



FINAL DECISION
Amadeus Gas Pipeline
Access Arrangement
2016 to 2021

Attachment 12 – Non-tariff
components

May 2016

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Note

This attachment forms part of the AER's final decision on the access arrangement for the Amadeus Gas Pipeline for 2016–21. It should be read with all other parts of the final decision.

The final 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

Attachment 11 - Reference tariff variation mechanism

Attachment 12 - Non-tariff components

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Shortened forms

Shortened form	Extended form
AA	Access Arrangement
AAI	Access Arrangement Information
APTNT	APT Pipelines (NT) Pty Limited (APTNT)
AER	Australian Energy Regulator
AGP	Amadeus Gas Pipeline
ATO	Australian Tax Office
capex	capital expenditure
CAPM	capital asset pricing model
CPI	consumer price index
DRP	debt risk premium
ECM	Efficiency carryover mechanism
ERP	equity risk premium
Expenditure Guideline	Expenditure Forecast Assessment Guideline
gamma	value of imputation credits
GTA	Gas Transport Services Agreement
MRP	market risk premium
NGP	Northern Gas Pipeline (formerly North East Gas Interconnector/NEGI)
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
TAB	tax asset base
UAFG	unaccounted for gas

Shortened form	Extended form
WACC	weighted average cost of capital
WPI	Wage Price Index

12 Non-tariff components

This attachment contains our decisions and reasons on the non-tariff components of APTNT's revised access arrangement proposal for the Amadeus Gas Pipeline (AGP) for 2016–21.

The non-tariff components are as follows:

- the terms and conditions for supply of the reference service
- queuing requirements—a process or mechanism for establishing an order of priority between prospective users of spare and/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—how users may assign contracted capacity and change delivery and receipt points
- provision for receipt and delivery point changes, and
- a review submission date and a revision commencement date.

12.1 Decision

We approve the non-tariff components in APTNT's revised access arrangement proposal except clauses 1.6 (review process) and 78 (liability cap).

We have revised the access arrangement having regard to our reasons for refusing to approve APTNT's proposal and the further matters identified in the NGR section 64(2). Our revisions are reflected in clauses 1.6 and 78 of the Approved Access Arrangement for the Amadeus Gas Pipeline for 2016-21, which gives effect to this decision.

12.2 Terms and conditions

An access arrangement must specify the terms and conditions on which each reference services will be provided.¹ These do not exhaustively set out the contractual arrangements between a service provider and a user. The NGL permits the service provider and the user to agree on terms and conditions different to those specified in the applicable access arrangement.² However, if an access dispute arises and is referred for determination, the relevant regulator must give effect to the access arrangement.³

¹ NGR, r. 48(1)(d)(ii).

² With the exception that a service provider must comply with the queuing requirements in an applicable access arrangement: NGL, ss. 135 and 322.

³ NGL, s. 189.

12.2.1 Final decision

We approve the terms and conditions in APTNT's revised access arrangement proposal except for clause 78 (liability cap).

12.2.2 APTNT's revised proposal

Our draft decision required seven amendments to the proposed terms and conditions.⁴ APTNT adopted five of these without modification, partially incorporated a further amendment, and did not incorporate the final amendment.⁵ The table below gives a high level overview of APTNT's response to our draft decision and our final decision on these seven amendments.

Table 12.1 Overview - Final Decision on Terms and Conditions

Draft decision	AGN response	Final decision
Clause 69 ⁶ - termination for default	Amended as required	Accept
Clause 78 - consequential loss	Accepted in part	Accept
Clause 79 - liability cap	Not amended	Not accepted
Clause 95 - confidential information	Amended as required	Accept
Clauses 53, 78 and 84 - minor drafting corrections	Amended as required	Accept

12.2.3 AER's assessment approach

We are required to assess APTNT's proposed terms and conditions for consistency with the NGL, the NGR and the relevant procedures. The NGO states that the objective of the NGL is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas. The NGR gives us discretion to withhold our approval of the non-price terms and conditions proposed in an access arrangement if we consider a preferable alternative exists which complies with the NGL and is consistent with the applicable criteria.⁷ Our approach to

⁴ AER, *Draft Decision, Amadeus Gas Pipeline Access Arrangement 2016 - 2021, Attachment 12 - Non-tariff components*, November 2015, pp. 12-28 – 12-30.

⁵ APA Group, *Access Arrangement for the Amadeus Gas Pipeline 1 July 2016 to 30 June 2021*, January 2016, Schedule 3.

⁶ The references in this table are to APA Group, *Access Arrangement for the Amadeus Gas Pipeline 1 July 2016 to 30 June 2021*, January 2016, Schedule 3.

⁷ NGR, rr. 100; 40(3). 'Procedures' are described in NGR Part 15B.

assessing APTNT's proposed terms and conditions is detailed in Attachment 12 of our draft decision, and we have used the same approach for our final decision.⁸

12.2.4 Reasons for final decision

APTNT's revised access arrangement proposal incorporates the revisions we required to clause 69 (termination for default) and clause 95 (confidential information). APTNT also corrected the minor drafting errors we identified in clauses 53, 78 and 85.

We received no submissions on these issues, and for the reasons set out in our draft decision we maintain our decision to approve these amendments in this final decision.

The following paragraphs set out our decision and reasons on the remaining two issues.

Consequential loss

APTNT's revised terms and conditions partially incorporate the revision we required to the liabilities and indemnities provision in clause 78. Our draft decision required APTNT to remove clause 78(c) which exposed the user, but not the service provider, to liability for consequential loss or punitive or exemplary damages in a range of circumstances. APTNT made the required amendment except for removing the user's potential liability for the damages provided for by clause 78 arising from the indemnity in clause 80. APTNT submitted:

The indemnity set out in [clause 80] keeps the Service Provider whole for claims brought by third parties in certain circumstances including for the User's breach of contract. The type of loss or damage which this indemnity is seeking to recover by its very nature falls into the definition of Consequential Loss as it stems from third party losses. Without the consequential loss carve out, there would be ambiguity in the drafting as to whether the indemnity would have any effect at all. Accordingly the carve out is necessary to avoid this ambiguity.⁹

We are satisfied that APTNT's explanation justifies the exclusion of consequential loss. We therefore approve its revised clause 78(c).

Liability cap

The AGP access arrangement for 2011 to 2015 limits the aggregate liability of APTNT and its related bodies corporate in respect of the transportation agreement to a monetary cap of 10 percent of the contract value over the life of the transportation agreement. Similar provisions exist in the terms and conditions of other gas

⁸ AER, *Draft Decision, Amadeus Gas Pipeline Access Arrangement 2016 - 2021, Attachment 12 - Non-tariff components*, November 2015, p. 12-8.

⁹ APA Group, *Amadeus Gas Pipeline - Access Arrangement Revised Proposal Response to Draft Decision - Submission*, January 2016, pp. 21–22.

networks.¹⁰ APTNT proposes a further cap of 2.5 percent of the contract value in any one year of the transportation agreement. Its proposed clause is as follows:

The aggregate liability of the Service Provider and its Related Bodies Corporate in respect of the Transportation Agreement, excluding for the Gross Negligence or Wilful Misconduct of the Service Provider or its Related Bodies Corporate, will be limited to a monetary liability cap of 10 per cent of the contract value over the life of the Transportation Agreement and 2.5% of such contract value in any one year of the Transportation Agreement.¹¹

Our draft decision required APTNT to remove the new 2.5 percent annual liability cap as the existing constraint of 10 percent over the life of the agreement provides adequate certainty to APTNT and its users without further limiting a user's options as to when it may 'use' its 10 percent limit over the period.¹², APTNT did not make this amendment, and defended the new 2.5 percent annual liability cap in the following terms:

APTNT considers that this must be considered in the context of the term of the Reference Service Agreement [which under the Access Arrangement is] three years or such longer period as the User elects at the time of entering into the Transportation Agreement.

Absent an annual cap the Service Provider is exposed to the entire aggregate liability cap rather than having the risk spread over the life of the contract. For longer term, high value contracts, the lumpiness of the exposure, particularly in the early years of the contract, may present an unacceptably high risk for the Service Provider. An annual cap ensures the risk is spread across the life of the contract such that the risk is commensurate with amounts paid under the contract at the time any claim is made. Such an approach is consistent with industry approaches in project development and construction contracts.¹³

We are not persuaded by APTNT's submission. No support has been provided for the assertion that the current 10 percent liability cap over the life of the agreement presents an unacceptably high risk for the service provider. We maintain our view that the 10 percent cap protects APTNT's legitimate interest in certainty as to the limit of its liability without adding the 2.5 percent annual cap. The 2.5 percent annual cap would lower the effective total cap for any transportation agreement of less than four years

¹⁰ For example, APT Petroleum Pipelines Pty Limited, *Access Arrangement effective 1 September 2012 – 30 June 2017 (Roma to Brisbane Pipeline Access Arrangement)*, Schedule 3, Terms and Conditions applying to the Firm Service, cl. 88.

¹¹ APA Group, *Access Arrangement for the Amadeus Gas Pipeline 1 July 2016 to 30 June 2021*, January 2016, Schedule 3, cl. 79.

¹² AER, *Draft Decision, Amadeus Gas Pipeline Access Arrangement 2016 - 2021, Attachment 12 - Non-tariff components*, November 2015, p. 12-12.

¹³ APA Group, *Amadeus Gas Pipeline - Access Arrangement Revised Proposal Response to Draft Decision - Submission*, January 2016, pp. 22–23.

duration.¹⁴ Further, for agreements of four years or more, in practical terms a 2.5 percent annual cap would lower the overall liability in every scenario, except where a user recovers the full 2.5 percent in four separate years - in which case recovery under the annual cap would equate to, but not exceed, recovery under the existing 10 percent cap.

Accordingly, we maintain our draft decision position to allow the existing 10 percent liability cap and not accept the additional 2.5 percent annual cap. We have amended clause 79 of the terms and conditions accordingly.

12.3 Revision and commencement

We approve APTNT's amendments specifying single fixed dates for both the submission of revisions and the commencement of amendments. These revisions are consistent with those required in our draft decision.

However, there are two further elements of APTNT's revision and commencement clause which we do not approve. These are discussed in the following paragraphs.

Attachment 12 of our draft decision set out our approach to assessing APTNT's revision and commencement clause. We have used the same approach in this final decision.¹⁵

Early review trigger

We do not approve the trigger in the revised access arrangement proposal for accelerating the review if another pipeline is connected with the AGP.

Our draft decision required the following amendment to accelerate the review if a new pipeline is connected to the AGP during the access arrangement period:¹⁶

The Review Submission Date will be accelerated under Rule 51 on written notification by the AER that one of the following events has occurred:

- (a) the interconnection of another pipeline with the Pipeline; or
- (b) the introduction of a significant new source of gas supply to one or more of the markets to which gas is delivered from the pipeline;

that substantially changes the types of Services that are likely to be sought by the market or has a substantial effect on the volume and/or direction of flow of natural gas through all or part of the Pipeline.

¹⁴ The Access Arrangement provides for terms of three years or such longer period as the user elects. APA Group, *Access Arrangement for the Amadeus Gas Pipeline 1 July 2016 to 30 June 2021*, January 2016, Schedule 3, cl. 2.3.3.

¹⁵ AER, *Draft Decision, Amadeus Gas Pipeline Access Arrangement 2016 - 2021, Attachment 12 - Non-tariff components*, November 2015, p. 12-23.

¹⁶ AER, *Draft Decision, Amadeus Gas Pipeline Access Arrangement 2016 - 2021, Attachment 12 - Non-tariff components*, November 2015, pp. 12-18 to 12-28.

Such notice will not be given within 18 months of the Review Submission Date in this clause 1.6.

We required this trigger in the context of the possible connection of the North Eastern Gas Interconnector (NEGI) during the access arrangement period. We considered the uncertainty about the impact of the NEGI could not be addressed through the extensions and expansion requirements or other methods.¹⁷

APTNT's revised proposal included a trigger, but changed the specification to omit the words "or has a substantial effect on the volume and/or direction of the flow of natural gas through all or part of the pipeline". The relevant part of APTNT's proposed trigger is:

the interconnection of another pipeline with the Pipeline that substantially changes the types of Services that are likely to be sought by the market.¹⁸

APTNT argued that the omitted factors are irrelevant to the specification of the reference service and the setting of the reference tariff, and could therefore trigger an early review in circumstances where the service or tariff may not change. APTNT stated:

...the reference service is an 'any direction' service which can apply between any receipt or delivery point on the pipeline, regardless of flow direction. Further, it is specified as a capacity tariff, and therefore volumes are not specifically relevant to the setting of the tariff."¹⁹

In response to APTNT's submission, PWC responded that the NEGI "would result in a material reduction of the reference tariff," on the basis that:

When the NEGI commences operation the AGP will effectively become three interrelated pipelines [...] [which] will be interdependent in that changes to the flow regime (and hence pressure profile) of one may affect the capacity of another. However the aggregate capacity of the three pipelines, representing the new aggregate capacity of the AGP, will be materially increased [...] in the order of 50% and will be contracted. The capacity increase will be realised with little if any cost to APTNT.

[...]

Contrary to APTNT's suggestion, this will lead to a material reduction of the Reference Tariff as it is presently calculated (that is, allowable revenue divided by forecast MDQ).²⁰

¹⁷ AER, *Draft Decision, Amadeus Gas Pipeline Access Arrangement 2016 - 2021, Attachment 12 - Non-tariff components*, November 2015, pp. 25–26.

¹⁸ APA Group, *Access Arrangement for the Amadeus Gas Pipeline 1 July 2016 to 30 June 2021*, January 2016, Schedule 3, cl. 1.6.

¹⁹ APA Group, *Amadeus Gas Pipeline - Access Arrangement Revised Proposal Response to Draft Decision - Submission*, January 2016, p. 25.

²⁰ PWC, *Amadeus Gas Pipeline, Access Arrangement 2016–21, Submission of PWC*, 4 February 2016, p. 2.

Similar arguments were made by Santos and AGL on APTNT's original access arrangement proposal, discussed in our draft decision.²¹ PWC argued further:

...there is currently no firm capacity available for contract in the AGP. Existing and prospective third party users of the AGP (ie, other than PWC) have the following options available for transportation of gas:

- i) purchase interruptible capacity from APTNT - PWC understands this is the service presently used by all third party users of the AGP, with the risk of interruption being low since PWC does not presently use all of its contracted capacity;
- ii) purchase firm capacity from PWC; or
- iii) purchase firm capacity from APTNT, in which case an expansion of the capacity of the AGP would need to be carried out - leading to a reduction in the average cost of using the AGP.

[...]

To date, all third party users of the AGP have accepted service on an interruptible basis. Logically the interruptible service should be a Reference Service at a tariff that reflects the actual commercial arrangements.²²

PWC stated it intends to increase its reservation of firm capacity in line with the capacity expansion, and will use it to transport its own gas to the NEGI and to transport third parties' gas on a firm basis.²³

We consider the trigger specified in our draft decision is the preferable alternative to that proposed by APTNT to deal with the possibility of interconnection. The approved access arrangement is drafted accordingly. We take this view because we consider the impact of an interconnection is uncertain in relation to both, the types of services that may be demanded, and the volumes of gas that may be transported.

APTNT's submission, that volume and direction of flow are irrelevant, addresses only the impact of those factors on the reference services and reference tariffs as currently defined. It does not address how potential changes in volume and direction, in combination with changes in the types of services sought by the market, might impact on what services should be defined as reference services and what the associated reference tariffs should be.

To illustrate, the amount of unutilised capacity might increase due to interconnection, as suggested by PWC, albeit that it may be fully contracted. The demand for transportation services might also increase, whether to access the newly connected eastern gas market or otherwise. With the firm service taken entirely by PWC, the market might seek to move increased volumes through interruptible services or other

²¹ AER, *Draft Decision, Amadeus Gas Pipeline Access Arrangement 2016 - 2021, Attachment 12 - Non-tariff components*, November 2015, pp. 20–21.

²² PWC, *Amadeus Gas Pipeline, Access Arrangement 2016–21, Submission of PWC*, 4 February 2016, pp.1–2.

²³ PWC, *Amadeus Gas Pipeline, Access Arrangement 2016–21, Submission of PWC*, 4 February 2016, p. 2.

negotiated services that are not currently reference services. This may have implications for these and other elements of the access arrangement which cannot be forecast at this time.

We acknowledge it would be undesirable to bring on an early review where the arrangements or tariffs under an access arrangement are unlikely to change.²⁴ We address this below in considering the process for determining whether a trigger event has occurred.

Review process

The review clause in our draft decision would be activated by us giving written notice that one of the trigger events has occurred. In response, APTNT submitted we should consult with it and any other party we consider appropriate before determining that a trigger event has occurred. Its revised access arrangement proposal provides:

The AER will consult with the Service Provider and other relevant parties in determining whether [a trigger event] has occurred.

This proposed addition reflects how we would approach a possible trigger event, and we have no concerns about including it in the access arrangement, with a minor change for clarity. Our approved access arrangement provides:

The AER will consult with the Service Provider and such other parties as the AER considers appropriate in determining whether [a trigger event] has occurred.

APTNT also proposed an amendment to the effect that, should the acceleration clause be activated, the review submission date will be advanced to a date no earlier than six months after the date of any notice issued under Rule 51. APTNT expressed concern that we envisage a limited review addressing only the factors that caused the trigger mechanism to be activated,²⁵ and proposed the six month period to ensure a reasonable period to prepare a full access arrangement proposal.

We agree that the acceleration clause triggers a review of the full access arrangement and not merely the factors prompting the early review. However, we consider the process and timeframe allowed for APTNT to prepare for a review under clause 1.6 are most appropriately determined when a trigger event occurs and, accordingly, we do not accept APTNT's proposal to fix a period before which the review submission date may not be advanced.

²⁴ As submitted by APTNT: APA Group, *Amadeus Gas Pipeline - Access Arrangement Revised Proposal Response to Draft Decision - Submission*, January 2016, p. 25.

²⁵ APA Group, *Amadeus Gas Pipeline - Access Arrangement Revised Proposal Response to Draft Decision - Submission*, January 2016, p. 26.

12.4 Other non-tariff components

APTNT's revised proposal restated without revision its original proposals on the following non-tariff components:

- queuing requirements
- extension and expansion requirements²⁶
- capacity trading requirements
- changing receipt and delivery points.

Our draft decision approved APTNT's proposals on each of these components. Our assessment approach is set out in Attachment 12 of our draft decision, and we have used the same approach in this final submission.

We did not receive any submissions from stakeholders on APTNT's proposals on these components, and, for the reasons set out in our draft decision, we maintain our decision to approve these components in this final decision.

²⁶ A significant factor in approving the extensions and expansions policy is the fact that, under the approved revision and commencement clause, the interconnection of the NEGI will trigger a full review of the access arrangement. The relationship between these issues is discussed in our draft decision - AER, *Draft Decision, Amadeus Gas Pipeline Access Arrangement 2016 - 2021, Attachment 12 - Non-tariff components*, November 2015, p. 26.