



Australian Energy Market Commission

DRAFT RULE DETERMINATION

National Gas Amendment (Reference service and rebateable service definitions) Rule 2012

Rule Proponent

The Australian Energy Regulator

Commissioners

Pierce
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Spalding

15 March 2012

JOHN PIERCE

Chairman

For and on behalf of the Australian Energy Market Commission

**RULE
CHANGE**

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About the AEMC

The Council of Australian Governments, through its Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005. The AEMC has two principal functions. We make and amend the national electricity and gas rules, and we conduct independent reviews of the energy markets for the MCE.

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Summary of draft rule determination

The Commission has made this draft rule determination in response to the reference service and rebateable service definitions rule change request (rule change request) submitted by the Australian Energy Regulator (AER) on 5 August 2011.

The rule change request seeks to allow more flexibility in the regulatory treatment of pipeline services in the National Gas Rules (NGR) in order to better ensure that prices for regulated services are efficient and cost reflective.

The AER stated that the current definition of a reference service does not provide sufficient flexibility for the regulatory treatment of pipeline services (such as backhaul and interruptible services) as it requires all pipeline services that are likely to be sought by a significant part of the market to be included in an access arrangement. The AER's proposal would have the effect of ensuring that at least one pipeline service that is likely to be sought by a significant part of the market be included in an access arrangement. Without the proposed change to the NGR, the AER considers that the application of the current definition is likely to result in access arrangement decisions which, in some circumstances, do not provide incentives for the most efficient investment in, and use of, pipeline services.

In relation to the rebateable service definition, the current definition requires that the market for a rebateable service be substantially different from the market for any reference service. The AER considers that this requirement should be removed as it may prevent revenue from other pipeline services being rebated to users of a reference service, even when it is efficient to do so having regard to the appropriate allocation of costs between users of pipeline services. The intention of the proposed rule change is to broaden the definition so that more pipeline services may be classified as rebateable services than is currently possible.

The AER has submitted that the proposed rule will address its specific concern about the revenue earned from AMDQ credit certificates (AMDQ cc) in the Victorian Declared Transmission System (DTS). It considers that APA GasNet (the service provider of the Victorian DTS) is recovering more than its efficient pipeline costs because of the revenue earned from AMDQ cc. The AER has submitted that the proposed rule will allow AMDQ cc to be treated as a rebateable service. This would have the effect of requiring revenue earned from the sale of AMDQ cc to be rebated against revenue from the reference services on the Victorian DTS, thereby reducing the reference tariff and limiting APA GasNet's over-recovery of revenue.

Commission's decision

The Commission's draft rule amends the current definition of a reference service in the NGR. It provides the regulator with some discretion (limited by the revenue and pricing principles) in considering the appropriate regulatory treatment of pipeline services that are likely to be sought by a significant part of the market.

The Commission has decided to make a draft rule which is a more preferable rule to the AER's proposed rule. The draft rule differs from the proposed rule in that it only makes changes to the reference service definition. It requires the AER to take into account the revenue and pricing principles in making a decision about reference services. The draft rule also includes a consequential rule change resulting from the changes to the reference service definition. The draft rule does not amend the current rebateable service definition.

This draft rule applies to all natural gas pipelines that are, or may be, subject to full regulation by the AER or the Economic Regulatory Authority of Western Australia (ERA).

Reasons for the Commission's decision

The Commission is making a more preferable rule as it considers that it is likely to better contribute to the achievement of the NGR than the proposed rule. In particular, the draft rule will better promote:

- the efficient use of and investment in pipeline services. When significant uncertainty exists as to the revenue and demand for a pipeline service, the draft rule reduces the likelihood that inefficient tariffs are set for that service; and
- the long term interests of consumers with respect to price and security of gas supply by allowing the AER to decide whether a pipeline service sought by a significant part of the market is a reference service. As a result, the AER will not be required to set a tariff for the relevant service which in certain circumstances may not be reflective of efficient costs.

The draft rule will provide regulators with discretion to accommodate the particular circumstances of a pipeline and the services it offers. It will allow regulators to recognise that in some circumstances market mechanisms, rather than setting a reference tariff in accordance with the NGR, may be better at determining the price for, and allocation of, a pipeline service that is likely to be sought by a significant part of the market. As a result, the draft rule should not increase investment risk on regulated pipelines. Instead, it may aid investment by providing service providers with relevant and appropriate pricing signals.

Invitation for submissions

The Commission invites public submissions on this draft rule determination by 26 April 2012. See section 1.5 for details on how to make a submission and how to request a public hearing on this draft rule determination.

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1 AER's rule change request

1.1 The rule change request

On 5 August 2011, the Australian Energy Regulator (AER or rule proponent) made a request to the Australian Energy Market Commission (Commission) to make a rule change regarding the definitions of reference service and rebateable service (rule change request).

1.2 Rationale for rule change request

In this rule change request the rule proponent seeks to amend the definitions of reference service and rebateable service to provide more flexibility in the regulatory treatment of pipeline services. A number of key points raised in the rule change request are summarised as follows.

In relation to the reference service definition, the AER stated that:

- currently all pipeline services are defined as reference services if they are likely to be sought by a significant part of the market;
- the proposed rule change includes the requirement that at least one pipeline service that is likely to be sought by a significant part of the market be included in an access arrangement. This requirement previously existed under the National Third Party Access Code for Natural Gas Pipeline Systems (Gas Code);
- the current definition does not provide flexibility for the regulatory treatment of pipeline services (such as backhaul and interruptible services) as either reference or rebateable services or neither;
- this flexibility previously existed under the Gas Code and was removed in the transfer to the National Gas Rules (NGR); and
- the application of the current definition is likely to result in access arrangement decisions which, in some circumstances, do not provide incentives for the most efficient investment in, and use of, pipeline services.

In relation to the rebateable service definition, the AER stated that:

- currently, the definition requires that the market for a rebateable service be substantially different from the market for any reference service;
- the current requirement may prevent revenue from other pipeline services being rebated to users, even when it is efficient to do so;
- in circumstances where there is a high level of uncertainty of revenue and demand for a pipeline service or where there is uncertainty due to commercial and technical arrangements, the regulator should have discretion to decide

whether a pipeline service is a rebateable service that is negotiated with users, a reference service, or neither; and

- the use of the current definition is likely to result in access arrangement decisions which are contrary to the long term interests of consumers with respect to price.

1.2.1 Specific issue the rule change is seeking to address

The AER submitted that the proposed rule change will address a specific issue that it anticipates will arise in the forthcoming APA GasNet access arrangement review. The service provider, APA GasNet Australia (Operations) Pty Limited (APA GasNet) is due to submit a revised access arrangement proposal by 31 March 2012 for the Victorian Declared Transmission System (DTS) for assessment and approval.

APA GasNet's access arrangement extends for a period of five years and sets out tariffs, terms and conditions and non-tariff policies and elements for pipeline services that have been identified as reference services. Under the current access arrangement, pipeline services that are considered as likely to be sought by a significant part of the market (that is, reference services) are the gas transportation services that are provided to users in agreements made in accordance with the Market System Operating (MSO) rules.¹ The MSO rules are now contained in Part 19 of the NGR – the Declared Wholesale Gas Market (DWGM) rules.

The specific issue about the APA GasNet access arrangement that concerns the AER is whether AMDQ credit certificates (AMDQ cc) should be treated as a reference service or as a rebateable service.² AMDQ cc provide preferential rights to holders (shippers or pipeline users) for specified amounts of pipeline capacity when the transmission system becomes constrained. AMDQ cc are specific to a certain injection point and are sold to users by APA GasNet through a tender process. The AER's view is that under the current rules AMDQ cc would be regarded as a reference service as they are likely to be sought by a significant part of the market. This would require a reference tariff to be set. However, the AER does not consider this task as technically feasible. Consequently, it would prefer to have the AMDQ cc service classified as a rebateable service in the forthcoming revised access arrangement.

The AER submitted that APA GasNet has already contracted AMDQ cc with a significant part of the market for the 2013-17 access arrangement period. Under these circumstances if AMDQ cc are not treated as a rebateable service, then the AER considers that APA GasNet may over recover its pipeline costs by selling unused contracted capacity and that this revenue will not be subsequently rebated to users of the reference service. Also, the AER is concerned that APA GasNet will retain all additional revenue resulting from the sale of AMDQ cc at a price that is above the relevant reference tariff. According to the AER, the combined impact of these effects

¹ APA Group, *GasNet Australia access arrangement*, approved 25 June 2008, commencement date 1 January 2008, pp3 and 17.

² AMDQ cc only exist in the Victorian Declared Transmission System. A description of AMDQ cc is provided at Appendix A.

would result in APA GasNet recovering and retaining higher revenue than that set as the target regulated revenue under the access arrangement.³

1.3 Solution proposed in the rule change request

The AER proposed to resolve the issue discussed above by making a rule that amends both the reference service and rebateable service definitions in the NGR. The proposed rule seeks to:

- amend the definition of a reference service in rule 101 of the NGR by:
 - removing the requirement that a full access arrangement must specify all reference services (being pipeline services sought by a significant part of the market);
 - including the requirement that a full access arrangement must specify as a reference service at least one pipeline service likely to be sought by a significant part of the market; and
 - allowing the relevant regulator discretion in determining what other pipeline services that are likely to be sought by a significant part of the market should be included as a reference service.
- amend the definition of a rebateable service in rule 93(4) of the NGR by:
 - removing the requirement that the market for such a service be substantially different to the market for any reference service; and
 - providing that a service that is not a reference service may be a rebateable service if either substantial uncertainty exists concerning the extent of demand for the service, or the revenue to be generated or it is not commercially and technically reasonable to set a reference tariff for such a service.

The proponent's rule change request includes a proposed draft rule.

The effect of the proposed rule change would be to allow the AER to determine which pipeline services can be classified as reference services, rebateable services, or neither. In the AER's opinion, this discretion would better ensure that tariffs for regulated services are efficient and cost reflective.

The proposed rule change would apply to all covered pipelines that are, or may be, fully regulated by either the AER or the Economic Regulation Authority (ERA) of Western Australia.

³ While reference tariffs are required to be approved by the AER, the level of the target revenue established under its access arrangement is important for APA GasNet. This is because the revenue approach it uses is an average revenue yield. APA Group, *GasNet access arrangement submission*, 14 May 2007, pp104-107.

1.4 Commencement of rule making process

On 6 October 2011, the Commission published a notice under s. 303 of the National Gas Law (NGL) advising of its intention to commence the rule making process and the first round of consultation in respect of the rule change request. A consultation paper prepared by AEMC staff identifying specific issues and questions for consultation was published with the rule change request. Submissions closed on 3 November 2011.

Eight submissions on the rule change request were received as part of the first round of consultation. They are available on the AEMC website.⁴ The submission from DBNGP (WA) Transmission Pty Ltd (DBP) has had confidential information omitted as a result of the Commission accepting a claim of confidentiality by the stakeholder. A summary of the issues raised in all submissions, and the Commission's response to each issue, is contained in Appendix B.

On 22 December 2011, the Commission decided under s. 317 of the NGL to extend the period of time for the making of the draft rule determination to 15 March 2012. The reason for this decision was to allow time for it to consider a number of complex and difficult issues that were raised in submissions.

1.5 Consultation on draft rule determination

In accordance with the notice published under s. 308 of the NGL, the Commission invites submissions on this draft rule determination, including the draft rule, by 26 April 2012.

In accordance with s. 310(2) of the NGL, any person or body may request that the Commission hold a hearing in relation to the draft rule determination. Any request for a hearing must be made in writing and must be received by the Commission no later than 22 March 2012.

Submissions and requests for a hearing should quote project number "GRC0012" and may be lodged online at www.aemc.gov.au or by mail to:

Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

⁴ www.aemc.gov.au

2 Draft rule determination

2.1 Commission's draft determination

In accordance with s. 308 of the NGL, the Commission has made this draft rule determination in response to the rule proposed by the AER.

The Commission's draft determination is that it should not make the proposed rule but should instead make a more preferable rule.⁵ The more preferable rule incorporates changes to the reference service definition in terms similar to that proposed in the AER's rule change request. It also includes changes to rule 59(2) that are consequential to the changes to the reference service definition. However, the more preferable rule does not include any amendments to the rebateable service definition.

The Commission's draft rule is attached to and published with this draft rule determination. Its key features are described in section 3.2 of this draft determination.

2.2 Commission's considerations

In assessing the rule change request the Commission considered:

- the Commission's powers under the NGL to make the rule;
- the rule change request;
- submissions received during first round consultation;
- other information relevant to the rule change request; and
- the Commission's analysis as to the ways in which the proposed rule will, or is likely to, contribute to the national gas objective (NGO).

There is no relevant Ministerial Council on Energy (MCE) Statement of Policy Principles relating to this rule change request.⁶

2.3 Commission's power to make the rule

The Commission is satisfied that the draft rule falls within the subject matter about which the Commission may make rules. It falls within s. 74 of the NGL as it relates to

⁵ Under s. 296 of the NGL, the AEMC may make a rule that is different (including materially different) from a market initiated proposed rule (a more preferable rule) if it is satisfied that having regard to the issue or issues that were raised by the market initiated proposed rule (to which the more preferable rule relates), the more preferable rule will or is likely to, better contribute to the achievement of the national gas objective.

⁶ Under s. 73 of the NGL, the AEMC must have regard to any relevant MCE statement of policy principles in making a rule.

regulating access to and the provision of pipeline services. Further, the draft rule falls within the matters set out in schedule 1 to the NGL, including:

- item 17, because it relates to the regulation of access to pipeline services provided by means of a scheme pipeline;
- item 28(a), because it relates to pipeline services including reference services that are provided or may be provided by means of a scheme pipeline which are described in an applicable access arrangement; and
- item 69, because it relates to the specification of pipeline services as reference services.

2.4 Rule making test

Under s. 291(1) of the NGL the Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the NGO. This is the decision making framework that the Commission must apply.

The NGO is set out in s. 23 of the NGL as follows:

“The objective of this Law is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.”

Under s. 291(2) of the NGL, for the purposes of s. 291(1) of the NGL the AEMC may give such weight to any aspect of the NGO as it considers appropriate in all the circumstances, having regard to any relevant MCE statement of policy principles.⁷

For this rule change request, the relevant aspect of the NGO is the efficient investment in and use of natural gas services for the long term interests of consumers of natural gas with respect to price and security of supply.

The Commission is satisfied that the draft rule will, or is likely to, contribute to the achievement of the NGO because it will promote:

- the efficient use of and investment in pipeline services. When significant uncertainty exists as to the revenue and demand for a pipeline service, the draft rule reduces the likelihood that inefficient tariffs are set for that service; and
- the long term interests of consumers with respect to price and security of gas supply by allowing the AER to decide whether a pipeline service sought by a significant part of the market is a reference service. As a result, the AER will not be required to set a tariff for the relevant service which in certain circumstances may not be reflective of efficient costs.

⁷ In this instance, there is no relevant MCE statement of policy principles.

The Commission considers that the draft rule will not increase investment risk on other regulated pipelines (that is, other than the Victorian DTS). It will allow regulators to accommodate circumstances where it is problematic to set a reference tariff due to the uncertainty of demand and/or revenue; or where it is inappropriate to set a reference tariff due to technical and/or commercial arrangements. In these cases, the regulator may find that market mechanisms, rather than a reference tariff, may be better at determining the price for and allocation of a pipeline service.

One example of a service where the setting of a reference tariff may be inappropriate is APA GasNet's AMDQ cc. In this instance, it may be inappropriate to set a reference tariff due to existing commercial arrangements. If a reference tariff is set for the AMDQ cc service, then it may distort pipeline investment and the allocation of AMDQ cc. A reference tariff for AMDQ cc may not reflect efficient costs and could therefore lead to the over or under utilisation of and investment in pipeline services.

2.5 More preferable rule

Under s. 296 of the NGL, the AEMC may make a rule that is different (including materially different) from a proposed rule (a more preferable rule) if the AEMC is satisfied that, having regard to the issue or issues that were raised by the market initiated proposed rule (to which the more preferable rule relates), the more preferable rule will or is likely to better contribute to the achievement of the NGO.

The Commission has considered the issues raised by the rule proponent in the rule change request as well as the issues raised by stakeholders in submissions. It has concluded that the draft rule (a more preferable rule) will, or is likely to, better contribute to the NGO because it will better promote efficient investment in pipeline services which will promote the long term interests of consumers with respect to price and security of gas supply.

2.6 Other requirements under the NGL

2.6.1 Section 292(a) of the NGL

Under s. 292(a) of the NGL, the Commission must take into account the form of regulation factors⁸ when making a rule that:

- specifies a pipeline service as a reference service; or
- confers a function or power on the AER to specify a pipeline service as a reference service when making a full access arrangement decision.

The Commission has considered the form of regulation factors in making the draft rule. In broad terms, the form of regulation factors, require an assessment to be made of the

⁸ NGL, s. 16.

potential for market power to be exploited by a service provider in determining how pipeline services provided by means of a full regulation pipeline are to be regulated.

The draft rule provides some discretion to the AER in approving what pipeline services are specified as reference services in an access arrangement. This recognises that although a pipeline service may be sought, or be likely to be sought, by a significant part of the market, it would not always be appropriate to define the service as a reference service (and, as a consequence, have to establish a reference tariff). That is, under the draft rule, the AER would be able to decide that the level of economic regulation applied to a pipeline service should be less than it would otherwise be subject to if it was defined as a reference service. In using this discretion the AER will have regard to the revenue and pricing principles.

This level of discretion is appropriate for the AER. It provides the opportunity for the AER to establish a more appropriately tailored level of economic regulation to pipeline services having regard to the features of the particular pipeline service.

2.6.2 Section 293 of the NGL

Under s. 293 of the NGL, the Commission must take into account the revenue and pricing principles when making a rule for or with respect to any matter or thing specified in items 40 to 48 of schedule 1 of the NGL. Items 40 to 48 relate to regulatory economic methodologies.

The Commission considers that because the draft rule is not directly related to items 40 to 48 of schedule 1 of the NGL, it is not required to take into account the revenue and pricing principles when making this rule. However, the Commission considers that the draft rule will enhance the AER's ability to make access arrangement decisions that are in accordance with the revenue and pricing principles.

2.6.3 Section 295(4) of the NGL

Under s. 295(4) of the NGL, the Commission may only make a rule that has effect with respect to an adoptive jurisdiction if it is satisfied that the rule as made is compatible with the proper performance of AEMO's declared system functions.⁹

The Commission considers that the draft rule will not impact on AEMO's declared system functions as it relates to economic regulation of service providers and does not change the operation of the Victorian DTS or DWGM.

2.6.4 Section 295(5) of the NGL

Under s. 295(5) of the NGL, the Commission may only make a rule that affects the allocation of powers, functions and duties between AEMO and a service provider for a

⁹ AEMO's declared system functions are specified in s. 91BA of the NGL.

declared transmission system if AEMO consents to the making of the rule or the rule is requested by the Minister of the relevant adoptive jurisdiction.¹⁰

In relation to this rule change request, there is no requirement under s. 295(5) of the NGL for AEMO to consent to the Commission making this rule. This is because the draft rule does not affect the allocation of powers, functions and duties between AEMO and a service provider for a declared transmission system.

2.7 Participating jurisdictions

The rules as made will apply to each participating jurisdiction including Western Australia. Under s. 21 of the NGL, the participating jurisdictions are the States, the Commonwealth, the Australian Capital Territory and the Northern Territory. The draft rule applies in Western Australia as it falls within the subject matters about which the Commission may make rules under the *National Gas Access (WA) Act 2009* of Western Australia.

¹⁰ The declared transmission system is the set of transmission pipelines for the declared wholesale gas market in Victoria.

3 Commission's reasons

The Commission has analysed the rule change request and assessed the issues arising from it. For the reasons set out below, the Commission has determined that a draft rule (a more preferable rule) be made. Its analysis of the proposed rule and the differences between the proposed rule and the draft rule are set out below.

3.1 Assessment of issues

In submitting the rule change request, the AER sought to provide more flexibility in the regulatory treatment of pipeline services. This would be achieved by amending the definitions of reference services and rebateable services to:

- provide the AER discretion in determining what pipeline services sought by a significant part of the market may be classified as reference services; and
- broaden the definition of rebateable services so that services which cannot currently be classified as rebateable services (such as AMDQ cc) may be defined as rebateable services.

The AER has presented the amendments to the two definitions as a package to address its specific concern about the revenue APA GasNet generates from providing AMDQ cc on the Victorian DTS. The AER's concern is that APA GasNet is over-recovering on its efficient pipeline costs because of the revenue earned from AMDQ cc. That is, APA GasNet is recovering more than the target regulated revenue approved by the AER.¹¹ The AER considers that the proposed amendments to the two definitions are complementary and are necessarily linked together in order to address this concern.¹²

The current arrangements relevant to the rule change request and the issues considered in making this draft rule determination are set out below.

3.1.1 Current arrangements

Reference service definition

Rule 101 of the NGR states that:

- a full access arrangement must specify all reference services;
- a reference service is a pipeline service that is likely to be sought by a significant part of the market.

¹¹ AER rule change proposal, 5 August 2011, pp7, 21-22.

¹² AER rule change proposal, cover letter, 5 August 2011, p3.

Rebateable service definition

Rule 93(4) of the NGR states that:

A pipeline service is a rebateable service if:

- the service is not a reference service; and
- substantial uncertainty exists concerning the extent of the demand for the service or of the revenue to be generated from the service; and
- the market for the service is substantially different from the market for any reference service.

3.1.2 AER's proposed rule

Reference service definition

The AER proposes a change to the definition of a reference service by requiring that a full access arrangement must specify a reference service for:

- at least one pipeline service that is likely to be sought by a significant part of the market;
- each pipeline service that is likely to be sought by a significant part of the market and for which the relevant regulator considers should be included as a reference service.¹³

Rebateable service definition

The AER proposes a change to the definition of a rebateable service by specifying that a pipeline service is a rebateable service if:

- the service is not a reference service; and
- either:
 - substantial uncertainty exists concerning the extent of the demand for the service or of the revenue to be generated from the service; or
 - it is not commercially and technically reasonable to set a reference tariff for the service.¹⁴

¹³ AER rule change proposal, 5 August 2011, p23.

¹⁴ AER rule change proposal, 5 August 2011, p24.

In proposing this rule change the AER is seeking to remove the requirement that the market for a rebateable service be substantially different from the market for any reference service.

3.1.3 Impact and assessment of the proposed rule

This section summarises the Commission's assessment of the impact of the proposed rule. These matters are discussed in more detail in Chapters 5-7.

APA GasNet is rebating users for AMDQ cc revenue

The key reason for the AER's submission of the proposed rule change was to address a problem that it considered to exist relating to APA GasNet's access arrangement. In brief, and as noted previously, the AER was concerned that APA GasNet has been (and would continue to) earn revenue from the sale of AMDQ cc in addition to the total revenue approved by the AER. That is, APA GasNet would earn excess revenue outside of its access arrangement.

Consideration of this matter required an understanding and analysis of the annual updating and operation of APA GasNet's price control model which the AER approves as being in accordance with the current access arrangement. This revealed that APA GasNet has been rebating to users part of the revenue earned from the sale of AMDQ cc. That is, the operation of the price control model in a manner that is consistent with the approved access arrangement results in a rebate of revenue to reference service users by reducing reference tariffs from the level they would otherwise be.

Accordingly, the Commission is not satisfied that the key reason for the proposed rule as described by the AER in its rule change request has been clearly demonstrated. Nevertheless, the Commission has considered the secondary and broader reasons suggested by the AER for the proposed rule.

Reference service definition

Impact on setting efficient tariffs

The AER has stated that the proposed definition for reference services is likely to result in price benefits because it will allow the AER discretion not to specify a pipeline service sought by a significant part of the market as a reference service. As a result, the AER will not be required to set a reference tariff for the relevant service. This discretion could be relevant in circumstances where setting a reference tariff may result in a tariff that may not be reflective of the efficient costs of providing that service to users. This may occur where there is a high level of uncertainty with respect to revenue and/or demand for the pipeline service, or where there are commercial and/or technical reasons that preclude an efficient tariff being set. The AER has claimed that the provision of AMDQ cc by APA GasNet is one such service where this discretion would be relevant.

Impact on the AER's discretion

The proposed rule would better enable the AER to set reference tariffs that are reflective of efficient costs. This is because the proposed rule would provide increased discretion to the AER to enable it not to specify a pipeline service sought by a significant part of the market as a reference service. As a result, the AER would not be required to set a tariff for the relevant service which in certain circumstances may not be reflective of efficient costs.

However, the Commission considers that this discretion should not be unbounded. For this reason the Commission has amended the proposed rule to require the AER to take into account the revenue and pricing principles¹⁵ when making a decision on classifying a pipeline service as a reference service. This is appropriate because if the AER determines that a pipeline service is a reference service it must set a reference tariff for that service. In accordance with the NGL, the AER would also be required to consider the NGO when making a decision on reference services.

Rebateable service definition

Impact on existing contracts

The AER's proposed rule is likely to result in an increase in investment risk with respect to other full regulation pipelines (that is, pipelines other than the Victorian DTS) because of specific provisions in existing contracts. Under the current rule the requirement that the market for a rebateable service be substantially different to the market for the reference service minimises the risk and impact of triggering the 'most favoured nation clause'¹⁶ in many existing bilateral contracts. The removal of this requirement in the proposed rule would increase the likelihood that the most favoured nation clause in these contracts would be triggered. If this were to happen, then the service provider may be exposed to increased financial and investment risk as the risk/reward relationship inherent in these contracts may be altered.

Impact on the fixed principle in the DBNGP access arrangement

If the proposed change to the rebateable service definition was implemented it may expose a service provider to the unwinding of regulatory arrangements put in place to preserve pre-existing contractual arrangements. Specifically in the case of the Dampier to Bunbury Natural Gas Pipeline (DBNGP), it may impact on the 'fixed principle' in the access arrangement. If the proposed rule was made then it may be interpreted as taking precedence over the fixed principle in the current DBNGP access arrangement. As a result, the fixed principle would no longer apply and DBNGP (WA) Transmission Pty Ltd (DBP) may be exposed to greater regulatory uncertainty and greater financial risk.

¹⁵ NGL, s. 24.

¹⁶ A most favoured nation clause provides that if the tariff for the pipeline service on offer to other users is less than that agreed to in the contract, then the lower tariff will also apply to the contract (this is further discussed in section 7.1).

This in turn may impact on the service provider's ability to invest in pipeline expansion which may not be in the long term interests of consumers if future demand is not met.

3.1.4 Commission's conclusion

The Commission has decided to consider the two proposed amended definitions separately. As detailed in Chapter 5 and noted above, it is not satisfied that it has been clearly demonstrated that APA GasNet is retaining additional revenue earned from AMDQ cc as claimed by the AER. However, the Commission is satisfied that the AER requires greater flexibility in specifying pipeline services as reference services to ensure that it is only required to set a reference tariff where it is practicable and efficient to do so.

The Commission is also concerned that a change to the rebateable service definition risks unintended consequences for service providers of pipelines other than the Victorian DTS. The impacts of the alleged over-recovery on the Victorian DTS have not been demonstrated to a sufficient level to outweigh these risks.

Considering each proposed definition separately, the Commission has found for this draft determination that the proposed:

- reference service definition will, or is likely to, contribute to the NGO because it will promote the efficient use and investment in pipeline services and will be in the long term interests of consumers; and
- rebateable service definition will not, or is not likely to, contribute to the NGO because it may lead to an increase in investment risk which could result in inefficient investment in pipeline services and may not be in the long term interests of consumers.

The Commission is proposing to make a more preferable rule (the draft rule). It is satisfied that the more preferable rule (that is, the change to the reference service definition) will, or is likely to, better contribute to the NGO, as it is likely to promote efficient investment in pipeline services for the long term interests of consumers of natural gas with respect to price and security of gas supply.

3.2 The draft rule

The draft rule is a more preferable rule to the rule proposed by the AER. It is different from the proposed rule in the following respects:

- the draft rule requires the AER to take into account the revenue and pricing principles when making a decision to classify a pipeline service as a reference service;
- the draft rule includes minor drafting changes including the addition of 'and' between the two sub-rules of the reference service definition for the purposes of clarification;

- the draft rule does not include the proposed rebateable service definition; and
- the draft rule includes a consequential amendment (example 2 of rule 59(2) of the NGR) as a result of the change to the reference service definition. The Commission considers that this consequential amendment is required because the existing rule is inconsistent with the draft rule reference service definition.¹⁷

3.3 Civil penalties

The draft rule does not amend any rules that are currently classified as civil penalty provisions under the National Gas (South Australia) Law or Regulations. The Commission does not propose to recommend to the MCE that any of the amendments in the draft rule be classified as civil penalty provisions.

¹⁷ Under s. 297 of the NGL, the AEMC may make a rule that is necessary or consequential to the rule that is to be made on request under s. 295(1).

4 Commission's assessment approach

This chapter describes the Commission's approach to assessing the rule change request in accordance with the requirements set out in the NGL (and explained in Chapter 2).

In assessing any rule change request against the NGL criteria, the first step is to consider the counterfactual arrangements against which the rule change is being compared. In the present case, the counterfactual arrangements are the reference service and rebateable service definitions under the existing rules. These have been set out earlier in section 3.1.1.

In assessing this rule change request, the Commission has considered:

- whether the problem as identified by the AER has been substantiated and justifies a rule change;
- whether the rule change proposal would be likely to address the problem identified by the AER;
- whether the rule change proposal would be likely to contribute to the achievement of the NGO, particularly in respect of promoting efficient investment in and use of pipeline services;
- whether there is a more preferable rule that is likely to better contribute to the achievement of the NGO, particularly in respect of promoting efficient investment in and use of pipeline services;
- the likely impact of the rule change proposal on the AER's ability to set efficient tariffs;
- how the rule change proposal may impact on regulated pipelines other than the Victorian DTS;¹⁸
- other consequences of the rule change (intentional or unintentional) that have not been identified by the AER; and
- whether the level of discretion that the rule change proposal provides to the AER is appropriate.

The Commission has focussed on this set of issues because the definitions of reference service and rebateable service are fundamental to the regulation of covered pipelines under the NGR. The Commission is cognisant that any change to these definitions will

¹⁸ The Victorian DTS operates under a market carriage approach for the management of pipeline capacity. However, for other pipelines the management of pipeline capacity is by contract carriage (where users contract with the service provider for the right to access a certain capacity of the pipeline). These different capacity management approaches may result in the proposed rule having a different impact on different pipelines.

have application to all full regulation pipelines. In considering these issues, the Commission was particularly concerned that:

- the AER had not sufficiently identified the broader implications of its proposed rule change (particularly the impact on pipelines other than the Victorian DTS) in its rule change request; and
- in its proposal the AER had indicated that APA GasNet was not rebating users for revenue earned from the volume effect of AMDQ cc¹⁹, while in fact APA GasNet has been rebating users (as explained in Chapter 5).

The Commission has held discussions with the AER (the rule proponent), APA Group (the ultimate owner of the Victorian DTS and other regulated pipelines) and DBNGP (WA) Transmission Pty Ltd (the owner and service provider of the DBNGP).

The Commission's analysis and consideration of APA GasNet's rebating of users for revenue earned from AMDQ cc is discussed in Chapter 5. Chapters 6 and 7 set out the Commission's analysis and consideration of the key issues relating to the reference service definition and the rebateable service definition respectively.

¹⁹ AER rule change proposal, 5 August 2011, p15.

5 APA GasNet is rebating users for the volume effect of AMDQ cc

5.1 Introduction

Under the NGL, full regulation pipelines are required to have full access arrangements.²⁰ Full access arrangements extend over a set period of time (usually five years) and include:

- reference services and reference tariffs;
- non-reference services that are negotiated with users; and
- non-tariff components such as terms and conditions, extensions and expansions policy, capacity trading and queuing arrangements.

In these access arrangements, the regulator is required to approve reference tariffs on all pipeline services that are defined to be reference services. The reference tariff is set at a level that returns to the service provider at least the efficient cost of providing the reference service.²¹ In order to calculate a reference tariff the regulator needs to know the total costs allocated to the reference service and the demand for that service. Where there are reference services and non-reference services on the one pipeline, the total regulated revenue is allocated to a reference service in proportion to the costs associated with that service.²²

In the current APA GasNet access arrangement, the AMDQ cc service is not defined as a reference service or as a rebateable service.

This chapter discusses the recovery of revenue earned by APA GasNet from AMDQ cc; the views of the AER and APA GasNet as to whether APA GasNet is retaining this revenue; and the Commission's analysis and conclusion that APA GasNet is rebating users under the current access arrangement.

5.2 Over-recovery of revenue earned from AMDQ cc

The central reason for the proposed rule change is the AER's view that APA GasNet is inappropriately over-recovering on its efficient pipeline costs because the revenue earned from AMDQ cc is in addition to the revenue earned from reference tariffs. That is, APA GasNet is recovering more than the total regulated revenue which is approved by the AER.²³

There are two possible types of over-recovery associated with AMDQ cc. These are:

²⁰ NGL, s. 132.

²¹ NGL, s. 24.

²² NGR, rule 93.

²³ AER rule change proposal, 5 August 2011, pp7, 21-22.

- the price effect which occurs when the price paid for AMDQ cc is above the reference tariff, and is the difference between these two prices; and
- the volume effect which occurs when APA GasNet is able to earn additional revenue for providing reference services on unused AMDQ cc contracted capacity. This is revenue that APA GasNet would otherwise not have earned if the holder of the AMDQ cc had fully used its contracted capacity.

In its rule change request, the AER only identified over-recovery due to the volume effect. However, the AER subsequently acknowledged that over-recovery also can occur due to the price effect.

5.3 Rule proponent's view

In its rule change request, the AER stated that APA GasNet was not rebating users for revenue earned from the volume effect of AMDQ cc.²⁴As a result, any revenue earned from the use of any unused portion of AMDQ cc contracted capacity was being retained by APA GasNet.

However, in subsequent discussions with the AEMC, the AER acknowledged that APA GasNet has been rebating users for the volume effect of AMDQ cc through its price control model²⁵ during the current access arrangement period. However, it was suggested that any rebating that is occurring is on a 'voluntary' basis. The AER claimed that the current access arrangement does not prescribe the inclusion of AMDQ cc contracted volumes in determining annual reference tariff variations (given that the access arrangement does not include the AMDQ cc service as a reference service).

5.4 Stakeholder views

APA stated that due to the effect of updating volumes and revenues in its price control model, it is not earning any excess revenues from selling AMDQ cc when AMDQ cc is priced at the reference tariff. Extra revenue is only earned to the extent that AMDQ cc is priced above the reference tariff (that is, the injection tariff for that injection point).²⁶ In discussions with the AEMC, APA stated that this tariff rebalancing is consistent with the ACCC's approved access arrangement and price control model. It also claimed that most of the revenue it earns from AMDQ cc is due to the volume effect, which is rebated back to users.

²⁴ AER rule change proposal, 5 August 2011, p15.

²⁵ APA GasNet's price control model implements the approved reference tariff variation mechanism which is set out in schedule 4 of the current access arrangement. The price control model was part of APA GasNet's access arrangement proposal which was submitted to the ACCC in 2007. The ACCC was the relevant regulator for the Victorian DTS prior to the AER.

²⁶ APA submission, 3 November 2011, p5.

5.5 Analysis

The Commission understands that the volume effect of AMDQ cc is automatically taken into account when APA GasNet annually updates its price control model by replacing forecast volumes with actual volumes for that year. When actual volumes are above forecast volumes in a year, reference tariffs for the injection service will be reduced for the subsequent year.

The price control model was part of APA GasNet's access arrangement proposal²⁷ which was approved by the ACCC in 2008.²⁸ The model applies the approved price control formula to calculate revenues and tariffs for each year of the access arrangement period as described in schedule 4 of the access arrangement.²⁹

In accordance with the access arrangement, APA GasNet submits an annual tariff variation proposal to adjust tariffs for the following year to the AER each November for approval. As part of this proposal, APA GasNet submits its price control model³⁰ which it has updated with actual and forecast values to demonstrate its compliance with the approved price control formula in the derivation of the proposed adjusted tariffs.³¹

As part of this annual tariff variation process, APA GasNet replaces the volumes forecast at the start of the access arrangement period for the year with actual volumes in its price control model. This has the effect of limiting APA GasNet's exposure to changes in volumes at its injection points.³² Because the updated model is submitted to the AER prior to the end of each year, the data for the current year is partly actual, estimate and forecast.³³ Therefore updated volumes for the current year include actual injection volumes (irrespective of whether these flows are from AMDQ cc or not) and an estimate of volumes for the remainder of the year based on the full volume of AMDQ cc outstanding for that year.³⁴ Where actual flows are greater than those initially forecast (using the full take or pay amounts of AMDQ cc) lower tariffs will

²⁷ ACCC, *Draft decision, Revised access arrangement by GasNet Australia Ltd for the Principal Transmission System*, 14 November 2007, p213.

²⁸ ACCC, *Final approval, Revised access arrangement by GasNet Australia (Operations) Pty Ltd and GasNet (NSW) Pty Ltd for the Principal Transmission System*, 25 June 2008.

²⁹ APA Group, *GasNet Australia access arrangement*, approved 25 June 2008, commencement date 1 January 2008, schedule 4, pp35-38.

³⁰ APA GasNet, *Statement of proposed year 2012 transmission tariffs*, 17 November 2011, p6.

³¹ APA Group letter to the AER, *APA GasNet transmission system year 2012 tariff reset*, 17 November 2011.

³² This approach is not typically found in access arrangements for transmission pipelines. It is more common in access arrangements for distribution pipelines. For contract carriage transmission pipelines (where the service provider has some discretion over the use of the pipeline) using forecast volumes for the duration of an access arrangement period, is an incentive mechanism to improve performance. That is, where actual volumes exceed those forecast, the service provider is able to retain any additional revenue.

³³ In this context, 'estimate' refers to forecasts that have been subsequently updated as new information becomes available.

³⁴ APA email, 21 December 2011; and APA email, 23 December 2011.

result for the forthcoming year. For simplicity APA GasNet applies any resulting decrease in tariffs to all injection tariffs across the board.³⁵

If the AER is satisfied that APA GasNet has correctly applied its reference tariff variation mechanism as described in the access arrangement and as set out in the price control model, then it will approve the tariffs for the coming year. For example, in December 2011 the AER stated:³⁶

“The AER is satisfied that GasNet’s Statement complies with the relevant principles and formulae set out in Schedule 4 of GasNet’s Access Arrangement. Further, the AER considers that the forecasts used by GasNet are acceptable.”

Accordingly, under the current access arrangement APA GasNet is rebating users for the over-recovery of revenue from AMDQ cc due to the volume effect. This is occurring even though the ACCC decided not to classify AMDQ cc as a rebateable service in its 2008 final decision on the access arrangement.³⁷ In fact, it appears that nominating AMDQ cc as a rebateable service is not required to achieve this outcome – the rebating is occurring through the application of APA GasNet’s approved annual tariff variation process and operation of its price control model.

5.6 Conclusion

On the information available to it, the Commission is not satisfied that the problem identified by the AER exists (that is, that APA GasNet is inappropriately retaining revenue that is in excess of the target regulated revenue). This is because APA GasNet is rebating users for the volume effect of AMDQ cc under the current access arrangement and the volume effect represents the majority of the AMDQ cc generated revenue.³⁸

This rebating is a consequence of APA GasNet updating its price control model which it is required to do under its current access arrangement (which was approved by the ACCC in 2008). The AER has approved this rebating when approving APA GasNet’s annual tariff variation proposals, which the AER considers have complied with the provisions of the current access arrangement. For these reasons, the Commission considers that the rebating to users for the volume effect of AMDQ cc is consistent and compliant with the current access arrangement.

³⁵ APA email, 21 December 2011.

³⁶ AER, *Statement of reasons, GasNet tariff reset for 2012*, 14 December 2011.

³⁷ ACCC, *Final decision, Revised access arrangement by GasNet Australia (Operations) Pty Ltd and GasNet (NSW) Pty Ltd for the Principal Transmission System*, 30 April 2008, pv.

³⁸ Information provided to the AEMC indicates that the volume effect of AMDQ cc represents approximately 80 per cent of total AMDQ cc revenue. The remainder is generated from the price effect. This smaller amount is retained by APA GasNet, providing an incentive for investment on the Victorian DTS.

Similarly, on the basis of the Commission's understanding of the operation and status of the APA GasNet price control model, it is yet to be convinced that this rebating is occurring on a voluntary basis as has been suggested by the AER.

The Commission further notes that if the AER has concerns with the process of rebating users through the updating and operation of APA GasNet's price control model, then under the NGR the AER may propose an amendment to APA GasNet's proposed reference tariff variation mechanism at the next access arrangement review.³⁹

³⁹ NGR, rules 59(2), 62, 64, 72(1)(k), 92 and 97.

6 Reference service definition

6.1 The setting of efficient tariffs

6.1.1 Rule proponent's view

The AER stated that the proposed change to the definition of reference service will allow it to exercise discretion as to whether to set a reference tariff in circumstances where:

- a high level of uncertainty exists with respect to revenue and/or demand for a pipeline service, such that determining an efficient tariff may not be possible; and/or
- commercial and/or technical arrangements preclude an efficient tariff to be set (such as in the case of AMDQ cc).⁴⁰

6.1.2 Stakeholder views

AEMO stated that criteria should be developed to guide the AER in making a determination regarding a reference service and making an apportionment to rebateable or negotiated services. In developing this criteria AEMO suggested that consideration be given to the uncertainty in forecasting demand and the difficulty in determining costs for services when determining a reasonable tariff.⁴¹

Other stakeholders had concerns about the AER's assertion that the current requirement to determine a reference tariff for each reference service gives rise to regulatory risks where the demand or revenues to be derived from services are uncertain (such as, where there are emerging pipeline services). In particular:

- APA submitted that it is unclear how a service for which there is uncertain demand could be considered a reference service;⁴²and
- Australian Pipeline Industry Association (APIA) submitted that the current rules allows for the AER to approve the treatment of emerging or developing pipeline services where demand is uncertain as non-reference services. It also submitted that a service for which there is uncertainty in demand or revenue of itself means that it is a service which is not likely to be sought by a significant part of the market. Therefore, it could not be a reference service.⁴³

⁴⁰ AER rule change proposal, 5 August 2011, p4.

⁴¹ AEMO submission, 3 November 2011, p2.

⁴² APA submission, 3 November 2011, p2.

⁴³ APIA submission, 3 November 2011, p7.

6.1.3 Analysis

The AER has stated that under the current rules it would have no choice but to classify AMDQ cc as a reference service as it is to be likely sought by a significant part of the market (that is, it would otherwise satisfy the definition of a reference service). This outcome would be problematic – by specifying AMDQ cc as a reference service the AER would then be required to approve a reference tariff and non-tariff terms and conditions for the service. Because the incremental costs of providing AMDQ cc is minimal, then any reference tariff set by the AER based on efficient costs would be much lower than the recent contract price for AMDQ cc.

If a reference tariff was set for AMDQ cc that was lower than the AMDQ cc contract price, then it may reduce the incentive for APA GasNet to invest in additional capacity in the pipeline system. Lack of investment would not be in the long term interest of consumers. Alternatively, if a reference tariff for AMDQ cc were higher than the contract price, this could dampen demand for the AMDQ cc service and also affect future investment.

APA and APIA expressed concern about the impact of the proposed rule on emerging pipeline services. The Commission does not agree with these concerns. The proposed rule maintains the future-looking approach of the current rule by specifying that the AER considers each pipeline service that is likely to be sought by a significant part of the market to be included as a reference service. This means that when making an access arrangement decision, the AER would assess whether an emerging or developing pipeline service is likely to be sought by a significant part of the market over the next access arrangement period.

It may be possible for a pipeline service which is assessed as likely to be sought by a significant part of the market to have uncertain demand and/or revenue. That is, the service would appear to fall within the definition of a reference service. In such a circumstance, the draft rule enables the AER not to include such a pipeline service in the access arrangement where it is problematic for the AER to set an efficient tariff.

AEMO suggested that criteria be developed to guide the AER in making a reference service decision. The Commission considers that such a guide is unnecessary and inappropriate as the purpose of the draft rule is to provide the AER flexibility to deal with situations where it is problematic for it to set an efficient tariff, but limits the AER's discretion in making a decision about a reference service. This is discussed in section 6.2.

6.1.4 Conclusion

The draft rule will give the AER discretion not to specify a pipeline service sought by a significant part of the market as a reference service, and therefore not set a reference tariff. In some cases, this course of action may be desirable if a reference tariff would not be cost reflective. If tariffs are set inefficiently too low or too high, the Commission considers that inefficient use of, and inefficient investment in, pipeline services may occur. This would not be in the long term interests of consumers.

6.2 The AER's discretion

6.2.1 Rule proponent's view

The AER stated that the proposed change to the definition of reference service will provide it with flexibility to determine whether more than one pipeline service should be a reference service.⁴⁴ The AER submitted that under the previously applicable Gas Code the regulator had discretion to determine which pipeline services should be reference services and that under the NGR this discretion has been removed. It also submitted that it was unaware of any policy reasons for this change and suggested that it was a drafting outcome rather than a policy intention to mandate all significantly sought services as reference services.⁴⁵

6.2.2 Stakeholder views

AEMO stated that it supported the proposal to give the AER discretion to determine reference services. It submitted that this would enable the AER to not include augmentation of the pipeline in the calculation of the regulatory asset base that was funded either:

- by a user in return for free rights to capacity; or
- by the sale of all allocation rights by auction at full value.⁴⁶

Other stakeholders had concerns that the proposed change would give too much discretion to the AER and that this discretion would be unbounded. In particular:

- APA submitted that this discretion should not be linked to the AER's stated concern over uncertainty in demand for the service or revenue earned from providing the service;⁴⁷
- Jemena submitted that the increased discretion will expose service providers to significant risk such that the balance and certainty inherent in the service offered by service providers will be altered in a way that is detrimental to the interests of service providers;⁴⁸
- Multinet stated that the AER's discretion should be limited to 'other' pipeline services to those put forward by the service provider under rule 101 of the NGR;⁴⁹and

⁴⁴ AER rule change proposal, 5 August 2011, p10.

⁴⁵ AER rule change proposal, 5 August 2011, p4; and AER rule change proposal, cover letter, 5 August 2011, p1.

⁴⁶ AEMO submission, 3 November 2011, p1.

⁴⁷ APA submission, 3 November 2011, p2.

⁴⁸ Jemena submission, 7 November 2011, p6.

⁴⁹ Multinet submission, 3 November 2011, p2.

- Origin was concerned that the discretion will lead to uncertain and unpredictable outcomes. It submitted that if a change were made then it should include limits on the level of discretion to ensure that market participants have certainty and clarity around the AER's decision making criteria.⁵⁰

6.2.3 Analysis

The Commission notes the concerns of stakeholders with regards to the level of the discretion provided to the AER in the proposed rule. While under the proposed rule, the AER would be required to consider the NGO,⁵¹ it may choose to take into account the revenue and pricing principles when making a reference service decision.⁵² The Commission considers that in making such a decision, it is appropriate that the AER have regard to the revenue and pricing principles because of the fundamental link between what is a reference service and establishing a reference tariff. For this reason, the draft rule requires the AER to take into account the revenue and pricing principles when making a reference service decision.

This amendment to the proposed rule will guide the AER in making decisions on what pipeline services should be classified as reference services and it will also provide service providers and users with context in which to understand how the AER may make, or has made, a decision. The Commission does not consider that any other limits to the AER's discretion are appropriate or necessary.

The Commission also notes that the proposed rule is restoring discretion to the regulator to what it was under the Gas Code.⁵³ The Commission is not aware of any concerns with this level of discretion provided to regulators under the Gas Code.

6.2.4 Conclusion

The proposed rule does provide an increased level of discretion to the AER, but the Commission considers that this discretion is necessary for the AER to be able to set reference tariffs that are reflective of efficient costs. However, the Commission does consider that the AER's discretion should be limited, and for this reason the draft rule requires the AER to take into account the revenue and pricing principles when making a decision about reference services.

50 Origin submission, 3 November 2011, p1.

51 NGL, s. 28(1).

52 NGL, s. 28(2)(b).

53 Gas Code, section 3.3.

7 Rebateable service definition

7.1 Impact on existing contracts

7.1.1 Rule proponent's view

The AER did not provide any comments on the impact of the proposed rule change on existing pipeline contracts in its rule change request.

7.1.2 Stakeholder views

APIA, APA and DBNGP (WA) Transmission Pty Limited (DBP) stated that they were concerned that the proposed change to the definition of a rebateable service could lead to a change in the risk/reward relationship in bilateral contracts between service providers and users in relation to other (that is, not the Victorian DTS) fully regulated pipelines. These concerns related to the possible triggering of the 'most favoured nation' clause in bilateral contracts.⁵⁴

A most favoured nation clause provides that if the tariff for the pipeline service on offer to other users is less than that agreed to in the contract, then the lower tariff will also apply to the contract.

If the requirement in the current definition that the market for the rebateable service be substantially different to that of the reference service was removed, then reference and rebateable services could be in the same market. Service providers have suggested that this would mean that there would be more services that could fall within the definition of a rebateable service. A greater likelihood that a rebateable service will be identified for a pipeline would make it more likely that a rebate resulting in a reduction to the reference tariff would occur and this could trigger the most favoured nation clause in any existing bilateral contracts for the pipeline.

The resulting reduction in revenues could jeopardise the operation of and investment in the pipeline and increase risks for a service provider, leading to a fundamental change in the risk/reward relationship inherent in the contracts between shippers and service providers.⁵⁵

In discussions with the AEMC, APA acknowledged that the most favoured nation clause could be triggered irrespective of whether the rebateable service was in the same market as the reference service or not. However, the requirement in the current rule that these services be in different markets reduces the likelihood of a most favoured nation clause being triggered or, if it is triggered, minimises its impact.

⁵⁴ APIA submission, 3 November 2011, p3; APA submission, 3 November 2011, p3; and DBP email, 3 January 2012.

⁵⁵ APA submission, 3 November 2011, p3.

Consequently, there is a small risk of a rebate to a reference tariff ultimately impacting on existing contracts and this level of risk is able to be managed. APA submitted that this can occur because:⁵⁶

- as the rebateable service is not a reference service by definition, then it is likely to be a minor service if it is not in the same market as the reference service. This is because the definition of a reference service requires that a reference service is likely to be sought by a significant part of the market; and
- if the rebateable service is a minor service then it is unlikely to generate a material level of revenue. Hence, the rebate to users of the reference service will be small resulting in a minor reduction in the reference tariff and an immaterial impact on the most favoured nation clause (if it is triggered at all).

7.1.3 Analysis

The Commission understands and acknowledges the importance of bilateral contracts to the gas industry. The majority of pipelines have long term contracts in place. The recognition of contractual arrangements in the national gas access regime is discussed in Appendix C.

The Commission notes the risk of a most favoured nation clause being triggered under the current rules is limited. Given that this low level risk has existed for some time,⁵⁷ it is something that is factored in by the contract parties.

The practical impact of removing the market requirement from the rebateable service definition would be to potentially expose service providers to increased investment risk by allowing rebateable and reference services to be in the same market. This may make reductions in the reference tariff more likely. Reductions in the reference tariff due to rebateable services being in the same market, may trigger a most favoured nation clause in existing contracts.

If this were to happen, then revenues earned from contracted services may be less, potentially exposing the service provider to greater financial and investment risk. This may impact on the service provider's ability to invest in pipeline expansions which may not be in the long term interests of consumers if future demand is not met.

7.1.4 Conclusion

The Commission considers that the proposed rule may lead to an increased risk to investment which would not be conducive to efficient investment in natural gas services and would not be in the long term interests of consumers. This is because there

⁵⁶ APA email, 21 December 2011.

⁵⁷ The same risk was present in contracts written under the Gas Code. This is because the definition of a rebateable service under the Gas Code also had the requirement that a rebateable service be in a substantially different market to the reference service.

is potential to change the risk/reward relationship in existing bilateral contracts if the proposed change to the rebateable service definition is accepted.

Any benefit of a change to the rebateable service definition may be outweighed by potential risks to investment on the majority of fully regulated pipelines.

7.2 Precedence over the fixed principle in the DBNGP access arrangement

7.2.1 Rule proponent's view

The AER did not discuss the impact of the proposed rule change on the fixed principle in the Dampier to Bunbury Natural Gas Pipeline (DBNGP) access arrangement in its rule change request.

7.2.2 Stakeholder views

DBP stated that if the proposed change to the definition of a rebateable service is made then, it will take precedence over the fixed principle⁵⁸ in the DBNGP access arrangement. The fixed principle prevents the Economic Regulatory Authority (ERA) from 'clawing back' any revenue that DBP might earn from the sale of pipeline services that is in excess of the total revenue set under the access arrangement.⁵⁹

It also submitted that the firm full haul capacity on the DBNGP is fully contracted under contracts and services that are outside the framework of the NGR and NGL. In addition, as the tariffs negotiated under these contracts were fundamental to the purchase of the DBNGP in 2004, then any clawing back of revenues earned under these contracts could have extreme adverse effects on DBNGP investment.⁶⁰

7.2.3 Current arrangements

The DBNGP access arrangement fixed principle has effect until 2031.

The fixed principle in the current access arrangement states in part that:⁶¹

“...in accordance with rule 99 of the NGR:

- the revenue earned by Operator during the period commencing on 1 July 2005 and ending on 31 December 2015 from the sale of any

⁵⁸ A full access arrangement may include a principle declared in the access arrangement to be fixed for a stated period of time extending over two or more access arrangement periods (NGR, rule 99).

⁵⁹ DBP submission (public version), 3 November 2011, pp1-2.

⁶⁰ DBP submission (public version), 3 November 2011, pp1-2.

⁶¹ ERA, *Revised access arrangement for the Dampier to Bunbury Natural Gas Pipeline*, 22 December 2011, reprinted 12 January 2012 to incorporate corrigenda notice, p23.

Services which is in excess of the amount (in net present value terms) equal to the sum of:

- the revenue that would have been earned had any of those services which were Full Haul Services been sold at the Reference Tariff; and
- the revenue actually earned from the sale of those services which were services other than Full Haul Services,

must not:

- be taken into account directly or indirectly for the purpose of setting a Reference Tariff or determining or applying any aspect of the price and revenue elements of the Access Arrangement which applies on or after 1 January 2011; or
- otherwise be taken into account directly or indirectly by the relevant Regulator in performing any of its functions under the NGA, NGL or NGR.”

Under rule 99(4)(b) of the NGR, if a rule is inconsistent with a fixed principle, then the rule takes precedence over the fixed principle. However, transitional rule 6 of the NGR negates the effect of rule 99(4)(b).

Transitional rule 6 of the NGR states that:

“Rule 99(4)(b) does not apply to the fixed principle referred to in clause 7.13(a)(ii) of the Revised Access Arrangement for the Dampier to Bunbury Natural Gas Pipeline dated 21 November 2006.”

Transitional rule 6 of the NGR refers to the revised access arrangement approved in 2006 which was the current access arrangement at the time that version 1 of the NGR was made in 2008. Since then, a later revised access arrangement (the current DBNGP access arrangement, dated 22 December 2011) has been approved by the ERA. In the current access arrangement, the fixed principle referred to in transitional rule 6 of the NGR is at clause 13(a)(ii).⁶²

However, the fixed principle described in the current access arrangement is essentially on the same terms as that in the earlier access arrangement except for updating references to the current access arrangement, the National Gas Access (WA) Act 2009 (NGA), the NGL and the NGR. Also, the expiry date of the fixed principle remains unchanged at 31 December 2031.⁶³

⁶² ERA, *Revised access arrangement for the Dampier to Bunbury Natural Gas Pipeline*, 22 December 2011, reprinted 12 January 2012 to incorporate corrigenda notice, p23.

⁶³ ERA, *Revised access arrangement for the Dampier to Bunbury Natural Gas Pipeline*, 21 November 2006, pp23-24; and ERA, *Revised access arrangement for the Dampier to Bunbury Natural Gas Pipeline*, 22 December 2011, reprinted 12 January 2012 to incorporate corrigenda notice, p23.

7.2.4 Analysis

Despite the similarities between the earlier access arrangement and the current access arrangement with respect to the fixed principle, as the wording is not entirely clear it is possible that transitional rule 6 of the NGR could be interpreted to not apply to the fixed principle described in the current access arrangement. If this interpretation was accepted it would mean that if the proposed rule were made, it would take precedence over the fixed principle. As a consequence it would be possible for a rebateable service included in any future DBNGP access arrangement to:

- rebate off the reference tariff and trigger any most favoured nation clauses in existing contracts; and
- draw on revenue earned under existing contracts to create a rebate off the reference tariff.

If this were to happen, then revenues earned from negotiated services may be less, potentially exposing DBP to greater financial risk. This may impact on the DBP's ability to invest in pipeline expansion which may not be in the long term interests of consumers if future demand is not met.

7.2.5 Conclusion

The Commission considers that the proposed change to the definition of rebateable services may lead to an increased risk to investment which would not be conducive to efficient investment in natural gas services and would not be in the long term interests of consumers. This is because there is potential to expose DBP to greater regulatory risk, which may result in lower revenues earned from negotiated services. This may lead to increased investment risk and deter future investment in the pipeline.

Any benefit of a change to the rebateable service definition may be outweighed by potential risks to investment on the DBNGP.

Abbreviations

ACCC	Australian Competition and Consumer Commission
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
AMDQ	authorised maximum daily quantity
AMDQ cc	authorised maximum daily quantity credit certificates
APA	APA Group
APA GasNet	APA GasNet Australia (Operations) Pty Limited
APIA	Australian Pipeline Industry Association
Commission	See AEMC
DBP	DBNGP (WA) Transmission Pty Limited
DBNGP	Dampier to Bunbury Natural Gas Pipeline
DTS	Victorian Declared Transmission System
DWGM	Victorian Declared Wholesale Gas Market
ERA	Economic Regulation Authority of Western Australia
gas	natural gas
Gas Code	National Third Party Access Code for Natural Gas Pipeline Systems
Jemena	Jemena Limited
MCE	Ministerial Council on Energy
Multinet	Multinet Gas Distribution Partnership
MSO rules	Market System Operating rules

NGA	National Gas Access (WA) Act 2009 (Western Australia)
NGL	National Gas Law
NGO	national gas objective
NGR	National Gas Rules
Origin	Origin Energy
Proponent	See AER
SWP	South West Pipeline
SCO	Standing Committee of Officials
TJ	terrajoule

A AMDQ credit certificates

The following discussion is an outline of AMDQ credit certificates. It is based on information provided by AEMO, APA and the AER.

AMDQ and AMDQ credit certificates (AMDQ cc) exist only in the Victorian declared transmission system (DTS) and provide a form of access rights to users to a specified amount of pipeline capacity when the transmission system becomes constrained.

AMDQ and AMDQ cc also provide users with:

- a hedge against uplift charges which are incurred in the event of congestion on the DTS or when demand is significantly different to what was planned; and
- a tie break right when there are competing bids at injection and withdrawal points.

AMDQ were created in 1998 prior to the commencement of the Victorian wholesale market when the primary source of gas supply for the DTS was from Longford (with the addition of limited peak gas supplied from the Dandenong LNG plant). Total AMDQ was set to equal the peak capacity of the system at that time (that is, 990 TJ/day) and was allocated to existing contract customers, the Interconnect (the Barnawartha to Culcairn leg of the DTS) and other parts of the DTS, and as a block to all residential and small to medium sized commercial and industrial customers. This was part of the preparations of creating a market carriage based transmission system and wholesale market for gas in Victoria.

Since then, the DTS has been extended and expanded. As new pipeline capacity becomes available AMDQ cc are created to provide similar rights to those arising from AMDQ on the Longford pipeline. AMDQ cc are created specific to a certain injection point and specify a certain amount of capacity. The amount of capacity made available through either investment in new capacity or through pipeline re-configuration is agreed between APA GasNet (the asset owner) and AEMO (the operator of the asset and the Victorian wholesale gas market). Once agreement has occurred and new capacity is operational, new certificates are created and APA GasNet has the right to allocate these certificates to users. AMDQ cc have been issued for injection points at Port Campbell and at Culcairn. For the 2013-17 access arrangement period, there is currently 353 TJ/day contracted under AMDQ cc on the South West Pipeline (SWP) and 50 TJ/day contracted for at Culcairn.

AMDQ cc were introduced in 2002. Initially, AMDQ cc were allocated on a first come first served basis and were priced at the reference tariff on a take or pay basis. However, at this time there was not significant demand for this product. Following the change in the wholesale gas market introduced in 2007 and unusual market conditions that applied during the winter of that year (which was particularly cold and dry), demand for AMDQ cc increased dramatically. In 2008, after consultation with the ACCC, APA GasNet auctioned AMDQ cc for the first capacity tranche made available

on the SWP. This auction attracted bids that were very high compared to the floor price (which was set at the reference tariff). All available AMDQ cc was fully allocated.

In 2010, when the next tranche of capacity at Port Campbell became available, APA GasNet changed the AMDQ cc auction process to a tender process. This was because it considered that high prices from the previous open auction process were not desirable in the longer term. It was also cognisant of the requirement that all shippers should have access to scarce resources. Consequently, AMDQ cc were tendered at a fixed price set by APA GasNet at a level between the reference tariff and what it expected the incremental tariff would be necessary to underwrite the expansion of the SWP.

Since this initial tender process, APA GasNet has conducted several other tenders for available pipeline capacity which have been consistently oversubscribed. Where bids total more than the total of new capacity available, APA GasNet has allocated the available capacity on a pro-rata basis based on the capacity tendered for by bidders. The operation of the tender process for AMDQ cc is not specified in the Declared Wholesale Gas Market Rules of the NGR, the current APA GasNet access arrangement, or by AEMO.⁶⁴

The price placed on AMDQ cc by APA GasNet is forward looking over a five year horizon which provides it with an investment signal for future expansion. The terms of AMDQ cc contracts are now aligned to the access arrangement period, although this was not always the case with earlier AMDQ cc contracts. Holders of AMDQ cc pay APA GasNet in equal monthly instalments over the five years. They do not pay injection charges for the equivalent capacity.

Because holders of AMDQ cc are not required to pay injection charges on AMDQ cc volumes and the price paid for AMDQ cc is at a level which is at least the reference tariff, users that hold AMDQ cc are not paying for transportation pipeline services twice.

⁶⁴ However, there are procedures in the NGR for the auction of AMDQ by AEMO.

B Summary of issues raised in submissions

Issue	AEMC Response
Reference service definition	
<p><i>Ability of the AER to set efficient tariffs</i></p> <p>AEMO submitted that criteria should be developed to guide the AER in making a determination regarding a reference service and making an apportionment to rebateable or negotiated services. In developing this criteria AEMO suggested that consideration be given to the uncertainty in forecasting demand and the difficulty in determining costs for services. AEMO also raised concerns regarding the allocation of the asset value between reference services and non-reference services.</p> <p>APA was concerned about the AER's assertion that the current requirement to determine a reference tariff for each reference service gives rise to regulatory risks, where the demand or revenues to be derived from services are uncertain. It submitted that it is unclear how a service for which there is uncertain demand could be considered a reference service.</p> <p>APIA submitted that the current rules allows for the AER to approve the treatment of emerging or developing pipeline services where demand is uncertain as non-reference services. It also submitted that a service for which there is uncertainty in demand or revenue means that it is a service which is not likely to be sought by a significant part of the market. Therefore it could not a reference service.</p>	<p><i>Ability of the AER to set efficient tariffs</i></p> <p>The draft rule requires the AER to take into account the revenue and pricing principles when determining a reference service.</p> <p>The allocation of pipeline costs between reference services and non-reference services is beyond the scope of the rule change request.</p> <p>The Commission does not agree with the concerns raised by APA and APIA. The draft rule maintains the future-looking approach of the current rule by specifying that the AER considers each pipeline service that is likely to be sought by a significant part of the market to be included as a reference service.</p>
<p><i>The AER's discretion</i></p> <p>AEMO supported the proposed rule in respect of it giving the AER discretion to determine reference services.</p>	<p><i>The AER's discretion</i></p> <p>The draft rule does provide an increased level of discretion to the AER. However, this discretion is necessary for the AER to be able to set reference tariffs that are reflective of efficient costs. The draft rule requires the AER to</p>

Issue	AEMC Response
<p>APA submitted that this discretion should not be linked to the AER's stated concern over uncertainty as to the demand for the service or to the revenues earned from providing this service.</p> <p>Jemena submitted that the increased discretion will expose service providers to significant risk such that the balance and certainty inherent in the service offered by the service provider will be altered in a way that is detrimental to the interests of the service provider.</p> <p>Multinet submitted that the AER's discretion should be limited to 'other' pipeline services to those put forward by the service provider under rule 101 of the NGR.</p> <p>Origin was concerned that the discretion will lead to uncertain and unpredictable outcomes. It submitted that if a change were made then it should include limits on the level of discretion to ensure that market participants have certainty and clarity around the AER's decision making criteria.</p>	<p>take into account the revenue and pricing principles when making a decision on classifying a pipeline service as a reference service which leads to the setting of reference tariffs. The AER would also be required to consider the NGO when making a reference service decision.</p> <p>The draft rule restores discretion to the regulator to what it was under the Gas Code. The Commission is not aware of any problems with regards to this discretion under the Gas Code.</p>
<p><i>Policy intent</i></p> <p>APIA disputed the AER's claim that its proposal seeks to address a 'drafting error'. It considered that it was inappropriate for the AER to make assertions as to the policy intention without referencing direct evidence. APIA cited a SCO document which stated that "access arrangements must specify as reference services all services that are likely to be sought by a significant part of the market".</p> <p>Jemena submitted that there is no policy intent for returning to the regulatory framework of the Gas Code. It also submitted that in its view, the presumption must be that what is placed in the current rules is intended to be there.</p>	<p><i>Policy intent</i></p> <p>No explanation of the change from the Gas Code to the NGR with regards to the regulator's discretion to determine reference services has been located. In addition, there is no explanation of the change with respect to the number of reference services that must be included in an access arrangement. Accordingly, it is unclear as to what the policy intent was in changing the reference service definition.</p>

Issue	AEMC Response
<p><i>Alternative rule changes</i></p> <p>Jemena submitted that there are alternatives to the AER's proposed rule which avoids the detrimental effects of the proposed rule change, and better contributes to the achievement of the NGO.</p> <p>For the reference service definition, Jemena proposed adding the provision that a reference service is not a rebateable service. This means that all services which are likely to be sought by a significant part of the market will be reference services unless they are rebateable services.</p> <p>Jemena submitted that the Commission explore the option of a change to the Victorian Wholesale Market Rules as an alternative to the proposed rule change. It also suggested that the AER investigate the possibility that an administrative solution be developed rather than a rule change.</p> <p>Multinet generally supported the proposed rule, however it submitted that the proposed reference service definition be amended by inserting 'and' between the two sub-rules. By doing so, Multinet submitted the proposed rule would align to the Gas Code.</p>	<p><i>Alternative rule changes</i></p> <p>Jemena's alternative reference service definition would not solve the problem of the AER not being able to set efficient tariffs in circumstances where demand and/or revenue are uncertain, or where setting a reference tariff would be inappropriate due to commercial circumstances.</p> <p>Jemena's alternative reference service definition relies on its proposed alternative to the rebateable service definition, which the Commission considers will likely lead to an increased risk to investment and therefore would not be consistent with the NGO.</p> <p>With regards to Jemena's other suggested alternatives, the reason for making the draft rule is to provide the AER greater discretion in determining reference services. This will allow the AER to avoid situations where it is problematic to set efficient tariffs. This reason for the rule change goes beyond the issue identified by the AER with respect to the Victorian DTS.</p> <p>The Commission agrees with Multinet.</p>
<p><i>Supportive of the proposed rule change</i></p> <p>TRUenergy submitted that it was supportive of the proposed rule with respect to the reference service definition as it will result in an outcome that is consistent with the NGO.</p>	<p><i>Supportive of the proposed rule change</i></p> <p>The Commission agrees.</p>
<p>Rebateable service definition</p>	
<p><i>Triggering the most favoured nation clause in existing contracts</i></p> <p>APIA, APA and DBP submitted that they were concerned that the proposed rule could lead to a change in the risk/reward relationship in bilateral contracts</p>	<p><i>Triggering the most favoured nation clause in existing contracts</i></p> <p>The Commission accepts the argument that the proposed rule may expose service providers to increased investment risk by allowing the possibility that</p>

Issue	AEMC Response
<p>between service providers and users in relation to other fully regulated pipelines. These concerns related to the possible triggering of the most favoured nation clause in bilateral contracts.</p>	<p>rebateable and reference services may be in the same market (see Chapter 7). This may lead to reductions in the reference tariff being more likely to occur. Significant reductions in the reference tariff may trigger the most favoured nation clause.</p> <p>The Commission considers that the proposed rule change may lead to an increased risk to investment which would not be conducive to efficient investment in natural gas services and would not be in the long term interests of consumers.</p>
<p><i>The fixed principle in the DBNGP access arrangement</i></p> <p>DBP submitted that if the proposed rule change is made, then it may take precedence over the fixed principle in the DBNGP access arrangement. The fixed principle prevents the ERA from clawing back any revenue that DBP might earn from the sale of pipeline services that is in excess of the total revenue set under the access arrangement. It also submitted that as the tariffs negotiated under contracts were fundamental to the purchase of the DBP in 2004, then any clawing back of revenues earned under these contracts could have extreme adverse effects on DBNGP investment.</p>	<p><i>The fixed principle in the DBNGP access arrangement</i></p> <p>It is possible that transitional rule 6 of the NGR could be interpreted to not apply to the fixed principle described in the current access arrangement (see Chapter 7).</p> <p>The Commission considers that the proposed rule change may lead to an increased risk to investment which would not be conducive to efficient investment in natural gas services and would not be in the long term interests of consumers.</p>
<p><i>Introduction of cross subsidies</i></p> <p>APA submitted that the proposed rule change has scope to introduce cross subsidies between competitive users served by gas pipelines. It submitted that this will result from the removal of the requirement that the markets for rebateable and reference services be substantially different.</p>	<p><i>Introduction of cross subsidies</i></p> <p>The proposed rule does not introduce cross subsidies. This is because:</p> <ul style="list-style-type: none"> • the rebating of revenue earned from the provision of rebateable services against the reference service is rebalancing a cross subsidy that exists against users of the reference service; and • in any case, the AER has discretion under rule 93(3) of the NGR in determining the appropriate portion of revenue generated from the sale of rebateable services to be rebated to users of reference services.

Issue	AEMC Response
<p><i>Retrospective regulation</i></p> <p>APA submitted that if the proposed rule was to be accepted then the AER could take the opportunity to take into account revenues already earned under existing AMDQ cc contracts when setting future revenues and tariffs for the Victorian DTS. It also submitted that if the rule were accepted then it should only apply prospectively.</p>	<p><i>Retrospective regulation</i></p> <p>The Commission does not accept that the proposed rule will result in retrospective regulation. This is because:</p> <ul style="list-style-type: none"> • s. 321 of the NGL prohibits an access arrangement from depriving a person of a protected contractual right; and • if the rule was made, it would not be good regulatory practice to apply the rule to revenues generated prior to the commencement of the rule.
<p><i>Alternative rule changes</i></p> <p>Jemena proposed an alternative to the AER's proposed rule.</p> <p>For the rebateable service definition Jemena proposed adding the provision that a pipeline service may be a rebateable service if the service is likely to be sought by a significant part of the market. This Jemena submitted is consistent with its alternative amendment to the reference service definition.</p> <p>TRUenergy submitted that while it was supportive of the proposed rule, it considered that it should be amended to provide that users who have paid for AMDQ cc are rebated in full where they have effectively paid for transportation pipeline services twice. Also that the return of the rebate should be paid to users on a pro-rata basis.</p>	<p><i>Alternative rule changes</i></p> <p>The Commission does not consider that Jemena's alternative rebateable service definition would better promote the NGO with respect to efficient investment in pipeline services and the long term interests of consumers. It will likely lead to an increased risk to investment, by allowing a rebateable service to be in the same market as the reference service.</p> <p>TRUenergy's proposed amendment to the rule change is specific to the Victorian DTS and should not be included in the rebateable service definition which is relevant to all full regulation pipelines. Also, users who hold AMDQ cc are not effectively paying twice for transportation pipeline services (see Appendix A).</p>

C Recognition of contractual arrangements in the national gas regime

The national gas access regime is designed to recognise and balance the contractual arrangements of the pipeline industry with the need for regulatory oversight where the benefits of regulation exceed the costs.⁶⁵

Unlike electricity, the gas industry is founded on bilateral negotiated contracts.⁶⁶ These bilateral contracts are critical in the development of pipeline infrastructure as pipeline investment is usually debt financed over a long period.⁶⁷

Pipelines that are fully regulated have access arrangements approved by the regulator⁶⁸ which set out minimum terms and conditions and prices (reference tariffs) for access to pipeline services.⁶⁹ The regulated terms and conditions and tariffs serve as a reference point around which terms and conditions and tariffs can be negotiated.⁷⁰ Under this regulatory regime, the service provider (that is, the owner and/or operator of the pipeline) is under no obligation to charge the reference tariff or to provide non-tariff elements as set out in the access arrangement, unless it is required to do so under arbitration.⁷¹ For example, fully regulated pipelines may provide all of their pipeline services under negotiated contractual arrangements but still have a reference service and a reference tariff specified in an access arrangement.

Where negotiation between users or prospective users and the service provider has not been successful, the gas access regime provides for a dispute resolution mechanism.⁷² In resolving a dispute, the arbitrator must refer to the access arrangement including the reference service and reference tariff.⁷³ However, the gas access regime ensures that existing contractual rights are protected in access disputes.⁷⁴

⁶⁵ MCE, *Review of the National Gas Pipelines Access Regime, Decision*, May 2006, pp13-14.

⁶⁶ The Victorian DTS operates under a market carriage approach for the management of pipeline capacity. However, for other pipelines the management of pipeline capacity is by contract carriage (where users contract with the service provider for the right to access a certain capacity of the pipeline).

⁶⁷ Productivity Commission, *Review of the Gas Access Regime, Inquiry Report No. 31*, 11 June 2004, p522; APIA submission, 3 November 2011, pp2-3; and APA submission, 3 November 2011, p1.

⁶⁸ Either the AER, or in Western Australia the ERA.

⁶⁹ NGL, s. 32(1); and NGR, rule 48.

⁷⁰ National Gas (South Australia) Bill 2008, *Second Reading Speech*, p17.

⁷¹ NGL, s. 322; National Gas (South Australia) Bill 2008, *Second Reading Speech*, p17; and The Gas Reform Task Force, *Information paper to accompany the exposure draft of the National Third Party Access Code for Natural Gas Pipeline Systems*, 8 August 1996, p37.

⁷² NGL, chapter 6.

⁷³ NGL, s. 189.

⁷⁴ NGL, s. 188; and National Gas (South Australia) Bill 2008, *Second Reading Speech*, p19.