

Non-scheme Pipeline Information Disclosure Compliance Bulletin

September 2022



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1 Introduction

This compliance bulletin outlines for non-scheme pipeline service providers our expectations regarding the disclosure of information under Part 23 of the National Gas Rules (**NGR**).¹

Part 23 of the NGR aims to facilitate access on reasonable terms to services provided on non-scheme pipelines by requiring publication of information by pipeline service providers and setting out an arbitration framework to resolve access disputes.

Under Part 23 of the NGR, service providers of non-exempt non-scheme pipelines (**service providers**) are required to publish a range of non-financial and financial information (**Part 23 information**).² This information is intended to assist prospective users negotiate access to a non-scheme pipeline and carry out a high-level assessment of the reasonableness of the service provider's standing price, as well as the terms and conditions associated with the pipeline services. This in turn may reduce the information asymmetry and the imbalance in bargaining power that users or prospective users may face when negotiating with service providers.

It is important that service providers publish their information in accordance with the requirements of the NGR and our *Financial reporting guideline for non-scheme pipelines (the Guideline)* to ensure that current and prospective users can make informed decisions in negotiations.

The Australian Energy Regulator (**AER**) is responsible for monitoring and enforcing service providers' compliance with the Part 23 information disclosure obligations. In 2021-22, one of our compliance and enforcement priorities was to ensure non-scheme pipeline service providers complied with the Part 23 information disclosure regime. This remains a compliance and enforcement priority in 2022-23.

As part of our work in this priority area, we reviewed a range of information published by service providers to meet their obligations under Part 23 of the NGR. We identified a number of issues with service providers' disclosures, including instances where we considered the service providers had not met the requirements of the NGR, and where there was potential for improvement in how service providers presented information. We have written to these service providers to raise our concerns and to seek amendments to their published information.

We expect to develop new guidelines under the gas pipeline regulation reforms agreed to by Energy Ministers in May 2021.³ As part of developing the new guidelines, we will consider how issues we have identified in this review could be addressed. We will undertake stakeholder consultations when developing these guidelines and we welcome submissions

¹ A non-scheme pipeline is a pipeline that is not a 'covered pipeline' under National Gas Law. Non-scheme pipelines are not subject to full or light regulation under the National Gas Rules. The non-scheme pipeline access regime commenced on 1 August 2017.

² Exemptions to some Part 23 information disclosure requirements can be granted if the pipeline satisfies certain conditions. There are three exemption categories.

³ See <https://www.energy.gov.au/government-priorities/energy-ministers/energy-ministers-publications/energy-ministers-agree-final-package-gas-pipeline-regulatory-amendments>

from stakeholders to inform the guidelines' development. We expect to commence consultations in late 2022 or early 2023.

As the new guidelines are unlikely to be in effect for over 12 months, we have prepared this compliance bulletin to set our expectations of good reporting practices to promote more consistent and transparent information disclosures by gas pipeline operators before the new guidelines take effect. Service providers should consider this compliance bulletin carefully to ensure their reporting is consistent with our expectations and the objectives of Part 23 of the NGR. This compliance bulletin is not, however, a substitute for any provisions of the NGR, or an exhaustive statement of the AER's expectations.

Service providers sometimes contact the AER seeking clarification of their information disclosure obligations. We encourage such communication, which along with our ongoing monitoring and compliance work, will assist us to determine whether further AER guidance may be appropriate or to inform our amendments to the Guideline. Seeking clarification is not, however, a substitute for independent legal advice.

Further, while Part 23 remains in place, we will continue monitoring Part 23 reporting compliance and will take compliance and enforcement action when necessary.

This compliance bulletin is structured as follows:

- Section 2 summarises the key information disclosure obligations under Part 23 of the NGR
- Section 3 sets out examples of what we consider to be good practice in reporting Part 23 information, and which we encourage service providers to adopt. Service providers should review how they are publishing information in light of these expectations and update their practices as appropriate.

2 Relevant Gas Rules

This section summarises the key information disclosure obligations under Part 23 of the NGR.

In summary, rule 552 of the NGR requires a service provider of a non-exempt non-scheme pipeline to prepare, publish and maintain the following information:⁴

- **Service and access information:**⁵
 - **Pipeline information:** this includes the pipeline’s classification, the pipeline’s capacity, the details of the receipt or delivery points on the pipeline and key connected facilities, a schematic map of the pipeline, technical or physical characteristics of the pipeline and the service provider’s policies that may affect access to the pipeline or the price for pipeline services.
 - **Pipeline service information:** this is a list of the pipeline services available on the pipeline, a description of the service, and information about availability.
 - **Service usage information:** this includes information about the actual and scheduled quantity of gas injected into and withdrawn from a pipeline.
 - **Service availability information:** this includes an outlook of the firm capacity of the pipeline that is available for sale for the next 36 months, and information about matters expected to affect the capacity of the pipeline in the next 12 months.
- **Standing terms:**⁶
 - the standard terms and conditions applicable to the service, including price terms (**the standing price**)
 - the methodology used to calculate the standing price and sufficient information to allow a user to understand how the methodology was used to reach the standing price
 - other prices and charges applicable to the pipeline service.
- **Financial information:**⁷
 - financial information that is specified in the Guideline, which includes a statement of pipeline revenue and expenses, a statement of pipeline assets and a valuation of pipeline assets using the recovered capital method (**the RCV**).⁸ The Guideline requires service providers to publish their financial information using the AER’s financial reporting template and to publish a basis of preparation document with the template that sets out the sources of information, allocation methods and assumptions for estimates.

⁴ Rule 552(1). It is a tier 2 civil penalty provision.

⁵ See rule 553.

⁶ See rule 554.

⁷ See rule 555.

⁸ AER, *Financial reporting guideline for non-scheme pipelines*, December 2017. Available at: <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/non-scheme-pipeline-financial-reporting-guidelines>

- the financial information must also be certified in the manner provided for in the Guideline.
- The following **weighted average price information**:⁹
 - the weighted average price information includes the weighted average prices paid by users for the service provider’s pipeline services and the description of the weighted average price calculation methodology.

The Guideline specifies the level of detail of information required for the financial information and weighted average price information. The Guideline also specifies the methods, principles and inputs to be used to calculate financial information and weighted average price information.

Rule 551 requires Part 23 information to be prepared, published and maintained in accordance with the **access information standard**, meaning the information:¹⁰

- is not false or misleading in a material particular
- in relation to information of a technical nature, 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
- in relation to a forecast or estimate, is supported by a statement of the basis of the forecast or estimate and:
 - is arrived at on a reasonable basis; and
 - represents the best forecast or estimate possible in the circumstances.

Rule 551 also requires the published information to include the date of publication, the date to which the information is current and, if the information replaces an earlier version, notice of that fact.¹¹

Service providers are required to publish the relevant information in accordance with the timeline and frequency specified in rule 552(2). They must also publish the information by:

- making the information publicly available on the service provider's website; or
- where the information is also required to be provided by the service provider for a non-scheme pipeline to the Australian Energy Market Operator (**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.¹²

⁹ See rule 556.

¹⁰ See rules 551(1)-(3). Rules 551(1) and (3) are both tier 2 civil penalty provisions.

¹¹ See rule 551(4).

¹² See rule 552(3).

To facilitate access requests and negotiations, rule 558 requires non-exempt service providers to develop, maintain and publish in a publicly accessible part of its website a **user access guide** for each of their non-scheme pipelines.¹³

A user access guide must contain the following information:¹⁴

- the identity of the service provider
- the contact information for an officer of the service provider for the purpose of access enquiries and requests
- the process for making an access request, and the information to be included with the access request and response times
- arrangements for undertaking further investigations by the service provider
- an explanation of how any confidential information exchanged will be handled
- the process for preparing an access offer and requesting negotiations
- a statement of the obligation to negotiate in good faith under section 216G of the National Gas Law (**NGL**) and the right of to refer an access dispute to arbitration under section 216J of the NGL
- a description of the arrangements in rule 562 for the exchange of information during negotiations under Part 23.

Service providers should familiarise themselves with their reporting obligations as described in Part 23 of the NGR as amended from time to time.

¹³ See rule 558(1). It is a tier 2 civil penalty provision.

¹⁴ See rule 558(6).

3 AER's expectations

In 2021-22, we reviewed specific Part 23 information published by non-exempt service providers for non-scheme pipelines on their websites. We found that service providers have generally complied with their information disclosure requirements, but there are some instances where the reported information does not completely satisfy the requirements of the NGR and the Guideline, or could be improved for better transparency.

Greater consistency and transparency in how service providers report Part 23 information, particularly financial information, can assist prospective users or users of the service providers' pipelines to understand the published information and use it for access negotiation.

This section outlines some of the reporting issues identified in our review and the AER's expectations on how service providers should prepare, publish and maintain their Part 23 information.

3.1 Part 23 information should be easy to find

In our review, we found that some Part 23 information is difficult to find because the information:

- is not clearly labelled or identified on the service providers' websites
- is included in a seemingly unrelated document, such as a user access guide, or an expired access arrangement, or a transport service agreement, without explicit references
- cannot be found by simply navigating from the service providers' web homepages
- is sometimes scattered and not presented in a structured, reader-friendly format
- is contained within website hyperlinks which are broken or outdated.

Where information is published but is not easy to locate or identify, it can undermine the role Part 23 plays in addressing information asymmetries between users or prospective users, and service providers.

To improve users or prospective users' ability to find and use Part 23 information, service providers should take the following steps:

- ensure Part 23 information is easy to locate and access on their websites, by including all relevant information and hyperlinks on a single webpage that is easy to identify and to navigate to from their website homepages
- clearly identify Part 23 information by using clear labels or headings
- state clearly where any Part 23 information is not relevant or applicable in the pipeline's circumstances, rather than simply omitting it
- ensure the hyperlinks provided on the website are up-to-date and link to the exact location of the relevant Part 23 information directly.

For pipeline information and pipeline service information, the adoption of a table format that is easy to read and find is good practice (see example below).

Table 1 Example of pipeline information and pipeline service information presentation

[Pipeline name]			
<i>Pipeline information</i>			
Pipeline Class			
Nameplate rating			
Receipt points			
Delivery points			
Key facilities connected and the respective receipt/delivery points			
Schematic map of the pipeline		[hyperlink to the schematic map]	
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		[technical or physical characteristics, or a hyperlink to more detailed information]	
Any policies that may affect access to or use of the pipeline or the price for pipeline services		[hyperlink(s) to relevant policies]	
<i>Pipeline service information</i>			
Service name	Description	Locational limitations on availability	Priority ranking

We also expect service providers to review the presentation of their Part 23 information periodically to ensure that the information remains up-to-date, complete, and accessible on their websites.

3.2 Standing price methodology should contain sufficient explanatory information

Standing price information and methodology is important to users or prospective users of a pipeline, as they can use it to assess the reasonableness of the service providers' offers and to negotiate. Rule 554(1)(b) NGR requires service providers to, among other things, provide sufficient information to enable prospective users to understand how the standing price reflects the methodology used to calculate the standing price.

We expect that, to enable a user or prospective user to understand the service provider's standing price methodology, a service provider should explain their methodology in sufficient detail by including:

1. a description of all inputs and/or the numerical input values used to calculate the standing prices;
2. a description of the calculations or a mathematical representation of the calculations used to calculate the standing prices; and
3. an explanation of why the chosen inputs and calculations are appropriate in the service provider's circumstances, as well as any supporting analysis or evidence.

We observed that service providers employ a variety of pricing methodologies and provide varying degrees of detail. Some pricing methodologies may make it difficult for pipeline users to understand how standing prices are calculated or to assess their reasonableness. For

example, some service providers describe their standing price methodology with reference to their existing or legacy contracts (**reference contracts**), without providing details on the characteristics of these contracts or how these contract prices are used to derive the standing price.

Where such an approach is adopted, service providers should, for example, provide the following information about their reference contracts to sufficiently describe their standing price methodology where possible:

- the number of reference contracts that were considered
- the characteristics of the reference contracts, such as when the reference contracts were negotiated, the pipeline services and contracted capacity that were negotiated under these contracts, and any special conditions that were included in these contracts
- the mathematical representation of how the standing price is calculated using the reference contract prices
- what adjustments, including inflation escalators, the service providers made to the reference contract prices to derive the standing price, and
- the range of prices derived from these reference contracts and where relevant, an explanation of why the standing price falls outside this range of prices.

For transparency, if a service provider amends its standing price methodology, it should:

- explain why it has amended its standing price methodology
- describe the changes it has made to its standing price methodology
- maintain a copy of its historical standing price methodology on its website for ease of comparison.

3.3 Basis of preparation should contain sufficient explanations

Service providers are required to publish their financial information by completing the AER's financial reporting template (financial reports), and by also providing specific information to support their financial data in the basis of preparation document.

The basis of preparation document should contain sufficient explanations and supporting information to assist prospective users of the financial reports to understand and interrogate the data and estimates provided by the service providers.¹⁵ We found that the level of detail provided in the basis of preparation document varies among service providers.

In deciding the level of detail of information to be provided in a basis of preparation, service providers should consider the intended purpose of the basis of preparation, which is to:

¹⁵ Rule 555(1)(a) of the NGR requires that a service provider for a non-scheme pipeline must prepare and publish financial information that is in the form and contains the information specified in the Guideline. As set out in section 7 of the Guideline, the basis of preparation must explain the sources of information used in the preparation of the financial reporting template, any amendments to the data from previous years, identification of shared assets and the method for allocating these from the entity to the individual pipeline.

- enable an understanding of how the amounts reported in the pipeline financial statements are determined or calculated
- assist with interpretation of information reported in the pipeline financial statements
- assist with comparison of information provided in the pipeline financial statements to the service provider as a whole
- provide an understanding of how shared amounts are allocated.

Some service providers have stated the basis of their estimates but did not explain how their estimates are arrived at on a reasonable basis or represent the best estimates possible in the circumstances. Similarly, service providers are required under the Guideline to justify why their chosen shared cost allocators are the most appropriate available allocators, but it appears that some may not currently do so. The Guidelines require service providers to include these explanations and justifications in their basis of preparation and where service providers do not do so, they will not be meeting their obligations under the NGR.

We also consider that it would benefit prospective users of non-scheme pipelines if service providers provided greater detail than they currently do on how they estimate their rates of return. The rate of return is a key input to calculating the 'return on capital' and the pipeline asset value under the recovered capital method, which prospective users may rely on in access negotiation. As a matter of good reporting practice, we encourage service providers to provide an explanation of the inputs, assumptions, and calculations of their rates of return in their basis of preparation. This includes the numeric values of the parameters and the description of the methodology that the service providers use to calculate return on equity and return on debt.

We will consider whether additional requirements on such issues should be included in the new guidelines.

3.4 Part 23 reporting compliance should be regularly reviewed by service providers

We expect service providers to take their Part 23 information disclosure obligations seriously and to have appropriate systems and processes in place to manage these obligations.

Part 23 requires that some information published by service providers must be updated at regular intervals. For information that does not have to be updated regularly, we still expect all service providers to take steps to ensure that this information remains up to date, such that they are meeting their obligations under the NGR. We also expect service providers to notify us where there has been a material change in their published information.