

By email

Australian Energy Market Commission

**RE: Project Reference Code GRC0011 – Transitional Arrangements for Proposed Changes to the Rate of Return for Gas Networks under the National Gas Rules**

ATCO Gas Australia welcomes the opportunity to be part of the AEMC's consultation process regarding transitional arrangements for proposed amendments in its draft rule determination published on 23 August 2012, and thus is pleased to submit its response to the Consultation Paper on Savings and Transitional Arrangements.

In summary, the attached response details several substantial concerns regarding the transitional arrangements proposed for ATCO's next access arrangement revisions, as a result of which ATCO does not support the proposal.

Instead, ATCO proposes an alternative approach in which ATCO's review submission date is deferred by 6 months, or until 3 months after the WA rate of return guidelines are finalised, whichever is later. ATCO envisages a similar rule being made for Goldfields Gas Transmission Pty Ltd. ATCO proposes that the resulting delay in new tariffs commencing (they are currently scheduled to commence on 1 July 2014) should be dealt with using the same approach as existing rule 92(3).

Should you have any questions, please feel free to contact me on 08 6218 1718 or Deborah Evans on 08 6218 1722.

Yours sincerely



Brian Hahn  
President  
ATCO Gas Australia

25 October 2012



# Attachment

## Submission in Response to AEMC's Consultation Paper on Savings and Transitional Arrangements

### 1. Executive Summary

It is important to ensure that the transitional rules, like the substantive provisions, are consistent with the NGL, especially the NGO and RPPs.

ATCO is scheduled to lodge its proposed access arrangement revisions on 1 July 2013. At that time the ERA's rate of return guidelines will still be in development. If the timetable set out in draft rule 87<sup>4</sup> is followed, the draft guidelines are due to be published on 30 June 2013.

ATCO estimates that an NSP needs a minimum of 3 months to amend its proposed revisions, after guidelines are finalised.<sup>5</sup>

The AEMC has proposed<sup>6</sup> that ATCO's review submission date be deferred by 1 month to 1 August 2013, but that otherwise ATCO lodge its proposed revisions based on the draft guidelines rather than waiting for final guidelines to be available. ATCO opposes this proposal for two reasons:

- requiring ATCO to prepare and submit its revisions based only on draft guidelines would be inefficient, poor process, require complex transitional rules and likely delay the revisions' commencement;<sup>7</sup>
- allowing ATCO only one month to adapt its proposed revisions to the draft guidelines, is simply not enough time.<sup>8</sup>

ATCO proposes<sup>9</sup> an alternative mechanism in which ATCO's review submission date is postponed to whichever is the later of:

- **1 January 2014** (i.e. a deferral of 6 months compared with the current date); or
- a date which is at least **3 months after guidelines are finalised** (ie. to ensure ATCO has adequate, if minimum, time to adapt its revisions).

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<sup>4</sup> AEMC 2012, Economic Regulation of Network Service Providers, and Price and Revenue Regulation of Gas Services, Draft Rule Determinations, 23 August 2012, Sydney ("**Draft Determination**")

<sup>5</sup> section 2.3 below

<sup>6</sup> AEMC 2012, Economic Regulation of Network Service Providers, and Price and Revenue Regulation of Gas Services, Consultation Paper on Savings and Transitional Arrangements, 14 September 2012, Sydney ("**Consultation Paper**")

<sup>7</sup> section 3.2 below

<sup>8</sup> section 3.3 below

<sup>9</sup> section 4.1 below

This will likely mean that the access arrangement review process will not be complete before ATCO's existing revisions commencement date of 1 July 2014. ATCO proposes that tariffs for the interim period starting on 1 July 2014 and ending when the revisions take effect, should be dealt with using an adaptation of the existing rule 92(3) mechanism. This provides that the carried-forward tariffs during the interim will be those applying on 30 June 2014, and that there will be a net present value neutral 'truing up' when the new tariffs do commence.

## 2. Background and context

### 2.1 About ATCO

ATCO owns and operates the Mid West and South West Gas Distribution System ("**MWSWGDS**") which is a covered pipeline located in Western Australia, serving an area from Geraldton to Busselton (including the greater Perth metropolitan area) together with two separate non-covered gas distribution systems in the regional centres of Kalgoorlie and Albany.

ATCO is due to submit its Proposed Revisions to its Access Arrangement for the MWSWGDS to the Economic Regulation Authority ("**ERA**") by **1 July 2013**.

### 2.2 Guiding principles

ATCO suggests that the following principles should guide the development of transitional rules:

- **Transition is a vitally important issue.** It is uncontroversial that rate of return regulation itself is a critical issue for NSPs. The same holds true for how the NGR transition from one rate of return regime to another. ATCO has a unique interest in this subject because of the coincident timing between implementation of the new regime, and ATCO's review submission date.
- **Should be consistent with the NGO and RPPs.** It follows that the implementation of transitional rules, just as much as the operative amendments, must be consistent with the NGO and RPPs.
- **NSPs need time to address final guidelines.** The AEMC has indicated that the guidelines are "*critical to the overall operation of the rules*".<sup>10</sup> A corollary of this is that NSPs should be given adequate time to consider the guidelines after they are finalised, and to respond to them. This point is developed below.
- **Should not provide an advantage or disadvantage** as a result of the historical accident of when the NSP's access reset date falls.

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<sup>10</sup> Consultation Paper, p8

## 2.3 NSPs need at least 3 months to change proposed revisions

### (a) Adapting to finalised guidelines will take time

The following is an indicative timeline showing what an NSP needs to do if the guidelines are finalised while the NSP is preparing its access arrangement revisions.<sup>11</sup>

The times are at the shorter end of the spectrum and assume straightforward guidelines. More complex guidelines may need considerably more time.

Stage	Minimum weeks required for stage <sup>12</sup>	Cumulative weeks from publication
AER/ERA publishes finalised guidelines	Start	Start
Review internally, seek and receive initial expert input, identify key areas of AA and revisions likely to be impacted, prepare briefing notes for Board/Steering Committee	2-3	2-3
Identify areas on which expert consultant(s) input is required (for example reviewing the consultants' previous reports), brief consultants <sup>13</sup>	1	3-4
Consultants preparing and delivering reports	2-3	5-7
<i>Concurrently – begin making strategic decisions on application of guidelines, begin preparing explanation for approach (for example by weighting models differently, or using specific inputs or assumptions), seek further advice as necessary, consider impact of guidelines in light of WA Local Provisions regulations,<sup>14</sup> begin modelling changes and document changes<sup>15</sup></i>	—	—
<i>Concurrently – consider whether any future capex needs to be reprioritised,<sup>16</sup> consider notification requirements to market, banks, ratings agencies, etc</i>	—	—
Consider consultant reports, brief and receive expert input on implications, amend proposed revisions accordingly, amend financial models accordingly, revise supporting submissions, draft submissions justifying departures from guidelines, finalise changes	2-3	7-10
Seek and obtain Board/Steering Committee approval for amended proposed revisions <sup>17</sup>	2	9-12

<sup>11</sup> The same issues would arise if the guidelines are finalised after the revisions are lodged, as is proposed for ATCO but opposed in section 3 below.

<sup>12</sup> This timetable does not include contingencies for unforeseen difficulties such as key decision-makers or advisers being unavailable. Any such events could easily add a further 1-2 weeks at some stages. Also, at least 2 weeks should be added if this period fell over the Xmas shutdown.

<sup>13</sup> Because the guidelines deal with rate of return, it is highly likely not only that consultants' reports will have been received on this subject, but that there may have been more than one such report

<sup>14</sup> Specifically r7 of the *National Gas Access (WA) (Local Provisions) Regulations 2009* (WA), which provides that the ERA, in exercising its discretion in approving or making an access arrangement for a distribution pipeline, must take into account the possible impact of proposed reference tariffs and reference tariffs variation mechanisms on small use customers and retailers.

<sup>15</sup> It would be more efficient for much of this work to wait until consultant reports and other advice is received. This compressed schedule allows for some overlap in order to minimize the elapsed time. The risk is that this work may need to be revised once the advice is received.

<sup>16</sup> If after reviewing the guidelines the NSP forms a view that the allowed rate of return is likely to be lower than was projected, it may well form the view that funds will be harder to attract (for example because they are allocated differently within a corporate group), and hence may need to revise its forecast capital works program. If so, it may very well wish to change the allocation of capex between tariff classes. This in turn will require considerable adjustments to the tariffs applicable to those tariff classes. This is a substantial task.

<sup>17</sup> Normal standards of corporate governance would expect such important decisions to be circulated on the '10 day rule'. If so, the allocated time (2 weeks) would be the absolute minimum necessary to comply with the 'rule', even if the Board meeting schedule aligns perfectly with the regulatory work programme.

This demonstrates that an NSP will likely require **3 months** to adapt its proposed revisions to a finalised set of guidelines.

(b) *Draft guidelines assist, but only to a limited extent*

The above estimate of 3 months includes an allowance for the fact that the NSP will have already seen a draft of the guidelines.<sup>18</sup>

If the transitional rules leave the NSP insufficient time between the guidelines being finalised and when the revisions must be submitted, the NSP will be forced to start the steps described in section (a) using the draft guidelines. If finalised guidelines are different in material respects, some of the preparation will be wasted, and simultaneously urgent last-minute rework will be needed. This is **inefficient and imprudent**.

However, even if the final guidelines happen to be largely unchanged from the draft guidelines, **it is unlikely that the response to the final guidelines will be materially shorter than the range indicated in section (a)**, because:

- The NSP must still repeat most of the steps in section (a) once the guidelines are finalised. For example, consultants' and experts' advice based on the draft guidelines will have been qualified. The NSP will have to re-brief relevant consultants or experts to have the qualification removed. This may be faster than the initial analysis, but is unlikely to fall much outside the lower bound in the table in section (a).
- Some processes cannot be conducted in advance, such as Board or Steering Committee approval and finalisation of the proposed revisions. They must await the final guidelines.

## 2.4 The process of establishing guidelines may take longer than planned

The transitional rules must be robust to delays in the guideline-making process.

For example, if for some reason the WA guidelines took, say, 18 months to develop, that would bring the release of the guidelines to somewhere in the first half of 2014. This would have implications for the assumed timetable discussed in section 3.

## 2.5 Impact on ERA's work program

The AEMC is conscious of the possible impact that preparing the guidelines, and rescheduling ATCO and GGT's revisions, may have on the ERA's work program.<sup>19</sup>

ATCO considers that transitional rules should be guided by the NGL, especially the NGO and RPPs.

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<sup>18</sup> This discussion deals with a situation where the NSP is asked to lodge a short time after guidelines are finalised. Section 3.2 below deals with ATCO's rejection of the AEMC's proposal that ATCO be required to lodge **based on draft guidelines**.

<sup>19</sup> Consultation Paper, p16

Clearly, however, it is desirable to let regulators efficiently manage resources to minimise cost and maximise the quality of regulatory decision-making. Thus, if a transitional regime can meet the NGO and RPPs and **also** accommodate the ERA's desired work program management, it should.

## 2.6 The transitional regime should not discriminate against ATCO

ATCO is the only WA NSP which is proposed to be required to submit its revisions before the guidelines are currently forecast to be finalised.

The AEMC has recognised the importance of procedural fairness in this regard.<sup>20</sup>

Clearly, ATCO should not be disadvantaged as a result of the historical accident of when it falls in the cycle. ATCO is entitled to the same level of treatment in accordance with the NGO and RPPs as all other NSPs.

## 3. Commentary on AEMC's proposal for transitioning ATCO

### 3.1 The AEMC's proposed timetable for ATCO

#### (a) *The AEMC's proposal*

The AEMC proposes<sup>21</sup> that:

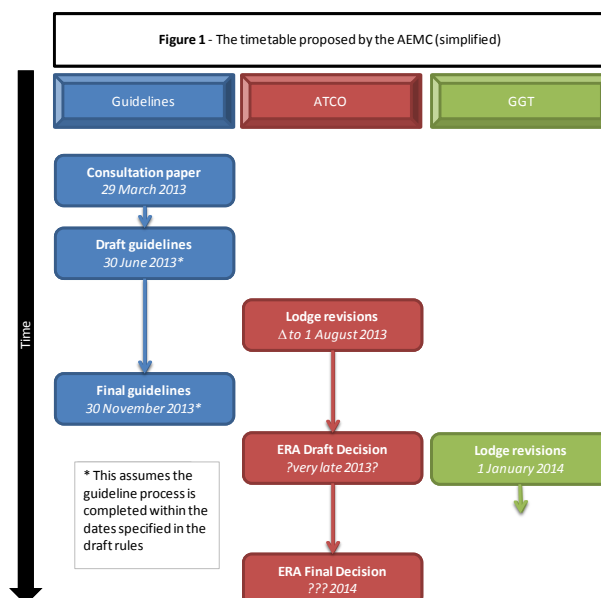
- the draft guidelines be issued by 30 June 2013;
- ATCO's review submission date be moved by one month, to 1 August 2013;
- the guidelines be finalised by **30 November 2013**; and
- ATCO be given an opportunity to amend its proposed revisions, after the guidelines are finalised.

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<sup>20</sup> Consultation Paper, p6

<sup>21</sup> Consultation Paper, p16

This timetable is shown (in simplified form) in **Figure 1**:



(b) *ATCO's opposition in summary form*

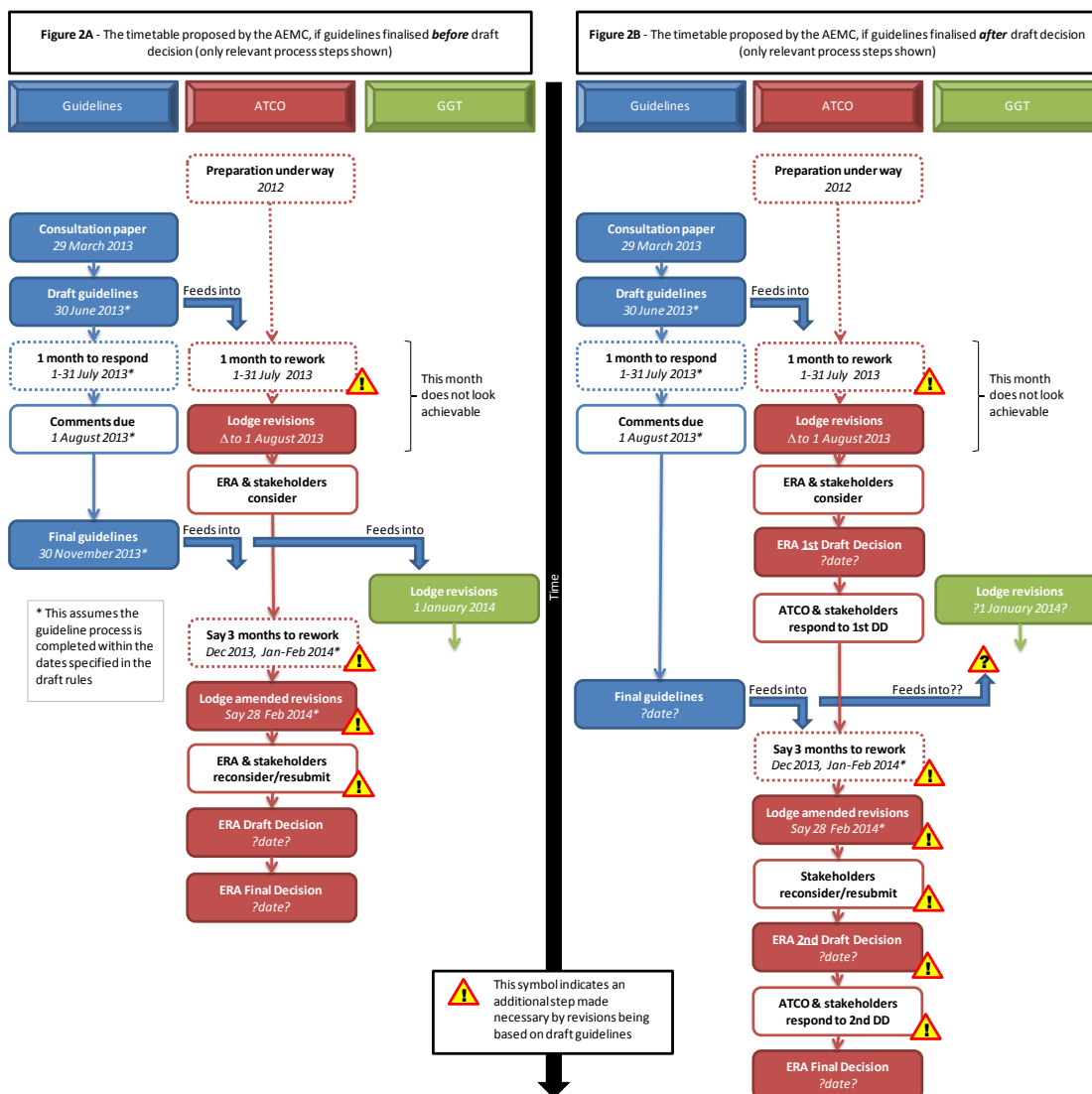
ATCO opposes this proposal as being inconsistent with the NGO and RPPs for two key reasons:

- it requires ATCO to prepare and submit its revisions based only on draft guidelines which ATCO submits would be inefficient and imprudent, poor process, require complex transitional rules and likely delay the revisions anyway (see section 3.2).
- it allows ATCO only one month to adapt its proposed revisions to the draft guidelines, which is simply not achievable (see section 3.3).

**Figures 2A and 2B** (over page) represent the AEMC's proposed process in more complete form, highlighting the additional steps which it makes necessary. Figure 2A deals with the most likely scenario, which the guidelines are finalised **before** a draft decision is issued on the access arrangement revisions. In Figure 2B the guidelines are not finalised until **after** the draft decision is issued.<sup>22</sup>

<sup>22</sup> The pressure on the ERA to issue a draft decision would start to increase, if the guidelines were significantly delayed for any reason. The ERA would feel pressure to decouple the revisions from the guidelines, in order to prevent there being two stalled processes concurrently. Such decoupling might be justified on the basis that the access arrangement revisions are more urgent in order to get tariff certainty, whereas the guidelines can be finalised on a less rushed timetable.

Although complex, this schematic helps illustrate some of the timing difficulties, complexities and inefficiencies of a proposal in which the NSP must lodge before the guidelines are finalised.



(c) *The basis of the AEMC’s proposal*

The AEMC wishes to ensure “*practicality, timing and procedural fairness*”.<sup>23</sup> ATCO seeks in this section 3 to assess the AEMC’s proposal against these factors.

**3.2 The proposal that ATCO lodge revisions based only on *draft* guidelines**

The AEMC has indicated that the guidelines are “*critical to the overall operation of the rules*”.<sup>24</sup> ATCO generally supports the concept of guidelines, although has in its main submission identified some areas in which the use of

<sup>23</sup> Consultation Paper, p6.

<sup>24</sup> Consultation Paper, p8



guidelines may cause difficulties. But it is undeniable that guidelines are a highly relevant and influential part of setting the rate of return.<sup>25</sup>

In the following paragraphs ATCO highlights a number of serious deficiencies in the proposal that it be required to lodge based on draft guidelines only. In light of these deficiencies, there can be no sound policy reason to require an NSP to prepare and lodge its proposed revisions based only upon draft guidelines. The historical accident that an NSP's review submission date happens to fall between the scheduled publication of draft guidelines and the finalisation of the guidelines is not an adequate or even relevant consideration. The NGL includes a power for the AEMC to make transitional rules for precisely this sort of reason.<sup>26</sup>

(a) *This approach would be inefficient*

The approach is clearly inefficient and in direct conflict with the NGL. The inefficiency for the NSP is of two types:

- first, to the extent that the guidelines change from draft to final, some work done in respect of the draft guidelines will be wasted;
- second, for reasons described in section 2.3(b), even if the final guidelines substantially resemble the draft guidelines, much of the work undertaken in relation to the draft guidelines will need to be repeated for the finalised guidelines, a significant duplication of effort.

Identical inefficiencies would arise in respect of the regulator's assessment of the proposed revisions, for all stakeholders – some of their work will be wasted and some duplicated.

(b) *It is a poor process*

The guidelines are proposed to be prepared through a transparent public consultation process in which all stakeholders can participate, including consumer representatives. The guideline-setting process would necessarily and appropriately be conducted at a higher level of generality than a typical access arrangement revision process.

This can be contrasted with the (normally) separate access arrangement revision process for a given NSP, which is of course focussed on the NSP's particular circumstances.

The AEMC's transitional proposal for ATCO is to intertwine these two conceptually different processes. ATCO anticipates the following problems:

- The strain on all participants' resources will be high.

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<sup>25</sup> In contrast **draft guidelines** are of very limited significance and value, in terms of preparing proposed revisions. They may or may not indicate the content of the finalised guidelines, but as a matter of both logic and practical experience there can be material changes between draft and final guidelines. Indeed the second round of consultation would have no value if such changes were not a real possibility.

<sup>26</sup> National Gas Law, s74(3)(o)

- Consumer groups will be unavoidably drawn into the parallel NSP review process, which is directly contrary to one of the AEMC's objectives in creating the guidelines.<sup>27</sup>
- Pragmatically, there is considerable risk of confusion, duplication and inadvertent cross-over between the two processes.
- This practical issue highlights a potentially serious legal complication. The regulator as a matter of administrative law must assess what material is properly before it in each process.<sup>28</sup>

Further, the group of legitimately interested stakeholders will be different for the two processes. Major transmission users such as power generators and miners would be legitimate participants in the guidelines process (because the guidelines will also affect the transmission pipelines) but would have less standing, and their submissions would be given appropriately less weight, when it comes to ATCO's gas distribution revisions.

The Consultation Paper effectively summarises the problem in relation to the NEL:

*"... by reducing the overlap of regulatory determination processes, there should be less likelihood of an adverse impact on the quality of the AER's decisions. Higher quality decisions promote confidence in the regulatory regime and in turn encourage efficient investment. This should contribute to achieving the NEO."<sup>29</sup>*

ATCO's alternative proposal in section 4 is designed to achieve this result.

(c) *It will require complex consequential rules*

The transitional rules will need to allow the NSP a right (and sufficient time, see section 2.3) to amend its proposed revisions, once the guidelines are finalised.

If the guidelines are finalised **before** the access arrangement draft decision, the transitional rules will need to stop the normal clocks, and allow the NSP time to revise and resubmit its proposal. These rules must displace the normal rule 58(3) requirement for the ERA's consent.<sup>30</sup> The rules would then need to allow a further stopped-clock period for stakeholders to make submissions on the amended revisions.

If the guidelines are finalised **after** the access arrangement draft decision, the position will be substantially more complex. In addition to the time granted to the NSP and stakeholders as just described, the ERA will need to reconsider and reissue its draft decision, and all stakeholders will then need to further respond to the second draft decision. These rules must displace the normal

<sup>27</sup> Draft Determination, p59

<sup>28</sup> Also, in the event of any application for review, the task of identifying what is "review related matter" may become complex.

<sup>29</sup> Consultation Paper, p9

<sup>30</sup> It would be entirely inappropriate for the AER to be given a discretion whether to allow the NSP to lodge revisions, when the revisions are occasioned by the AER's own guidelines. Indeed if any areas of the guidelines had been controversial, the AER would face a difficult conflict of interest if the NSP proposed amendment to its access arrangement revisions were to include justifications for a departure from those controversial guidelines.

rule 60(2) limitations which constrain the issues that the NSP may raise without the ERA's consent to only matters arising from the (first) draft decision. Here the NSP must also be free to propose changes as a result of the finalised guidelines. It may prove difficult to draft such a rule, without substantially undermining the original intent of rule 60(2).

At the boundaries there will be disagreements as to whether a proposed amendment to the revisions or a submission is or is not occasioned by the finalisation of the guidelines. Such disagreements would be complex to resolve, and would add further delay.

If the AEMC judges that it is too complex and uncertain to allow a draft decision to be issued before the guidelines are finalised, the transitional rules will need to stop all clocks on the access arrangement revisions indefinitely, pending guidelines finalisation. The disadvantage of this is that the access arrangement would go into limbo for an indefinite period. Indeed, this could eliminate whatever timing benefit was hoped to be gained by running the processes concurrently.

Further, it will be essential for the rules to clarify what use the regulator (or the ACT) can make of documents lodged before the guidelines were finalised, if they have been withdrawn or amended after the guidelines were finalised. This raises difficult issues of transparency versus procedural fairness.

(d) *It will almost certainly delay the access arrangement revisions anyway*

ATCO predicts that the AEMC's proposal for revisions to be assessed concurrently with the guideline-setting process will substantially prolong the access arrangement revision process, for the following reasons:

- Regulators and NSPs already find it challenging to complete a normal revisions process within a 12 month period. Under the AEMC's proposal the risk of all types of delay is higher, due to the increased demands on personnel, advisers and consultants, and the overlapping nature of the two processes.
- Plus, the transitional rules must insert additional steps (and hence time) into the revisions process, for the NSP, stakeholders and possibly the ERA to respond to the finalised guidelines.

It is in fact quite possible that this concurrent process could take almost as long as the combined length of the two processes if they were conducted consecutively, but would more likely produce a low-quality result.

### **3.3 The proposal that ATCO be given only 1 month to adapt its proposed revisions**

ATCO does not support the AEMC's proposal that ATCO submit its proposed revisions just one month after the draft guidelines are released (assuming they are released as per the scheduled time frames).<sup>31</sup>

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<sup>31</sup> Consultation Paper, p16

(a) *The revisions will be largely finalised by the start of the last month*

It is a substantial task to prepare and lodge access arrangement revisions. The process typically commences more than 12 months before the review submission date. One of the most important issues is of course the rate of return, so a considerable amount of the work is potentially affected by the guidelines.

One month out from submission, the great majority of this work will already have been completed. This raises two points:

- First, all that work will have been done without the benefit of even draft guidelines. This is neither prudent nor efficient.
- Second, the AEMC proposes that a significant amount of this year-long work will need to be reconsidered, and may be rendered irrelevant or incorrect, 30 days before submission. There simply would not be enough time for ATCO to do this job adequately in 30 days. ATCO would be enormously disadvantaged by this process.

(b) *The proposal takes no account of the NSP's internal approval processes*

The access arrangement is of course a critical business document for ATCO. Hence the proposed revisions require sign-off from the highest levels of ATCO group management. As with all senior management decisions, papers must be circulated well ahead of the relevant meeting.<sup>32</sup>

In ATCO's case, depending on internal meeting schedules, it is anticipated that the internal approvals process could take a minimum of 2 weeks to complete.

(c) *The month runs concurrently with a submission period in the guidelines process*

The AEMC has proposed a 30 day consultation period after draft guidelines are issued. This is proposed to run concurrently with the month during which ATCO must adapt its revisions to the draft guidelines. ATCO would be at a great logistical disadvantage in responding to the draft guidelines.

(d) *It assumes the guidelines process runs on time*

If for any reason the ERA is late issuing its draft guidelines, the above issues will be exacerbated. If the ERA is more than a month late, ATCO would be forced to lodge blind, without even draft guidelines to assist it. This would place it at an enormous disadvantage and the proposed revisions would also be of very limited value for the ERA and stakeholders, who would be forced to hold back until ATCO later updates them to match the final guidelines.

The transitional rules could say that the review submission date may be deferred if the draft guidelines are late. But if they only allow ATCO one month after the draft guidelines, this deferral would not be adequate to allow

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<sup>32</sup> As noted earlier, normal principles of corporate governance follow the '10 day rule'.

ATCO to complete its review. In section 4 ATCO proposes a more suitable alternative.

### **3.4 Summary regarding the AEMC's proposal**

In summary, under this proposal:

- Almost all of ATCO's revisions preparation would be done without even draft guidelines available to assist.
- Then, in the final month before revisions submission (assuming the draft guidelines are issued on time), ATCO would need to: comprehend the draft guidelines; devise appropriate amendments to the draft revisions; seek, receive and assimilate expert advice and consultants' reports; draft amendments to the revisions, the financial models and all supporting materials; obtain all internal approvals; and lodge its amended proposed revisions.
- Ironically, all this effort would go to produce a document that was at risk of later being rendered partially or substantially irrelevant, when the guidelines are finalised.
- At that later stage ATCO would need to go through the same process again (including advice, consultants and internal approvals), to update the revisions for the finalised guidelines.
- Then stakeholders and the ERA would also need to redo their assessments.

The process will work even less satisfactorily if the ERA is unable to issue its draft guidelines before 30 August 2013.

## **4. ATCO's alternative proposal**

ATCO submits that it will be risky, cumbersome, potentially unworkable, and inconsistent with the NGO and RPPs to require it to submit its revisions in the absence of finalised guidelines, and to require it to do so just one month after draft guidelines are published.

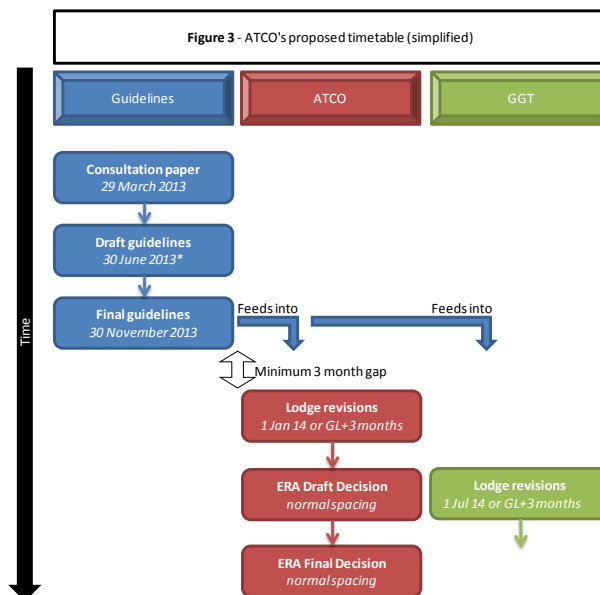
### **4.1 Proposal: Defer ATCO's lodgement until 3 months after finalised guidelines are available**

ATCO proposes instead that the transitional rules provide that ATCO's review submission date be postponed to whichever is later of:

- **1 January 2014** (i.e. a deferral of 6 months compared with the current date); or
- a date which is at least **3 months after guidelines are finalised** (i.e. to ensure ATCO has adequate, if minimum, time to adapt its revisions as described in section 2.3 above).

Although GGT's treatment is largely a matter between GGT and AEMC, ATCO suggests that a similar approach could be adopted for GGT's review submission date.

Figure 3 shows a simplified schematic of this proposal:



A comparison between ATCO's proposed Figure 3, and the AEMC's proposal outlined in Figures 2A and 2B on page 7, highlights the simplicity of this alternative.

## 4.2 Benefits of this proposal

This proposal separates out the guidelines process from the access arrangement revision process, avoiding the numerous inefficiencies and problems described in section 3 above.

It allows ATCO adequate, if tight, time to respond properly to the final guidelines **before** its proposed revisions are lodged. Thus there is no inefficient wasted or duplicated effort for the ERA or stakeholders in responding to the original version of ATCO's proposed revisions.

It allows the ERA to focus its resources on finalising the guidelines, during a window of availability when it was originally expecting to be reviewing ATCO's proposed revisions.

It preserves the ERA's existing work program, just offset by a period of 6 months (or more if the guidelines take longer to finalise).

It avoids the need for very complex transitional rules dealing with how the access arrangement revision process should be changed and suspended to allow mid-review adjustments for finalised guidelines.

It would be possible to some extent to achieve all of these outcomes using just the second limb of ATCO's proposal, i.e. deferral until 3 months after the guidelines are finalised. The first limb is included, and is essential, to allow planning certainty for ATCO, the ERA and all stakeholders. ATCO in

particular needs to be able to program the substantial revisions project by reference to a target date which must be known much more than 3 months in advance, even if that date must later be deferred because the guidelines are delayed.

### 4.3 Why 6 months?

Another possibility would be to defer ATCO's review submission date by 12 months as the AEMC has proposed for the TNSPs and DNSPs. ATCO does not support this, unless it is made necessary by the length of time the ERA requires to finalise guidelines. A 12 month deferral, coupled with a 12 month review period (assuming no extra time is required), means that the adjustment under rule 92(3)(b) must be spread over only 3 years of the access arrangement period, increasing the risk of price shocks at either end of the adjustment period. ATCO therefore requests 6 months, as the shortest practicable time for a fixed extension, but preserving the second limb of its proposal to ensure it always has at least 3 months to respond to the final guidelines.

### 4.4 Treatment of tariffs during any deferral

A consequence of ATCO's proposal is that the access arrangement review process is unlikely to be complete by the existing revisions commencement date of 1 July 2014. This raises the question of what should be done in respect of tariffs, for the interim period starting on 1 July 2014 and ending when the revisions take effect. Existing rule 92(3) provides a template mechanism to deal with ATCO's and GGT's tariffs during any period of deferral.<sup>33</sup>

ATCO suggests that the transitional rules provide simply that:

- the deferral of ATCO's and GGT's review commencement dates counts as an "interval of delay" under rule 92(3);
- the carried-forward tariff for GGT will be that applying under GGT's access arrangement on 30 December 2014;
- a similar provision for ATCO, freezing tariffs at what is being paid on 30 June 2014.

The 'truing up' mechanism in rule 92(3)(b) would then operate in the normal way for both NSPs, to produce a neutral result in net present value terms.

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<sup>33</sup> Rule 92(3) was introduced to address exactly this concern, ie. what happens if the commencement of revisions is delayed. The MCE Standing Committee of Officials stated in its response to stakeholder consultations on the National Gas Rules:

*"[rule 92(3) will] ... allow existing reference tariffs to be continued without adjustment. Pipelines will be compensated for any CPI adjustments in the next access arrangement. Officials agreed that this is necessary to balance the need to provide regulatory certainty in the event of a delay, with appropriate incentives for businesses and the AER to complete access arrangement negotiations on time (emphasis added)."* [SCO response to stakeholder consultations on the National Gas Rules, see [this link](#).]

# Schedule 1

## Glossary/Abbreviations

AA	Access Arrangement
ACT	Australian Competition Tribunal
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
ATCO	ATCO Gas Australia Pty Ltd
Capex	Capital expenditure
DNSP	Distribution Network Service Provider
ERA	Economic Regulation Authority of Western Australia
GGT	Goldfields Gas Transmission Pty Ltd
Guidelines	Rate of return guidelines made by the ERA under new rule 87 of the NGR
MWSWGDS	Mid West and South West Gas Distribution System
NEL	National Electricity Law
NGL	National Gas Law
NGO	National Gas Objective
NGR	National Gas Rules
NSP	Network Service Provider
RPP's	Revenue and Pricing Principles
Regulator	See ERA and AER
TNSP	Transmission Network Service Provider



## Schedule 2

# ATCO's suggested drafting of transitional rules for Western Australia

**Part 5**      **Transitional provisions consequent on the National Gas  
Amendment (Price and Revenue Regulation of Gas Services)  
Rule 2012**

**33**            **Definitions**

In this Part:

**Affected NSP** means *ATCO* or *GGT*.

**ATCO** means ATCO Gas Australia Pty Ltd ACN 089 531 975.

**GGT** means Goldfields Gas Transmission Pty Ltd ACN 004 273 24.

**33**            **Deferral of ATCO's review submission date**

*ATCO's review submission date* will be deferred until the later of:

- (a) 6 months after the *review submission date* fixed in the *affected NSP's* access arrangement; or
- (b) 3 months after the first *rate of return guidelines* are made under subrule 87[X]; and

**34**            **Deferral of GGT's review submission date**

*[This is a matter for the AEMC and GGT to settle. However, ATCO envisages a similar rule to proposed rule 33 above.]*

**35**            **Delay of affected NSP's revisions commencement**

If there is an interval (interval of delay) between an *affected NSP's revision commencement date for an applicable access arrangement* and the date on which revisions to the access arrangement actually commence:

- (a) reference tariffs, as in force at the end of the *affected NSP's* previous *access arrangement period*, continue without variation for the interval of delay; but
- (b) the operation of this rule 35 may be taken into account in fixing reference tariffs for the new *access arrangement period*.