



National Gas Amendment (Price and Revenue Regulation of Gas Services) Rule 2012 No. 3

under the National Gas Law to the extent applied by:

- (a) the National Gas (South Australia) Act 2008 of South Australia;
- (b) the National Gas (ACT) Act 2008 of the Australian Capital Territory;
- (c) the National Gas (New South Wales) Act 2000 of New South Wales;
- (d) the National Gas (Queensland) Act 2008 of Queensland;
- (e) the National Gas (Tasmania) Act 2008 of Tasmania;
- (f) the National Gas (Victoria) Act 2008 of Victoria; and
- (g) the National Gas (Northern Territory) Act 2008 of Northern Territory;
- (h) the National Gas Access (WA) Act 2009 of Western Australia; and
- (i) the Australian Energy Market Act 2004 of the Commonwealth.

The Australian Energy Market Commission makes the following Rule under the National Gas Law.

John Pierce
Chairman
Australian Energy Market Commission

National Gas Amendment (Price and Revenue Regulation of Gas Services) Rule 2012 No. 3

1 Title of Rule

This Rule is the *National Gas Amendment (Price and Revenue Regulation of Gas Services) Rule 2012 No. 3*.

2 Commencement

This Rule commences operation on 29 November 2012.

3 Amendment of the National Gas Rules

The National Gas Rules are amended as set out in Schedule 1.

4 Savings and Transitional Amendments to the National Gas Rules

The National Gas Rules are amended as set out in Schedule 2.

Schedule 1 Amendments to the National Gas Rules

(Clause 3)

[1] Rule 3 Interpretation

In rule 3, insert the following definitions in alphabetical order:

allowed rate of return see rule 87(1).

allowed rate of return objective see rule 87(3).

rate of return consultative procedure means the procedure for consultative decision making laid down in rule 9B.

rate of return guidelines means the guidelines made under rule 87.

[2] New Rule 9B Rate of return consultative procedure

After Rule 9A insert:

9B Rate of return consultative procedure

- (1) If the Law requires a *decision* maker to comply with the *rate of return consultative procedure* in making, amending, replacing or reviewing the *rate of return guidelines*, the *decision* maker must proceed in accordance with this rule.
- (2) The *decision* maker must proceed as follows:
 - (a) the *decision* maker must publish a notice on its website and in a newspaper circulating generally throughout Australia:
 - (i) describing the proposed *rate of return guidelines*, amendments or review, and giving the address of a website on which the details of such guidelines, amendments or review, and the reasons for them, are published; and
 - (ii) inviting written submissions on the proposed *rate of return guidelines*, amendments or review within no less than 30 *business days* of the date of the notice;
 - (b) the *decision* maker may publish such issues, consultation and discussion papers, and hold such conferences and information sessions in relation to the proposed *rate of return guidelines*, amendments or review as it considers appropriate; and
 - (c) the *decision* maker must, within 80 *business days* of the date of the notice referred to in subrule (2)(a) and after considering relevant submissions made within the time allowed in the

notice and other matters the *decision* maker considers relevant, make its final *decision*.

- (3) The final *decision* must:
 - (a) be in writing; and
 - (b) state the terms of the *decision* and the reasons for it; and
 - (c) include a summary of each issue raised in submissions, that the *decision* maker reasonably considers to be material, together with the *decision* maker's response to each such issue.
- (4) The *decision* maker may extend the time within which it is required to make its final *decision* if:
 - (a) the consultation involves issues of unusual complexity or difficulty; or
 - (b) the extension of time has become necessary because of circumstances beyond the *decision* maker's control.
- (5) After making a final decision, the *decision* maker must, without delay:
 - (a) publish the final *decision* on the *decision* maker's website; and
 - (b) make the final *decision* available for inspection during business hours at the *decision* maker's public offices.

**[3] Rule 72 Specific requirements for access
arrangement information relevant to price and revenue
regulation**

Omit rule 72(g) and 72(h) and substitute:

- (g) the proposed return on equity, return on debt and *allowed rate of return*, for each regulatory year of the *access arrangement period*, in accordance with rule 87, including any departure from the methodologies set out in the *rate of return guidelines* and the reasons for that departure;
- (ga) the proposed formula (if any) that is to be applied in accordance with rule 87(12);
- (h) the estimated cost of corporate income tax calculated in accordance with rule 87A, including the proposed value of imputation credits referred to in that rule;

[4] Rule 76 Total revenue

Omit rule 76(c) and substitute:

- (c) the estimated cost of corporate income tax for the year (See Division 5A); and

[5] Rule 87 Rate of return

Omit rule 87 and substitute:

- (1) Subject to rule 82(3), the return on the projected capital base for each regulatory year of the *access arrangement period* is to be calculated by applying a rate of return that is determined in accordance with this rule 87 (the *allowed rate of return*).
- (2) The *allowed rate of return* is to be determined such that it achieves the *allowed rate of return objective*.
- (3) The *allowed rate of return objective* is that the rate of return for a service provider is to be commensurate with the efficient financing costs of a benchmark efficient entity with a similar degree of risk as that which applies to the service provider in respect of the provision of reference services (the *allowed rate of return objective*).
- (4) Subject to subrule (2), the *allowed rate of return* for a regulatory year is to be:
 - (a) a weighted average of the return on equity for the *access arrangement period* in which that regulatory year occurs (as estimated under subrule (6)) and the return on debt for that regulatory year (as estimated under subrule (8)); and
 - (b) determined on a nominal vanilla basis that is consistent with the estimate of the value of imputation credits referred to in rule 87A.
- (5) In determining the *allowed rate of return*, regard must be had to:
 - (a) relevant estimation methods, financial models, market data and other evidence;
 - (b) the desirability of using an approach that leads to the consistent application of any estimates of financial parameters that are relevant to the estimates of, and that are common to, the return on equity and the return on debt; and
 - (c) any interrelationships between estimates of financial parameters that are relevant to the estimates of the return on equity and the return on debt.

Return on equity

- (6) The return on equity for an *access arrangement period* is to be estimated such that it contributes to the achievement of the *allowed rate of return objective*.
- (7) In estimating the return on equity under subrule (6), regard must be had to the prevailing conditions in the market for equity funds.

Return on debt

- (8) The return on debt for a regulatory year is to be estimated such that it contributes to the achievement of the *allowed rate of return objective*.
- (9) The return on debt may be estimated using a methodology which results in either:
 - (a) the return on debt for each regulatory year in the *access arrangement period* being the same; or
 - (b) the return on debt (and consequently the *allowed rate of return*) being, or potentially being, different for different regulatory years in the *access arrangement period*.
- (10) Subject to subrule (8), the methodology adopted to estimate the return on debt may, without limitation, be designed to result in the return on debt reflecting:
 - (a) the return that would be required by debt investors in a benchmark efficient entity if it raised debt at the time or shortly before the time when the AER's *decision* on the access arrangement for that *access arrangement period* is made;
 - (b) the average return that would have been required by debt investors in a benchmark efficient entity if it raised debt over an historical period prior to the commencement of a regulatory year in the *access arrangement period*; or
 - (c) some combination of the returns referred to in subrules (a) and (b).
- (11) In estimating the return on debt under subrule (8), regard must be had to the following factors:
 - (a) the desirability of minimising any difference between the return on debt and the return on debt of a benchmark efficient entity referred to in the *allowed rate of return objective* ;
 - (b) the interrelationship between the return on equity and the return on debt;

- (c) the incentives that the return on debt may provide in relation to capital expenditure over the *access arrangement period*, including as to the timing of any capital expenditure; and
 - (d) any impacts (including in relation to the costs of servicing debt across *access arrangement periods*) on a benchmark efficient entity referred to in the *allowed rate of return objective* that could arise as a result of changing the methodology that is used to estimate the return on debt from one *access arrangement period* to the next.
- (12) If the return on debt is to be estimated using a methodology of the type referred to in subrule (9)(b) then a resulting change to the service provider's total revenue must be effected through the automatic application of a formula that is specified in the *decision* on the access arrangement for that *access arrangement period*.

Rate of return guidelines

- (13) The AER must, in accordance with the *rate of return consultative procedure*, make and publish guidelines (the *rate of return guidelines*).
- (14) The *rate of return guidelines* must set out:
- (a) the methodologies that the AER proposes to use in estimating the *allowed rate of return*, including how those methodologies are proposed to result in the determination of a return on equity and a return on debt in a way that is consistent with the *allowed rate of return objective*; and
 - (b) the estimation methods, financial models, market data and other evidence the AER proposes to take into account in estimating the return on equity, the return on debt and the value of imputation credits referred to in rule 87A.
- (15) There must be *rate of return guidelines* in force at all times after the date on which the AER first publishes the *rate of return guidelines* under these rules.
- (16) The AER must, in accordance with the *rate of return consultative procedure*, review the *rate of return guidelines*:
- (a) at intervals not exceeding three years, with the first interval starting from the date that the first *rate of return guidelines* are published under these rules; and
 - (b) at the same time as it reviews the Rate of Return Guidelines under clauses 6.5.2 and 6A.6.2 of the National Electricity Rules.

- (17) The AER may, from time to time and in accordance with the *rate of return consultative procedure*, amend or replace the *rate of return guidelines*.
- (18) The *rate of return guidelines* are not mandatory (and so do not bind the AER or anyone else) but, if the AER makes a *decision* in relation to the rate of return (including in an access arrangement draft *decision* or an access arrangement final *decision*) that is not in accordance with them, the AER must state, in its reasons for the *decision*, the reasons for departing from the guidelines.
- (19) If the *rate of return guidelines* indicate that there may be a change of regulatory approach by the *decision* maker in future *decisions*, the guidelines should also (if practicable) indicate how transitional issues are to be dealt with.

Division 5A

87A Estimated cost of corporate income tax

- (1) The estimated cost of corporate income tax of a service provider for each regulatory year of an *access arrangement period* (ETC_t) is to be estimated in accordance with the following formula:

$$ETC_t = (ETI_t \times r_t) (1 - \gamma)$$

Where

ETI_t is an estimate of the taxable income for that regulatory year that would be earned by a benchmark efficient entity as a result of the provision of reference services if such an entity, rather than the service provider, operated the business of the service provider;

r_t is the expected statutory income tax rate for that regulatory year as determined by the AER; and

γ is the value of imputation credits.

Schedule 2 Savings and Transitional Amendments to the National Gas Rules

[1] Schedule 1, Part 5 Transitional provisions consequent on the National Gas Amendment (Price and Revenue Regulation of Gas Services) Rule 2012

After Part 4, insert:

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

33 Definitions

In this Part:

next access arrangement revision proposal, for a service provider, means an *access arrangement revision proposal* that is first submitted by that service provider after the commencement of the National Gas Amendment (Price and Revenue Regulation of Gas Services) Rule 2012.

34 Modification of rule 52(3)

Rule 52(3) is varied so as to provide that the period for submitting an *access arrangement revision proposal* under rule 52 may be extended by the AER by a period (or aggregate period) of no more than 18 months with respect to the next access arrangement revision proposal that is required to be submitted by the relevant service provider for:

- (1) the Mid-West and South-West Gas Distribution System;
- (2) the Goldfields Gas Pipeline; and
- (3) the ACT, Queanbeyan and Palerang gas distribution network.

35 Extension of time

- (1) The AER must exercise its power under rule 52(3) (as modified by clause 34 of this Schedule 1) to extend the period for submitting the next access arrangement revision proposal for the Mid-West and South-West Gas Distribution System to the date that is 3 months after the date the first *rate of return guidelines* are published under rule clause 37 of this Schedule 1.
- (2) The AER must exercise its power under rule 52(3) (as modified by clause 34 of this Schedule 1) to extend the period for submitting the next *access arrangement revision proposal* for the Goldfields Gas Pipeline (including any *access arrangement revision proposal* that

is required to be submitted due to the occurrence of a trigger event under rule 51) to the date that is 6 months after the date the first *rate of return guidelines* are published under rule clause 37 of this Schedule 1.

- (3) The AER must exercise its power under rule 52(3) (as modified by clause 34 of this Schedule 1) to extend the period for submitting the next access arrangement revision proposal for the ACT, Queanbeyan and Palerang gas distribution network to 30 June 2015.

36 Modification of rule 92(3)

If a trigger event occurs under the access arrangement for the Goldfields Gas Pipeline before the next access arrangement revision proposal is submitted, then in applying rule 92(3), the "interval of delay" is the period between the date that is 12 months after the date that the *review submission date* advances to, by virtue of the operation of rule 51(1) and that access arrangement, and the date on which revisions to the access arrangement actually commence.

37 Rate of return guidelines

- (1) The AER must make and publish on its website the first *rate of return guidelines* by 29 November 2013.
- (2) By no later than 21 December 2012, the AER must publish on its website a paper that sets out:
 - (a) a schedule setting out the key dates and milestones for the making of the first *rate of return guidelines* by the date specified in paragraph (1); and
 - (b) the specific consultation procedure that the AER will follow in making the first *rate of return guidelines*, which must be consistent with the *rate of return consultative procedure*.

[END OF RULE AS MADE]
