



## Reference service and rebateable service definitions rule change request – section 320 report

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### Purpose

The Australian Energy Market Commission (Commission) is required under s. 320 of the National Gas Law (NGL) to publicly report if a final rule determination is not made within 12 months of publication of a notice under s. 303 of the NGL which formally commences the rule change process. This report relates to the reference service and rebateable service definitions rule change request which has taken 13 months from when the AEMC formally initiated the rule change process to completion.

### Background

On 5 August 2011, the Commission received a rule change request from the Australian Energy Regulator (AER) seeking to amend the definitions of reference service and rebateable service in the National Gas Rules (NGR).

The purpose of the AER's rule change request was to provide the AER flexibility for it to determine which pipeline services are reference services, rebateable services or neither.

The reason provided by the AER for its rule change request was that it considered that the current definitions may lead to access arrangement decisions which in some circumstances could result in outcomes that are not the most efficient for investment in and use of pipeline services and are contrary to the long term interests of consumers.

The s. 303 notice was published on 6 October 2011, together with a consultation paper which formally commenced the public consultation process. Stakeholders were given four weeks to respond to the consultation paper, with submissions due on the 3 November 2011.

The Commission received eight submissions on the rule change request as part of the first round of consultation.

The draft rule determination and draft rule were published on 15 March 2012. Stakeholders were provided with six weeks to respond to the draft rule determination, with submissions due on 26 April 2012.

The Commission received six submissions and four supplementary submissions on the draft rule determination and draft rule as part of the second round of consultation.

The Commission published a consultation paper on 13 September 2012 which sought stakeholder comments on a proposed variation to the draft rule. Stakeholders were provided with three weeks to respond to the consultation paper, with submissions due on 5 October 2012.

The Commission received six submissions on the consultation paper as part of the third round of consultation.

The final determination and final rule were published on 1 November 2012. The final rule implements the AER's proposed change to the reference service definition with some minor amendment. However, in the final rule determination the Commission decided not to adopt the AER's proposed change to the rebateable service definition.

Over the course of this rule change, three notices have been issued under s. 317 of the NGL extending the periods of time for publishing the draft and final rule determinations for this rule change request. The Commission considered that the proposed rule raised issues of sufficient complexity and difficulty such that additional time was necessary.

## **Reason for the final rule determination not being made within 12 months**

The final rule determination has not been made within 12 months of the publication of the notice under s. 303 of the NGL as a result of:

- the detailed and complex nature of the rule change request; and
- the nature and volume of issues raised by stakeholders during the first, second and third rounds of consultation on the rule change request.

The consultation process has demonstrated a high level of interest from stakeholders regarding the rule change request and the issues raised. Over the course of this rule change process, the Commission received a total of 24 submissions and supplementary submissions to the initial consultation paper, draft rule determination and draft rule and the second consultation paper.

These submissions included a significant number of detailed policy issues and presented different legal interpretations on the relevant provisions of the NGR. A key concern raised in submissions was the complexity and implications of applying the proposed rule, if implemented, to regulated pipelines that have different market arrangements.

To ensure the Commission's assessment of the rule change request was robust, credible and would promote an outcome that was consistent with, and would contribute to, the achievement of the national gas objective, the Commission made the decision to extend the periods of time for considering the rule change request. These time extensions provided the Commission with the opportunity to fully consider the issues raised by stakeholders.

## **Time for making final rule determination**

The final rule determination and final rule were published on 1 November 2012.