procedure.

**30. Exemptions from minimum ring-fencing requirements (Section 140 of the NGL)**

- (1) An application to the AER for an exemption under section 140 of the NGL from one or more of the minimum ring fencing requirements may be made by a service provider.

Note:

The minimum ring fencing requirements are the requirements imposed by sections 133, 134 and 135 of the NGL.

- (2) An exemption is to be granted from section 133 of the NGL (prohibition on carrying on related business) if the AER is satisfied, on the application of a service provider, that:
  - (a) either:
    - (i) the relevant pipeline is not a significant part of the pipeline system for any participating jurisdiction; or
    - (ii) the service provider does not have a significant interest in the relevant pipeline and does not actively participate in the management or operation of the pipeline; and

- (b) the cost of compliance with the relevant requirement for the service provider and its associates would outweigh the public benefit resulting from compliance; and
  - (c) the service provider has, by arrangement with the AER, established internal controls within the service provider's business that substantially replicate, in the AER's opinion, the effect that would be achieved if the related business were divested to a separate entity and dealings between the service provider and the entity were subject to the controls applicable to associate contracts.
- (3) An exemption is to be granted from section 134 of the NGL (segregation of marketing staff etc.) or section 135 (accounts) if the AER is satisfied, on the application of a service provider, that the cost of compliance with the relevant requirement for the service provider and its associates would outweigh the public benefit resulting from compliance.
- (4) If compliance with a relevant requirement would, in the AER's opinion, lead to increased market competition, the AER must, in carrying out a cost/benefit analysis under subrule (2)(b) or subrule (3), disregard costs resulting from the increased competition.

**31. Approval of associate contracts etc (Sections 141 and 142 of the NGL)**

- (1) A service provider may apply to the AER for approval of:
- (a) an associate contract or a proposed associate contract; or
  - (b) a proposed variation of an approved associate contract.
- (2) The AER must, on application under subrule (1), approve a contract or the variation of a contract if the AER is satisfied that the contract or variation:
- (a) does not have the purpose, and is unlikely to have the effect, of substantially lessening competition in a market for natural gas services; and
  - (b) is not inconsistent with the competitive parity rule.

Note:

The comparative parity rule is stated in section 142(2) of the NGL.

- (3) If the AER is not satisfied that a contract, or the variation of a contract, should be approved under subrule (2), the AER may nevertheless approve the contract or variation if satisfied that the resulting public benefit would outweigh any resulting public detriment.

- (4) An approval under this rule may be subject to conditions the AER considers appropriate including (for example) conditions:
  - (a) limiting the duration of the approval or providing that the approval will lapse on a material change of circumstances; and
  - (b) imposing reporting requirements on the service provider.
- (5) If the AER fails to make a decision on an application under this section within 30 days after receiving it, the AER is taken to have approved the relevant contract or variation unconditionally.

**32. Notification of associate contracts**

- (1) A service provider must, within 7 days after entering into an associate contract (whether approved or not), give the AER written notice of the contract together with a copy of the contract.
- (2) A service provider incurs, by complying with this rule, no liability for breach of contract, breach of confidence, or any other civil wrong.

**PART 7 – LIGHT REGULATION DETERMINATIONS**

*Division 1 – Making and effect of light regulation determinations*

**33. Application for light regulation determination (Section 106(2) of the NGL)**

- (1) An application for a light regulation determination must:
  - (a) be in writing; and
  - (b) identify the pipeline that provides, or is to provide, the services for which the determination is sought and include a reference to a website at which a full description of the pipeline can be inspected; and
  - (c) include a description of all pipeline services provided or to be provided by means of the pipeline; and
  - (d) include the applicant's reasons for asserting that the pipeline services should be light regulation services; and
  - (e) include other information and materials on which the applicant relies in support of the application.
- (2) The application must also include the following information:
  - (a) the capacity of the pipeline and the extent to which that capacity is currently utilised; and

- (b) a description of:
  - (i) all locations served by the pipeline (i.e. all locations at which receipt or delivery points for natural gas carried by the pipeline exist); and
  - (ii) all pipelines that currently serve the same locations; and
  - (iii) all pipelines that currently pass within 100 km of any location served by the pipeline; and
- (c) a description of the pipeline services provided, or to be provided, by the pipeline; and
- (d) an indication of any other sources of energy available to consumers of gas from the pipeline; and
- (e) the identity of the parties with an interest in the pipeline and the nature and extent of each interest; and
- (f) a description of any relationship between the following:
  - (i) the owner and the operator of the pipeline; and
  - (ii) the owner or operator of the pipeline and a user or prospective user of pipeline services or a supplier or consumer of gas in any of the locations served by the pipeline; and
  - (iii) the owner or operator of the pipeline and the owner or operator of any other pipeline serving any one or more the same locations; and
- (g) an estimate of the annual cost to the service provider of regulation on the basis of light regulation and on the basis of full regulation; and
- (h) any other information the applicant considers relevant to the application of the National Gas Objective or the form of regulation factors in the circumstances of the present case.

**34. NCC's decision on the application (Sections 107 and 108 of the NGL)**

- (1) In deciding an application for a light regulation determination, the NCC must:
  - (a) proceed in accordance with the standard consultative procedure; and

- (b) consult with the AER.
- (2) A light regulation determination or a decision not to make a light regulation determination must:
  - (a) identify the pipeline, and the pipeline services, to which the determination or decision relates; and
  - (b) include a reference to a website at which a full description of the pipeline, and the pipeline services, can be inspected; and
  - (c) state the terms of the determination or decision and the reasons for it.

**35. Service provider must publish terms and conditions of access to light regulation services**

- (1) A service provider for a light regulation pipeline must publish on its website:
  - (a) the prices on offer for light regulation services; and
  - (b) the other terms and conditions of access to those services.
- (2) If, however, a limited access arrangement is in force and is accessible on the service provider's website, the terms and conditions of access (other than price) need not be separately published on the website.

**36. Service provider must provide information about access negotiations for light regulation services**

- (1) A service provider for a light regulation pipeline must report to the AER on access negotiations relating to light regulation services.
- (2) A report under this rule:
  - (a) must be made in a manner and form determined or approved by the AER; and
  - (b) must state the result of the negotiations and include other information required by the AER; and
  - (c) must be made (at least annually) at times specified by the AER.
- (3) The AER may publish a report made under this rule.

***Division 2 – Revocation of light regulation determinations***

**37. Application for revocation of light regulation determination (Section 112(2) of the NGL)**

An application for the revocation of a light regulation determination must:

- (a) state the applicant's name and contact details; and
- (b) identify the light regulation determination to which the application relates; and
- (c) identify the service provider; and
- (d) identify the covered pipeline; and
- (e) state the applicant's reasons for asserting that light regulation determination should be revoked; and
- (f) include any information and materials on which the applicant relies.

**38. NCC's decision on application (Sections 113 and 114 of the NGL)**

- (1) In deciding an application for revocation of a light regulation determination, the NCC must:
  - (a) proceed in accordance with the standard consultative procedure; and
  - (b) consult with the AER.
- (2) A decision on an application for revocation of a light regulation determination must:
  - (a) be in writing; and
  - (b) identify the light regulation determination; and
  - (c) identify the service provider and the covered pipeline; and
  - (d) describe the pipeline services affected by the decision; and
  - (e) state the terms of the decision and the reasons for it.

**PART 8 – ACCESS ARRANGEMENTS**

***Division 1 – AER's decisions regarding approval of access arrangement proposals***

**39. AER's discretion in decision making process regarding access arrangements**

***Full discretion***

- (1) Subject to this rule and other express provisions of the Law, the AER has a discretion to withhold its approval to an element of an access arrangement proposal as submitted by a service provider if an alternative would, in the AER's opinion, be better calculated to give effect to the national gas objective and other relevant principles and objectives of the Law.

Example:

In dealing with a full access arrangement submitted for its approval, the AER could, in its draft decision, insist on changes to queuing requirements if of the opinion that the changes could improve competition in upstream or downstream markets for natural gas.

***Limited discretion***

- (2) If the Law states that the AER's discretion under a particular provision of the Law is limited, then an element of an access arrangement proposal that is governed by the relevant provision must be regarded as acceptable if the AER is satisfied that it:
- (a) complies with applicable requirements of the Law; and
  - (b) is consistent with applicable criteria (if any) prescribed by the Law.

Example:

The AER has limited discretion under rule 93. (See rule 93(3).) This rule governs the design of a depreciation schedule. In dealing with a full access arrangement submitted for its approval, the AER cannot, in its draft decision, insist on change to an aspect of a depreciation schedule governed by rule 93 unless the AER considers change necessary to correct non-compliance with a provision of the Law or an inconsistency between the schedule and the applicable criteria. Even though the AER might consider change desirable to achieve more complete conformity between the schedule and the principles and objectives of the Law, it would not be entitled to give effect to that view in the decision making process.

***No discretion***

- (3) If the Law states that the AER has no discretion under a particular provision of the Law, then the discretion is entirely excluded in regard to an element of an access arrangement governed by the relevant provision.

Example:

If the service provider proposes an access arrangement period of 5 years, the AER must accept the proposal. (See rule 51(4).)

**40. Access arrangement proposal to be approved in its entirety or not at all**

- (1) The AER's approval of an access arrangement proposal implies approval of every element of the proposal.
- (2) It follows that, if the AER withholds its approval to any element of an access arrangement proposal, the proposal cannot be approved.

*Division 2 – Access arrangement information*

**41. General requirements for access arrangement information**

- (1) Access arrangement information for an access arrangement proposal is information that is reasonably necessary:
  - (a) to understand the background to the access arrangement, or the proposal for its revision or variation (as the case requires); and
  - (b) to understand the basis and derivation of the various elements of the access arrangement or the proposal for its revision or variation (as the case requires); and
  - (c) to form an opinion about the compliance of the access arrangement or the proposal for its revision or variation (as the case requires) with the Law.
- (2) Access arrangement information must include the information specifically required by the Law.

**42. Requirement to provide access arrangement information**

- (1) A service provider, when submitting an access arrangement proposal for the AER's approval, must submit, together with the proposal, access arrangement information for the access arrangement proposal.
- (2) If particular information (*sensitive information*) is confidential, and its public disclosure could cause undue harm to the legitimate business interests of the service provider, the AER may permit the service provider:
  - (a) to submit access arrangement information in a form, approved by the AER, in which the sensitive information:
    - (i) is aggregated or generalised so as to avoid disclosure of the elements that make it sensitive; or

- (ii) if that is not possible – is entirely suppressed; and
  - (b) to submit the sensitive information in a separate confidential document (which will not be regarded as part of the access arrangement information for the purposes of provisions requiring publication or disclosure of such information).
- (3) If information submitted as access arrangement information is, in the AER's opinion, deficient in its comprehensiveness or in any other respect, the AER may require the proponent:
  - (a) to make the revisions necessary to correct the deficiency and to re-submit the access arrangement information; or
  - (b) to submit further access arrangement information as an addendum to the information already submitted.

**43. Publication etc of access arrangement information**

A requirement of the Law for publication or the provision of copies of an access arrangement or an access arrangement proposal extends, subject to these rules, to access arrangement information relating to the access arrangement or access arrangement proposal.

*Division 3 – Limited access arrangements*

**44. Submission of limited access arrangement (Section 110(2) of the NGL)**

- (1) A limited access arrangement for a light regulation pipeline must:
  - (a) identify the pipeline to which the access arrangement relates and include a reference to a website at which a full description of the pipeline can be inspected; and
  - (b) describe all pipeline services the service provider is offering, or proposes to offer, to provide by means of the pipeline; and
  - (c) state the terms and conditions (other than price) for access to the pipeline services likely to be sought by a significant part of the market; and
  - (d) set out the queuing requirements; and
  - (e) set out the capacity trading requirements; and
  - (f) set out the extension and expansion requirements; and
  - (g) state the terms and conditions for changing receipt and delivery points; and

- (h) if there is to be a review submission date – state the review submission date; and
  - (i) if there is to be an expiry date – state the expiry date.
- (2) The access arrangement information for the limited access arrangement must include the following:
- (a) the capacity of the pipeline and the extent to which that capacity is currently utilised; and
  - (b) the key performance indicators for the pipeline; and
  - (c) any further information required by a regulatory information instrument.

**45. Decision on limited access arrangement for light regulation pipeline**

- (1) A decision to approve, or not to approve, a limited access arrangement for a light regulation pipeline must be made within 120 days after submission of the arrangement for the AER's approval.

Note:

In making the decision, the AER follows the expedited consultative procedure. (See rule 59.)

- (2) The time limitation fixed by subrule (1) cannot be extended by more than a further 60 days.
- (3) The decision must:
- (a) be in writing; and
  - (b) state the reasons for the decision; and
  - (c) be given, without delay, to the service provider who submitted the access arrangement for approval; and
  - (d) be published on the AER's website; and
  - (e) be available for inspection at the AER's public offices during business hours.

**Division 4 – Full access arrangements**

**46. Submission of full access arrangement (Section 126 of the NGL)**

- (1) A service provider for a covered pipeline must submit a full access arrangement to the AER for approval within 90 days after the pipeline becomes a covered pipeline.

Exceptions:

1. A full access arrangement is not required for a light regulation pipeline unless:
    - (a) the service provider wishes the pipeline services to cease to be light regulation services, advises the NCC to that effect, and an obligation to submit a full access arrangement consequently arises under section 111 of the NGL; or
    - (b) the NCC decides to revoke a light regulation determination and an obligation to submit a full access arrangement consequently arises under section 115(1) of the NGL.
  2. The obligation to submit a CTP access arrangement for a CTP pipeline is governed by Part 4 and not by this rule.
- (2) If an obligation to submit a full access arrangement arises in the circumstances described in Exception 1, the access arrangement must be submitted within 90 days after the obligation arises.
- (3) The AER may extend the period for submitting an access arrangement under this rule, but the period (or aggregate period) of extension cannot exceed 60 days.

**47. Voluntary submission of access arrangement (Section 121 of the NGL)**

- (1) A service provider for a pipeline that is not a covered pipeline may voluntarily submit a full access arrangement to the AER for approval.

Note:

The pipeline becomes a covered pipeline when the access arrangement takes effect as an applicable access arrangement and ceases to be a covered pipeline when the access arrangement expires. (See Section 121(2) and (3) of the NGL.)

- (2) However:
- (a) at any time before the AER makes a final decision to approve the access arrangement, the service provider may withdraw the access arrangement; and

- (b) the withdrawal terminates the proceedings for approval of the access arrangement.
- (3) When an access arrangement for a pipeline that is not currently classified is submitted to the AER for approval under this rule, the AER must, within 30 days after receiving the access arrangement:
  - (a) pass on the to the NCC a copy of the access arrangement, and accompanying access arrangement information, to the NCC; and
  - (b) ask the NCC to classify the pipeline in accordance with the pipeline classification criterion.
- (4) The NCC must make an initial classification decision:
  - (a) classifying the pipeline as a transmission pipeline or a distribution pipeline; and
  - (b) if the pipeline is classified as a transmission pipeline – determining whether the pipeline is also a cross-boundary transmission pipeline; and
  - (c) if the pipeline is classified as a distribution pipeline – determining whether the pipeline is also a cross-boundary distribution pipeline; and
  - (d) if the pipeline is a cross-boundary distribution pipeline – determining, with regard to the jurisdictional determination criteria, the participating jurisdiction with which the pipeline is most closely connected.
- (5) The NCC must notify the AEMC and the AER of an initial classification decision under this rule.
- (6) If the service provider withdraws the access arrangement before the AER makes a final decision to approve the access arrangement:
  - (a) the AER must immediately notify the NCC of the withdrawal; and
  - (b) an initial classification decision, if already made, lapses.

**48. Division or consolidation of access arrangements**

- (1) The AER may, by notice to a service provider for a covered pipeline, direct the service provider to submit separate access arrangements for different parts of the covered pipeline.
- (2) If pipeline services provided, or to be provided, by a service provider are (or are to be) provided by means of 2 or more covered pipelines, the AER

may, by notice to the service provider, require submission of a consolidated access arrangement for all the relevant covered pipelines.

Example:

The AER might require the submission of a consolidated access arrangement for 2 or more covered transmission pipelines, 2 or more covered distribution pipelines or a combination of covered transmission and covered distribution pipelines.

- (3) In deciding whether to give a direction under this rule, the AER must have regard to:
  - (a) the nature of the pipeline or pipelines; and
  - (b) the nature of the pipeline services provided or to be provided by means of the pipeline or pipelines.
- (4) A service provider must comply with a direction under this rule.

#### **49. Pre-submission conference**

- (1) A service provider may, in the course of preparing a full access arrangement for the AER's approval, by notice to the AER, request a pre-submission conference with representatives of the AER to discuss questions affecting the proper formulation of the access arrangement.
- (2) The AER must comply with such a request unless the request appears to be unreasonable.

#### **50. Content of access arrangement**

A full access arrangement must:

- (a) identify the pipeline to which the access arrangement relates and include a reference to a website at which a full description of the pipeline can be inspected; and
- (b) describe all pipeline services the service provider is offering, or proposes to offer, to provide by means of the pipeline; and
- (c) specify as reference services all pipeline services that are, or are likely to be, sought by a significant part of the market; and
- (d) specify for each reference service:
  - (i) the tariff; and
  - (ii) the other terms and conditions on which the reference service will be provided; and

- (e) set out the queuing requirements; and
- (f) set out the capacity trading requirements; and
- (g) set out the extension and expansion requirements; and
- (h) state the terms and conditions for changing receipt and delivery points; and
- (i) state the review submission date.

***Division 5 – Review and expiry of certain access arrangements***

**51. Review of access arrangements**

- (1) A full access arrangement must contain a review submission date and a revision commencement date.

Exception:

A voluntary access arrangement may (but need not) contain a review submission date and a revision commencement date.

- (2) A limited access arrangement may (but need not) contain a review submission date and a revisions commencement date.

Exception:

A limited access arrangement for an international pipeline must not contain a review submission date or a revision commencement date.

- (3) As a general rule:
  - (a) a review submission date will fall 4 years after the access arrangement took effect or the last revisions commencement date; and
  - (b) a revisions commencement date will fall 5 years after the access arrangement took effect or the last revision commencement date.
- (4) If a service provider, as part of an access arrangement proposal, proposes to fix a review submission date and a revision commencement date in accordance with the general rule, the AER must accept that part of the proposal.
- (5) The AER has no discretion under subrule (4).

- (6) The AER may, however, approve dates that do not conform with the general rule if satisfied that they are consistent with the national gas objective and the revenue and pricing principles.

**52. Acceleration of review submission date and revision commencement date**

- (1) The review submission date fixed in an access arrangement advances to an earlier date if:
- (a) the access arrangement provides for acceleration of the review submission date on the occurrence of a trigger event; and
  - (b) the trigger event occurs; and
  - (c) the review submission date determined, in accordance with the access arrangement, by reference to the trigger event, is earlier than the fixed date.
- (2) A trigger event may consist of any significant circumstance or conjunction of circumstances.

Examples:

- 1. A re-direction of the flow of natural gas through the pipeline.
  - 2. A competing source of natural gas becomes available to customers served by the pipeline.
  - 3. A significant extension, expansion or interconnection occurs.
- (3) If the access arrangement period for a full access arrangement exceeds 5 years, the AER may insist on the inclusion in the access arrangement of trigger events and may specify the nature of the trigger events to be included.

**53. Access arrangement revision proposal**

- (1) A service provider must, on or before the review submission date of an applicable access arrangement, submit an access arrangement revision proposal to the AER.
- (2) The access arrangement revision proposal must:
- (a) set out the amendments to the access arrangement that the service provider proposes for the ensuing access arrangement period; and
  - (b) incorporate the text of the access arrangement in the revised form.

**54. Expiry date**

- (1) A full access arrangement must not contain an expiry date.

Exception:

A voluntary access arrangement may contain a review submission date or an expiry date (or both).

- (2) A limited access arrangement may (but need not) contain an expiry date.

Exception:

A limited access arrangement for an international pipeline must contain an expiry date.

***Division 6 – Supplementary power to vary applicable access arrangement***

**55. Application for variation of applicable access arrangement**

- (1) A regulated service provider may submit for the AER's approval a proposal for variation of the applicable access arrangement (an ***access arrangement variation proposal***).
- (2) An access arrangement variation proposal cannot, however, be submitted between a review submission date for the applicable access arrangement and the commencement of the new access arrangement period.
- (3) An access arrangement variation proposal must:
- (a) be in writing; and
  - (b) state the variation sought and the reasons for it; and
  - (c) if the service provider considers the variation non-material – state that opinion and the reasons for it.

**56. Preliminary assessment of access arrangement variation proposal**

- (1) Within 30 days after receiving an access arrangement variation proposal from a service provider, the AER must decide whether or not it considers the variation non-material.
- (2) If the AER considers the variation non-material, the AER may, without consultation, approve the proposal.
- (3) If the AER does not consider the proposed variation non-material, the AER must refer the access arrangement variation proposal to be dealt with as a limited access arrangement proposal under Division 7 or a full access arrangement proposal under Division 8 (as the case requires).

- (4) If the service provider considers the proposed variation non-material and the AER disagrees with the service provider on that point, the AER must give the service provider written reasons for its contrary opinion.

**57. Decision (or initial decision) on access arrangement variation proposal**

A decision by the AER on an access arrangement variation proposal under this Division must:

- (a) be in writing; and
- (b) state the terms of the decision and the reasons for it; and
- (c) if the decision is to approve the variation as a non-material variation:
  - (i) set out the terms of the approved variation; and
  - (ii) state the commencement date of the variation; and
- (d) be given to the applicant service provider without delay; and
- (e) be published on the AER's website.

***Division 7 – Procedure for dealing with limited access arrangement proposal***

**58. Application of this Division**

This Division applies to a limited access arrangement proposal.

Exception:

This Division does not apply to an access arrangement variation proposal relating to a limited access arrangement if the proposal is approved by the AER under Division 6 as a proposal for a non-material variation.

**59. Decision on limited access arrangement proposal**

- (1) The AER must deal with a limited access arrangement proposal in accordance with the expedited consultative procedure.
- (2) If the AER, in its final decision on a limited access arrangement proposal, approves the proposal, the access arrangement, or the revision or variation, to which the decision relates, takes effect on a date fixed in the final decision or, if no date is so fixed, 14 days after the date of the final decision.

Note:

In the case of an access arrangement revision proposal, this date may, but will not necessarily, be the revision commencement date fixed in the access arrangement.

- (3) A final decision on a limited access arrangement proposal must be made within 180 days of the date of receipt of the proposal.
- (4) The time limitation fixed by subrule (3) cannot be extended by more than a further 60 days.

***Division 8 – Procedure for dealing with full access arrangement proposal***

**60. Application of this Division**

This Division applies to a full access arrangement proposal.

Exception:

This Division does not apply to an access arrangement variation proposal relating to a full access arrangement if the proposal is approved by the AER under Division 6 as a proposal for a non-material variation.

**61. Notification of submission of full access arrangement for approval**

- (1) As soon as practicable after receiving a full access arrangement proposal, or referring it (in the case of an access arrangement variation proposal) to be dealt with under this Division, the AER must publish a notice (an *initiating notice*) on its website and in a newspaper circulating generally throughout Australia:
  - (a) notifying receipt of the proposal; and
  - (b) describing the proposal and giving the address of a website at which the proposal can be inspected; and
  - (c) inviting written submissions on the proposal by a date specified in the notice (which must fall at least 28 days after the first publication of the notice).
- (2) The AER may, however, defer publication of an initiating notice for up to 45 days after the submission of the access arrangement proposal if, on a preliminary examination of the proposal, the AER considers the proposal or the related access arrangement information deficient in some respect, and allows the service provider an opportunity to correct the deficiency.
- (3) After publication of the initiating notice, the service provider may only revise the access arrangement proposal:
  - (a) in response to the AER's draft decision on the proposal; or

- (b) with the AER's consent.

**62. Access arrangement draft decision**

- (1) After considering the submissions made within the time allowed in the initiating notice, and any other matters the AER considers relevant, the AER must make an access arrangement draft decision.
- (2) An access arrangement draft decision indicates whether the AER is prepared to approve the access arrangement proposal as submitted and, if not, the nature of the amendments that are required in order to make the proposal acceptable to the AER.

Examples:

- 1. If the AER is not satisfied that the access arrangement proposal adequately describes the pipeline services offered, or to be offered, by the service provider, the decision might indicate the amendment or the nature of the amendment required to correct the deficiency.
  - 2. If the AER is not satisfied that the access arrangement proposal designates as reference services all pipeline services that are sought, or likely to be sought, by a significant part of the market, the decision might indicate that further or other pipeline services should be designated as reference services.
  - 3. The decision might indicate that specified changes, or changes of a specified nature, should be made to a reference tariff.
  - 4. The decision might indicate changes to queuing requirements, capacity trading requirements, or extension and expansion requirements needed to make the access arrangement acceptable to the AER.
- (3) 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 21 days) for revision of the proposal (the *revision period*).
  - (4) When the AER makes an access arrangement draft decision, it must:
    - (a) give a copy of the decision to the service provider; and
    - (b) publish the decision on the AER's website and make it available for inspection, during business hours, at the AER's public offices; and
    - (c) publish on its website and in a newspaper circulating generally throughout Australia a notice:
      - (i) stating that an access arrangement draft decision has been made and giving a reference to a website at which the relevant access arrangement proposal and the relevant draft decision may be inspected; and

- (ii) if a period has been allowed for revision of the proposal – specifying the revision period; and
- (iii) inviting written submissions within the time allowed in the notice (which must be at least 28 days from the end of the revision period).

**63. Revision of access arrangement proposal in response to draft decision**

- (1) The service provider may, within the revision period, submit additions or other amendments to the access arrangement proposal to address matters raised in the access arrangement draft decision (but only for that purpose).
- (2) If the service provider submits amendments to the access arrangement proposal, the service provider must also provide the AER (together with the amendments) with a revised proposal incorporating the amendments.
- (3) As soon as practicable after receiving the revised access arrangement proposal, the AER must publish it on its website.

**64. Hearing relating to access arrangement draft decision**

- (1) The AER may, on its own initiative or on request by any person, hold a hearing about an access arrangement draft decision.
- (2) A request for a hearing must:
  - (a) be made in writing within 14 days after publication of the draft decision; and
  - (b) state the applicant's name and contact details; and
  - (c) state the applicant's reasons for asking for a hearing.
- (3) If the AER refuses a request for a hearing, it must give the applicant written reasons for the refusal.

Example:

The AER might refuse the request on the ground that the applicant failed to make written submissions in response to the initiating notice or that the applicant's request does not disclose a sufficient reason for a hearing.

- (4) If the AER decides to hold a hearing (on request or on its own initiative), it must appoint a time and place for the hearing and give notice of the appointed time and place on its website.

**65. Access arrangement final decision**

- (1) After considering the submissions made in response to the access arrangement draft decision within the time allowed in the notice, and any other matters the AER considers relevant, the AER must make an access arrangement final decision.
- (2) An access arrangement final decision is a decision to approve, or to refuse to approve, an access arrangement proposal.
- (3) If the access arrangement proposal has been revised since its original submission, the access arrangement final decision relates to the proposal as revised.
- (4) If, in the access arrangement draft decision, the AER indicated that further pipeline services should in its opinion be designated as reference services (i.e. services sought or likely to be sought by a significant part of the market) and the further services have not been so designated in a revised access arrangement proposal, the AER must not approve the access arrangement proposal unless the AER has been satisfied by submissions made in response to the draft decision that the draft decision was wrong in that respect.
- (5) When the AER makes an access arrangement final decision, it must:
  - (a) give a copy of the decision to the service provider; and
  - (b) publish the decision on the AER's website and make it available for inspection, during business hours, at the AER's public offices.
- (6) If an access arrangement final decision approves an access arrangement proposal, the access arrangement, or the revision or variation, to which the decision relates, takes effect on a date fixed in the final decision or, if no date is so fixed, 14 days after the date of the final decision.

Note:

In the case of an access arrangement revision proposal, this date may, but will not necessarily, be the revision commencement date fixed in the access arrangement.

- (7) An access arrangement final decision must be made within 180 days of the date of receipt of the access arrangement proposal.
- (8) The time limitation fixed by subrule (7) cannot be extended by more than a further 60 days.

***Division 9 – Power of the AER to make and approve access arrangement proposal***

**66. AER's power to make or revise access arrangement on failure by service provider to submit an access arrangement proposal**

- (1) If a service provider fails to submit an access arrangement proposal within the time allowed under these rules, the AER must itself formulate an access arrangement proposal for the relevant pipeline.

Exception:

This rule does not apply to a failure to submit a limited access arrangement for an international pipeline to which a price regulation exemption applies. (See section 161(2) of the NGL)

- (2) The AER must make a determination giving effect to its access arrangement proposal (or some modified version of the proposal resulting from the decision making process) within 180 days after the end of the period allowed for submission of such a proposal by the service provider.
- (3) In making a determination under subrule (2), the AER must:
- (a) if the proposal is, or relates to, a limited access arrangement – proceed in accordance with the expedited consultative procedure; or
  - (b) if the proposal is, or relates to, a full access arrangement – proceed in accordance with the standard consultative procedure.

**67. AER's power to make or revise access arrangement on refusing to approve an access arrangement proposal**

- (1) If, in an access arrangement final decision, the AER refuses to approve an access arrangement proposal (other than a variation proposal), the AER must itself formulate an access arrangement proposal for the relevant pipeline.

Exception:

If the AER refuses to approve a limited access arrangement for an international pipeline to which a price regulation exemption applies, the AER may (but need not) exercise its powers under this rule. (See section 161(2) of the NGL)

- (2) The access arrangement proposal is to be formulated with regard to:
- (a) the service provider's access arrangement proposal; and

- (b) the AER's reasons for refusing to approve that proposal.
- (3) The AER may (but is not obliged to) consult on its access arrangement proposal.
- (4) The AER must, within 60 days after the access arrangement final decision, make a determination giving effect to its access arrangement proposal.
- (5) When the AER makes a determination under this rule, it must:
  - (a) give a copy of the determination to the service provider; and
  - (b) publish the determination on the AER's website and make it available for inspection, during business hours, at the AER's public offices.
- (6) The access arrangement or the revisions to which the determination relates takes effect on a date fixed in the determination or, if no date is so fixed, 14 days after the date of the determination.

*Division 10 – Non-financial provisions of access arrangements*

**68. General requirement of consistency with national gas objective**

All non-financial provisions of an access arrangement must be consistent with the national gas objective.

**69. Queuing requirements**

- (1) Queuing requirements must establish a process for establishing an order of priority between prospective users of spare or developable capacity (or both) in which all prospective users (whether associates of, or unrelated to, the service provider) are treated on a fair and equal basis.
- (2) Queuing requirements might (for example) provide that the order of priority is to be determined:
  - (a) on a first-come-first-served basis; or
  - (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) Queuing requirements must be sufficiently detailed to enable prospective users to understand the basis on which an order of priority between them has been, or will be, determined.

**70. Capacity trading requirements**

- (1) Capacity trading requirements must provide for transfer of contracted capacity as follows.
- (2) A user may, without the service provider's consent, transfer, by way of subcontract, all or any of the user's contracted capacity to another (the *third party*) with the following consequences:
  - (a) the transferor's rights against, and obligations to, the service provider are (subject to paragraph (b)) unaffected by the transfer; but
  - (b) the transferor must immediately give notice to the service provider of:
    - (i) the subcontract and its likely duration; and
    - (ii) the identity of the third party; and
    - (iii) the amount of the contracted capacity transferred.
- (3) A user may, with the service provider's consent (which must not be unreasonably withheld), transfer all or any of the user's contracted capacity to another (the *third party*) with the following consequences:
  - (a) the transferor's rights against, and obligations to, the service provider are terminated or modified in accordance with the capacity trading requirements; and
  - (b) a contract arises between the transferor and the third party on terms and conditions determined by or in accordance with the capacity trading requirements.
- (4) An adjustment of rights and liabilities under subrule (3) does not affect rights or liabilities that had accrued under, or in relation to, the contract before the transfer took effect.
- (5) The AER must approve proposed capacity trading requirements if satisfied that they comply with the requirements of the Law.

**71. Extension and expansion requirements**

- (1) Extension and expansion requirements may state whether the applicable access arrangement will apply to pipeline services provided by means of an extension to, or expansion of the capacity of, the pipeline (*incremental services*) or may allow for later resolution of that question on a basis stated in the requirements.

- (2) Extension and expansion requirements included in a full access arrangement may, if they provide that an applicable access arrangement is to apply to incremental services, deal with the effect of the extension or expansion on tariffs and may provide, subject to the Law, for the levying of a surcharge on incremental users.

Note:

It should also be noted that an extension or expansion of a pipeline may be a trigger event leading to revision of the relevant access arrangement.

- (3) 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.]*

## **72. Change of receipt or delivery point by user**

An access arrangement must provide for the change of a receipt or delivery point in accordance with the following principles:

- (a) a user may, with the service provider's consent, change the user's receipt or delivery point;
- (b) the service provider must not withhold its consent unless:
  - (i) it has reasonable grounds, based on technical or economic considerations, for doing so; or
  - (ii) the user fails to provide an indemnity reasonably required by the service provider under paragraph (c);
- (c) if the change involves modification to the pipeline, or involves the service provider in other expense, the service provider may require indemnity for the service provider's reasonable costs and expenses.

### ***Division 11 – Inherent variability of financial and non-financial terms***

## **73. Variable operation of access arrangement**

- (1) The operation of an applicable access arrangement may vary according to factors, or in accordance with a formula, stated in the arrangement.
- (2) A variation in the operation of an applicable access arrangement that is made, or occurs, in accordance with the provisions of the access arrangement, is not to be regarded as a variation of the access arrangement itself.

## PART 9 – PRICE AND REVENUE REGULATION

### *Division 1 – Preliminary*

#### 74. Interpretation

In this Part:

*applicable access arrangement* means an applicable access arrangement that is a full 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 must be satisfied if capital expenditure is to be rolled into the capital base under rule 83.

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

*operating expenditure* means operating, maintenance and other costs and expenditure of a non-capital nature incurred in providing pipeline services and includes expenditure incurred in increasing long-term demand for pipeline services and otherwise developing the market for pipeline 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.

*tariff class* means users of one or more reference services who constitute a tariff class under an applicable access arrangement.

#### 75. 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***

**76. Specific requirements for access arrangement information relevant to price and revenue regulation**

- (1) The access arrangement information for a full access arrangement, or an access arrangement revision proposal for a full access arrangement, must include the following:
  - (a) if the access arrangement period commences at the end of an earlier access arrangement period:
    - (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 period commences at the end of an earlier access arrangement period, 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;
  - (d) the capacity of the pipeline and projected utilisation of pipeline capacity over the access arrangement period;
  - (e) a forecast of operating expenditure over the access arrangement period and the justification for the forecast;

- (f) the key performance indicators to be used by the service provider to determine the reasonableness of operating expenditure to be incurred over the access arrangement period;
  - (g) the proposed rate of return, the assumptions on which the rate of return is calculated and a demonstration of how it is calculated;
  - (h) the proposed method for dealing with taxation, and a demonstration of how the allowance for taxation is calculated;
  - (i) if an incentive mechanism operated for the previous access arrangement period—the proposed carry-over of increments for efficiency gains or decrements for efficiency losses in the previous access arrangement period and a demonstration of how allowance is to be made for any such increments or decrements;
  - (j) 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) costs that are to be directly passed through to prices and a demonstration of the operation of the proposed pass through clause; and
    - (iii) a description of any pricing principles employed but not otherwise disclosed under this rule; and
    - (iv) the basis on which reference tariffs have been determined;
  - (k) the form of price control proposed;
  - (l) the service provider's justification for the form of price control proposed, for any proposed incentive mechanism, and for the pass through clause;
  - (m) any further information required by a regulatory information instrument.
- (2) The access arrangement information for an access arrangement variation proposal related to a full access arrangement must include so much of the above information as is relevant to the proposal.

**77. 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.

**78. 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.

**79. 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*

**80. Total revenue**

- (1) An applicable access arrangement must state the total revenue to be derived from pipeline services for each regulatory year of the access arrangement period.
- (2) The total revenue is to be determined using the building block approach in which the building blocks are:
  - (a) a return on the projected capital base for the year (See Divisions 4 and 5); and
  - (b) depreciation on the projected capital base for the year (See Division 6); and
  - (c) if applicable – the estimated cost of corporate income tax for the year; and

- (d) increments or decrements for the year resulting from the operation of an incentive mechanism to encourage gains in productivity (See Division 10); and
- (e) a forecast of operating expenditure for the year (See Division 7).

***Division 4 – The Capital base***

**81. Opening capital base**

- (1) When a pipeline first becomes a covered pipeline, the opening capital base for the first access arrangement period is to be as follows:
  - (a) if the pipeline was commissioned before the commencement of these rules, the opening 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 opening 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) actual depreciation; and
    - (iv) the value of pipeline assets disposed of since the commissioning of the pipeline.
- (2) If an access arrangement period follows immediately on the conclusion of a preceding access arrangement period, the opening capital base for the later access arrangement period 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) If a period intervenes between access arrangement periods during which the pipeline is not subject to an applicable access arrangement, the opening capital base for the later access arrangement period 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) actual depreciation since the relevant date; and
  - (d) the value of pipeline assets disposed of since the relevant date.

## **82. Projected capital base**

The projected capital base for a particular period is:

- (a) the opening capital base;
- plus:
- (b) forecast conforming capital investment for the period;
- less:
- (c) forecast depreciation for the period; and
  - (d) the forecast value of pipeline assets to be disposed of in the course of the period.

## **83. New capital investment criteria**

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

- (2) The amount of the expenditure must not exceed the amount that would be invested by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of providing services.
- (3) The expenditure must also be justifiable on one or more of the following grounds:
  - (a) the expected incremental revenue generated as a result of the investment exceeds the amount of the capital expenditure;
  - (b) overall the economic value of the investment is positive;
  - (c) 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.]*

- (4) In deciding whether the overall economic value of capital expenditure is positive, consideration is to be given only to the economic value directly accruing to gas producers, users and end users.
- (5) The AER's discretion under this rule is limited.

Note:

See rule 39(2).

*[Note: Compare section 8.17 of the Code.]*

**84. AER's power to make advance determination with regard to future capital expenditure**

- (1) The AER may, on application by a service provider, make a determination to the effect that, if capital expenditure is made in accordance with proposals made by the service provider and 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.]*

**85. 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.]*

**86. 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.]*

**87. 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) The AER must approve a surcharge if 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.]

#### **88. 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, determined at the AER's discretion, 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.]

#### **89. 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.]

**90. 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 pipeline 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***

**91. Rate of return**

- (1) The return on capital is to be commensurate with prevailing conditions in the market for funds and the risks involved in providing reference services.
- (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***

**92. 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.]*

**93. 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) The AER's discretion under this rule is limited.

Note:

See rule 39(2).

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

#### **94. 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***

#### **95. Criteria governing operating expenditure**

- (1) Operating expenditure must be such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of delivering reference services.

*[Note: Compare section 8.37 of the Code.]*

- (2) The AER's discretion under this rule is limited.

Note:

See rule 39(2).

***Division 8 – Allocation of total revenue and costs, control mechanisms and pricing of reference services***

**96. Allocation of total revenue and costs**

- (1) Total revenue is to be allocated between reference and other services in the ratio in which costs are allocated between reference and other services.
- (2) Costs are to be allocated between reference and other services as follows:
  - (a) costs directly attributable to reference services are to be allocated to those services; and
  - (b) costs directly attributable to pipeline services that are not reference services are to be allocated to those services; and
  - (c) other costs are to be allocated between reference and other services in the ratio between the costs referred to in paragraphs (a) and (b) or on some other recognised basis for cost allocation that is accepted in the gas pipeline industry.
- (3) The AER may, however, permit the allocation of the costs of rebateable services, in whole or part, to reference services if:
  - (a) the AER is satisfied that the service provider will 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; and
  - (b) any other conditions determined by the AER are satisfied.
- (4) A pipeline service is a ***rebateable service*** if:
  - (a) the service is not a reference service; and
  - (b) substantial uncertainty exists concerning the extent of the demand for the service or of the revenue to be generated from the service; and
  - (c) the market for the service is substantially different from the market for any reference service.

**97. Control mechanism over prices and revenue**

- (1) An applicable access arrangement must include a mechanism for the control of the prices of, and revenues to be derived from, reference services.

- (2) The control mechanism is to consists of:
- (a) a schedule of fixed prices; or
  - (b) caps on the prices of individual services; or
  - (c) caps on the revenue to be derived from a particular combination of services; or
  - (d) tariff basket price control; or
  - (e) revenue yield control; or
  - (f) a combination of any of the above.
- (3) In deciding whether a particular control mechanism is appropriate to a particular access arrangement, the AER must have regard to:
- (a) the need for efficient tariff structures; and
  - (b) the possible effects of the control mechanism on administrative costs of the AER, the service provider, and users or potential users; and
  - (c) the regulatory arrangements (if any) applicable to the relevant reference services before the commencement of the proposed control mechanism; and
  - (d) the desirability of consistency between regulatory arrangements for similar services (both within and beyond the relevant jurisdiction); and
  - (e) any other relevant factor.

**98. Level of control**

The control is to be set at a level designed to equalise (in terms of present values):

- (a) forecast revenue from reference services; and
- (b) the portion of total revenue allocated to reference services.

***Division 9 – Tariffs***

**99. 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.]*

#### **100. Tariffs – distribution pipelines**

- (1) An access arrangement for a distribution pipeline must divide customers for reference services into tariff classes.
- (2) A tariff class must be constituted with regard to:
  - (a) the need to group users of reference services together on an economically efficient basis; and
  - (b) the need to avoid unnecessary transaction costs.
- (3) For each tariff class, the revenue expected to be recovered should lie on or between:
  - (a) an upper bound representing the stand alone cost of providing the reference service to users who belong to that class; and
  - (b) a lower bound representing the avoidable cost of not providing the reference service to those customers.
- (4) A tariff, and if it consists of 2 or more charging parameters, each charging parameter for a tariff class:
  - (a) must take into account the long run marginal cost for the reference service or, in the case of a charging parameter, for the element of the service to which the charging parameter relates;
  - (b) must be determined having regard to:
    - (i) transaction costs associated with the tariff or each charging parameter; and
    - (ii) whether users belonging to the relevant tariff class are able or likely to respond to price signals.
- (5) If, however, as a result of the operation of subrule (4), the service provider may not recover the expected revenue, the tariffs must be adjusted to

ensure recovery of expected revenue with minimum distortion to efficient patterns of consumption.

- (6) The AER's discretion under this rule is limited.

**101. Tariffs – transmission pipelines**

- (1) A tariff for a reference service provided by means of a transmission pipeline must be designed to generate from the provision of each reference service the proportion of total revenue referable to that reference service.
- (2) The proportion of total revenue referable to a particular reference service is determined as follows:
- (a) costs directly attributable to each reference service are to be allocated to that service; and
  - (b) the costs attributable to reference services but not directly to any individual reference service are to be apportioned between the reference services in the ratio of the costs referred to in paragraph (a) or on some other recognised basis for costs allocation that is accepted in the gas pipeline industry; and
  - (c) the portion of total revenue allocated to reference services<sup>1</sup> is to be apportioned between the individual reference services in the ratio between the costs apportioned to each reference service under paragraphs (a) and (b).

<sup>1</sup> See rule 95.

- (3) The AER's discretion under this rule is limited.

Note:

See rule 39(2).

**102. Prudent discounts**

An access arrangement may contain provision allowing the service provider:

- (a) to discount reference tariffs to the extent necessary to maintain or increase demand for reference services in order to:
  - (i) respond to competition from other providers of pipeline services or other sources of energy; or
  - (ii) maintain efficient use of the pipeline; and

- (b) to increase other reference tariffs to compensate for loss of revenue resulting from the discounts.

***Division 10 – Incentive mechanisms***

**103. Incentive mechanism**

- (1) An applicable access arrangement must include an incentive mechanism to encourage efficiency in the provision of services by the service provider.
- (2) The incentive mechanism may provide for carrying over increments for efficiency gains and decrements for losses of efficiency from one access arrangement period to the next.
- (3) The incentive mechanism must be consistent with the revenue and pricing principles.

***Division 11 – Fixed principles***

**104. Fixed principles**

- (1) An applicable access arrangement may include a principle (which must be consistent with the rules) 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 is binding on the AER and the service provider for the period for which the principle is fixed.
- (4) However:
  - (a) the AER may vary or revoke a fixed principle at any time with the service provider's consent; and
  - (b) if a rule is made that is inconsistent with a fixed principle, the rule operates to the exclusion of the fixed principle.

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

**PART 10 – FACILITATION OF, AND REQUEST FOR, ACCESS**

**105. Availability of applicable access arrangement and other information**

- (1) A regulated service provider must ensure that the applicable access arrangement is accessible on the service provider's website.
- (2) The AER may, by notice to a regulated service provider, require the service provider to provide, at the request of a prospective user, specified

information the prospective user reasonably requires to decide whether to seek access to a pipeline service provided by the service provider and, if so, how to go about applying for access.

- (3) A notice under subrule (2) may require the provision of specified information to prospective users generally, prospective users of a particular class, or a particular prospective user.
- (4) A regulated service provider must provide the required information (free of charge) to a prospective user:
  - (a) within a time limit fixed by the AER in its notice; or
  - (b) if the notice does not fix a time limit – within 7 days after the prospective user requests the information.
- (5) A copy of an applicable access arrangement, or 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.
- (6) A service provider incurs, by providing information required under this rule, no liability for breach of contract or breach of confidence or any other civil liability.

**106. Information about tariffs**

- (1) A prospective user that reasonably requires the provision of a pipeline service that a regulated service provider is in a position to provide, but for which the service provider has published no tariff, may (by written request) ask the service provider:
  - (a) to fix a tariff for the service; and
  - (b) to notify the prospective user of the tariff for the service.
- (2) A regulated service provider who is in a position to provide the service to which the request relates must, within 14 days after receiving a request from a prospective user for the tariff, inform the prospective user, in writing, of the relevant tariff.
- (3) A service provider is in a position to provide a particular service if it is commercially and technically feasible for the service provider to provide the service.

**107. Information to be provided by users about unutilised contracted capacity**

- (1) A user must, within 14 days after receiving a request from any person for information about the user's unutilised contracted capacity (if any), provide the person with the following information:
  - (a) unutilised contracted capacity is, or is likely to become, available; and
  - (b) if so:
    - (i) the quantity of the unutilised contracted capacity that is, or is likely to become, available; and
    - (ii) the nature of the unutilised contracted capacity (ie whether it is firm or interruptible and whether it is forward or backhaul); and
    - (iii) when the unutilised contracted capacity will be, or is likely to become, available nominating, if possible, a specific date; and
    - (iv) the terms and conditions (which may include price) on which the user would be prepared to transfer the unutilised capacity; and
  - (c) whether technical or safety considerations might limit the utilisation of the user's unutilised contracted capacity and, if so, the nature of those considerations.
- (2) On providing information under subrule (1), a user must immediately notify the service provider of the provision of the information:
  - (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.
- (3) A user incurs, by providing information under this rule, no liability for breach of contract or breach of confidence or any other civil liability.

**108. Public registers of spare capacity**

- (1) This rule applies to:
  - (a) a service provider that provides regulated services by means of a transmission pipeline; and

- (b) a service provider that:
  - (i) provides regulated services by means of a distribution pipeline; and
  - (ii) is, by determination of the AER, a service provider to which this rule applies.
- (2) In deciding whether this rule should apply to a distribution service provider, the AER must have regard to whether it is technically and economically feasible for the service provider to maintain a register of spare capacity.
- (3) A service provider to which this rule applies must establish and maintain a register of spare capacity.
- (4) The register of spare capacity 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.
- (5) If the relevant covered pipeline consists of one or more trunk or mains pipelines and a subordinate pipeline or pipelines, the information contained in the register may be confined to the trunk or mains pipeline or pipelines.
- (6) 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.

- (7) 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.
- (8) The service provider must ensure that the register of spare capacity is accessible on the service provider's website.

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

**109. Requests for access**

- (1) A prospective user may request a regulated service provider to provide a pipeline service for the prospective user.
- (2) The request must be made in writing and 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.
- (3) The service provider must, within 30 days after the date of the request, respond to the request:
  - (a) by informing the prospective user:
    - (i) whether the service provider can provide the requested pipeline service; and
    - (ii) if so, the terms and conditions on which the service provider is prepared to provide the requested pipeline service;
  - (b) by informing the prospective user that the service provider needs to carry out further investigation to determine whether it can provide the requested pipeline service and setting out a proposal for carrying out the further investigation including:
    - (i) a statement of the nature of the investigation; and
    - (ii) a plan (including a time schedule) for carrying out and completing the investigation; and

- (iii) a statement of the reasonable costs of the investigation the prospective user would be required to meet.
- (4) If the service provider informs the prospective user that it cannot provide the requested pipeline service, the service provider must:
  - (a) provide the prospective user with written reasons explaining why the requested pipeline service cannot be provided; and
  - (b) if there is some prospect that it will become possible to provide the requested service at some time in the future – give details (which must be as specific as the circumstances reasonably allow) of when capacity to provide the requested service is likely to become available and, if possible, nominate a specific date.
- (5) If the service provider responds to the request by proposing further investigation, the following provisions apply:
  - (a) if the parties have not agreed on the service provider's proposal or some negotiated modification of it within 30 days after the date of the response – the service provider is taken to have rejected the prospective user's request; and
  - (b) if the parties agree on the service provider's proposal or on some negotiated modification of it within 30 days after the date of the response – the service provider must carry out the investigation in accordance with the agreement and, on the conclusion of the investigation, inform the prospective user whether it can, or cannot, provide the requested pipeline service and comply with other relevant requirements of this rule.

#### **110. Prohibition of bundling of services**

- (1) A service provider must not make it a condition of the provision of a particular pipeline service to a prospective user that the prospective user accept another non-gratuitous service from the service provider unless the bundling of the services is reasonably necessary.
- (2) The description of pipeline services in an access arrangement must conform with this principle.

### **PART 11 – ACCESS DISPUTES**

#### *Division 1 – Preliminary*

#### **111. Interpretation**

In this Part:

**expert safety report** means a report by an independent expert on whether the provision of a requested pipeline service would be unsafe;

**safety of operation notification** means a notification by a service provider to a prospective user that the service provider believes the provision of a pipeline service requested by the prospective user would be unsafe;

**submissions lodgement date** means a date fixed by the AER, and notified to the parties to an access dispute, as the date by which initial submissions in the access dispute must be lodged with the AER.

**unsafe** – the provision of a pipeline service is unsafe if it is not reasonably possible for the service provider to provide it consistently with:

- (a) the safe operation of the relevant pipeline; or
- (b) prudent pipeline practices in the gas industry.

### ***Division 2 – Safety of operation notification***

#### **112. Safety of operation notification**

- (1) If a service provider refuses to provide a requested pipeline service and an access dispute arises in consequence of the refusal, the service provider may, on or before the submissions lodgement date, give a safety of operation notification.
- (2) A safety of operation notification is given (and may be withdrawn) by notice to the AER and the other parties to the dispute.
- (3) A safety of operation notification must set out the grounds on which the notification is based, including a statement of any facts and assumptions relevant to those grounds.

#### **113. Expert safety report**

- (1) When a service provider gives a safety of operation notification, it must submit the name of an independent expert who might be engaged to provide an expert safety report.
- (2) The AER may approve the person nominated by the service provider or some other person as the independent expert to provide an expert safety report.
- (3) The service provider must, on receiving notice of the AER's approval, immediately engage the independent expert approved by the AER to provide an expert safety report on the requested pipeline service to which the access dispute relates.

- (4) In carrying out the investigations necessary for the expert safety report, the approved independent expert must have regard to all relevant statutory or regulatory requirements or restrictions (including those imposed under the conditions of a licence).
- (5) When the independent expert provides the service provider with the expert safety report, the service provider must immediately give copies of the report to the AER and the other parties to the dispute.

**114. Access determination**

In proceedings for the resolution of the access dispute, the AER is bound by the findings of an approved independent expert in an expert safety report.

*Division 3 – Access determinations*

**115. Access arrangement requiring expansion of capacity**

- (1) An access determination:
  - (a) may require the service provider to carry out an expansion of the capacity of the access dispute pipeline; but
  - (b) may not require the service provider to extend the geographical range of the access dispute pipeline.
- (2) However:
  - (a) the service provider cannot be required to carry out an expansion of the capacity of a light regulation pipeline unless the prospective user funds the capacity expansion in its entirety; and
  - (b) the service provider cannot be required to fund, in whole or part, an expansion of the capacity of a standard regulation pipeline unless the extension and expansion requirements of the applicable access arrangement provide for the relevant funding; and
  - (c) an expansion of capacity required under an access determination must be:
    - (i) technically and economically feasible; and
    - (ii) consistent with the safe and reliable operation of the pipeline.
- (3) A user or prospective user acquires no interest in a pipeline by funding an expansion of capacity of the pipeline in accordance with an access determination unless the service provider agrees.

**116. Variation of applicable access arrangement to accommodate capacity expansion**

- (1) If an access determination requires a service provider to carry out work to expand the capacity of the access dispute pipeline, the access determination may make consequential amendments to the applicable access arrangement.
- (2) The amendments may provide for any one or more of the following:
  - (a) a mechanism to roll some or all the capital costs of the expansion into the capital base;
  - (b) consequential adjustments to reference tariffs;
  - (c) a surcharge to be paid by incremental users or users generally;
  - (d) the establishment of a speculative investment account and regulation of its operation;
  - (e) if a prospective user of incremental capacity is to contribute some or all the cost of the capacity expansion – tariff concessions for the prospective user reflecting the extent of the capital contribution.

**PART 12 – GREENFIELDS INCENTIVES**

*Division 1 – Preliminary*

**117. Excluded infrastructure (Section 143 of the NGL)**

For the purposes of Chapter 5 of the NGL, all tanks, reservoirs, machinery and equipment that form part of a pipeline are classified as excluded infrastructure.

**118. Pipeline description (Section 145(3) and section 154(2) of the NGL)**

- (1) A pipeline description for a proposed transmission pipeline (including an international pipeline) for which a greenfields pipeline incentive is sought must contain the following information:
  - (a) the route of the pipeline; and
  - (b) the end points of the trunk of the pipeline (i.e. the points defining the extremities, where the trunk begins and ends); and
  - (c) if a lateral forms part of the pipeline – the point where the lateral interconnects with the trunk and the end point of the lateral; and
  - (d) the range of diameters for the principal pipes (including laterals).

- (2) A pipeline description for a proposed distribution pipeline for which a greenfields pipeline incentive is sought must contain the following information:
  - (a) the geographical area to be served by the pipeline; and
  - (b) the points at which natural gas is to be injected into the pipeline.

*Division 2 – 15-year no-coverage determinations*

**119. Application for 15-year no-coverage determination (Section 145(3) of the NGL)**

- (1) An application for a 15-year no-coverage determination must include, or be accompanied by the following:
  - (a) the name and contact details of the applicant;
  - (b) a short description sufficient to identify the pipeline and its route together with a website address at which a map of the route, and a full description, of the pipeline can be inspected;
  - (c) a statement of the basis on which the project for the construction of the pipeline is to be regarded as a greenfields pipeline project;
  - (d) a statement of expenditure already made on the construction of the pipeline and an estimate of the expenditure yet to be made together with a statement of the basis on which the estimate has been made;
  - (e) an estimate of the pipeline's capacity and an estimate of the extent to which the pipeline's capacity is likely to be utilised by the applicant or associates of the applicant;
  - (f) a statement of the services to be provided by means of the proposed pipeline;
  - (g) a statement of the locations to be served by the proposed pipeline and, in relation to each downstream location, a statement of other sources of natural gas available at the relevant location;
  - (h) a statement of any existing pipelines, and any proposed pipelines of which the applicant is aware, that serve (or will serve) any of the same locations or that pass (or will pass) within 100 km of any of the same locations;
  - (i) an estimate of the reserves of natural gas available at any upstream location to be served by the pipeline and an estimate of the rate of production from that location;

- (j) an estimate of expected demand at each downstream location to be served by the pipeline including for each location a description of the expected customer base and an indication of the revenue expected from each location;
  - (k) the identity of all parties with an interest in the proposed pipeline and the nature and extent of each interest;
  - (l) a description of any relationship between the following:
    - (i) the owner and the operator (or proposed operator) of the pipeline; and
    - (ii) the owner or operator (or proposed operator) of the pipeline and a user of pipeline services or a supplier or consumer of gas in any of the locations served by the pipeline; and
    - (iii) the owner or operator (or proposed operator) of the pipeline and the owner or operator of any other pipeline serving any one or more the same locations; and
  - (m) a statement of whether it would be feasible to expand the capacity of the pipeline and, if so, an explanation of how the capacity might be expanded and an estimate of the cost; and
  - (n) an estimate of the annual cost to the service provider of regulation; and
  - (o) any other information the applicant considers relevant, in the circumstances of the present case, to the application of the National Gas Objective or the pipeline coverage criteria; and
  - (p) any other information or materials on which the applicant relies in support of its application.
- (2) Information in the nature of an estimate must be supplemented by a statement of the facts and assumptions on which the estimate is based.

**120. Recommendation on application for 15 year no-coverage determination (Sections 146 and 147 of the NGL)**

- (1) In deciding what recommendation it should make on an application for a 15-year no-coverage determination, the NCC must proceed in accordance with the standard consultative procedure.
- (2) The NCC must make a no-coverage recommendation within 120 days after receiving the application for a no-coverage determination.

- (3) The time limitation fixed by subrule (2) cannot be extended by more than a further 60 days.
- (4) A no-coverage recommendation must:
  - (a) be in writing; and
  - (b) identify the pipeline to which the recommendation relates; and
  - (c) include a reference to a website at which a full description of the pipeline can be inspected; and
  - (d) state the terms of the recommendation and the reasons for it; and
  - (e) if the pipeline is not an international pipeline – include the NCC's initial pipeline classification decision and the reasons for it.

**121. Relevant Minister's determination of the application (Section 150(5) of the NGL)**

- (1) A 15-year no-coverage determination, or a decision not to make such a determination, must –
  - (a) be in writing; and
  - (b) identify the pipeline to which the determination or decision relates; and
  - (c) include a reference to a website at which a full description of the pipeline can be inspected; and
  - (d) state the terms of the determination or decision and the reasons for it.
- (2) The determination or decision must:
  - (a) be given to the applicant, the NCC and the AEMC without delay; and
  - (b) be published on the NCC's website.

*Division 3 – Price regulation exemptions*

**122. Application for price regulation exemption (Section 154(2) of the NGL)**

- (1) An application for a price regulation exemption must include, or be accompanied by the following:
  - (a) the name and contact details of the applicant;

- (b) a short description sufficient to identify the international pipeline and its route together with a website address at which a map of the route, and a full description, of the pipeline can be inspected;
- (c) a statement of the basis on which the project for the construction of the pipeline is to be regarded as a greenfields pipeline project;
- (d) a statement of the amount already expended on the construction of the pipeline and an estimate of the expenditure yet to be made together with a statement of the basis of the estimate;
- (e) an estimate of the pipeline's capacity and an estimate of the extent to which the pipeline's capacity is likely to be utilised by the applicant or associates of the applicant;
- (f) a statement of the services to be provided by means of the proposed pipeline;
- (g) a statement of the locations to be served by the proposed pipeline and, in relation to each downstream location, a statement of other sources of natural gas available at the relevant location;
- (h) a statement of any existing pipelines, and any proposed pipelines of which the applicant is aware, that serve (or will serve) any of the same locations or that pass (or will pass) within 100 km of any of the same locations;
- (i) an estimate of the reserves of natural gas available at any upstream location to be served by the pipeline and an estimate of the rate of production from that location;
- (j) an estimate of expected demand at each downstream location to be served by the pipeline including for each location a description of the expected customer base and an indication of the revenue expected from each location;
- (k) the identity of all parties with an interest in the proposed pipeline and the nature and extent of each interest;
- (l) a description of any relationship between the following:
  - (i) the owner and the operator (or proposed operator) of the pipeline; and
  - (ii) the owner or operator (or proposed operator) of the pipeline and a user of pipeline services or a supplier or consumer of gas in any of the locations served by the pipeline; and

- (iii) the owner or operator (or proposed operator) of the pipeline and the owner or operator of any other pipeline serving any one or more the same locations;
  - (m) an estimate of the annual cost to the service provider of regulation (assuming regulation on the basis of a full access arrangement);
  - (n) any other information the applicant considers relevant, in the circumstances of the present case, to the application of the National Gas Objective or the criteria governing the making of a price regulation exemption;
  - (o) any other information or materials on which the applicant relies in support of its application.
- (2) Information in the nature of an estimate must be supplemented by a statement of the facts and assumptions on which the estimate is based.

**123. How NCC deals with application for a price regulation exemption (Section 155 of the NGL)**

- (1) On receiving an application for a price regulation exemption, the NCC must:
- (a) notify the Commonwealth Minister of the application; and
  - (b) publish notice of the application on its website and in a newspaper circulating generally throughout Australia.
- (2) The notice under subrule (1)(b) must:
- (a) state the nature of the application; and
  - (b) identify the international pipeline to which the application relates; and
  - (c) include a reference to a website at which a full description of the pipeline can be inspected; and
  - (d) invite submissions and comments within a specified period from the date of the notice.

**124. NCC's recommendation (Section 156 of the NGL)**

- (1) The NCC must, within 42 days after receiving an application for a price regulation exemption, make a recommendation on the application to the Commonwealth Minister.
- (2) The time limit fixed by subrule (1) cannot be extended.

- (3) The recommendation must:
  - (a) be in writing; and
  - (b) identify the pipeline to which the recommendation relates; and
  - (c) include a reference to a website at which a full description of the pipeline can be inspected; and
  - (d) state the terms of the recommendation and the reasons for it.
- (4) As soon as practicable after delivering the recommendation to the Commonwealth Minister, the NCC must:
  - (a) give copies of the recommendation to:
    - (i) the applicant; and
    - (ii) the AEMC; and
    - (iii) the AER; and
  - (b) publish the recommendation on the NCC's website; and
  - (c) make copies of the recommendation available for inspection at the offices of the NCC during business hours.

**125. Making of price regulation exemption (Section 158 of the NGL)**

- (1) A price regulation exemption, or a decision not to make a price regulation exemption, must:
  - (a) be in writing; and
  - (b) identify the pipeline to which the exemption or decision relates; and
  - (c) include a reference to a website at which a full description of the pipeline can be inspected; and
  - (d) set out the Commonwealth Minister's reasons for the decision to grant, or not to grant, the exemption.
- (2) The exemption or decision must:
  - (a) be given to the applicant, the NCC and the AEMC without delay; and
  - (b) be published on the NCC's website.

*Division 4 – Limited access arrangement for international pipeline*

**126. Submission of limited access arrangement for international pipeline to which price regulation exemption applies (Section 162 of the NGL)**

- (1) A limited access arrangement for an international pipeline to which a price regulation exemption applies must:
  - (a) identify the pipeline to which the access arrangement relates and include a reference to a website at which a full description of the pipeline can be inspected; and
  - (b) describe all pipeline services the service provider is offering, or proposes to offer, to provide by means of the pipeline; and
  - (c) state the terms and conditions (other than price) for access to pipeline services likely to be sought by a significant part of the market; and
  - (d) set out the queuing requirements; and
  - (e) set out the capacity trading requirements; and
  - (f) set out the extension and expansion requirements; and
  - (j) state the expiry date for the access arrangement.
- (2) The access arrangement information for the access arrangement must include the following:
  - (a) the pipeline's capacity and the nature and extent of expected utilisation; and
  - (b) the key performance indicators for the pipeline; and
  - (c) any further information required by regulatory information instrument.

**127. Decision on limited access arrangement for international pipeline to which a price regulation exemption applies**

- (1) A decision to approve, or not to approve, a limited access arrangement for an international pipeline to which a price regulation exemption applies must be made within 120 days after submission of the arrangement for the AER's approval.

Note:

In making the decision, the AER follows the expedited consultation procedure. (See rule 59.)

- (3) The time limitation fixed by subrule (1) cannot be extended by more than a further 60 days.
- (4) The decision must:
  - (a) be in writing; and
  - (b) state the reasons for the decision; and
  - (c) be given, without delay, to the service provider who submitted the access arrangement for approval; and
  - (d) be published on the AER's website; and
  - (e) be available for inspection at the AER's public offices during business hours.

### **PART 13 – RECLASSIFICATION OF PIPELINES**

#### **128. Reclassification application (Section 122 of the NGL)**

A reclassification application must:

- (a) identify the pipeline to which the application relates; and
- (b) specify the nature of the reclassification sought by the applicant; and
- (c) demonstrate that the reclassification would be consistent with the pipeline classification criterion; and
- (d) include, or be accompanied by, any further information or materials on which the applicant relies in support of the application.

#### **129. Reclassification decision (Section 123 of the NGL)**

- (1) The NCC must deal with a reclassification application in accordance with the expedited consultative procedure.
- (2) A Minister who could, as a result of the decision taken on the reclassification application, become or cease to be the relevant Minister for the pipeline is to be regarded as a party to the application.
- (3) A reclassification decision must:
  - (a) be in writing; and
  - (b) identify the pipeline to which the decision relates; and

- (c) include a reference to a website at which a full description of the pipeline can be inspected; and
- (d) state the terms of the decision and the reasons for it.

#### **PART 14 – SCHEME REGISTER**

##### **130. Establishment and maintenance of register**

- (1) The AEMC must establish and maintain a register (the *scheme register*).
- (2) 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 Law or the old scheme.
- (3) The scheme register is to include for each pipeline:
  - (a) the full pipeline description (including, in the case of a covered pipeline, historical information about extensions and capacity expansions occurring while the pipeline was covered); and
  - (b) the pipeline's classification and regulatory history under the Law and the old scheme.
- (4) The scheme register is to include the text of current and former:
  - (a) greenfields pipeline incentives; and
  - (b) tender approval decisions; and
  - (c) coverage determinations; and
  - (d) coverage revocation determinations; and
  - (e) light regulation determinations; and
  - (f) applicable access arrangements.

##### **131. Notification of extension or capacity expansion**

When the pipeline description for a regulated pipeline is affected by an extension or capacity expansion, the service provider must give the AEMC a revised full description of the pipeline, incorporating the extension or expansion, for inclusion in the register.

##### **132. Public availability of the register**

The scheme register:

- (a) must be accessible on the AEMC's website; and

- (b) must be available for inspection by the public at the AEMC's public offices during business hours.

## **PART 15 – CONFIDENTIAL INFORMATION**

### **133. Interpretation**

In this Part:

***gas supply information*** means information obtained by a service provider (but not from a public source) about a person's:

- (a) use or prospective use of pipeline services; or
- (b) acquisition or consumption, or prospective acquisition or consumption, of natural gas ;

***improper*** – disclosure or use of relevant confidential information is improper if the information is disclosed or used contrary to this Part.

***recognised stock exchange*** means:

- (a) a stock exchange that is a member of the World Federation of Exchanges; or
- (b) an approved stock exchange within the meaning of section 470 of the *Income Tax Assessment Act 1936* (Cth).

***relevant confidential information*** means:

- (a) information given to a service provider in confidence by a user or prospective user or information about a user or prospective user that the user or prospective user has asked the service provider to keep confidential; or
- (b) gas supply information.

### **134. Maintenance of confidentiality**

- (1) A service provider must not:
  - (a) disclose relevant confidential information; or
  - (b) use relevant confidential information for a purpose other than the purpose for which the information was given to the service provider.
- (2) A service provider must take all practicable steps to protect relevant confidential information in the service provider's possession against improper disclosure or use.

- (3) This rule does not, however, prevent:
- (a) disclosure or use of relevant confidential information with the consent of the person to whom the information relates; or
  - (b) disclosure or use of information that is in the public domain; or
  - (c) disclosure or use of relevant confidential information in order to comply with:
    - (i) the law of a participating jurisdiction; or
    - (ii) an order of a court or tribunal of a participating jurisdiction; or
    - (iii) a requirement imposed by or under the Law; or
    - (iv) the listing rules of a recognised stock exchange.
- (4) A duty imposed by this rule is a non-delegable duty.

**135. Obligation to disclose gas supply information in certain circumstances**

- (1) A service provider must, at the request of a person to whom gas supply information relates (the *relevant person*), or a person who makes the request with the consent of the relevant person, disclose gas supply information relating to the relevant person.
- (2) A service provider may charge a reasonable fee for providing the requested information.

**PART 16 – MISCELLANEOUS**

**136. General regulatory information order (Section 49 of the NGL)**

In making a general regulatory information order, the AER must proceed in accordance with the standard consultative procedure.

**137. Preparation of service provider performance report (Section 63 of the NGL)**

- (1) Before the AER embarks on the preparation of service provider performance reports, the AER must consult with:
- (a) service providers; and
  - (b) bodies representative of the pipeline industry and users of pipeline services; and
  - (c) the public generally;

in order to determine appropriate priorities and objectives to be addressed through the preparation of service provider performance reports.

- (2) In the course of preparing a service provider performance report, the AER:
  - (a) must consult with the service provider or service providers to which the report is to relate; and
  - (b) must consult with the relevant jurisdictional safety and technical regulator about relevant safety and technical obligations; and
  - (c) may consult with any other persons who have, in the AER's opinion, a proper interest in the subject matter of the report; and
  - (d) may consult with the public.
- (3) A service provider to whom the report is to relate:
  - (a) must be allowed an opportunity, at least 60 days before publication of the report, to submit information and to make submissions relevant to the subject matter of the proposed report; and
  - (b) must be allowed an opportunity to comment on material of a factual nature to be included in the report.