



# APA Group supplementary submission

## Gas pipeline information disclosure and arbitration framework: proposed changes to the initial draft rules

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### Proposed drafting

APA Group has lodged a comprehensive submission responding to the Gas Market Reform Group's (GMRG's) Gas Pipeline information disclosure and arbitration framework Initial draft rules.

In addition to that submission, APA has also prepared proposed drafting to address matters raised in our submission. This is to assist the GMRG in preparing revised rules for implementation over the very short time period available.

APA's proposed changes to the initial draft rules have necessarily been developed under significant time constraints. As such, they may not be comprehensive in their effect – they represent APA's best efforts in the time available to develop appropriate and effective drafting solutions to the issues it identifies in its submission.

## **Part 23 Access to non-scheme pipelines**

### **Division 1 Preliminary**

#### **546 Objective**

- (1) The objective of this Part is to facilitate access to pipeline services on non-scheme pipelines on reasonable terms, which, for the purposes of this Part, is taken to mean at prices and on other terms and conditions that, so far as practical, reflect the outcomes of a workably competitive market.
- (2) This Part is intended to contribute to achieving the objective in subrule (1) by means of:
  - (a) requirements for the publication and exchange of information to facilitate timely and effective commercial negotiations in relation to access to non-scheme pipelines;
  - (b) an effective and binding commercially-orientated arbitration process to resolve access disputes in a cost-effective and efficient manner; and
  - (c) principles that the arbitrator must have regard to when determining access disputes, which are consistent with the outcomes of a workably competitive market,

so as to reduce the imbalance in bargaining power that prospective users may face when negotiating access to non-scheme pipelines and to pose a constraint on the exercise of market power by service providers for non-scheme pipelines.

#### **547 Application**

- (1) This Part is made for section 83A and Chapter 6A of the *NGL*.
- (2) This Part does not apply in Western Australia until the day fixed in an order made for that purpose under the National Gas Access (Western Australia) Law within the meaning of the *National Gas Access (WA) Act 2009* of Western Australia.

#### **548 Structure of this Part**

- (1) Division 1 sets out the objectives of this Part and deals with preliminary matters.
- (2) Division 2 sets out information that must be published by the service provider for a non-scheme pipeline.
- (3) Division 3 provides for access requests and negotiations.
- (4) Division 4 provides for the arbitration of access disputes.

- (5) Division 5 contains provisions about the role of the scheme administrator.
- (6) Division 6 provides for exemptions from the application of this Part.

## 549 Definitions

In this Part:

**access contract** means a contract between a user and a service provider under which the service provider provides or will provide a pipeline service on a non-scheme pipeline to the user.

**access determination** is defined in section 216A of the *NGL* and includes an interim access determination and a final access determination.

**access dispute** has the meaning in section 216A of the *NGL*.

**access dispute notice** is defined in rule 564.

**access information standard** is defined in rule 551.

**access negotiation information** is defined in rule 562(21).

**access offer** means an offer to provide access to a pipeline service that complies with rule 560.

**access request** means a request referred to in rule 560.

~~**application date** means:~~

~~(a) in relation to a pipeline that is a non-scheme pipeline on the commencement date—the date falling 4 months after the commencement date;~~

~~(b) in relation to a pipeline that becomes a non-scheme pipeline within 4 months after the commencement date—the date falling 4 months after the commencement date; and~~

~~(c) in relation to any other pipeline, the later of:~~

~~(i) the date the pipeline is commissioned; and~~

~~(ii) the date the pipeline becomes a non-scheme pipeline.~~

~~**Note:**~~

~~Section 12 of the *NGL* defines when a pipeline is commissioned.~~

**arbitrator**, in relation to an access dispute, means the pool arbitrator to whom the dispute has been referred for determination.

**business day** means a day that is not a Saturday, Sunday or public holiday in any participating jurisdiction or in relation to a pipeline in Western Australia, that jurisdiction alone.

**commencement date** means ~~the date this Part commences~~ in relation to:

(a) a pipeline that is a non-scheme pipeline, 1 February 2018; or

(b) any other pipeline, the later of:

(i) the date the pipeline is commissioned; and

(ii) the date the pipeline becomes a non-scheme pipeline.

**Note:**

Section 12 of the NGL defines when a pipeline is commissioned.

**completed access request** has the meaning in rule 559(4).

**confidential information**, in relation to an arbitration under this Part, means information that relates to the access dispute or the arbitration or to an access determination made in that arbitration and includes the following:

- (a) statements under rule 567 and other statements in the nature of pleadings or submissions, and other information supplied to the arbitrator by a party to the access dispute;
- (b) any information supplied by a party to another party in compliance with a direction of the arbitrator;
- (c) any evidence (whether documentary or otherwise) supplied to the arbitrator;
- (d) any notes made by the arbitrator of oral evidence or submissions given before the arbitrator;
- (e) any transcript of oral evidence or submissions given before the arbitrator;
- (f) any rulings of the arbitrator; and
- (g) any access determination of the arbitrator.

**daily capacity** means:

- (a) for a transmission pipeline, for each direction in which natural gas can be transported on the pipeline, the quantity of natural gas that can be transported through the pipeline on a gas day for the pipeline in that direction; and
- (b) for a distribution pipeline, the quantity of natural gas that can be transported through each gate station on the distribution pipeline on a gas day for the pipeline.

**disclose**, in relation to confidential information, includes publishing or communicating or otherwise supplying the confidential information.

**dispute hearing** has the meaning in section 216A of the *NGL*.

**exemption** means an exemption granted under Division 6.

**existing access contract** means, at any time, an access contract in force at that time, even if the service term for one or more pipeline services provided under the access contract has not commenced.

**final access determination** means a determination made under rule 572.

**financial information** means the information required to be published under rule 555.

**financial reporting guidelines** means the guidelines published by the AER under rule 556 as amended from time to time.

**firm primary pipeline capacity** means firm capacity on a pipeline that is sold by the service provider to a user, giving the user the right to transport an agreed quantity of natural gas on that pipeline for an agreed period.

**further investigations** means investigations to determine whether the provision of a pipeline service sought by a prospective user is technically feasible and consistent with the safe and reliable operation of the pipeline having used all reasonable efforts to accommodate the reasonable requirements of the prospective user.

**Gas Bulletin Board** means, as applicable:

- (a) the Natural Gas Services Bulletin Board established under Part 18 of the Rules; or
- (b) the gas bulletin board established under the *Gas Services Information Act 2012* of Western Australia.

**gas day** means in respect of a pipeline, the 24 hour period for which nominations for use of pipeline services on the pipeline are provided or if no such nomination period applies to the pipeline, the 24 hour period commencing at 6:00 am Australian eastern standard time.

**information** includes data.

**interim access determination** means a determination referred to in rule 571.

**nameplate rating** means, in relation to a pipeline, the maximum daily capacity of the pipeline under normal operating conditions.

**non-scheme pipeline** has the meaning in section 83A(1) of the *NGL*.

**non-scheme pipeline arbitration guide** means the guide published by the scheme administrator under rule 584.

**pool arbitrator** means a person appointed by the scheme administrator as a member of the pool of arbitrators established under rule 583, for so long as that appointment continues.

**pipeline information** is defined in rule 553(2).

**pipeline service information** is defined in rule 553(3).

~~**primary pipeline capacity** means firm capacity on a pipeline that is sold by the service provider to a user, giving the user the right to transport an agreed quantity of natural gas on that pipeline for an agreed period.~~

**pricing principles** means the principles in rule 569(23).

**prospective user** has the meaning in section 216B of the *NGL*.

**scheme administrator** has the meaning in section 216A of the *NGL*.

**Note to draft:**

The AER is the scheme administrator except in WA, where the ERA is expected to be the scheme administrator.

**service and access information** is defined in rule 553(1).

**service availability information** is defined in rule 553(5).

**service provider** has the meaning in section 8 of the *NGL*.

**Note:**

Section 10 of the *NGL* provides for pipelines with more than one service provider.

**service term** in relation to a pipeline service provided to a user under an access contract means the period during which the pipeline service is available to the user under that access contract.

**service usage information** is defined in rule 553(4).

**standing terms** means the information required to be published under rule 554.

**terms and conditions** includes price and non-price terms and conditions.

~~**weighted average price information** is defined in rule 557.~~

**user access guide** for a non-scheme pipeline means the user access guide published for the non-scheme pipeline under rule 558.

## 550 Interpretation

- (1) In this Part, a reference to a pipeline service on a pipeline includes a service provided by means of the pipeline and a service ancillary to the provision of a service provided by means of the pipeline.
- (2) In this Part, a pipeline service is to be treated as distinct from another pipeline service having regard to service type (for example, forward haul, backhaul, park and loan), the priority of the service relative to other pipeline services of the same type and the locations at which or between which the pipeline service is available.

- (3) In this Part, in relation to a prospective user, a pipeline service is also to be treated as distinct from another pipeline service by reference to the service term and the capacity sought by the prospective user.
- (4) For the purpose of this Part, a service provider for a non-scheme pipeline provides a pipeline service to a user indirectly where an associate of the service provider provides the pipeline service to the user.

**Note:**

Section 2 of the *NGL* defines associate.

## 551 Access information standard

- (1) A service provider required by a provision of this Part to prepare, publish and maintain information must do so in accordance with the access information standard.

**Note:**

The GMRG is recommending that this rule be classified as a civil penalty provision.

- (2) The **access information standard** means that the information:
  - (a) is not as far as the service provider is reasonably aware, false or misleading in a material particular;
  - (b) is prepared in accordance with:
    - (i) where applicable to the information, the financial reporting guidelines; and
    - (ii) all applicable laws;
  - (c) in relation to information of a technical nature and as far as the service provider is reasonably aware, is prepared, published and maintained in accordance with the practices, methods and acts that would reasonably be expected from an experienced and competent person engaged in the ownership, operation or control of a pipeline in Australia acting with all due skill, diligence, prudence and foresight; and
  - (d) in relation to a forecast or estimate, is supported by a statement of the basis of the forecast or estimate and:
    - (i) is arrived at on a reasonable basis; and
    - (ii) represents the best forecast or estimate possible in the circumstances.
- (3) Where a service provider becomes aware that information required to be published by it under this Part does not comply with the access information standard or this Part, the service provider must publish information that does comply as soon as practicable after the service provider becomes aware of the non-compliance.

**Note:**

The GMRG is recommending that this rule be classified as a civil penalty provision.

- (4) Information published under this Part must include the date of publication, the date to which the information is current and, if the information replaces an earlier version as provided for by subrule (3), notice of that fact.

**Note:**

The GMRG is recommending that this rule be classified as a civil penalty provision.

## Division 2 Information

### 552 Obligation to publish information

- (1) Subject to subrule (4), a service provider for a non-scheme pipeline must prepare, publish and maintain:
- (a) the service and access information specified in rule 553;
  - (b) standing terms in accordance with rule 554; [and](#)
  - (c) the financial information specified in rule 555; ~~and.~~

~~(d) weighted average price information specified in rule 557, subject to subrule 557(4),~~

in accordance with the *NGL*, this Part and the financial reporting guidelines.

**Note:**

The GMRG is recommending that this rule be classified as a civil penalty provision.

- (2) The information referred to in subrule (1) must be published at the following times.

|                                |                              |  |
|--------------------------------|------------------------------|--|
| service and access information | pipeline information         | No later than 20 business days after the <del>application</del> - <a href="#">commencement</a> date for the non-scheme pipeline.<br><br>Updated pipeline information must be published whenever there is a change.   |
|                                | pipeline service information | No later than 20 business days after the <del>application</del> - <a href="#">commencement</a> date for the non-scheme pipeline.<br><br>Updated pipeline service information must be published whenever a new pipeline service is added or an existing pipeline service changes or is withdrawn. |



|   |                                  |   |
|---|----------------------------------|---|
|   | service usage information        | Each month after the <del>application</del> <u>commencement</u> date for the non-scheme pipeline, by the last business day of the month for the prior month.  |
|   | service availability information | Each month after the <del>application</del> <u>commencement</u> date for the non-scheme pipeline, by the last business day of the month for the next 36 months.   |
| standing terms                                |                                  | No later than 20 business days after the <del>application</del> <u>commencement</u> date for the non-scheme pipeline.<br><br>Updated standing terms must be published whenever a new pipeline service is added or an existing pipeline service changes or is withdrawn. |
| financial information                         |                                  | Annually no later than four months after the end of the financial year of the service provider for the non-scheme pipeline.   |
| <del>weighted average price information</del> |                                  | <del>Annually no later than four months after the end of the financial year of the service provider for the non-scheme pipeline.</del>  |

**Note:**

The transitional rules provide for publication of initial financial information ~~and initial weighted average price information.~~

- (3) A service provider for a non-scheme pipeline must publish the information referred to in subrule (1) by:
  - (a) making the information publicly available on the service provider's website; or
  - (b) where the information is also required to be provided by the service provider for a non-scheme pipeline to AEMO for publication on a Gas Bulletin Board, by providing a publicly available link on its website to the part of the Gas Bulletin Board where the information is to be located.
- (4) When the service provider for a non-scheme pipeline publishes financial information ~~and weighted average price information~~, it must at the same time send the information to the AER.
- (5) A service provider for a non-scheme pipeline is not required to comply with subrule (1) in relation to a non-scheme pipeline to the extent that an exemption from the obligation to publish the information has been granted in relation to the non-scheme pipeline and that exemption remains in effect.

## 553 Service and access information

- (1) The service and access information comprises:
  - (a) the pipeline information described in subrule (2);
  - (b) the pipeline service information described in subrule (3);
  - (c) the service usage information described in subrule (4); and
  - (d) the service availability information described in subrule (5).
  
- (2) The pipeline information in respect of a non-scheme pipeline comprises:
  - (a) for a transmission pipeline – the details of all *receipt or delivery points* on the pipeline and key facilities to which those *receipt or delivery points* connect;
  - (b) for a distribution pipeline – the details of all points on the pipeline where the service provider takes delivery of natural gas;
  - (c) the pipeline's nameplate rating;
  - (d) a schematic map of the pipeline that shows:
    - (i) for a transmission pipeline – the location on the pipeline of each *receipt or delivery point* and other key facilities; and
    - (ii) for a distribution pipeline – the location on the pipeline of the points referred to in paragraph (b) and the geographic limits of the areas served by the pipeline;
  - (e) any technical or physical characteristics of the pipeline that may affect access to or use of the pipeline or the price for pipeline services on the pipeline;
  - (f) policies of the service provider that may affect access to or use of the pipeline or the price payable for access which may include:
    - (i) queuing requirements;
    - (ii) a *receipt or delivery point* change policy;
    - (iii) a metering and measurement policy; and
    - (iv) for a distribution pipeline – a balancing policy.
  
- (3) The pipeline service information for a pipeline comprises a list of the pipeline services available on the pipeline and for each pipeline service:
  - (a) a description of the service and any locational limitations on availability; and
  - (b) the priority ranking of the service in relation to the other pipeline services including when scheduling and in the event of curtailment.

- (4) The service usage information for a pipeline for a month comprises:
- (a) the total quantity of natural gas metered as having been injected into the pipeline during the month;
  - (b) the total quantity of natural gas metered as having been withdrawn from the pipeline during the month;
  - (c) the total quantity of natural gas scheduled for injection into the pipeline during the month;
  - (d) the total quantity of natural gas scheduled for withdrawal from the pipeline during the month; and
  - (e) of the scheduled quantities, the quantities attributable to each pipeline service on the pipeline as identified in the pipeline service information.
- (5) The service availability information for a pipeline for a month comprises:
- (a) an outlook of the firm primary pipeline capacity of the pipeline that the service provider has available for sale or that it will have available for sale for each month in the following 36 month period;
  - (b) information about matters expected to affect the ~~capacity of~~ contractual load on the pipeline ~~(including any planned expansions of the capacity~~ (but excluding planned maintenance) for each month in the following 36 month period, including:
    - (i) the period over which the capacity is expected to be affected;
    - (ii) a description of the matters expected to affect capacity; and
    - (iii) the expected capacity of the pipeline during the period it is affected by the matters referred to in paragraphs (b)(i) and (ii); and
  - (c) information on any other limitations on the availability of the pipeline services identified in the pipeline service information.

## 554 Standing terms

- (1) The service provider for a non-scheme pipeline must publish:
- (a) standing terms for each pipeline service on the pipeline in accordance with subrule (2); and
  - (b) the methodology used to calculate the standing price referred to in subrule (2)(b) and sufficient information to enable prospective users to understand how the standing price reflects the application of the methodology.
- (2) The standing terms must in each case include:

- (a) the service provider's standard terms and conditions applicable to the pipeline service;
- (b) the standing price, being the price applicable to the pipeline service under the terms and conditions referred to in paragraph (a); and
- (c) other information about prices and charges applicable to the pipeline service including the charging structure for the pipeline service, any minimum charge and any additional charges such as imbalance or overrun charges.

## **555 Financial information**

- (1) A service provider for a non-scheme pipeline must prepare and publish on its website financial information about each of its non-scheme pipelines. The financial information must:
  - (a) be in the form and contain the information specified in the financial reporting guidelines; and
  - (b) ~~be audited and~~ certified in the manner provided for in the financial reporting guidelines.
- (2) To avoid doubt, an arbitrator is not bound by financial information published under this rule or by any methods, principles or inputs that have been used to calculate financial information published under this rule.

## **556 Financial reporting guidelines**

- (1) The AER must prepare, publish and maintain financial reporting guidelines under this Part. The initial financial reporting guidelines must be published no later than 4 months after the commencement date.
- (2) The financial reporting guidelines must:
  - (a) provide for the publication of financial information about each non-scheme pipeline on a pipeline by pipeline basis and in respect of the financial year of the service provider for the pipeline, which may include but is not limited to:
    - (i) financial statements;
    - (ii) information on the methods, principles and inputs used to calculate:
      - (A) the value of any assets used in the provision of pipeline services;
      - (B) depreciation allowances;
      - (C) the allocation of costs between the different categories of pipeline services provided by the pipeline; and
      - (D) the allocation of costs to the pipeline if the service provider operates more than one pipeline; and

- (iii) financial performance metrics;
  - (b) specify the level of detail of information required, which must be the level of detail reasonably required given the objectives of this Part and to provide a true and accurate statement of the financial performance of the non-scheme pipeline;
  - (c) specify any accounting ~~or audit~~ standards that are to apply to the reported information; and
  - (d) provide for the manner in which the financial information is to be ~~audited and~~ certified as being true and accurate.
- (3) The AER may from time to time amend the financial reporting guidelines in accordance with the *standard consultative procedure* in rule 8.

**Note:**

The *standard consultative procedure* provides for publication of the proposal and consultation on the draft decision before making a final decision.

**557 ~~Weighted average prices~~ Not used**

- ~~(1) The weighted average price information for a non-scheme pipeline means, for each pipeline service provided on the non-scheme pipeline and subject to subrule (2):~~
- ~~(a) the weighted average price paid by users for the pipeline service in the financial year of the service provider for the non-scheme pipeline ending immediately prior to the date it is published; and~~
  - ~~(b) the methodology and inputs used by the service provider to calculate the weighted average price for the pipeline service.~~
- ~~(2) The weighted average price information for a financial year must:—~~
- ~~(a) be audited and certified in the same manner as financial information under the financial reporting guidelines; and~~
  - ~~(b) in the case of the weighted average price, be calculated in a manner that is consistent with the standing price for the relevant service and allows for direct comparison to the standing price.~~

**Note:**

~~For example, \$/GJ of firm MDQ per day where the standing price is also in \$/GJ of firm MDQ per day.~~

- ~~(3) If the service provider changes the pipeline services on the pipeline from year to year, it must indicate the nearest equivalent pipeline service from prior years and, if possible, recalculate the prices to reflect the change in classification of the pipeline service.~~

- ~~(4) Subject to sub-rule (5), a service provider is not required to publish the weighted average price information for a pipeline service for a financial year if:~~
- ~~(a) during the relevant period, the pipeline service was provided, directly or indirectly, to fewer than 3 users of the non-scheme pipeline; and~~
  - ~~(b) the service provider gives a notice to the AER before the date required for publication that the service provider is not publishing the information for that financial year, specifying the pipeline service to which the notice relates and certifying the pipeline service was provided to fewer than 3 users of the non-scheme pipeline during the relevant period.~~
- ~~(5) Where a notice is given to the AER under subrule (4), the AER may by notice to the service provider require the service provider to treat two or more pipeline services on the non-scheme pipeline as if they were the same type of pipeline service for the purposes of calculating and publishing weighted average price information for the financial year. A service provider must comply with a notice given to it under this clause.~~

## Division 3 Access requests and negotiations

### 558A Commercial-in-confidence negotiations

- (1) Nothing in this Division 3 prevents a service provider and a prospective user from entering into commercial-in-confidence negotiations prior to the issue of an access request.
- (2) Information exchanged during commercial-in-confidence negotiations between the service provider and the prospective user will not form access negotiation information for the purposes of an access dispute or access determination and will not be identified by either party to the arbitrator under rule 567 unless the parties otherwise agree in writing.
- (3) A prospective user may at any time by notice to the service provider bring commercial-in-confidence negotiations to an end, whether or not it also makes an access request under this Part.

### 558 User access guide

- (1) A service provider for a non-scheme pipeline must develop, maintain and publish in a publicly accessible part of its website a user access guide that contains the information in subrule (6) for each of its non-scheme pipelines.

**Note:**

The GMRG is recommending that this rule be classified as a civil penalty provision.

- (2) Each user access guide:

- (a) must comply with and give effect to [the relevant timeframes set out in](#) this Division;
- (b) must not contain anything [intended to be](#) directly or indirectly inconsistent with this Division ~~or that may otherwise operate to defeat the objective of this Part or the outcomes described in rule 546(2)~~; and
- (c) must not operate or be applied by a service provider in a manner ~~that prevents or delays~~ [preventing](#) a prospective user from referring an access dispute to arbitration.

**Note:**

The GMRG is recommending that this rule be classified as a civil penalty provision.

- (3) The same user access guide may apply to one or more of the service provider's non-scheme pipelines.
- (4) The service provider for a non-scheme pipeline must publish the user access guide for the non-scheme pipeline no later than 20 business days after the ~~application~~ [commencement](#) date for the non-scheme pipeline.
- (5) The service provider for a non-scheme pipeline must publish a revised version of the user access guide for the pipeline as soon as practicable after facts or circumstances arise that require the guide to be updated.
- (6) Each user access guide must:
  - (a) identify the service provider for the non-scheme pipeline and, where there is more than one service provider for the pipeline, identify the service provider responsible for dealing with preliminary enquiries and access requests;
  - (b) set out the *contact details* for an officer of the service provider to whom preliminary enquiries and access requests can be sent;
  - ~~(c) describe the process for making a preliminary enquiry, information to be included with the preliminary enquiry and response times;~~
  - ~~(c)~~ describe the process for making an access request, the information to be included with the access request (subject to subrule (7)) and response times;
  - ~~(e)~~ describe the circumstances in which the service provider will undertake further investigations following ~~a preliminary enquiry or an~~ access request, the factors that may influence the time and cost for undertaking those further investigations and the terms on which the service provider will undertake those further investigations, which must be fair and reasonable;
  - ~~(e)~~ explain how the service provider will deal with and use any confidential information ~~in a preliminary enquiry or access request~~ [exchanged between the service provider and the prospective user](#);

- ~~(gf)~~ describe the process for preparing an access offer ~~and for requesting negotiations in relation to an access offer;~~
  - ~~(hg)~~ include a statement of the obligation to negotiate in good faith under section 216G of the *NGL* and the right to refer an access dispute to arbitration under section 216J of *NGL*; and
  - ~~(ih)~~ include a statement of the obligations in rule ~~562–558A regarding commercial-in-confidence negotiations and rule 562 obligations~~ to exchange access negotiation information during negotiations under this Part.
- (7) The information to be included with the access request specified in a user access guide must be no more than is reasonably required to enable the service provider to identify the prospective user making the access request and the pipeline service or pipeline services to which the access request relates. The information may include:
- (a) any specific types of information that may be requested by the service provider that is relevant to the access request or the prospective user that may influence the terms of any access offer (including reasonable supporting information);
  - ~~(ab)~~ the time or times when each pipeline service will be required and the capacity that is to be utilised;
  - ~~(bc)~~ the *receipt or delivery points* where the prospective user is seeking access; and
  - (ed) relevant technical details for any new interconnection to the pipeline.

## 559 Access requests

- (1) A prospective user may request the service provider for a non-scheme pipeline to provide access to a pipeline service requested by the prospective user and provided or to be provided by means of the non-scheme pipeline (or by part of the non-scheme pipeline or ~~by an extension to, or~~ expansion of the capacity of, the non-scheme pipeline).
- ~~(2) A prospective user may make a preliminary enquiry about the matters referred to in subrule (1) before making an access request. A service provider must:~~
- ~~(a) not require a prospective user to make a preliminary enquiry before making an access request;~~
  - ~~(b) respond to a duly made preliminary enquiry no later than 10 business days after the preliminary enquiry is received including its indication of whether further investigations need to be carried out; and~~
  - ~~(c) if requested by the prospective user, carry out further investigations on the basis of the preliminary enquiry and before the prospective user makes an access request.~~



- ~~(3)~~(2) An access request must be in writing and must state within its contents that it is a formal access request and include sufficient detail to enable the service provider to identify the prospective user making the access request and the pipeline service or pipeline services to which the access request relates.
- (43) If an access request is incomplete, the service provider must tell the prospective user within 5 business days after the access request is received, specifying the information required to complete the access request.
- ~~(5)~~(4) The service provider for a non-scheme pipeline in receipt of an access request containing all the information reasonably required to determine whether the service provider needs to undertake further investigations in relation to the access request (whether or not supplemented by information provided pursuant to subrule (3) (“completed access request”)) must within 10 business days of receiving the completed access request notify the user whether the service provider needs to undertake further investigations.
- ~~(6)~~(5) A service provider must:
- (a) only require further investigations in relation to a ~~preliminary enquiry or an~~ completed access request when and to the extent reasonably necessary;
  - (b) carry out further investigations expeditiously and at reasonable cost; and
  - (c) negotiate in good faith with the prospective user about the terms and conditions on which further investigations are to be carried out.
- ~~(7)~~(6) A prospective user may amend the details of the access sought in an access request with the consent of the service provider, such consent not to be unreasonably withheld.
- (7) Refusal by a service provider to provide consent under subrule (6) will not be unreasonable if:
- (a) the amendments to the details of a completed access request requested by a prospective user materially affects the nature of the access request or the access offer; and
  - (b) the service provider does not agree to a reasonable extension to the timeframes set out in rule 560.

## 560 Access offer

- (1) The service provider for a non-scheme pipeline in receipt of an access request containing all the information reasonably required for it to identify the prospective user and the pipeline service or pipeline services to which the access request relates must prepare and make the access offer:
- (a) within 20 business days of receiving the access request; or

- (b) if the service provider required further investigations to be carried out in relation to the access request, within 60 business days of receiving the access request.

**Note:**

The GMRG is recommending that this rule be classified as a civil penalty provision.

(2) The time periods under subrule (1) may be extended by agreement in writing between the parties.

~~(2)~~(3) An access offer must (in such detail as the timeframes under subrule (1) (as may be extended by agreement) will reasonably allow):

- (a) set out the terms and conditions on which the service provider offers to make the pipeline service or pipeline services requested in the access request available to the prospective user including price;
- (b) for an interconnection, contain the details of any works to be undertaken by the service provider and prospective user and the technical and performance specifications for the interconnected plant and equipment;
- (c) for an ~~extension to the pipeline or~~ expansion of the capacity of the pipeline or any other service requiring the service provider to complete works before the pipeline service starts, contain details of those works including expected timing; and
- (d) be in a form capable of acceptance by the prospective user so as to constitute a new access contract or form part of an existing access contract.

~~(3)~~(4) A service provider is not required to make an access offer under subrule (1) in relation to a pipeline service if:

- (a) the access request has been withdrawn; ~~or~~
- (b) after further investigations, the service provider has concluded that it is not technically feasible or consistent with the safe and reliable operation of the pipeline to provide the pipeline service requested by the prospective user; ~~or~~

(c) the access request relates to an extension to the non-scheme pipeline.

~~(3)~~(4) If a service provider does not make an access offer for the reason specified in subrule (3)(b), the service provider must give the prospective user:

- (a) written reasons explaining why the requested pipeline service cannot be provided; and
- (b) if there is some prospect that it will become possible to provide the requested pipeline service at some time in the future – details (which must be as specific as the circumstances reasonably allow) of when the requested pipeline service is likely to become available and, if possible, nominate a specific date.

## 561 ~~Negotiations~~ Not used

- ~~(1) A prospective user may request negotiation under this Part in relation to any aspect of access to a pipeline service including:~~
- ~~(a) whether access can be granted; and~~
  - ~~(b) the price and other terms and conditions of an access offer.~~
- Note:**
- Section 216G of the NGL applies to negotiations referred to in subrule (1).
- ~~(2) A service provider must seek to accommodate all reasonable requirements of the prospective user regarding the timetable for negotiations under this Part.~~
- ~~(3) The parties to a negotiation under this Part must ~~use reasonable endeavours to~~ identify any other person who may become a party to an access dispute relating to the pipeline service the subject of the negotiations.~~
- ~~(4) If an access request is for more than one pipeline service, the prospective user may request negotiations in relation to those pipeline services take place as part of the same negotiation process.~~
- ~~(5) A prospective user may at any time by notice to the service provider bring negotiations requested under this Part to an end, whether or not it also refers a related access dispute to arbitration under this Part.~~

## 562 Access negotiation information

- ~~(1) In negotiations under this Part, each party to the negotiations must:~~
- ~~(a) provide access negotiation information in accordance with this rule; and~~
  - ~~(b) when making a request for access negotiation information, responding to such a request or providing access negotiation information without a request being made, do so in a manner and at a time consistent with the duty of the party to negotiate in good faith.~~
- (1) Subject to rule 558A(2), access ~~(2) Access~~-negotiation information comprises:
- (a) information relevant to determining whether an access offer made by the service provider is an offer for access to the pipeline service sought by the prospective user on reasonable terms as defined in rule 546(1);
  - (b) information relevant to the principles and other matters in rule 569; and
  - (c) any other information that a party to negotiations may seek to rely on if there is an access dispute in relation to the subject matter of negotiations under this Part.

- ~~(3) For the purposes of subrule (2), information includes:~~
- ~~(a) information about the method used to determine the price in an access offer and the inputs used in the calculation of the price;~~
  - ~~(b) information regarding the costs associated with the provision of the pipeline service sought by the prospective user; and~~
  - ~~(c) reports and other materials including consultant reports, data sets, models or other documents.~~

~~(4)~~(2) All access negotiation information provided to a party to the negotiations must:

- ~~(a) comply with the access information standard as if the information were information required to be published under this Part;~~
  - ~~(b)~~(a) be proportionate and relevant to the subject matter of the negotiations and not out of scope or excessive; and
  - ~~(c)~~(b) be provided in a readily readable form including where requested in electronic file format with all underlying data files and inputs.
- ~~(5)~~(3) A party to negotiations under this Part ~~:(a)~~ may from time to time request another party to the negotiations to provide access negotiation information in relation to a specific matter arising in the negotiations; ~~and~~.

~~(4)~~ When making a request for access negotiation information, responding to such a request or providing access negotiation information without a request being made, the parties to the negotiation must do so in a manner and in a timeframe consistent with the duty of the party to negotiate in good faith.

~~(b) may during the course of negotiations~~ (5) Prior to issuing an access dispute notice, a party to negotiations under this Part must issue a notice on the other party of its intent to issue an access dispute notice, and request another party to the negotiations to:

- (a) provide all access negotiation information the party may seek to rely on if the matter is referred to arbitration; and
  - (b) identify three suitably qualified persons whom they propose could determine an access dispute.
- (6) If a party ~~to negotiations under this Part~~ makes a request under subrule ~~(5)(b3)~~, that party must not issue an access dispute notice in relation to the subject matter of the negotiations earlier than ~~15~~ 20 business days after the request is made.

(7) A party to negotiations under this Part must use reasonable endeavours to provide access negotiation information requested by another party to the negotiations as

soon as practical ~~and in any event within 15 business days (or any longer period agreed by the party making the request)~~after the request is made, unless the other party withdraws the request or to do so would:

- (a) breach a confidentiality obligation owed in respect of that information to an unrelated third party and the third party has not given consent to the disclosure despite reasonable efforts having been made to obtain that consent; or
- (b) require it to have access to information from another party to the negotiations that has not been provided.

(8) The parties must negotiate in good faith to agree the identity of a suitably qualified arbitrator.

## **Division 4            Arbitration of access disputes**

### **563            Application of this Division**

- (1) Without limiting the matters that may be notified under section 216H(1) of the *NGL* but subject to subrule (2), notice may be given to the scheme administrator under this Division in relation to:
  - (a) a request for access to a pipeline service under a new access contract;
  - (b) a request to add a new pipeline service to an existing access contract;
  - (c) a request for a new access contract to take effect on the expiry of an existing access contract; and
  - (d) a request for a pipeline service commencing after the expiry of the service term for the same service under an existing access contract.
- (2) For section 216H(4) of the *NGL*, the following matters are excluded from reference to arbitration under Chapter 6A of the *NGL* and this Part:
  - (a) a dispute about a pipeline service provided under an existing access contract;
  - (b) a request to vary the terms and conditions of access applicable to a pipeline service provided under an existing access contract for any part of the current service term for that pipeline service;
  - (c) an access request that would require the extension of a non-scheme pipeline; and
  - (d) an access dispute in relation to access to pipeline services on a non-scheme pipeline to the extent an exemption from the operation of this Division has been granted in respect of the non-scheme pipeline and that exemption remains in effect.
- (3) For section 216D of the *NGL*, the matters that may be referred for determination by an arbitrator under this Division include, subject to subrule (2), any dispute arising

under any rule in this Division between a service provider for a non-scheme pipeline and a prospective user.

## **564 Access dispute notice**

- (1) An access dispute notice is a notice given under section 216H(1) of the *NGL* under which a prospective user or a service provider gives notice to the scheme administrator that an access dispute exists.
- (2) An access dispute notice must be in writing and must state:
  - (a) the pipeline service to which the access dispute notice relates and where applicable [appropriately detail](#) the access request and the access offer made in response to the request;
  - (b) the matters mentioned in section 216H(2) of the *NGL*, being the matters (if any) on which agreement has been reached and the matters that are in dispute;
  - (c) the name and address of the person giving the notice;
  - (d) the name and address of each other party involved in the access dispute; and
  - (e) where the person giving the access dispute notice reasonably believes another person may be joined as a party under section 216I of the *NGL* – the name and address of that person.
- (3) An access dispute notice must be accompanied by the fee set by the scheme administrator (if any) from time to time and specified on its website.
- (4) If an access dispute notice is given by a prospective user, the prospective user may withdraw the access dispute notice at any time before an arbitrator appointed to determine the dispute makes a final access determination. [The provisions of rule 573\(5\) will apply to a withdrawal under this rule 564 as if that withdrawal is a failure to provide the notice under rule 573\(3\).](#)
- (5) If an access dispute notice is given by a service provider, the service provider may only withdraw the access dispute notice if the other parties to the access dispute agree.

## **565 Reference to arbitration**

- (1) For section 216J of the *NGL*, the scheme administrator will refer an access dispute to arbitration applying the procedures in this rule and no later than 15 business days after the receipt of the access dispute notice.
- (2) The scheme administrator must within 5 business days of receipt of an access dispute notice determine the parties to the access dispute for the purposes of section 216I of the *NGL* and give a notice to each party to the access dispute in which the scheme administrator:

- (a) identifies the parties to the access dispute;
  - (b) requests the parties to provide the identity of any suitably qualified arbitrator which the parties to the access dispute have agreed in writing to determine the access dispute (if any) within 10 business days of the access dispute notice;
  - (c) if the parties intend to appoint an arbitrator from the pool:
    - ~~(i)~~ invites the parties to the access dispute to give the scheme administrator within 5 business days of the notice written submissions as to which (if any) of the pool arbitrators should be disqualified from appointment, with reasons;
    - ~~(ii)~~ requires the parties to the access dispute to notify the scheme administrator of the identity of the pool arbitrator agreed by the parties to determine the access dispute (if any) within 10 business days of the access dispute notice being given; and
  - (d) informs the parties that in default of agreement being reached and notified to the scheme administrator within that time, the scheme administrator will select the arbitrator from the pool.
- (3) The parties to an access dispute identified in a notice under subrule ~~(1)~~(2) must:
- (a) failing agreement on a non-pool arbitrator under subrule 562(7), as soon as practical after an access dispute notice is given notify the other parties to the dispute of at least two pool arbitrators the party will agree to be appointed as the arbitrator to determine the access dispute;
  - (b) negotiate in good faith to agree to the identity of a pool arbitrator to be the arbitrator for the access dispute; and
  - (c) notify the scheme administrator if agreement has been reached, including confirmation that the ~~pool~~-arbitrator is available to undertake the arbitration.
- (4) If the parties to the access dispute do not notify the identity of the ~~pool~~-arbitrator agreed by the parties to determine the access dispute to the scheme administrator within 10 business days of the ~~access dispute~~-notice being given under subrule (2), the scheme administrator must select one of the pool arbitrators to determine the access dispute, taking into account any submissions from the parties under subrule (2)~~(b)~~(c) given within the specified time.
- (5) The scheme administrator must refer the access dispute (with the access dispute notice) to the ~~pool~~-arbitrator notified by the parties under subrule (2)(b) or (3)(c) or selected by the scheme administrator under subrule (4) within the time determined under subrule (1) and:
- (a) notify the parties to the access dispute of the referral; and

- (b) send each party to the access dispute the arbitrator's terms of appointment for execution.
- (6) The scheme administrator's selection of a pool arbitrator to determine an access dispute under subrule (4) is final and binding on the parties to the access dispute.
- (7) The terms of appointment of ~~the~~ a pool arbitrator will be the standard terms of appointment for that pool arbitrator notified by the scheme administrator to the parties to the access dispute. The parties to the access dispute must return executed copies of the terms of appointment to the scheme administrator within 5 business days of the access dispute being referred to the arbitrator.

**Note:**

Rule 583(7) provides for the determination of a pool arbitrator's standard terms of appointment.

- (8) To the extent permitted by law, the arbitrator is not liable for any loss, damage or liability suffered or incurred by any person as a consequence of any act or omission of that person which was done in good faith in connection with the access dispute.
- (9) If for any reason the arbitrator for an access dispute does not make a final access determination within the time provided for in this Division or withdraws from or abandons the arbitration or is unable to continue the arbitration, any party to the access dispute may notify the other parties and the scheme administrator that they require a new ~~pool~~ arbitrator to be appointed under subrules (2) to (4).
- (10) If a notice is given under subrule (9), subject to subrule (11), the scheme administrator must refer the access dispute to a new arbitrator or pool arbitrator (as the case may be) no later than 15 business days after the receipt of the notice under this subrule. Subrules (2) to (9) will apply as if the notice were a new access dispute notice for the purposes of this rule.
- (11) If a notice is given under subrule (10) on the grounds that the arbitrator has failed to make a final access determination within the time provided for in this Division and the arbitrator makes the final access determination before the scheme administrator refers the access dispute to a new arbitrator or pool arbitrator (as the case may be), the notice under subrule (10) lapses and the scheme administrator must not refer the access dispute to a new pool arbitrator.

## 566 Conduct of the parties

- (1) The parties must do all things reasonably necessary for the proper and expeditious conduct of the arbitration.
- (2) Without limitation to subrule (1), the parties must comply without undue delay with any order or direction of the arbitrator with respect to any procedural, evidentiary or other matter.
- (3) A party must not wilfully do or cause to be done any act to delay or prevent an access determination being made.



## 567 Statements to be provided to the arbitrator on appointment

- (1) ~~Within~~ Subject to rule 558A(2), within 10 business days of the access dispute being referred to the arbitrator, each party must give to the arbitrator and to the other parties to the access dispute a statement:
  - (a) listing the access negotiation information the party provided to the other parties to the negotiations before the access dispute notice was given and that the party seeks to rely on in the arbitration; and
  - (b) identifying with reasonable particularity any other access negotiation information:
    - (i) not provided by the party to the other parties to the negotiations before the access dispute notice was given and that the party seeks leave under rule 568(1) to submit and rely on in the arbitration; and
    - (ii) that the party reasonably requested from another party to the negotiations and that has not been provided by that other party.
- (2) Within 15 business days of the access dispute being referred to the arbitrator, ~~each party must~~ the service provider and the prospective user must each give to the arbitrator and to the other parties a statement of the access determination the party claims should be made ~~and the~~ including:
  - (a) their proposed price for each pipeline service sought;
  - (b) the methodology used to calculate the proposed price for each pipeline service sought and sufficient information to enable the arbitrator to understand how the proposed price for each pipeline service reflects the application of the methodology; and
  - (c) any other matters supporting the party's claim.
- (3) Within 20 business days of the access dispute being referred to the arbitrator, if the subject of the access dispute includes the price for access, a party that will be required to pay or be entitled to receive the price determined by the arbitrator must submit to the arbitrator and to the other parties to the access dispute the party's statement of its offer in relation to the price the subject of the access dispute.
- (4) Within the time determined by the arbitrator, each party must give to the arbitrator and to the other parties to the access dispute:
  - (a) its statement in response to the statement provided under subrule (1), which must:
    - (i) identify with reasonable particularity any areas of disagreement; and
    - (ii) state whether it consents to the provision of any of the information identified under subrule (1)(b)(i); and

- (b) its statement in reply to the statement provided under subrule (2).
- (5) With the leave of the arbitrator, a party may amend or supplement any statement made by the party under this rule during the course of the arbitration.
- (6) A statement under subrule (1) must, if the arbitrator so requires, be verified by statutory declaration of an appropriate officer of the party.

## **568 Arbitrator to give effect to rule 562**

- (1) A party to an access dispute must seek leave of the arbitrator to submit and rely on in the arbitration access negotiation information that it did not provide to the other parties to the negotiations before the access dispute notice was given.
- (2) In determining whether to grant leave under subrule (1), the arbitrator must seek to give effect to rule 562 so far as doing so is consistent with the proper consideration of the access dispute.
- (3) An arbitrator may direct a party to an access dispute to provide access negotiation information that it did not provide to the other parties to the negotiations before the access dispute notice was given. A party given a direction under this subrule must comply with the direction without undue delay.
- (4) If the arbitrator is satisfied that there has been inordinate and inexcusable failure by a party to comply with the obligation of the party to provide access negotiation information in accordance with rule 562 or subrule (3) or if a party fails to do any other thing necessary for the proper and expeditious conduct of the arbitration, the arbitrator may do any one or more of the following:
  - (a) direct that the party is not entitled to rely on any specified information or materials;
  - (b) draw such adverse inferences from the failure to comply as the circumstances justify; and
  - (c) proceed to an access determination solely on the basis of information relied on by that party that has been provided by that party in negotiations under this Part in accordance with rule 562.

## **569 Pricing and other principles**

- (1) ~~In~~ Subject to subrule (3), in determining an access dispute, the arbitrator must take into account the principle that access to pipeline services on a non-scheme pipeline must be on reasonable terms as defined in rule 546(1).
- (2) Before making a determination on the price of access to a pipeline service on a non-scheme pipeline, the arbitrator as a threshold requirement must be satisfied that:
  - (a) the pipeline service is not provided in a workably competitive market; and

(b) provision of the pipeline service will interfere with the safe and reliable operation of the pipeline, having regard to the pipeline's operational and technical requirements,

and if not so satisfied, the arbitrator must terminate the arbitration and provide reasons in accordance with rule 578(3).

~~(2)When (3)~~ Subject to the requirements of subrule (2) being met, when making a determination on the price of access to a pipeline service on a non-scheme pipeline, the arbitrator must take into account the following ~~pricing~~ principles:

~~(a) The price for a pipeline service must reflect the cost of providing that service, including a commercial rate of return that is commensurate with the prevailing conditions in the market for funds and reflects the risks the service provider faces in providing the pipeline service. For the purposes of this paragraph (a), the value of any assets used in the provision of the pipeline service must be determined having regard to asset valuation techniques consistent with the objective of this Part set out in rule 546(1), including those that take into account past recoveries of capital.~~

~~[Note to draft:~~

~~For an explanation of the following alternative version of paragraph (a), refer to the Explanatory Note at paragraph 2.4.3.~~

- (a) The price for a pipeline service must reflect the cost of providing that service, including a commercial rate of return that is commensurate with the prevailing conditions in the market for funds and reflects the risks the service provider faces in providing the pipeline service. For the purposes of this paragraph (a), the value of any assets used in the provision of the pipeline service must be determined as if the pipeline were a covered pipeline, with the asset value to be determined as follows:
- (i) if the non-scheme pipeline was commissioned before 1 July 2008, in the manner provided for in rule 77(1)(a);
  - (ii) if the non-scheme pipeline was commissioned after 1 July 2008, in the manner provided for in rule 77(1)(b); or
  - (iii) if the non-scheme pipeline has previously been subject to an access arrangement, in the manner provided for in rule 77(3).~~‡~~
- (b) In applying the principle in paragraph (a) to a pipeline service that when used affects the capacity of the non-scheme pipeline available for other pipeline services and is priced at a premium or a discount to the price for a firm haulage service on the relevant non-scheme pipeline – the premium or discount must:
- (i) take into account any opportunity cost or benefit to the service provider of providing the pipeline service, having regard to any effect on the cost of providing firm haulage services or the capacity of the non-scheme pipeline; and

(ii) be consistent with the price for the pipeline service providing a reasonable contribution to joint and common costs;

(c) the legitimate business interests of the service provider;

(d) the interests of all persons who have rights to use the pipeline; and

(e) the operational and technical requirements necessary for the safe and reliable operation of the pipeline.

(34) Notwithstanding the other provisions of this rule, when making an access determination in relation to price, the arbitrator must determine a price that is:

(a) no higher than the price that the service provider has offered for providing the pipeline service; and

(b) no lower than the price that the prospective user has offered to pay for use of the pipeline service,

each as specified in the applicable statement given under rule 567(3).

(45) ~~Where not inconsistent with subrules (1) to (3), when~~ When making a determination the arbitrator may also have regard to:

~~(a) the legitimate business interests of the service provider;~~

~~(b) the interests of all persons who have rights to use the pipeline;~~

~~(c) the value to the service provider of any extension or~~ (a) the value to the service provider of any expansion of the pipeline the cost of which is borne by another person; and

~~(d) the value to the service provider of interconnections to the pipeline the cost of which is borne by another person; and.~~

~~(e) the operational and technical requirements necessary for the safe and reliable operation of the pipeline.~~

## 570 Matters that may be dealt with in a determination

(1) For section 216L(2) of the *NGL*, subject to section 216N of the *NGL* and this rule, an access determination may deal with any matter the subject of the access dispute.

(2) The arbitrator must, when making an access determination, make a determination in relation to the pipeline service sought by the prospective user in the access dispute including the service type, the capacity sought and the service term start and end dates.

(3) The arbitrator must not make an access determination with a term exceeding 5 years.

- ~~(3)~~(4) Without limiting subrule (1), an access determination may:
- (a) require the service provider for a non-scheme pipeline to provide access to a pipeline service;
  - (b) specify the price and other terms and conditions on which the prospective user must be given access to the pipeline service;
  - (c) require the service provider to permit another facility to be connected to the non-scheme pipeline; or
  - (d) subject to subrule ~~(5)~~(6), require the service provider to carry out, either alone or in combination:
    - (i) an expansion of the capacity of a non-scheme pipeline;
    - (ii) a conversion of a non-scheme pipeline to a bi-directional pipeline;
    - (iii) the development of a new *receipt or delivery point*;
    - (iv) an expansion of an existing *receipt or delivery point*; or
    - (v) an interconnection with another pipeline or other facility.
- ~~(4)~~(5) An access determination does not have to require the service provider to provide access to the pipeline service by the prospective user.
- ~~(5)~~(6) An access determination must not, unless the service provider agrees, require the service provider to:
- (a) extend the geographical range of a non-scheme pipeline;
  - (b) carry out any of the activities referred to in subrule ~~(3)~~~~(4)~~(d) unless the prospective user funds the activity in its entirety; or
  - (c) carry out any of the activities referred to in subrule ~~(3)~~~~(4)~~(d) unless the activity is:
    - (i) technically feasible; and
    - (ii) consistent with the safe and reliable operation of the pipeline.
- ~~(6)~~(7) An access determination must not provide for a prospective user to acquire an interest in a non-scheme pipeline by funding an expansion of the capacity of the pipeline unless the service provider agrees.

## 571 Interim access determinations (NGL section 199(2))

- (1) If an arbitrator makes an interim access determination that provides for access to a pipeline service before the final access determination is made, the final access determination must provide for adjustments to reflect any differences between the

interim access determination and the final access determination in respect of the period:

- (a) prior to the prospective user gaining access on the terms of the final access determination; or
  - (b) if the prospective user does not elect to seek access on the terms of the final access determination – prior to access on the terms of the interim access determination ceasing under rule 573(5)(b).
- (2) An interim access determination must:
- (a) provide the terms and conditions for access during the term of the interim access determination, including payment terms;
  - ~~(a)~~(b) be in writing and dated and signed by the arbitrator;
  - (b) identify the parties to the interim access determination and the place the determination is made;
  - (c) be communicated by email when it is made to the parties to the access dispute and the scheme administrator; and
  - (d) be sent by post to the parties and the scheme administrator within 5 business days of being made.
- (3) An interim access determination takes effect from the later of the time specified in the access determination and the time it is communicated to the parties to the access dispute.

## 572 Final access determinations

- (1) Unless it terminates the arbitration under the *NGL* and subject to subrule (2), the arbitrator must determine the access dispute as quickly as possible, and in any case the arbitrator must make a final access determination within:
  - (a) 50 business days after the date the access dispute was referred to the arbitrator; or
  - (b) ~~if agreed by~~ by consent of the parties (not to be unreasonably withheld) to the access dispute, any greater number of business days, ~~up to a maximum of 90 business days,~~ that are reasonably required by the arbitrator after the date the access dispute was referred to the arbitrator, having regard to the complexity or technical nature of the access dispute.
- (2) In determining the number of business days elapsed since the date the access dispute was referred to the arbitrator, the following must be disregarded:
  - (a) a day that the parties to the access dispute agree must be disregarded;

- (b) if the arbitrator appoints an independent expert in accordance with rule 575 – any day within a period allowed by the arbitrator for the independent expert to report and that the arbitrator directs must be disregarded; and
  - (c) any day within a period allowed by the arbitrator for a party to prepare access negotiation information not provided in negotiations due to a failure by another party to comply with rule 562 and that the arbitrator directs must be disregarded.
- (3) A final access determination must:
- (a) be in writing and dated and signed by the arbitrator;
  - (b) identify the parties to the determination and the place the determination is made;
  - (c) set out the matters agreed by parties and the matters in dispute;
  - (d) set out the arbitrator’s determination of the access dispute;
  - (e) be communicated by email when it is made to the parties to the access dispute and the scheme administrator; and
  - (f) be sent by post to the parties and the scheme administrator within 5 business days of being made.
- (4) The arbitrator must give the parties and the scheme administrator a statement of reasons for the arbitrator’s final access determination, which must explain how the arbitrator took into account the pricing and other principles in rule 569. The statement of reasons must be given to the parties and the scheme administrator with the final access determination or within 20 business days of the final access determination being made.

### **573 Effect of final access determination**

- (1) A final access determination takes effect from the later of the time specified in the access determination and the time it is communicated to the parties to the access dispute.
- (2) A final access determination is binding on the parties to the dispute subject to section 216Q(2) of the *NGL*.
- (3) Subject to subrule (6), a prospective user wishing to enter into an access contract that gives effect to a final access determination must notify that decision to the other parties to the access dispute and the scheme administrator in writing within ~~20~~ 10 business days of the determination being made.
- (4) If the prospective user gives a notice under subrule (3), the parties to the access dispute must enter into an access contract for the provision of access in accordance with the final access determination (as may have been corrected under rule 579).

- (5) If a prospective user does not give a notice under subrule (3) within the period specified in that subrule:
  - (a) the prospective user and any associate of the prospective user must not give an access dispute notice in relation to an access dispute about the same or a substantially similar pipeline service on the same non-scheme pipeline as the pipeline service and non-scheme pipeline the subject of the final access determination for a period of one year from date of the final access determination; and
  - (b) if the prospective user had access under the terms of an interim access determination, that access ends at the end of that period.
- (6) The parties to an access dispute must comply with a final access determination to the extent it provides for adjustments under rule 571(1), even if the prospective user does not give a notice under subrule (3).

## 574 Arbitration procedures

- (1) Subject to Chapter 6 of Part 6 of the *NGL* and this Division, the arbitrator may determine the procedures for the arbitration and conduct the arbitration in such manner as it considers appropriate and is to decide whether to hold any dispute hearings.
- (2) The arbitrator must as soon as practicable after the arbitrator's appointment and after consultation with the parties to the access dispute, notify the parties of the procedures and timetable to apply to the arbitration. The arbitrator may in the arbitrator's discretion amend the procedures specified by the arbitrator during the course of the arbitration.
- (3) If documents are produced to an arbitrator, the arbitrator may take possession of, make copies of, and take extracts from, the documents and may keep the documents for as long as is necessary for the purposes of the arbitration.
- (4) ~~All~~ [Subject to rule 576](#), statements, documents or other information supplied to the arbitrator by a party must be communicated to the other parties.
- [\(5\) The arbitrator may either at the request of a party in respect of its information, establish a regime to protect the confidentiality of information and documents produced to an arbitrator including by restricting access to particular persons or classes of person within a party.](#)
- ~~(5)~~(6) Any expert report or evidentiary document on which the arbitrator may rely in making its decision must be communicated to the parties.

## 575 Experts appointed by the arbitrator – NGL section 199(1)(e)

- (1) If the arbitrator appoints an independent expert, the arbitrator may give directions to a party to give the independent expert any relevant information or to produce, or



to provide access to, any relevant documents or places for the independent expert's inspection.

- (2) At the request of the parties and if the arbitrator considers it necessary, the independent expert must, after delivery of the expert's written or oral report, participate in a hearing where the parties have the opportunity to put questions to the expert and present expert witnesses in order to testify on the points at issue.
- (3) Before appointing an independent expert under subrule (1), the arbitrator must:
  - (a) notify the parties to the dispute of its intention to refer a matter to an independent expert, the proposed independent expert and the specific amount the independent expert will charge or the manner in which that amount will be determined; and
  - (b) obtain the consent of the parties to the maximum amount that may be charged by the independent expert in connection with the reference.

## 576 Confidentiality

- (1) The parties to an access dispute must not disclose confidential information in relation to the course of the arbitration unless the disclosure is allowed under this rule.
- (2) An arbitrator must not disclose confidential information in relation to the course of the arbitration [or the terms or content of an interim determination or final access determination](#) unless the disclosure is allowed under this rule.
- (3) Confidential information in relation to course of the arbitration [or the terms or content of an interim determination or final access determination](#) may be disclosed by a party or the arbitrator:
  - (a) with the consent of all the parties to the access dispute;
  - ~~(b)~~ ~~to a professional or other adviser of any of the parties; (c) if it is necessary to ensure that a party has a reasonable opportunity to present the party's case and the disclosure is no more than reasonable for that purpose;~~
  - ~~(d)~~ if it is necessary for the establishment or protection of a party's legal rights in relation to a third party and the disclosure is no more than reasonable for that purpose;
  - ~~(e)~~ (c) if it is necessary for the purpose of enforcing an access determination and the disclosure is no more than reasonable for that purpose;
  - ~~(f)~~ (d) if it is required by, or necessary for the purposes of, these Rules or the *NGL* and the disclosure is no more than reasonable for that purpose;
  - ~~(g)~~ (e) if the disclosure is in accordance with an order made or a subpoena issued by a court of competent jurisdiction; or

~~(h)~~(f) if the disclosure is authorised or required by a law of a participating jurisdiction or required by a competent regulatory body, and the person making the disclosure gives written details of the disclosure (including an explanation of the reasons for the disclosure) to:

- (i) if the person is a party – the other parties and the arbitrator; and
- (ii) if the arbitrator is making the disclosure – all the parties.

(3A) Nothing in subclause (3) will prevent a party to an access dispute from disclosing confidential information:

- (a) to a professional or other adviser of any of the parties;
- (b) if it is necessary to ensure that a party has a reasonable opportunity to present the party's case and the disclosure is no more than reasonable for that purpose;

(4) An arbitrator may make an order allowing a party to the access dispute to disclose confidential information in relation to the proceedings in circumstances other than those mentioned in subrule (3), but may only do so at the request of one of the parties and after giving each of the parties the opportunity to be heard.

(5) Subject to rule 581, the scheme administrator must not disclose confidential information in relation to the course of the arbitration or the terms or content of any interim or final access determination.

## **577 Conflict of interest**

- (1) In this rule, there are justifiable doubts as to the impartiality or independence of a pool arbitrator or arbitrator to whom an access dispute has been referred only if there is a real danger of bias on the part of the person in conducting the arbitration.
- (2) ~~A pool~~An arbitrator approached in connection with the pool arbitrator's possible appointment to determine an access dispute must disclose any circumstances likely to give rise to justifiable doubts as to the pool arbitrator's impartiality or independence.
- (3) An arbitrator, from the time of the arbitrator's appointment and throughout the course of the arbitration, must without delay disclose any circumstances of the kind referred to in subrule (2) to the parties unless they have already been informed of them by the arbitrator.
- (4) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
- (5) A party may challenge an arbitrator agreed by the party only for reasons of which the party becomes aware after the appointment has been made.
- (6) A party who intends to challenge an arbitrator must, within 15 days after becoming aware of any circumstance which gives rise to a justifiable doubt as to the

impartiality or independence of the arbitrator, send a written statement of the reasons for the challenge to the arbitrator [and the scheme administrator](#).

- (7) Unless the arbitrator withdraws from office or the other parties to the access dispute agree to the challenge, the ~~arbitrator~~ [scheme administrator](#) must decide on a challenge under subrule (6).
- (8) If a challenge under subrule (6) is not successful, the challenging party may request, within 30 days after having received notice of the decision rejecting the challenge, the Court to decide on the challenge.
- (9) A decision of the Court on a request under subrule (8) which is within the limits of the authority of the Court is final.
- (10) While a request under subrule (8) is pending, the arbitrator may continue the course of the arbitration and make an access determination.

## **578 Termination of arbitration**

- (1) The arbitration of an access dispute is terminated by:
  - (a) the making of a final access determination;
  - (b) an order of the arbitrator under section 216O of the *NGL* made in accordance with subrule (3); or
  - (c) notice from the prospective user in accordance with section 216P of the *NGL*.
- (2) For section 216O(4) of the *NGL*, a specified dispute resolution circumstance occurs if the parties to the access dispute agree on the termination of the arbitration.
- (3) A decision of an arbitrator to terminate an arbitration under section 216O of the *NGL* must:
  - (a) be in writing and dated and signed by the arbitrator;
  - (b) include a statement of reasons for the termination of the arbitration;
  - (c) be communicated by email to the parties to the access dispute and the scheme administrator; and
  - (d) be sent by post to the parties to the access dispute and the scheme administrator within 5 business days of being made.
- (4) A decision of an arbitrator to terminate an arbitration takes effect from the later of the time specified in the decision and the time it is communicated to the parties to the access dispute.

## **579 Correction of errors**

- (1) Within 30 days of receipt of a final access determination, a party may by notice to the other parties to the access dispute and the arbitrator, request the scheme administrator to correct any of the matters specified in section 216T of the *NGL* in the final access determination.
- (2) If the scheme administrator, after consultation with the parties to the access dispute and the arbitrator considers a request under subrule (1) to be justified, the scheme administrator must make the correction.
- (3) The arbitrator may correct any error of the type referred to in section 216T of the *NGL* on the arbitrator's own initiative within 30 days of the date of the final access determination.
- (4) A correction of a final access determination must:
  - (a) be in writing and dated and signed by the person making the correction;
  - (b) identify the final access determination;
  - (c) set out the corrections;
  - (d) when it is made, be communicated by email to the parties to the access dispute and the scheme administrator or arbitrator as applicable; and
  - (e) be sent by post to the parties to the access dispute and the scheme administrator or arbitrator as applicable within 5 business days of being made.

## **580 Costs**

- (1) The parties to an arbitration under this Division must bear their own costs in accordance with section 216V(4) of the *NGL*.
- (2) Subject to subrule (3), the parties to an arbitration under this Division must each pay an equal share of the following costs of the arbitration:
  - (a) the fees and expenses of the arbitrator;
  - (b) the fees and expenses of any expert retained by the arbitrator under rule 575, to the extent those fees and expenses are consistent with the costs agreed under that rule;
  - (c) the costs of room hire; and
  - (d) the cost of any additional input agreed by the parties to be necessary to the conduct of the arbitration.
- (3) The arbitrator may, in making a final access determination, direct that the parties must pay the costs of the arbitration referred to in subrule (2) in unequal shares, taking into account:

[Note: Must be a reviewable regulatory decision]

- (a) in the case of a party to the access dispute other than the service provider or prospective user – the role of the party in the access dispute and the arbitration;
  - (b) whether the prospective user elects not to enter into an access contract in accordance with the access determination;
  - (c) whether a party has conducted itself in the arbitration (other than in respect of its obligations under rule 568 or rule 575) in a way that unnecessarily disadvantaged another party by conduct such as:
    - (i) failing to comply with an order or direction of the arbitrator without reasonable excuse;
    - (ii) failing to comply with the *NGL*, the Regulations or the Rules;
    - (iii) asking for an adjournment as a result of paragraph (i) or (ii);
    - (iv) causing an adjournment;
    - (v) attempting to deceive another party or the arbitrator; or
    - (vi) vexatiously conducting an access dispute;
  - (d) whether a party has been responsible for unreasonably prolonging the time taken to complete the arbitration; and
  - (e) any other matter the arbitrator considers relevant.
- (4) Costs that are payable under this rule:
- (a) are a debt due by the party to the arbitrator, or the person to whom the arbitrator has ordered that they be paid; and
  - (b) may be recovered by that person in a court of competent jurisdiction.

## **581 Information to be published about access determinations**

- (1) Within a reasonable time of a final access determination being made, the scheme administrator must publish on its website the following information:
- (a) the non-scheme pipeline the subject of the arbitration;
  - (b) with the consent of the prospective user, the parties to the access dispute;
  - (c) the name of the arbitrator who made the final access determination;
  - (d) the time elapsed between the access dispute being referred to the arbitrator and the making of the final access determination;

- (e) which of the pipeline services offered on the non-scheme pipeline was the subject of the access dispute; [and](#)
  - (f) whether the prospective user has given notice that it wishes to enter into an access contract in accordance with the final access determination; ~~and.~~
  - ~~(g) if the final access determination includes a determination with respect to asset valuation, the valuation method adopted, the assets to which the valuation applied and the determination of the asset value.~~
- (2) The scheme administrator must publish on its website information about the number of access disputes referred to arbitration under this Part and brought to an end before a final access determination is made.

## Division 5            Scheme administrator

### 582            Role of the scheme administrator

- (1) The scheme administrator has the functions provided for the scheme administrator under the Chapter 6A of the *NGL* and this Part.
- (2) Without limiting subrule (1), the functions of the scheme administrator include:
  - (a) establishing a pool of arbitrators and determining the terms of appointment to act as arbitrator for an access dispute;
  - (b) publication of guides, including the non-scheme pipeline arbitration guide;
  - (c) referring access disputes to arbitration and appointing the arbitrator;
  - (d) correcting errors in access determinations; and
  - (e) publishing information about access determinations under rule 581.
- (3) The scheme administrator has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

### 583            Pool of arbitrators

- (1) The scheme administrator must establish a pool of suitably qualified and experienced commercial arbitrators [with sufficient commercial experience in the industry](#) who may be appointed to determine access disputes referred to arbitration under this Part.
- (2) The scheme administrator may at any time add a commercial arbitrator to or remove a commercial arbitrator from, the pool of arbitrators.
- (3) The scheme administrator may make temporary appointments to the pool of arbitrators.

- (4) The scheme administrator must publish on its website and keep up to date the name, contact details and a professional profile of each person in the pool of arbitrators.
- (5) The scheme administrator may determine in its discretion from time to time the process for identifying candidates for appointment to the pool of arbitrators and making those appointments.
- (6) In identifying candidates and making appointments, the scheme administrator may consult with any person it considers appropriate including current pool arbitrators, other nationally or internationally recognised commercial arbitrators and nationally or internationally recognised institutions with relevant experience in the appointment of commercial arbitrators.
- (7) When appointing a person to the pool of arbitrators, the scheme administrator must determine by agreement with the person concerned the terms of appointment for the conduct of arbitrations by that person under this Part including fees set at a level that reflects the skill and experience sought in candidates for appointment to the pool of arbitrators.
- (8) The terms of appointment of a pool arbitrator must where possible provide for the arbitrator to conduct arbitrations in accordance with this Part on a fixed fee basis.
- (9) The scheme administrator must at the request of a prospective user, a service provider or any party to an access dispute provide the terms of appointment determined under subrule (7) for any one or more of the pool arbitrators. The terms of appointment are confidential information for the purposes of this Part.

## **584 Non-scheme pipeline arbitration guide**

- (1) The scheme administrator must develop, publish and maintain a non-scheme pipeline arbitration guide containing guidance for pool arbitrators and any person who may become a party to an access dispute about the process for determination of access disputes under the *NGL* and these Rules including the matters that may be referred to arbitration under this Part, timelines and information requirements.
- (2) The non-scheme pipeline arbitration guide may include model terms of appointment for arbitrators and model procedures for arbitrations conducted under this Part.
- (3) The non-scheme pipeline arbitration guide is not binding on an arbitrator or the parties to an access dispute.
- (4) The scheme administrator may in its discretion develop and publish and may from time to time amend, other non-binding guides relating to this Part.

## Division 6 Exemptions

### 585 Exemption categories

- (1) The AER may on the application of the service provider for a non-scheme pipeline, grant an exemption under this Division in respect of the service provider's non-scheme pipeline, if:
  - (a) the exemption sought in the application is one of the exemption categories in subrule (3);
  - (b) the service provider has demonstrated to the reasonable satisfaction of the AER that the non-scheme pipeline satisfies the exemption criteria applicable to the exemption category specified in the application; and
  - (c) the AER is otherwise satisfied having regard to the National Gas Objective and the objective in this Part including the principles in rule 569(3)(c) that in all the circumstances the exemption should be granted.
- (2) Subject to this Division, the AER may grant an exemption under this Division in respect of a class or group of non-scheme pipelines.
- (3) The AER may only grant the following categories of exemption under this Division:
  - (a) category 1 – an exemption excluding any access dispute in relation to pipeline services on the non-scheme pipeline from the operation of Division 4;
  - (b) category 2 – an exemption from the obligation to publish information under Division 2 in relation to the non-scheme pipeline; ~~and~~
  - (c) category 3 – an exemption in relation to the non-scheme pipeline from the obligations to:
    - (i) publish financial information under rule 555; and
    - (ii) publish service usage information under rule 553(4) and service availability information under rule 553(5) each month, but subject to the condition in rule 586(1) requiring annual publication of that information.
  - (d) category 4 – an exemption in relation to the non-scheme pipeline from the obligations to publishing pipeline service information under rule 553(3) or service usage information under rule 553(4);
  - (e) category 5 – an exemption in relation to the non-scheme pipeline, a class of pipeline service or a particular pipeline service in relation to excluding:
    - (i) any negotiations in relation to pipeline services on the non-scheme pipeline from negotiations under Division 3; and
    - (ii) any access dispute in relation to pipeline services on the non-scheme pipeline from the operation of Division 4.



(4) For the avoidance of doubt, an exemption may be granted by the AER in respect of one or more categories of exemption under this Division.

~~(4)~~(5) The exemption criteria are set out in the table in this subrule. For the purposes of the table:

- (a) a non-scheme pipeline provides third party access if any pipeline services on the non-scheme pipeline are offered or provided, directly or indirectly, to any person other than:
  - (i) the service provider for the non-scheme pipeline;
  - (ii) a related body corporate of the service provider for the non-scheme pipeline; or
  - (iii) a joint venture in which the service provider for the non-scheme pipeline or a related body corporate of the service provider is a joint venture participant; and
- (b) a non-scheme pipeline is a single shipper pipeline if:
  - (i) the pipeline provides third party access; and
  - (ii) all pipeline services on the non-scheme pipeline are provided to a single user, taking into account pipeline services provided both directly and indirectly by the service provider.

| <b>Exemption category</b> | <b>Exemption criteria</b>   |
|---------------------------|---|
| Category 1                | The non-scheme pipeline does not provide third party access.  |
| Category 2                | Either of the following:<br><br>The non-scheme pipeline does not provide third party access.<br><br>The non-scheme pipeline is a single shipper pipeline. |
| Category 3                | The nameplate rating of the non-scheme pipeline is less than 10TJ/day.  |
| <u>Category 4</u>         | <u>The non-scheme pipeline services three third party customers or less.</u>  |
| <u>Category 5</u>         | <u>The non-scheme pipeline offers services in a workably competitive market.</u>  |

~~(5)~~(6) An exemption granted by the AER in accordance with this Division:

- (a) takes effect on the date specified by the AER in the exemption; and

- (b) ends on the date specified in the exemption or, if earlier, the date a revocation of the exemption made under this Division comes into effect.

~~(6)~~(7) The AER must establish, publish and maintain a register of exemptions and exemption revocations made under this Division.

~~(7)~~(8) The service provider for a non-scheme pipeline for which an exemption has been granted under this Division must notify the AER without delay if circumstances change such that the non-scheme pipeline no longer qualifies for the exemption under this Division.

**Note:**

The GMRG is recommending that this rule be classified as a civil penalty provision.

## 586 Exemption conditions

~~(1)~~ Each category 3 exemption is subject to the condition that the service provider for the non-scheme pipeline must at the same time that it publishes the weighted average price information under rule 557, publish, in respect of the financial year to which the weighted average price information relates:

~~(a)~~ the service usage information described in rule 553(4) for each of the 12 months in the financial year; and

~~(b)~~ the service availability information described in rule 553(5) for the 36 month period starting at the end of the financial year.

~~(2)~~(1) An exemption under this Division may be granted subject to any other conditions determined by the AER.

~~(3)~~(2) The service provider for a non-scheme pipeline for which an exemption has been granted under this Division must comply with the terms of any conditions of the exemption.

**Note:**

The GMRG is recommending that this rule be classified as a civil penalty provision.

~~(4)~~(3) The AER may on the application of the service provider for the non-scheme concerned or on its own initiative vary the conditions of an exemption determined by the AER.

~~(5)~~(4) A variation to the conditions of an exemption takes effect on the date specified by the AER in its decision to grant the variation.

## 587 Revocation

(1) The AER may revoke an exemption granted by it under this Division where in the AER's reasonable opinion, the relevant exemption criteria in rule 585(4) is no longer satisfied.

- (2) The AER may revoke an exemption granted by it under this Division on its own initiative or following an application made by any person.
- (3) A revocation of an exemption under this rule takes effect on the date specified by the AER in its decision to revoke the exemption.
- (4) If a category 1 or category 3 exemption is revoked for a non-scheme pipeline, for the purpose of rule 552(2), the application date for the non-scheme pipeline is taken to be the date on which the revocation takes effect.

## **588 Making and form of application**

- (1) A service provider for a non-scheme pipeline may apply to the AER for:
  - (a) the grant of an exemption;
  - (b) a variation to any condition of an exemption determined by the AER; or
  - (c) the revocation of an exemption.
- (2) An application under subrule (1) must be in the form, and contain the information, specified in any guidelines issued by the AER for the purposes of this rule.
- (3) The AER may, within 20 business days after receiving an application under this rule, ask the applicant to provide further information or clarification in support of the application if the AER considers that the application is incomplete or requires clarification.
- (4) If the AER asks for further information or clarification under subrule (3), the application is taken to have been made when the further information or clarification is provided to the AER's satisfaction.
- ~~(5) If the further information or clarification requested under subrule (3) is not provided to the AER's satisfaction within 20 business days of the request, the application lapses.~~

## **589 Decision on application**

- (1) The AER must decide whether to grant or refuse to grant an application made under rule 588 within 40 business days after the application is made.
- (2) The AER may extend the time period in subrule (1) by a further period of 20 business days by giving the applicant written notice of the extension not later than 30 business days after the application was made.
- (3) The AER must:
  - (a) give the applicant written notice of its decision to grant or refuse to grant an application made under rule 588, including any conditions imposed in accordance with rule 586; and

- (b) if the AER imposes conditions on the grant of an exemption or a variation of an exemption in accordance with rule 586, or refuses to grant an application made under rule 588, it must give the applicant written reasons for its decision.

## **590 Decision to vary or revoke an exemption**

- (1) If the AER proposes to vary or revoke an exemption other than on the application of the service provider for the non-scheme pipeline concerned, it must notify the service provider for the pipeline and invite the service provider to make submissions about the proposed variation or revocation within 10 business days of the notice.
- (2) If a service provider is given a notice under subrule (1) and provides written submissions to the AER within the period required by the notice, the AER must have regard to those submissions in deciding to vary or revoke the exemption.
- (3) If the AER varies or revokes an exemption it must give the service provider for the non-scheme pipeline written reasons for its decision.

## Proposed transitional rules for NGR Schedule 1

### 51 Initial financial reporting

- (1) This rule applies to the service provider for a non-scheme pipeline that is a non-scheme pipeline on the date Part 23 commences or that becomes a non-scheme pipeline at any time before 31 January 2018.
- (2) Subject to subrule (3), where this rule applies, the service provider must prepare and publish the financial information specified in rule 555 as follows:
  - (a) where the financial year of the service provider current on 31 January 2018 ends on or before 30 June 2018 – 31 October 2018 for the six month period ending on 30 June 2018 ; and
  - (b) where the financial year of the service provider current on 31 January 2018 ends after 30 June 2018 – 31 December 2018 for the six month period ending on 30 September 2018.
- (3) Subrule (2) does not apply in respect of a non-scheme pipeline if the non-scheme pipeline is the subject of an exemption under Division 6 of Part 23, from the obligation to report under Division 2 of Part 23 and that exemption continues.

### ~~52 Initial weighted average prices~~

### 52 Not Used

- ~~(1) This rule applies to the service provider for a non scheme pipeline that is a non-scheme pipeline on the date Part 23 commences or that becomes a non-scheme pipeline at any time before 31 January 2018.~~
- ~~(2) The initial weighted average price information for a non scheme pipeline means, for each pipeline service provided on the non scheme pipeline:
  - ~~(a) the weighted average price paid by users for the pipeline service in the 12 month period ending on 31 December 2017; and~~
  - ~~(b) the methodology and inputs used by the service provider to calculate the weighted average price for the pipeline service.~~~~
- ~~(3) Subject to subrule (4), where this rule applies, the service provider must prepare and publish on its website the initial weighted average price information for each of its non-scheme pipelines no later than 1 February 2018. The initial weighted average price information must:
  - ~~(a) be audited and certified in the same manner as financial information under the financial reporting guidelines; and~~~~

~~(b) in the case of the weighted average price, be calculated in a manner that is consistent with the standing price for the relevant service and allows for direct comparison to the standing price.~~

~~(4) Subrules 557(4) and (5) apply to the obligation to publish initial weighted average price information under subrule (3) as if references in those rules to weighted average price information were reference to initial weighted average price information.~~

### 53 Access requests before the commencement date

- (1) In this rule:
  - (a) the commencement date has the meaning given in Part 23;
  - (b) the election period is the period starting ~~when Part 23 is made by the South Australian Minister under section 294F of the NGL and ending 20 business days after~~ on the commencement date;
  - (c) non-scheme pipeline has the meaning in section 83A of the *NGL*; and
  - (d) prospective user has the meaning in section 216B of the *NGL*.
- (2) An election made by a prospective user under this rule must be made by notice to the service provider given at any time within the election period.
- (3) A request for access to pipeline services provided by a non-scheme pipeline made no more than 40 business days before the commencement date, to which the service provider has not provided a response, may at the election of the prospective user be treated as an access request under Part 23, received by the service provider on the date the election is communicated to it.
- (4) Where the service provider for a non-scheme pipeline has provided a response to a request for access to pipeline services provided by a non-scheme pipeline made no more than 40 business days before the commencement date and that response is open for acceptance and is in a form that is capable of immediate acceptance by the prospective user, that response may at the election of the prospective user be treated as an access offer under Part 23 made on the date the election is communicated to the service provider.
- (5) Where an election is made under subrule (3) or (4) and subject to rule 558A(2), for the purposes of rules 567 and 568, information provided during negotiations includes information exchanged during any negotiations that may have occurred before the commencement date.