

Extract of proposed amendments to the Pipeline Regulatory Determinations and Elections Guide

This document outlines the minor amendments we are proposing to make to the Pipeline Regulatory and Elections Guide (the Guide). New text is shown in red, and deleted text in strikethrough.

The following amendments are proposed at pages 9 to 11 of the Guide.

3.3.1 Notice and information requests

If we receive an application for a form of regulation determination or commence an AER-initiated review for a form of regulation determination, we will notify the service provider for the pipeline that we have received the application or that we are commencing such a review.²⁸

After we provide such notice, we may request the service provider to submit certain information about the pipeline. ~~If requested, the service provider must provide the information to us within the time specified in our request.~~²⁹ **We may request this information by:**

- **sending an information request under rule 16 of the NGR, or**
- **issuing a compulsory notice to obtain information and documents under section 42 of the NGL.**

The time **provided to respond to the information request or notice** ~~we specify~~ will depend on the amount of information and the complexity of the information sought from the service provider. However, we will generally provide at least 20 business days for a service provider to respond to our request.

Request under rule 16 of the NGR

A service provider must provide the information in response to a request issued under r 16 of the NGR, within the time specified. If a service provider considers that it will have difficulty in providing the information requested, it should inform us as soon as possible. We may extend the time to respond to the request if the service provider is able to provide good reasons to do so.

Where we are conducting a form of regulation review in response to an application, and ~~if a~~ service provider does not provide the requested information within the specified period, we may draw such adverse inferences from the failure to comply as the circumstances justify.³⁰

²⁸ NGR, rr 16(1) and 21.

²⁹ ~~NGR, rr 16(2), 21(2) and 21(3).~~

³⁰ NGR, rr 16 and 21.

To determine this, we will consider the extent of the non-compliance and the effect of the non-compliance on our ability to make a decision on whether to make the form of regulation determination.³¹

In deciding whether to draw an adverse inference, we will consider the circumstances of any non-compliance in determining whether to draw any adverse inferences on a case-by-case basis. However, some examples of where we are more likely to draw an adverse inference include:

- where a service provider refuses to provide the information requested, and does not provide any reasons for its refusal
- where a service provider fails to provide information that it should readily have access to
- where information is important to make the form of regulation determination, such as price, costs or capacity information.

The type of ‘adverse inference’ that we may draw because of non-compliance will also depend on the circumstances of the non-compliance. The inference could include that information that was not provided supported us making a scheme pipeline determination.

Further, if we do not receive a response to an information request, we may make a form of regulation determination based on information that is available and which we consider to be relevant.³²

Content of a rule 16 information request

Information we may seek in an **rule 16** information request includes:³³

- the capacity of the pipeline and the extent to which that capacity is currently utilised
- for a **transmission pipeline**, a description of:
 - all locations served by the pipeline
 - all other pipelines that currently serve the same locations
 - all pipelines the service provider is aware of that pass within 100 km of any location served by the pipeline
- for a **distribution pipeline**, a description of:
 - the geographical area served by the pipeline
 - the points at which natural gas is, or is to be, injected into the pipeline
- any other sources of energy available to consumers of gas from the pipeline of which the service provider is aware
- the parties with an interest in the pipeline and the nature and extent of each interest
- a description of the following relationships:

³¹ NGR, rr 16(4)(a).

³² NGR, rr 16(4)(b) and 21(6).

³³ NGR, rr 16(2) and 21(4).

- any relationship between the owner, operator and controller of the pipeline (or any 2 of them)
- any relationship between the owner, operator or controller of the pipeline and a user, supplier or end user in a location or geographical area served by the pipeline
- any relationship between the owner, operator or controller of the pipeline and the owner, operator or controller of any other pipeline serving any one or more of the same locations or the same geographical area
- an estimate of the annual cost to the service provider of regulation as a scheme pipeline and as a non-scheme pipeline
- **if we are conducting a review in response to an application for a scheme pipeline determination**, any other information that we consider to be relevant to the application ~~or proposal~~.

Compulsory notice under section 42 of the NGL

We may also issue a compulsory notice under section 42 of the NGL to obtain information and documents to assist us in conducting a form of regulation review. We will use section 42 notices if we are not able to obtain the relevant information under rule 16, or if we require documents.

A person must comply with the compulsory notice by the due date unless there is a reasonable excuse or a variation is granted. Penalties apply for non-compliance with a compulsory notice.

Further information and guidance about compulsory notices is available in [the AER's Compulsory Notice Guidelines](#).

3.3.2 Consultation process

We must follow the standard consultation procedures set out in the NGR when considering whether to make a form of regulation determination (as part of an AER-initiated review or following an application).³⁴ The following summarises the steps for a form of regulation review:³⁵

- We receive an application for a form of regulation determination or decide to commence an AER-initiated review.³⁶
- We provide the service provider with notice of the application or our decision to conduct an AER-initiated review).³⁷
- We will publish information about the application or AER-initiated review on our website, which describes the form of regulation determination being considered.³⁸ Stakeholders

³⁴ NGR, r 17(1).

³⁵ NGR, r 8.

³⁶ NGR, rr 16(1) and 21(1).

³⁷ NGR, rr 16(1), 21(2) and 21(3)(a).

³⁸ NGR, r 8(2)(a)(i).

will be given at least 15 business days to make written submissions on whether or not we should make the determination.³⁹

The following amendments are proposed at page 24 of the Guide under Heading 5.1.1.

The National Gas Objective is currently:¹¹⁴

‘to promote efficient investment in, and efficient operation and use of, ~~natural~~ covered natural gas services for the long-term interests of consumers of covered natural gas with respect to:

- (a) price, quality, safety, reliability and security of supply of covered natural gas; and
- (b) the achievement of targets set by a participating jurisdiction –
 - (i) for reducing Australia’s greenhouse gas emissions; or
 - (ii) that are likely to contribute to reducing Australia’s greenhouse gas emissions.’

Other minor changes made:

- footnote 42 in the Guide is now footnote 41 and refers to NGR r 8(4) instead of NGR r 8
- the term ‘natural gas service’ has been amended to ‘covered gas service’ on pages 24, 28 and 33
- the term ‘natural gas’ has been amended to ‘covered gas’ on pages 18, 24, 26 and 30.

³⁹ NGR, r 8(2)(a)(ii).

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¹¹⁴ NGL, s 23.