



DRAFT DECISION
Roma to Brisbane Gas Pipeline
Access Arrangement
2017 to 2022

Attachment 12 – Non-tariff
components

July 2017

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Inquiries about this publication should be addressed to:

Australian Energy Regulator
GPO Box 520
Melbourne Vic 3001

Tel: 1300 585 165

Email: AERInquiry@aer.gov.au

Note

This attachment forms part of the AER's draft decision on the access arrangement for the Roma to Brisbane Gas Pipeline for 2017–22. It should be read with all other parts of the draft decision.

The draft decision includes the following documents:

Overview

Attachment 1 - Services covered by the access arrangement

Attachment 2 - Capital base

Attachment 3 - Rate of return

Attachment 4 - Value of imputation credits

Attachment 5 - Regulatory depreciation

Attachment 6 - Capital expenditure

Attachment 7 - Operating expenditure

Attachment 8 - Corporate income tax

Attachment 9 - Efficiency carryover mechanism

Attachment 10 - Reference tariff setting

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Attachment 12 - Non-tariff components

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Shortened forms

Shortened form	Extended form
AER	Australian Energy Regulator
ATO	Australian Tax Office
capex	capital expenditure
CAPM	capital asset pricing model
CPI	consumer price index
DRP	debt risk premium
ECM	(Opex) Efficiency Carryover Mechanism
ERP	equity risk premium
Expenditure Guideline	Expenditure Forecast Assessment Guideline
gamma	Value of Imputation Credits
MRP	market risk premium
NGL	National Gas Law
NGO	national gas objective
NGR	National Gas Rules
NPV	net present value
opex	operating expenditure
PTRM	post-tax revenue model
RBA	Reserve Bank of Australia
RFM	roll forward model
RIN	regulatory information notice
RPP	revenue and pricing principles
SLCAPM	Sharpe-Lintner capital asset pricing model
STTM	Short Term Trading Market
TAB	Tax asset base
UAFG	Unaccounted for gas
WACC	weighted average cost of capital
WPI	Wage Price Index

12 Non-tariff components

This attachment contains our draft decision and reasons on the non-tariff components of APTPPL's 2017–22 access arrangement proposal.

The non-tariff components are as follows:

- queuing requirements—a process or mechanism for establishing an order of priority between prospective users of spare or developable capacity
- extension and expansion requirements—the method for determining whether an extension or expansion is a part of the covered pipeline and the effect this will have on tariffs
- capacity trading requirements—the arrangements for users to assign contracted capacity
- the requirements for changing receipt and delivery points
- a review submission date and a revision commencement date, and
- the terms and conditions for the supply of reference services.

12.1 Queuing requirements

12.1.1 Draft decision

Our draft decision is to not approve APTPPL's proposed queuing requirements, and to require APTPPL to restore the queuing requirements in clauses 6.1 to 6.6 of the 2012–17 RBP access arrangement.¹

12.1.2 Proposal

APTPPL proposed to replace the existing 'first-come-first-served' queuing policy with a new process that would require:²

- prospective users to lodge a registration of interest in spare or developable capacity with APTPPL, which would remain valid for 12 months but would not give the user any priority in gaining access
- existing capacity to be allocated through either an open season, or an auction if the demand exceeds the capacity available
- developable capacity to be allocated on the basis of direct negotiations between APTPPL and prospective users.

¹ Clause 6.7 of the 2012-17 RBP access arrangement deals with the transition from the previous RBP access arrangement and is not required for the 2017-22 RBP access arrangement.

² See APTPPL, *Roma to Brisbane Pipeline proposed revised access arrangement 2017 – 22*, September 2016, cl. 6.

Existing capacity

Under APTPPL's proposal, if less than 2TJ/d of capacity is, or is likely to become, available, APTPPL may elect to allocate it on a first come, first served basis. However if the spare capacity exceeds 2TJ/d, then APTPPL must issue a public notice seeking expressions of interest in the capacity.

If all expressions of interest can be met with the available spare capacity, APTPPL proposes to enter negotiations with all interested parties. This is referred to as the 'open season' stage.

If the expressions of interest exceed the available capacity, then APTPPL would issue a notice of auction inviting bids for the spare capacity and setting out the terms and conditions on which the capacity will be made available, including the required financial security. APTPPL would be able to set a reserve price for the auction which, in the case of the Long Term Firm Service, must not exceed the reference tariff.

To submit a bid, users would complete an auction registration form and provide both the required financial security and a transportation agreement in the specified form. The proposed access arrangement provides for users to consult with APTPPL on alternative terms and conditions prior to submitting a bid.

If all complying bids can be met with the spare capacity, then each bid is deemed to be an irrevocable offer which APTPPL may accept. However, if the complying bids exceed the spare capacity, they would be ranked according to NPV. The NPV of each bid would be calculated using the user's nominated tariff, the requested capacity, term and commencement date, and using APTPPL's approved rate of return as the discount rate.

Developable capacity

Under the proposal, if user requirements can be met only by developing capacity, APTPPL would investigate the scale and scope of the necessary investment negotiate with prospective users for access to this capacity if it finds the development technologically and economically feasible.

Prospective users who have contributed to the cost of the investigation would have priority ahead of those who do not. Priority will otherwise be determined on the basis of 'the outcome and timing of the conclusion of negotiations with each prospective user.'³

³ APTPPL, *Roma to Brisbane Pipeline proposed revised access arrangement 2017 – 22*, September 2016, cl. 6.3.2(c).

12.1.3 AER assessment approach

Rule 103 of the NGR provides that an access arrangement for a transmission pipeline must contain queuing requirements. To comply with rule 103, the queuing requirements in an access arrangement must:

- create a process or mechanism for establishing an order of priority between users for spare or developable capacity that is fair and equitable between prospective users, and
- be sufficiently detailed to enable users to understand the basis on which the order of priority has been, or will be, established and, if an order of priority has been determined, to determine their position in the queue.

Rule 103 is a full discretion provision. We may reject a proposal if we consider a preferable alternative exists that complies with the relevant requirements and is consistent with the applicable criteria.⁴ In making this decision, we are required to have regard to the NGO and may also take into account the revenue and pricing principles.⁵

12.1.4 Reasons for draft decision

APTPPL's proposal is similar to the queuing policy it proposed for the 2012-17 RBP access arrangement. We found that this earlier proposal did not comply with the requirements and objectives of the NGL and NGR, in part because:

- the proposal could undermine the role and effectiveness of the negotiate-arbitrate framework established by the NGL and the NGR, and
- the proposal did not meet the criteria set out in NGR rule 103 and may not promote efficient outcomes in accordance with the NGO and the revenue pricing principles.⁶

We concluded in our 2012 draft decision that the first-come-first-served approach should be retained. In response, APTPPL adopted the first-come-first-served method, which we accepted (with some minor amendments) in our 2012 final decision.⁷

APTPPL's submission in support of its proposed 2017-22 RBP access arrangement includes a lengthy discussion of our 2012 draft decision and the benefits of its queuing proposal over the first-come-first-served option.⁸ It also noted the recent decision by the Economic Regulation Authority (ERA) of Western Australia to accept a largely identical queuing proposal for the Goldfields Gas Pipeline.⁹

⁴ NGR, r. 40(3).

⁵ NGL, s. 28.

⁶ AER, *APT Petroleum Pipeline Pty Ltd, Access arrangement draft decision, Roma to Brisbane Pipeline 2012-17*, April 2012, p. 47.

⁷ AER, *APT Petroleum Pipeline Pty Ltd, Access arrangement final decision, Roma to Brisbane Pipeline 2012-17*, August 2012, p. 159.

⁸ APTPPL, *Roma to Brisbane Pipeline access arrangement submission – public*, September 2016, p. 209 ff.

⁹ ERA, *Goldfields Gas Pipeline Final Decision*, June 2016; ERA, *Goldfields Gas Pipeline Draft Decision*, December 2015, p. 377.

In assessing APTPPL's queuing proposal we have considered the matters it raised as well as the submissions received from a number of other interested parties. We have also taken into account a number of important contextual factors, including:

- APTPPL's demand projections for the 2017-22 access arrangement period, which indicate that there will be a substantial amount of spare capacity on the RBP over this period, making it unlikely the 'auction' stage will be triggered, and¹⁰
- the AEMC's recent recommendations to the COAG Energy Council about the use of auctions on transmission pipelines and the work the Gas Market Reform Group is expected to carry out over the next year to develop the detailed design of:
 - a day-ahead auction of contracted but un-nominated capacity on contractually congested contract carriage pipelines, and
 - a capacity auction for the Victorian Transmission System (VTS), if a decision is made to introduce the entry-exit model.

APTPPL's submission

APTPPL argued that the existing queuing system will not lead to efficient capacity allocation because:¹¹

- first-come-first-served prioritisation takes no account of the service provider's costs or the prospective user's valuation of the service
- a prospective user at the front of the queue may not be ready to contract, while another further back may be ready to contract but cannot be accommodated until arrangements have been concluded with the earlier ranked user
- first-come-first-served prioritisation does not allow higher value projects to take precedence of lower value projects when it is not possible to meet the needs of both, and
- the sequential nature of first come first served prioritisation makes it difficult to coordinate and allocate developable capacity.

APTPPL's submission contains an extended discussion of the reasons we articulated in our 2012 draft decision for the 2012–17 RBP access arrangement for rejecting a queuing mechanism similar to that now proposed.

User submissions

Origin submitted that it is open to considering improvements to the queuing process but does not regard the current method as fundamentally flawed. Origin says further information is needed to assess whether APTPPL's proposal adequately addresses

¹⁰ APTPPL, *Roma to Brisbane Pipeline access arrangement submission – public*, September 2016, p. 23 ff.

¹¹ APTPPL, *Roma to Brisbane Pipeline access arrangement submission – public*, September 2016, pp. 214-215.

the AER's previous concerns, and that users could manipulate their bids to inflate the NPV of their offer.¹²

Similar submissions were made by shippers during the 2012–17 access arrangement review. BP, Origin and TRUenergy made submissions about the need for more detail and the uncertainty surrounding the NPV ranking of bids.¹³

Australia Pacific LNG stated it supports the proposed queuing policy:¹⁴

APLNG supports this change as it allocates the capacity to the customers that value it the most while providing the highest return to APA. Complying bids should include both negotiated and referenced services with no reserve tariff. Available capacity should be allocated based on the highest net present value at an agreed discount rate.

Discussion

A well designed auction may achieve economically efficient outcomes when allocating a scarce resource. However, in this decision we need to consider how the proposed mechanism would operate in conjunction with the regulatory framework, in which price and revenue caps are underpinned by a third party access regime. The auction mechanism proposed by APTPPL gives rise to two critical concerns in this regard:¹⁵

- It appears to us that the proposed mechanism is likely to render arbitration ineffective, limiting role and effectiveness of the third party access regime which is an important part of the regulatory framework.
- We also consider that under the proposed auction mechanism, bids for negotiated services at prices exceeding the reference tariff are likely to win out over bids for the reference service at the reference tariff, other things being equal.

These matters are discussed under separate headings below. We do not discount the possibility that an auction system could be crafted so as to complement the regulatory framework rather than undermine it. However it is clear that this task would be complex, warranting broad consultation and careful consideration.¹⁶ Given the low forecast demand over the access arrangement period and the low prospect that an auction would be triggered, we consider it is undesirable at this time to impose upon stakeholders the engagement necessary to resolve the critical concerns noted above in a coherent and well thought out way. We would be open to considering the

¹² Origin, *Roma (Wallumbilla) to Brisbane Pipeline – Access Arrangement 2017-22*, 21 October 2016.

¹³ AER, *APT Petroleum Pipeline Pty Ltd, Access arrangement draft decision, Roma to Brisbane Pipeline 2012-17*, April 2012, pp. 232-233.

¹⁴ Australia Pacific LNG, *Proposed Roma to Brisbane Pipeline Access Arrangement*, 4 November 2016.

¹⁵ These matters were not canvassed by the ERA in its 2016 Goldfields decision. See ERA *Goldfields Gas Pipeline Final Decision*, June 2016; ERA, *Goldfields Gas Pipeline Draft Decision*, December 2015.

¹⁶ The work now being undertaken by the AEMC to develop auction mechanisms for the VTS and the East Australian Gas Market (for contracted, un-nominated capacity) may in due course be informative.

introduction of a queuing policy involving an auction mechanism in other market circumstances.

The first come first serve process in the 2012–17 access arrangement meets the requirements of the NGR: it is fair and equal as between prospective users, and enables them to determine the basis of the order of priority and their position in the queue. While acknowledging its limitations, we consider it is nevertheless the preferable mechanism in light of our concerns with APTPPL's proposal.

Negotiate-arbitrate model

Arbitration of access disputes by the AER is a fundamental element of the regulatory framework. In our 2012 draft decision we concluded that APTPPL's proposed queuing mechanism could limit the significance and role of the arbitration process:

Where a contract exists at the time an access dispute arises, under s. 188 of the NGL the arbitrator must not make an access determination that is contrary to the rights of the parties under the contract. The arbitrator may terminate an access dispute under s. 186(2) of the NGL without making an access determination if it considers that the dispute is based on an aspect of access expressly or impliedly dealt with under a contract between the parties. APTPPL's proposed auction potentially diminishes the effect of arbitration because it removes the potential recourse to an arbitrator to set reference terms and conditions during negotiations.¹⁷

In its current proposal, APTPPL submitted there are no grounds for concern that including an auction process would diminish the role and effectiveness of the arbitration framework, stating:

Sections 186(2) and 188 of the NGL are general provisions which respectively: allow the dispute resolution body to terminate a dispute which is more appropriately dealt with in another way; and require the dispute resolution body to recognise certain pre-existing contracts. They are not limited by any particular method of allocating capacity to prospective users. The application of sections 186(2) and 188 of the NGL is not (indeed, cannot) be limited by APTPPL's proposed auctioning of spare capacity.¹⁸

We are not persuaded by APTPPL's submission. Arbitration is enlivened only when the negotiating parties are 'unable to agree' and one of them notifies the dispute resolution body that an access dispute exists.¹⁹ However in the auction process proposed by APTPPL, the prospective user will not know whether they have been 'unable to agree' on access until the auction process is played out and contracts have been formed with the successful bidders. Should a disappointed bidder notify a dispute post-auction, the

¹⁷ AER, *APT Petroleum Pipeline Pty Ltd, Access arrangement draft decision, Roma to Brisbane Pipeline 2012-17*, April 2012, p. 226.

¹⁸ APTPPL, *Roma to Brisbane Pipeline access arrangement submission – public*, September 2016, pp. 224-225.

¹⁹ NGL, s. 181.

arbitrator may be hamstrung due to its lack of capacity to interfere with the rights of others, including rights forged in the auction itself – for example, the arbitrator may not be able to make a determination depriving a person (e.g. the successful bidder) of a right under contract that was in force immediately before the dispute was notified (e.g. a contract made via the auction).

Revenues and prices

In our 2012 draft decision we were not satisfied that APTPPL’s queuing proposal would lead to efficient outcomes consistent with the revenue and pricing principles, nor that it would promote the efficient operation, use of, and investment in, the pipeline consistent with the NGO. We considered it likely that the auction mechanism would produce prices and revenues exceeding efficient levels and may make it less likely that users were able to obtain the reference service at the reference tariff. We expressed concern that this could distort the incentives on the service provider and users to undertake efficient investment in pipeline and dependent facilities, as well as skew consumption decisions by users.²⁰

In its current access arrangement proposal APTPPL argued that high prices and excess revenues are to be expected in a competitive market when capacity is scarce, describing these as ‘scarcity rents’ that will cease if the contract terminates or additional capacity is developed.²¹ We accept this as a general observation but do not believe it is pertinent to the circumstances of the RBP at this time. We remain of the view that the prospect of earning rents for existing capacity may act as a disincentive for an incumbent operator to develop additional capacity, as this may reduce the scarcity and make it less possible to extract these rents.

APTPPL rejected this proposition, asserting that tariffs for spare capacity cannot distort incentives for developable capacity since these will be driven by tariffs for developable capacity. We do not accept APTPPL’s argument. We consider it generally accepted that a facility owner earning rents due to scarcity of supply will be incentivised by those rents to maintain the scarcity.

APTPPL argued its proposed auction mechanism will lead to spare capacity being allocated to the users who value it most highly, “thereby promoting the efficient operation and use of gas transportation systems in the long term interest of consumers of natural gas.”²² We agree that, in conditions of scarcity, allocative efficiency may be furthered by a suitably designed auction, in turn advancing the NGO. However, APTPPL’s submission does not sufficiently address the broader concept of efficiency – including dynamic efficiency and productive efficiency – which is also relevant to our

²⁰ AER, *APT Petroleum Pipeline Pty Ltd, Access arrangement draft decision, Roma to Brisbane Pipeline 2012-17*, April 2012, p. 226-228.

²¹ APTPPL, *Roma to Brisbane Pipeline access arrangement submission – public*, September 2016, pp. 225-229.

²² APTPPL, *Roma to Brisbane Pipeline access arrangement submission – public*, September 2016, p. 225.

consideration of the NGO. Further, it seems unlikely that capacity on the RBP will be scarce during the access arrangement period.²³

Finally, we maintain our view that sustained pricing in excess of reference tariffs – which as set out we regard as a possible outcome of the proposed auction system – is inconsistent with the price cap form of regulation provided for by the NGR and NGL and would not promote the NGO.

12.2 Capacity Trading and Changing Receipt and Delivery Points

12.2.1 Draft decision

Our draft decision is to approve APTPPL's proposed requirements for capacity trading and changing receipt and delivery points.

12.2.2 APTPPL's proposal

APTPPL's proposed capacity trading and receipt/delivery point requirements are unchanged from those in the 2012–17 RBP access arrangement.

The proposed capacity trading requirements provide for transfers by subcontract without the service provider's consent as well as other transfers with the service provider's consent. In the latter case the transferee must enter a transportation agreement with the service provider similar to the user's transportation agreement. The service provider may withhold its consent to a transfer of capacity only on reasonable commercial or technical grounds, such as if the service provider would not receive at least the same revenue as it would have received before the change.²⁴

In relation to receipt and delivery points, clause 5.4 of APTPPL's proposed access arrangement provides that a user may, by giving 45 days notice, request substitution of all or part of an existing delivery point or receipt point MDQ. The service provider may withhold its consent to the request on reasonable commercial or technical grounds. Any substitution under this process will not result in a reduction in the amount payable under the transportation agreement prior to the substitution being made.

12.2.3 AER's assessment approach

We assessed APTPPL's proposed capacity trading requirements for consistency with the NGO and rule 105 of the NGR. Rule 105 provides in summary that:

²³ APTPPL's submissions and forecasts in support of its access arrangement proposal make it clear that it expects the available capacity of the RBP to significantly exceed demand.

²⁴ APTPPL, *Roma to Brisbane Pipeline proposed revised access arrangement, 2017-22*, September 2016, cl. 5.1-5.3.

- the access arrangement must provide for capacity transfers in accordance with the rules or procedures of the relevant gas market, if the service provider is registered as a participant in a particular gas market. If the service provider is not so registered the access arrangement must provide for transfer of capacity in accordance with NGR rule 105
- a user may subcontract to a third party all or part of its contracted capacity without the service provider's consent
- a user may transfer all or part of its contracted capacity with the service provider's consent, which can be withheld only on reasonable technical or commercial grounds.

We assessed APTPPL terms and conditions for changing receipt or delivery points against the NGO and rule 106 of the NGR which provides that:

- a user may change its receipt or delivery point with the service provider's consent
- the service provider must not withhold consent unless it has reasonable grounds, based on technical or commercial considerations, for doing so, and
- the access arrangement may specify in advance conditions under which consent will or will not be given.

12.2.4 Reasons for draft decision

We are satisfied that the capacity trading and receipt/delivery point provisions are appropriate. They are the same as those approved for the 2012-17 RBP access arrangement and comply with the relevant NGR provisions.

12.3 Extension and expansion requirements

12.3.1 Draft decision

Our draft decision is to approve APTPPL's proposed extension and expansion requirements.

12.3.2 APTPPL's proposal

APTPPL proposed no changes to the extensions and expansions policy in the 2017–22 RBP access arrangement.

Under the proposal, APTPPL will apply to the AER for a decision on whether the access arrangement will apply to an extension, but not where it involves the interconnection of a new lateral linking the pipeline to a new market or a new source of gas. For expansions, the access arrangement will apply unless the AER agrees it will not apply.

Where the access arrangement applies to an extension or expansion, the service provider will elect whether the incremental services will be offered as part of the reference service or as a negotiated service at a negotiated tariff. The reference tariff will be unaffected.²⁵

12.3.3 AER's assessment approach

We have assessed APTPPL's proposed extension and expansion requirements for consistency with the NGO and rule 104 of the NGR.

Rule 104 of the NGR specifies the extension and expansion requirements and provides that:

- the requirements may state whether the access arrangement will apply to incremental services to be provided as a result of a particular extension to, or expansion of the capacity of, the pipeline, or may allow for later resolution of that question on a basis stated in the requirements
- if an access arrangement is to apply to incremental services, the requirements must deal with the effect of the extension or expansion on tariffs
- the requirements cannot require the service provider to provide funds for extension or expansion works unless the service provider agrees.

12.3.4 Reasons for draft decision

APTPL's proposal allows us to determine at a later time whether the access arrangement should apply to extensions (excluding those that link the pipeline to a new market or new source) or expansions, and also gives APTPL discretion to determine whether the service will be provided as part of the reference service or as a negotiated service. The proposal is the same as the extensions and expansions policy that we approved for the 2012–17 RBP access arrangement and the Amadeus Gas Pipeline access arrangement for 2016–21. We are satisfied the proposal complies with NGR rule 104 and we do not require any amendments to these provisions in the proposed access arrangement.

12.4 Revision and commencement date

12.4.1 Draft decision

Our draft decision is to require APTPL to amend its proposed revisions submission date and revisions commencement date so that each specifies a single fixed date.

²⁵ APTPL, *Roma to Brisbane Pipeline proposed revised access arrangement, 2017-22*, September 2016, cl. 7.

12.4.2 APTPPL's proposal

APTPPL's proposal for the revision and commencement date states:²⁶

Service Provider will submit revisions to the Access Arrangement to the AER on or before 1 July 2021, or four years from the commencement of this Access Arrangement, whichever is the later (Revisions Submission Date).

The revisions to this Access Arrangement will commence on the later of 1 July 2022 and the date on which the approval by the AER of the revisions to the Access Arrangement takes effect under the NGR (Revisions Commencement Date).

12.4.3 AER's assessment approach

Rule 49 of the NGR requires a full access arrangement to include a review submission date and a revisions commencement date.

Rule 50(1) of the NGR provides that, as a general rule:

- a review submission date will fall 4 years after the access arrangement took effect or the last revision commencement date; and
- a revision commencement date will fall 5 years after the access arrangement took effect or the last revision commencement date.²⁷

We must accept a proposal made in accordance with this general rule.²⁸ We may also approve dates that do not conform to the general rule if we are satisfied that the dates are consistent with the NGO and the RPP.²⁹

Under rule 51 of the NGR, the review submission date fixed in an access arrangement advances to an earlier date if the access arrangement provides for acceleration of the review submission date on the occurrence of an approved trigger event, and that trigger occurs prior to the fixed date.³⁰ This rule also allows us to require the inclusion of trigger events in an access arrangement, and to specify the nature of the trigger events to be included.³¹

12.4.4 Reasons for draft decision

We consider that APTPPL's proposed submission date and commencement date are consistent with the general rule, but that their reflection in the access arrangement

²⁶ APTPPL, *Roma to Brisbane Pipeline proposed revised access arrangement, 2017-22*, September 2016, cl. 1.6.

²⁷ NGR, r. 50(1).

²⁸ NGR, r. 50(2).

²⁹ NGR, r. 50(4).

³⁰ NGR, r. 51(1).

³¹ NGR, r. 51(3).

itself should be clarified to prevent potential confusion in future reviews and to better reflect the requirements of the NGR.

For the 2017–22 access arrangement, APTPPL proposed a review submission date of:

on or before 1 July 2021, or four years from the commencement date of this Access Arrangement, whichever is the later (Revisions Submission Date).³²

We do not accept this drafting, because rule 3 of the NGR defines a review submission date as ‘a date on or before which an access arrangement revision proposal is required to be submitted’.³³ To reflect the requirements of the NGR, we require APTPL proposed access arrangement to specify a single date rather than alternative dates.

For the revision commencement date in the 2017–22 access arrangement, APTPPL proposed:

the later of 1 July 2022 and the date on which the approval by the AER of the revisions to the Access Arrangement takes effect under the National Gas Rules (Revisions Commencement Date).³⁴

We do not accept this drafting, because rule 3 of the NGR defines the revision commencement date for an applicable access arrangement as the date fixed in the access arrangement as the date on which revisions resulting from a review of the access arrangement are *intended* to take effect. In doing so, it again contemplates a single date. We therefore require amendment to confirm a revision commencement date of 1 July 2022, again consistent with APTPPL’s proposal.

This is consistent with the AER’s recent decisions, including the final decision on the Amadeus Gas Pipeline access arrangement for 2016–21.

12.4.5 Miscellaneous amendments

Variance charge

The access arrangement provides for APTPPL to levy an additional charge whenever the quantity of gas received or delivered at a particular point differs (beyond an agreed margin) from the amount nominated by a user.³⁵

During the assessment of APTPPL’s proposal, APTPPL indicated it has waived this charge for the period from 1 December 2016 to 30 November 2017. APTPPL also stated it would be comfortable with a note to the Variance Charge tariff indicating that

³² APTPPL, *Roma to Brisbane Pipeline proposed revised access arrangement, 2017-22*, September 2016, cl. 1.6.

³³ NGR, r. 3.

³⁴ APTPPL, *Roma to Brisbane Pipeline proposed revised access arrangement, 2017-22*, September 2016, cl. 1.6.

³⁵ APTPPL, *Roma to Brisbane Pipeline proposed revised access arrangement, 2017-22*, September 2016, cl. 4.3.3.

this charge has been waived for the period from 1 December 2016 to 30 November 2017.³⁶

We consider it would improve the transparency of the access arrangement to include reference to the waiver of this charge, and we require APTPPL to amend its proposal accordingly.

Authorised overruns

During the assessment process APTPPL proposed some amendments to limit the authorised overrun facility to 20 per cent of a shipper's firm capacity reserved on a day. APTPPL submitted that these changes would address the risk of shippers playing the terms of the access arrangement against the STTM Rules. We note that the authorised overrun charge is 120 per cent of the applicable firm reference tariff.

This issue was raised late in the assessment process, and there has been no opportunity for shippers to comment or for us to consider alternative views. However, our preliminary position is sympathetic towards APTPPL's submission and our draft decision is to accept the proposal.

We invite user comments in response to our draft decision.

12.5 Terms and conditions

12.5.1 Draft decision

Our draft decision is to approve the proposed terms and conditions for supply of reference services, provided APTPPL addresses the matters discussed at heading 12.5.4 below.

12.5.2 APTPPL's proposal

The proposed terms and conditions are largely unchanged from the 2012–17 RBP access arrangement. Various clauses have been amended to reflect APTPPL's proposed new reference service specification. A clause dealing with title to gas where the pipeline is in Western Australia has been removed as it has no operation in relation to the RBP.

12.5.3 AER's assessment approach

An access arrangement must specify, for each reference service, the reference tariff and the other terms and conditions on which the reference service will be provided.³⁷ In considering a service provider's proposed terms and conditions, we seek to balance

³⁶ APTPPL, Response to IR#25, February 2017.

³⁷ NGR r. 48(d)(ii)

the interests of APTPPL, users and consumers by considering whether the terms and conditions:

- appropriately allocate risk between APTPPL, users and consumers
- are clear and legally certain
- are consistent with the relevant requirements in the NGL, NGR and the relevant procedures in force.

The terms and conditions should allocate risk to the party that is best able to control or manage that risk. Importantly, that party has the ability to control or manage the likelihood of the risk occurring and the consequences of the risk if it occurs. The incentive to mitigate that risk is therefore best placed with that party. Effective risk mitigation is likely to reduce the total costs of providing reference services to consumers in the long-term, and is therefore consistent with the NGO.

The terms and conditions also need to be clear and legally certain. This is because the terms and conditions will be used in resolving any access dispute and in making any access determination.³⁸ Further, these terms and conditions are likely to form the starting point for commercial negotiations between APTPPL, retailers and other users.

Section 321 of the NGL provides that “nothing in [the NGL] is to be taken as preventing a service provider from entering into an agreement with a user or prospective user about access to a pipeline service by means of a scheme pipeline that is different from an applicable access arrangement that applies to that pipeline service.”³⁹ The parties may wish to reach agreement on aspects of their commercial relationship, separate from the access arrangement's terms and conditions. These aspects are likely to depend on the parties' particular circumstances.

In some cases, greater prescription or intervention on our part in determining these terms and conditions may impede competitive market outcomes and be inefficient.⁴⁰ There are two reasons for this: first, our lower level of information than that of APTPPL and users and second, the user-specific nature of many issues. Accordingly, we will generally avoid proposing amendments in these cases where flexibility to negotiate commercial outcomes is desirable. We expect that both service providers and users will negotiate in good faith on such matters.

12.5.4 Reasons for draft decision

Consistent with our decision on APTPPL's 2012–17 RBP access arrangement we are generally satisfied the proposed terms and conditions appropriately balance the interests of APTPPL, users and consumers.

³⁸ NGL, s. 189.

³⁹ This is subject to section 135, which requires the service provider to comply with the queuing requirements of the applicable access arrangement.

⁴⁰ See: *Application by WA Gas Networks Pty Ltd (No 3)* [2012] ACompT 12 at [261]-[278]; and *Australian Competition and Consumer Commission v Telstra Corporation* [2009] FCAFC 68.

Minor revisions

Many of APTPPL's proposed changes are of a 'housekeeping' nature, flowing from the proposed changes to the reference service definition and the deletion of a redundant provision (concerning title to gas where the pipeline is in WA).

Submissions raised few concerns about the terms and conditions. AEC proposed two amendments, said to improve the clarity and certainty of the terms and conditions:⁴¹

Firstly, [APTPPL proposes] ... that where sufficient capacity is not available, users with an as available service will be scheduled or curtailed to a quantity determined pro rata, based on the user's nominations. This should relate to confirmed nominations, to maximise efficiency.

Secondly, for users with interruptible services, APTPPL proposes that capacity will be scheduled or curtailed on the available capacity equitably among the users, on the basis of "tariffs paid, first-come-first-served, pro-rata based on nominated quantities or such other basis as Service Provider reasonably determines". The list of possible methods for determining capacity does not offer sufficient clarity to prospective users, in particular the reference to what the Service Provider "reasonably determines". A single, clear method should be articulated.

It is desirable for the terms and conditions of access to be as clear as possible, and we have some sympathy for AEC's concerns. However the proposed changes deal with the relative priority of non-reference services – as available versus as available, or interruptible versus interruptible – and we have determined not to require APTPPL to incorporate them into the reference service terms and conditions.

Finally in clause 15(c) there is a reference to paragraph 'e' – this appears to be a typographic error and should refer to paragraph 'd'.

Specification of services

Our draft decision on reference services and rebateable services may necessitate consequential changes beyond those considered in the relevant Attachments to this decision. In making our final decision we will have regard to submissions on any further changes to the access arrangement and terms and conditions consequential upon our decision on services.

Renominations

The terms and conditions forming part of the proposed access arrangement allow a user to revise its nomination prior to a 'nomination deadline' of 4 PM on the day prior to the day to which the nomination relates.

⁴¹ Australian Energy Council, *Roma (Wallumbilla) to Brisbane Pipeline – Access Arrangement 2017-22*, 20 October 2016

The terms and conditions appear not to contemplate or provide for *intra-day* renominations. However during the assessment process APTPPL indicated that intra-day renomination is a standard feature of its proposed reference services, for which APTPPL has permanently waived charges. APTPPL stated it would incorporate a form of words in the access arrangement to make this clear.⁴²

We welcome APTPPL’s agreement to clarifying this issue in its revised proposal.

12.6 Required amendments

Table 12.2 Required amendments

Clause	Amendment
1.6 Revisions	<p>Service Provider will submit revisions to this Access Arrangement to the AER on or before 1 July 2021, or four years from the commencement date of this Access Arrangement, whichever is the later (Revisions Submission Date).</p> <p>The revisions to this Access Arrangement will <u>are intended to</u> commence on the later of 1 July 2022 and the date on which the approval by the AER of the revisions to the Access Arrangement takes effect under the NGR (Revisions Commencement Date).</p>
4.3.3 Daily Variance Charges	<p><i>Add a note stating that this charge has been waived for the period 1 December 2016 to 30 November 2017.</i></p> <p><i>Delete clauses 6.1 to 6.3 entirely.</i></p> <p><i>Insert following clauses from APTPPL RBP Access Arrangement 2012-17:</i></p> <p><i>6.1 Existing Capacity Queues</i></p> <p><i>6.2 Forming the Existing Capacity Queue</i></p>
6 Queuing Requirements	<p><i>6.3 Conditions Applicable to the Existing Capacity Queue</i></p> <p><i>6.4 Procedure when capacity can be made available for Services provided by the Existing Capacity</i></p> <p><i>6.5 Developable Capacity</i></p> <p><i>6.6 Investigations to Determine if Developable Capacity is Available</i></p>
Schedule 2 Definitions	<p>Authorised Overrun Quantity means the amount of an Overrun Quantity that is attributable to an Authorised</p>

⁴² APTPPL, Responses to IR#23 and IR#25, February 2017.

Clause	Amendment
and Interpretations	Overrun, which cannot be greater than 20% of Firm MDQ.
Schedule 3 Terms and Conditions	
3	Nominations <i>Incorporate words to make it clear that intra-day renomination is a standard feature of the reference service and that it is provided without an additional charge.</i>
15(c)	<i>Change the reference to paragraph 'e' to paragraph 'd'.</i>