



**Roma to Brisbane Pipeline
Access Arrangement
2012–17**

Queuing Industry Paper

January 2012

© Commonwealth of Australia 2012

This work is copyright. Apart from any use permitted by the Copyright Act 1968, no part may be reproduced without permission of the Australian Competition and Consumer Commission. Requests and inquiries concerning reproduction and rights should be addressed to the Director Publishing, Australian Competition and Consumer Commission, GPO Box 3131, Canberra ACT 2601.

Inquiries about these guidelines should be addressed to:

Australian Energy Regulator

GPO Box 520

Melbourne Vic 3001

Tel: (03) 9290 1444

Fax: (03) 9290 1457

Email: AERInquiry@aer.gov.au

AER reference: AER11/6025, 45752

1	Introduction and background	4
1.1	The current access arrangement	5
1.2	The short term trading market	6
1.3	The relevant law	6
1.3.1	<i>The access arrangement decision process.....</i>	6
1.3.2	<i>Queuing requirements.....</i>	6
1.3.3	<i>The national gas objective.....</i>	7
1.3.4	<i>Access disputes.....</i>	7
1.3.5	<i>Revenue and pricing principles</i>	8
1.3.6	<i>Reference services and negotiated services</i>	9
1.3.7	<i>Other laws</i>	9
2	APTPL's proposed queuing requirements	10
2.1	Existing capacity.....	10
2.2	Developable Capacity	12
3	Industry response to the proposed queuing requirements.....	13
3.1	AGL	13
3.2	BP	14
3.3	Origin Energy.....	15
3.4	TRUenergy	15
4	AER Staff - Topics for consideration	17
4.1	Topics for discussion.....	17
4.2	Queuing requirement options.....	18
4.2.1	<i>The use of auctions to allocate capacity in other contexts.....</i>	18
4.2.2	<i>Other auction design elements.....</i>	20
4.2.3	<i>First-come-first-served</i>	20
4.2.4	<i>Other queuing requirements.....</i>	20
4.3	Key clauses of the access arrangement proposal	21
5	Conclusion and next steps.....	23
	Attachment A: Section 6 of APTPL's access arrangement proposal	24
	Attachment B: Relevant Legislation	30

1 Introduction and background

The Australian Energy Regulator (AER) welcomes your participation at an industry workshop to discuss queuing requirements for the Roma to Brisbane Pipeline Gas Transmission System (RBP).

APT Petroleum Pipelines Pty Limited (APTPPL), the RBP service provider, has proposed new queuing requirements in its recently submitted access arrangement proposal. In broad terms, APTPPL proposes to change its queuing requirements from the existing first-come-first-served approach to a publicly notified auction.

APTPPL submitted its access arrangement proposal and supporting documentation to the AER on 12 October 2011. These are available at:

www.aer.gov.au/content/index.phtml/itemId/750330

The AER is holding a queuing workshop to engage industry and APTPPL to inform its consideration of APTPPL's proposed queuing requirements in the draft and final decisions. The AER intends to release its draft decision in April 2012, and its final decision in July 2012.

AER Queuing Industry Workshop

Date	Thursday, 12 January 2012
Time	10 am to 2 pm
Location	ACCC Melbourne Office Vue Room 1, Level 35, The Tower 360 Elizabeth Street, Melbourne Central Melbourne VIC 3000

The AER intends the queuing workshop to facilitate discussion of APTPPL's proposed queuing arrangements. AER staff have prepared this industry paper to inform workshop participants of the issues they consider to be relevant. While AER staff seek feedback on the issues discussed in this paper, comments on related issues are also welcome.

The views expressed in this industry paper should be taken to represent the initial views of AER staff and not as those of the AER Board.

Further industry consultation on the proposed RBP queuing requirements may be needed beyond the workshop. If so, the AER will seek views from industry on the most effective means of further engagement.

1.1 The current access arrangement

The current RBP access arrangement, for the period 2007–12, allocates both existing and developable capacity on a first-come-first-served basis. This system determines priority based on the order in which APTPPL receives requests to join the queue for capacity.

In its access arrangement proposal APTPPL submitted that there are several issues with the current arrangements, particularly with the existing capacity queue:¹

10.2 Problems experienced with the current queuing requirements

APTPL's experience with the queuing requirements over the current access arrangement period has highlighted a number of issues with the efficiency of the arrangements, particularly in relation to the queue for existing capacity.

Firstly, APTPL has found that when existing capacity does become available, there are sometimes users close to the front of the queue who do not genuinely want that capacity. In these circumstances, the first-come-first-served approach can become time consuming, as the capacity needs to be offered to each prospective user in the queue sequentially, even where some users do not genuinely want that capacity. This problem is exacerbated since the queue is costless to join. This increases the incentives for prospective users to join the queue, however speculative their requirement for capacity, and results in excessive 'queue sitting'.

This also demonstrates a genuine concern over capacity hoarding, whereby non-intending users can occupy positions on the queue as a strategy to discourage competitors from entering the market or planning to expand their positions in the market. This is clearly not an efficient outcome.

More fundamentally, a first-come-first-served approach has the potential to result in inefficient outcomes, where prospective users higher in the queue want to take capacity later and/or for shorter periods than those further down in the queue. APTPL's experience has been that prospective users tend to align their queue requirements to the lead time for particular projects or expected needs. This means that prospective users higher in the queue who want capacity later can contract for that capacity and block its allocation to other prospective users who would be willing to take that capacity as soon as it becomes available. The current queuing arrangements also do not allow the flexibility to allow higher value projects to take precedence over lower value projects, when it is not possible to meet the needs of both.

APTPL has commissioned NERA Economic Consulting to examine the implications for economic efficiency of the first-come-first-served approach to allocating capacity. NERA's report is included as Attachment 10.1 to this submission. NERA concludes that for existing capacity, queuing requirements based on a first-come-first-served approach have the potential to result in the economically inefficient allocation of existing capacity, given the particular circumstances of the RBP.

In the case of developable capacity, APTPL's experience under the current queuing requirements has been that it has been difficult to co-ordinate Requests for developable capacity, due to the sequential nature of the discussions held under the first-come-first-served approach. APTPL also has concerns about the ability of the current arrangements to facilitate the timely expansion of capacity.

¹ APTPL *Access arrangement submission*, October 2011, pp. 111-112

1.2 The short term trading market

The short term trading market (STTM) is a market-based wholesale gas balancing mechanism established at defined gas hubs in Sydney, Adelaide and Brisbane. An objective of the STTM is to facilitate the short term trading of gas between pipelines, participants and production centres. The STTM commenced operation in Adelaide and Sydney on 1 September 2010 and in Brisbane on 1 December 2011.

The RBP queuing requirements may need to account for the existence of the STTM. AER staff seek industry views on the implications of the Brisbane STTM for RBP queuing requirements.

1.3 The relevant law

In this section we outline some of the relevant legislation regarding APTPPL's access arrangement proposal and its proposed queuing requirements. Attachment B reproduces the laws referred to in full.

1.3.1 The access arrangement decision process

Section 27 of the *National Gas Law* (NGL) grants the AER certain functions and powers. Subsection 28(1) requires the AER to perform its functions and powers in a manner that will or is likely to contribute to the achievement of the National Gas Objective (NGO). Paragraph 28(2)(b) states that the AER may take into account the revenue and pricing principles when performing or exercising any other AER economic regulatory function or power, if the AER considers it appropriate to do so.

The AER must publish a draft decision in accordance with r. 59 of the *National Gas Rules* (NGR), and a final decision in accordance with r. 62 of the NGR. Regarding the final decision, r. 64(1) of the NGR states:

- (1) If, in an access arrangement final decision, the AER refuses to approve an access arrangement proposal (other than a variation proposal), the AER must itself propose an access arrangement or revisions to the access arrangement (as the case requires) for the relevant pipeline.

1.3.2 Queuing requirements

Rule 100 requires that, as a part of an access arrangement, queuing requirements must be consistent with both the NGO and the NGR:

The provisions of an access arrangement must be consistent with:

- (a) the national gas objective; and
- (b) these rules and the Procedures as in force when the terms and conditions of the access arrangement are determined or revised.

Rule 103(1) and r. 103(2) of the NGR require an access arrangement for a gas transmission pipeline to contain queuing requirements:

- (1) An access arrangement must contain queuing requirements if:

- (a) the access arrangement is for a transmission pipeline; or
 - (b) the access arrangement is for a distribution pipeline and the AER notifies the service provider that the access arrangement must contain queuing requirements.
- (2) If the AER gives a notification under subrule (1), the access arrangement must contain queuing requirements as from the commencement of the first access arrangement period to commence after the date of the notification (but this requirement lapses if the AER, by notice to the service provider, withdraws the notification).

Rule 103(3) of the NGR provides:

- (3) Queuing requirements must establish a process or mechanism (or both) for establishing an order of priority between prospective users of spare or developable capacity (or both) in which all prospective users (whether associates of, or unrelated to, the service provider) are treated on a fair and equal basis.

To determine the order of priority, rule 103(4) of the NGR provides:

- (4) Queuing requirements might (for example) provide that the order of priority is to be determined:
 - (a) on a first-come-first-served basis; or
 - (b) on the basis of a publicly notified auction in which all prospective users of the relevant spare capacity or developable capacity are able to participate.

The use of an auction is provided as an example in r. 103(4)(b). Clearly, the drafters of the rules considered that an auction system would be appropriate in certain circumstances. The AER must have regard to whether APTPPL's proposed auction system satisfies the requirements of the rules. NERA's report for APTPPL concludes that in principle, auctioning may be more efficient than the use of a first-come-first-served approach to queuing.

Rule 103(5) of the NGR provides that queuing requirements must be sufficiently detailed to enable bidders to understand how their respective bids will be ranked:

- (5) Queuing requirements must be sufficiently detailed to enable prospective users:
 - (a) to understand the basis on which an order of priority between them has been, or will be, determined; and
 - (b) if an order of priority has been determined – to determine the prospective user's position in the queue.

1.3.3 The national gas objective

Section 23 of the NGL promotes efficiency and the long term interests of end users:

The objective of this Law 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.

1.3.4 Access disputes

Negotiated services offered on a covered pipeline such as the RBP are subject to the provisions for the hearing and determination of access disputes under Chapter 6 of the NGL and Part 12 of the NGR. These establish the provisions for access disputes, where a prospective user and service provider cannot reach agreement about the terms of access to a covered pipeline.

Section 181(1) of the NGL provides that a prospective user may lodge a dispute:

Subject to this section, if a prospective user or user is unable to agree with a service provider about 1 or more aspects of access to a pipeline service provided or to be provided by means of a scheme pipeline, the prospective user, user or service provider may notify the dispute resolution body, in writing, that an access dispute exists.

Subsection 185(1) of the NGL provides that, prior to the dispute resolution body making a determination:

The dispute resolution body may require the parties, in accordance with the Rules, to mediate, conciliate or engage in another alternative dispute resolution process for the purpose of resolving the dispute.

A final access determination may deal with any matter about the provision of a pipeline service to a prospective user or user. Section 193 of the NGL provides an example:

An access determination may require the service provider to provide a pipeline service to the prospective user or user at -

- (a) a specified tariff, rate or charge; and
- (b) on specified terms and conditions.

The interaction of the proposed queuing requirements and the access dispute process is an important consideration.

1.3.5 Revenue and pricing principles

Under subsection 28(2)(b) the AER may take into account the revenue and pricing principles when considering the proposed queuing requirements. Section 24 of the NGL provides:

- (1) The revenue and pricing principles are the principles set out in subsections (2) to (7).
- (2) A service provider should be provided with a reasonable opportunity to recover at least the efficient costs the service provider incurs in—
 - (a) providing reference services; and
 - (b) complying with a regulatory obligation or requirement or making a regulatory payment.
- (3) A service provider should be provided with effective incentives in order to promote economic efficiency with respect to reference services the service provider provides. The economic efficiency that should be promoted includes—
 - (a) efficient investment in, or in connection with, a pipeline with which the service provider provides reference services; and
 - (b) the efficient provision of pipeline services; and
 - (c) the efficient use of the pipeline.
- (4) Regard should be had to the capital base with respect to a pipeline adopted—
 - (a) in any previous—
 - (i) full access arrangement decision; or
 - (ii) decision of a relevant Regulator under section 2 of the Gas Code;
 - (b) in the Rules.
- (5) A reference tariff should allow for a return commensurate with the regulatory and commercial risks involved in providing the reference service to which that tariff relates.

- (6) Regard should be had to the economic costs and risks of the potential for under and over investment by a service provider in a pipeline with which the service provider provides pipeline services.
- (7) Regard should be had to the economic costs and risks of the potential for under and over utilisation of a pipeline with which a service provider provides pipeline services.

1.3.6 Reference services and negotiated services

Services offered on a covered pipeline can be either reference services or negotiated services. A reference service is defined in section 2 of the NGL:

reference tariff means a tariff or charge for a reference service—

- (a) specified in an applicable access arrangement approved or made under a full access arrangement decision; or
- (b) determined by applying the formula or methodology contained in an applicable access arrangement approved or made under a full access arrangement decision.

Rule 101(2) of the NGR provides:

A reference service is a pipeline service that is likely to be sought by a significant part of the market.

The revenue and pricing principles in s. 24 of the NGL and r. 95 of the NGR (which provides for transmission pipeline tariffs) are also relevant when determining the reference tariff.

The NGL and NGR do not expressly define the term 'negotiated service'. A negotiated service can generally be regarded as a pipeline service which is provided to users on different terms and conditions, including the tariff, to those of a reference service.

1.3.7 Other laws

Other laws which are relevant to a discussion of queuing requirements include:

- Rule 104 of the NGR which provides for the extension and expansion requirements in an access arrangement.
- Rule 105 of the NGR which provides for capacity trading requirements for the service provider and users.
- Section 321 of the NGL which provides for the protection of pre-existing contractual rights, such that an applicable access arrangement must not have the effect of depriving a person of a relevant protected contractual right.

2 APTPPL's proposed queuing requirements

In broad terms, APTPPL's proposed queuing requirements involve moving from a first-come-first-served approach to a publically notified auction. Details are in section 10 of APTPPL's access arrangement submission and section 6 of the access arrangement proposal.² Section 6 sets out the clauses which would apply. AER staff have also reproduced the relevant clauses in attachment A of this industry paper.

The following sections provide a high level summary of AER staff's understanding of APTPPL's proposed queuing requirements.

2.1 Existing capacity

Users can register non-binding expressions of interest at any time for existing capacity. If less than 2 terajoules of unutilised existing capacity becomes available, APTPPL can choose to place this on the spare capacity register, which would remain subject to first-come-first-served allocation. Otherwise, to allocate any amount of unutilised existing capacity, APTPPL can choose to employ an open season, or auction, process. Different processes are triggered depending on whether the available unutilised existing capacity can meet the users' aggregate demand. Table 2.1 summarises AER staff's understanding of these processes, based on APTPPL's access arrangement proposal and supporting materials.

² Available on the AER Website <http://www.aer.gov.au/content/index.phtml/itemId/750330>

Table 2.1 APTPPL's proposed queuing requirements for existing capacity

Step		Clause
FOR unutilised existing capacity less than 2TJ		6.2.1 a
AND IF APTPPL choose not to run an open season and auction process		6.2.1 a
(1)	Spare capacity register	6.2.1
	Unutilised existing capacity is made available on a first-come-first-served basis, at a rate which is at or above the reference tariff	6.2.1 b
FOR unutilised existing capacity of any amount		
(2)	Open Season for unutilised existing capacity	6.2.2
	APTPL must issue an Existing Capacity Notice and accept expressions of interest	6.2.2 a b c
IF available existing capacity can meet all expressions of interest		6.2.2 d
	APTPL allocates existing capacity by bilaterally negotiating with those who lodged a complying expression of interest, in any order	6.2.2 d
IF APTPL determines there is sufficient demand		6.2.3 a
AND available existing capacity cannot meet all expressions of interest		6.2.3 a
(3)	Auction for unutilised existing capacity	6.2.3
	APTPL issues a Notice of Auction for Existing Capacity	6.2.3 a
	APTPL may set a reserve price, which will not exceed the reference tariff, for reference services	6.2.6
	APTPL may provide the: application form; form of financial security; and terms and conditions required	6.2.3 d
	Users must submit bids which comply with APTPL's specifications above	6.2.3 e
IF all complying bids do not exceed unutilised existing capacity		6.2.4
	APTPL treats complying bids as irrevocable requests for existing capacity, and will deal with them in any order	6.2.4 b c
	IF there is existing capacity not taken up in the auction, APTPL places it on the spare capacity register, making it available on a first-come-first-served basis	6.2.4 d
IF all complying bids exceed unutilised existing capacity		6.2.5
	APTPL allocates existing capacity according to its ranking of the bids, based on their NPV	6.2.5 b c

2.2 Developable Capacity

Users are also able to register non-binding expressions of interest at any time for developable capacity. To allocate developable capacity APTPPL can choose to negotiate with the interested parties, or employ an auction process. Different processes are triggered depending on whether the developable capacity likely to become available can meet the users' aggregate demand. Table 2.2 summarises AER staff's understanding of these processes, based on the proposed access arrangement and supporting materials submitted by APTPPL.

Table 2.2 APTPPL's proposed queuing requirements for developable capacity

Step		Clause
IF APTPPL chooses to conduct negotiations		6.3.2
(1)	Negotiations for developable capacity	6.3.3
	APTPL allocates developable capacity according to bilateral negotiations which it conducts in order according to its ranking of the bids, based on their NPV	6.3.3
IF APTPPL chooses to conduct an auction		6.3.2
(2)	Auction for developable capacity	6.3.4
	APTPL issues a Notice of Auction for Developable Capacity, to users who lodged a relevant expression of interest	6.3.4 a
	APTPL may set a reserve price, which may exceed the reference tariff	6.3.8
	APTPL may provide the: application form; form of financial security; and terms and conditions required	6.3.4 c
	Users must submit bids which comply with APTPL's specifications above	6.3.4 d
IF all complying bids do not exceed developable capacity		6.3.6
	APTPL treats bids as irrevocable requests for developable capacity, and will deal with them in any order	6.3.5 b c
	IF there is developable capacity not taken up through the auction process, APTPL may bilaterally negotiate with any prospective users	6.3.5 d
IF all complying bids exceed developable capacity		6.3.6
	APTPL allocates developable capacity according to its ranking of the bids, based on their NPV	6.3.6 b c
IF APTPL chooses, regardless of the outcome of an auction process for developable capacity, it is not bound to undertake the relevant development		6.3.7

3 Industry response to the proposed queuing requirements

The AER received five submissions in response to its call for written submissions on APTPPL's access arrangement proposal. They are available at:

www.aer.gov.au/content/index.phtml/itemId/750330

Four of the submissions commented on APTPPL's proposed queuing requirements and related issues. These were from:

- AGL Energy;
- BP Australia;
- Origin Energy; and
- TRUenergy.

Generally, there is interest from industry to develop a competitive process for capacity allocation, and to address the issues related to the current first-come-first-served queuing arrangements.

A summary of these submissions' commentary on APTPPL's proposed auction-based queuing requirements and related matters is below.

3.1 AGL

AGL made limited comment on the proposed queuing requirements and did not comment on specific elements of the queuing proposal. However, AGL did express clear support for APTPPL's proposals for both existing and developable capacity. AGL stated:³

We have already seen instances of this in the Victorian gas market where APA have sought expressions of interest in order to allocate existing rights and capacity via competitive tender, albeit in the area of unregulated services. Notwithstanding that, the allocation of rights through an auction process is workable and ensures that capacity or rights go to those parties who value is most. We see this as being very much in keeping with and furthering the National Gas Objective as set out in section 23 of the National Gas Law.

³ AGL, *RBP Access Arrangement, 1 July 2012 to 30 June 2017*, December 2011, p. 1

3.2 BP

BP made significant comment on APTPPL's proposed queuing requirements, both at a high level and on specific elements. BP stated:⁴

The proposed revisions to the queuing policy within the RBP AA do appear at face value to improve the economic efficiency in recontracting both existing and developable capacity.

However, BP went on to question "a key assumption" of the NERA Report APTPPL provided in support of its proposal. Namely, that capacity trading on the RBP is limited.⁵

Whilst historically this may have been true, the introduction of the gas STTM to the Brisbane area fundamentally changes the ability of an RBP User to trade capacity with other users on a daily basis. Whilst the merits of the STTM may be questioned in some respects, there is little doubt that when it comes to daily capacity trading, the STTM provides a quantum leap in liquidity!

From the above observation, BP questioned the value of auctioning capacity, stating:⁶

...due to the greatly increased liquidity for capacity trading provided by the STTM, the same (or better) economic efficiency outcomes would eventuate under the AA by retaining the existing queuing policy, rather than the suggested auction process.

A summary of BP's comments on specific elements of the proposed queuing requirements is below:

- The access arrangement should better articulate how small capacity amounts (under 2TJs) will be priced and allocated.
- Ranking of bids requires more detail to enable the market to understand it.
- APTPPL should not be able to retain revenues above regulated returns.
- In the context of a limited pool of users (prospective bidders), auctioning developable capacity may result in revenue maximisation for APTPPL rather than achieving economic based outcomes for new developments.
- Where existing available capacity is sufficient to meet demand, APTPPL should take bids as irrevocable in terms of volume, but reference tariffs should apply, not bid tariffs. BP also raised the issue of information flows within the auction process.⁷

Prospective Users are forced to participate in the auction process against a background of information asymmetry, and possible large regret costs should they not be successful in accessing pipeline capacity in the auction. Leaving aside the discussion about how an auction against this backdrop can lead to "efficient" outcomes, BP believes subsequent contracting of this capacity at auction prices rather than reference tariffs is completely unacceptable and unjustified.

⁴ BP, *Submission on the proposed RBP Access Arrangement*, December 2011, p. 4

⁵ BP, *Submission on the proposed RBP Access Arrangement*, December 2011, p. 4

⁶ BP, *Submission on the proposed RBP Access Arrangement*, December 2011, p. 4

⁷ BP, *Submission on the proposed RBP Access Arrangement*, December 2011, p. 4

3.3 Origin Energy

Origin Energy offered qualified support within its submission for the auction-based queuing requirements, stating:⁸

While Origin supports the principle of the auction process and the level of transparency of the process itself, there are a few cases where we need to understand its practical application on the RBP.

Origin expressed some confusion over the applicability of the proposed auction-based methodology to reference service capacity and negotiated service capacity. It also indicated that auctioning developable capacity may give rise to additional commercial risk compared to direct bilateral negotiations between shippers and APTPPL.

Origin also raised the issue of information flows within auctions. Origin noted that APTPPL proposed to release an auction notice including applicable indicative tariffs:⁹

It is unclear to prospective pipeline users how APTPPL determines the value of the tariff. There is an information asymmetry that leaves prospective users unable to sufficiently evaluate tariff information, which places them in a poor negotiation position for that capacity. We ask that the AER consider how the auction process section of the Access Arrangement could be enhanced to alleviate any potential asymmetries between the information held by APTPPL and prospective users. Clarity and transparency around how APTPPL sets the tariff level could greatly improve users understanding of how a suggested tariff reflects the costs of a new development.

3.4 TRUenergy

TRUenergy's submission focussed on issues specific to it. In particular, it focussed on TRUenergy's proposed business model for construction of a new lateral to link the RBP to a new gas fired power station it wishes to develop near Ipswich.

TRUenergy noted the existence of a dispute resolution mechanism within the NGL and NGR. It considers this mechanism provides important commercial protections in its negotiations with a monopolistic service provider:¹⁰

We consider that chapter 6 of the NGL provides a clear pathway for both the APA Group and any shipper to resolve an access dispute. Specifically, the NGL under section 193 states that an access determination may deal with any matter relating to the provision of a pipeline service. We can see no alternative than to rely on these provisions to provide some competitive tension and ultimately provide some protection for us in negotiating and expansion. Whilst we do not expect that our commercial negotiations to secure the expansion of the RBP will lead to an access dispute, we are comforted by the fact that this remedy is available to us.

The submission includes qualified support for APTPPL's proposed auction-based queuing requirements:¹¹

We accept that the NPV prioritised auction process will help the APA Group optimise the size of an expansion of the RBP in future. However, because we do not have enough information about

⁸ Origin, *Access arrangement proposal for the Roma to Brisbane Pipeline*, December 2011, p. 4

⁹ Origin, *Access arrangement proposal for the Roma to Brisbane Pipeline*, December 2011, p. 5

¹⁰ TRUenergy, *RBP access arrangement submission*, December 2011, p. 3

¹¹ TRUenergy, *RBP access arrangement submission*, December 2011, p. 3

this process, we cannot say for sure whether it will benefit all parties that seek access to the pipeline.

TRUenergy's submission indicated concern that the proposed queuing requirements should not preclude effective bilateral negotiations:¹²

In other words, a bilateral negotiation should not be excluded on the basis that it does not maximise the NPV prioritised capacity.

TRUenergy also raised the possibility of a user building an extension and connecting it to the RBP. It proposed that the AER and APA Group (of which APTPPL is a member) jointly confirm the necessary technical and operating standards. It also proposed that, should a proponent meet those standards, then the access arrangement should oblige APTPPL to connect the extension.

¹² TRUenergy, *RBP access arrangement submission*, December 2011, p. 3

4 AER Staff - Topics for consideration

This section sets out some topics considered relevant by AER staff. Industry views on these topics will inform the AER's consideration of the queuing requirements in APTPPL's access arrangement proposal. Please note the AER will not make a formal preliminary decision on queuing until its draft decision.

This section outlines key points designed to generate discussion at the workshop. Discussion is not limited to the points in this section.

4.1 Topics for discussion

1. The experience with the current first-come-first-served queuing arrangements.
2. The relative efficiency of first-come-first-served versus an auction system.
3. The relationship between auctions for existing capacity and auctions for developable capacity.
4. The relationship between the proposed queuing requirements and:
 - a. bilateral negotiations
 - b. dispute resolution processes
 - c. the Brisbane STTM
5. The effect of auctions on tariffs users will pay, in comparison to the reference tariff.
6. The impact of queuing requirements on access to the pipeline for both incumbent users and new entrants
7. The impact of auctioning on pipeline investment.
8. Regarding the specific queuing requirements proposed by APTPPL:
 - a. The bid ranking process
 - b. The circumstances under which an auction will be held
 - c. Commercial confidentiality and an auction system, and the information to be made available to APTPPL and to bidders
 - d. Defining the actual capacity being auctioned
 - e. Irrevocable bids
 - f. Requirements for compliant bids
 - g. The incentives facing bidders

4.2 Queuing requirement options

The AER is required to assess APTPPL's access arrangement proposal against the relevant legislation. Possible outcomes include:

- accepting APTPPL's proposed auction system;
- requiring amendments to APTPPL's proposed auction system;
- reverting to the first-come-first-served approach, possibly with amendments to address some of its deficiencies; or
- adopting a different approach.

4.2.1 The use of auctions to allocate capacity in other contexts

APTPPL's proposed auction design provides for a single bidding round of closed bids with potential for entry into long term transmission contracts. Existing capacity auctions would occur when existing capacity becomes available, and other criteria are met. Auctions for developable capacity would occur when APTPPL understands that sufficient demand exists, and other criteria are met.

Auction methodologies range from the straightforward to quite complex designs incorporating multiple stages. AER staff are aware of more complex auction designs for gas transmission capacity and for other divisible good property rights in a variety of contexts. Some brief examples are listed below:

- United Kingdom national gas transmission capacity auctions are held twice annually for monthly access rights with each auction incorporating at least four stages of multiple bidding rounds.¹³
- The proposed auction design for capacity on the prospective Nabucco gas transmission pipeline (running from Turkey to Austria) incorporates multiple rounds, including an initial non-binding round specifically so all participants can gather the same information.¹⁴
- Telecommunications spectrum auctions sometimes incorporate:¹⁵
 - simultaneous multi-round ascending (SMRA) auctions;¹⁶ or
 - combinatorial clock auctions (CCA).¹⁷

¹³ McDaniel & Neuhoff, *Auctions to gas transmission access: The British experience*, 2002, p. 1

¹⁴ Pickl & Whirl, *Auction design for gas pipe line transportation capacity*, 2011, p. 1

¹⁵ Australian Communications & Media Authority, *Types of auctions*, website: www.acma.gov.au, December 2012

¹⁶ All lots are simultaneously on offer over multiple rounds of bidding. Bidders may bid on any lot or combination of lots in each bidding round. At the end of each round high bids are disclosed and all bidders can bid again in the next round to become the high bidder. In general, after a round with no more bids, the bidders holding the high bids in the previous round win the lots

- Auctions featuring combinatorial bidding. This allows bids on packages of items with related values or costs (for example, “I bid \$1 to buy one unit of transmission capacity in year A and \$3 for two units of capacity in year B, but I won't pay anything unless I get everything”).

The ACCC has recently approved the use of an auctioning system to allocate port terminal capacity for the export of grain, in access undertakings from bulk wheat exporters.¹⁸ The Co-operative Bulk Handling Limited (CBH) Access Undertaking, for example, allocates capacity in the first instance by ‘ascending clock’ auctions. CBH (a co-operative, not a commercial organisation) offers any residual capacity that is not booked on a first-come-first-served basis. Briefly, the auction process operates as follows:¹⁹

- CBH offers capacity in lots (tranches) of capacity for bidding over a series of rounds. The price of capacity in a lot is at a per tonne uniform price across all bidders. To place a bid, bidders indicate how much capacity they would purchase in a lot at the uniform price.
- The price of capacity in a lot rises incrementally after each round. In each new round bidders must submit a new volume bid.
- The bidding continues until the volume of capacity bid is equal to the volume of capacity in the lot.
- CBH sets the first round uniform price at a base amount. Each round the bidding increases by an ‘auction premium’.
- Once CBH identifies winning bidders it allocates capacity to them. CBH charges them a base fee plus the auction premium.
- CBH rebates the auction premium to all exporters that ship through CBH's port at the end of the season on a pro rata basis, less CBH's costs.

In its Final Decision to accept the CBH Access Undertaking the ACCC stated: ²⁰

As set out in its Decision to Accept an undertaking from GrainCorp, the ACCC is of the view that auctions and transferability are appropriate mechanisms on economic efficiency grounds to allocate capacity, particularly when capacity is constrained relative to demand and administered approaches—such as a first come, first served (FCFS) system—are unlikely to result in economically efficient outcomes.²¹ Auctions and transferability promote economic efficiency by ensuring that capacity is used by those that value it most highly at times when demand for port terminal services exceeds capacity.

17 A price clock-based auction format used to sell multiple lots for different categories in a single process. It provides bidders with the flexibility to bid on different combinations of lots.

18 See, Viterro Operations Limited Access Undertaking 2011; ACCC, Viterro Operations Limited Port Terminal Services Access Undertaking Decision to Accept, 29 September 2011; Co-operative Bulk Handling Limited Access Undertaking 2011; ACCC, CBH Access Undertaking – Final Decision, 28 September 2011.

19 See, Co-operative Bulk Handling Access Undertaking 2011, Schedule 1: Shipping Capacity Access Allocations Auction Rules.

20 ACCC, Co-operative Bulk Handling Limited Port Terminal Services Access Undertaking - Decision to accept, 29 September 2011, p. 27.

21 ACCC, GrainCorp Operations Limited Port Terminal Services Access Undertaking - Decision to Accept, 22 June 2011, p. 8.

In addition, auctions are transparent, fair and provide non-discriminatory access to services, and hence promote competition within markets.

4.2.2 Other auction design elements

As outlined above, a broad range of auction designs are used to allocate scarce network (and spectrum) capacity. Some auction design elements which can feature on their own, or in combination, in an auction design are:

- Single or multiple round bidding
- Open or closed bids
- Combinatorial bidding or not
- Conditional bidding or not
- Ascending or descending prices
- Ascending or descending volumes
- Non-binding rounds, followed by binding rounds.
- Defining the auctioned capacity 'units' by time (rights may be limited to 6 months, one year or other), and/or by volume (offered in single TJ lots, 5 TJ units or other).
- Ranking criteria including the net present value (NPV) of the total bid, NPV per time period, NPV per unit of capacity, or other.
- Allocation of any remaining spare capacity resulting from an auction, by offering it to any of the successful bidders, to the first unsuccessful bidder, to the first user in a queue, or other.

4.2.3 First-come-first-served

Another option for the queuing requirements would be to revert back to the current first-come-first-served arrangements. Given that APTPPL submitted concerns with the current arrangements (as outlined in section 1.2) AER staff consider there could be scope for modifying the current first-come-first-served approach to resolve some of the issues raised.

For example, to address the issue of queue sitting, APTPPL could charge a non-refundable deposit to join and/or sit in the queue. Under these circumstances, regard should be had to how the deposit would be treated once that user secured a contract for capacity. Further suggestions to remedy this and other efficiency issues related to first-come-first-served are also welcome.

4.2.4 Other queuing requirements

A range of possible queuing requirements may be available to meet the NGL's and NGR's requirements. In principle, industry has reacted positively to APTPPL's proposal to use an auction-based process for the RBP's queuing requirements. However, AER staff are open to

hearing industry's views on other allocation mechanisms, including alternative competitive methodologies.

4.3 Key clauses of the access arrangement proposal

Section 6 of APTPPL's access arrangement proposal contains the clauses on the proposed queuing requirements (reproduced at attachment A). This section highlights some particular clauses relevant to the topics outlined above.

Ranking bids

The access arrangement proposal provides that where complying bids exceed the capacity APTPPL is auctioning, APTPPL will rank bids based on their NPV. Clause 6.2.5(b) provides for existing capacity:

Immediately after the auction, Service Provider will rank the applications on the basis of its assessment of the net present value of the respective bids, taking into account all of the terms of the offers and commercial factors including risk, from highest to lowest. The assessment process may result in bids for Negotiated Services at tariffs that exceed the Reference Tariff having priority over bids for the Reference Service.

Similarly, clause 6.3.6(b) provides for developable capacity:

Immediately after the close of the auction, Service Provider will rank the applications on the basis of its assessment of the net present value of the respective bids, taking into account all of the terms of the offers and commercial factors including risk, from highest to lowest.

Election to hold an auction

Regarding when APTPPL will hold auctions for existing capacity, clause 6.2.3 of the access arrangement proposal provides that:

In the event Service Provider determines that there is sufficient demand to proceed with an auction for the unutilised Existing Capacity (and that the available Existing Capacity is not sufficient to meet the expressions of interest for Services to be provided by Existing Capacity), Service Provider will notify all Prospective Users that lodged expressions of interest for Existing Capacity in response to the Existing Capacity Notice that Service Provider will accept bids for unutilised Existing Capacity (Notice of Auction for Existing Capacity).

Similarly for developable capacity, clause 6.3.2 provides:

Where Service Provider has determined on the basis of the investigations undertaken and the registrations of interest for Services that have been lodged that Developable Capacity may be made available, Service Provider may conduct negotiations with Prospective Users with respect to that Developable Capacity or hold an auction to determine the allocation of that Capacity in the event that the investment in the Developable Capacity proceeds.

The requirements a prospective user must meet to make a complying bid

The access arrangement proposal specifies a number of requirements prospective users must meet for a bid to be compliant. Clauses 6.2.3(d) and 6.2.3(e) of the access arrangement proposal provide for existing capacity:

(d) Service Provider may provide the following documents or information together with the Notice of Auction for Existing Capacity:

- (i) an auction application registration form;

(ii) the form of financial security required to participate in the auction, which may take the form of a parent company guarantee, bank guarantee or similar security as reasonably determined by Service Provider and in the amount reasonably determined by the Service Provider. The form and amount of security required may vary as between Prospective Users, with any variation to be reasonably based; and

(iii) the terms and conditions upon which the unutilised Existing Capacity may be made available. These terms and conditions may vary depending on the category or categories of Services that may be provided by the unutilised Existing Capacity.

(e) In order to submit a complying bid, Prospective Users must complete and provide to Service Provider by the date specified in the Notice of Auction for Existing Capacity:

(i) the completed auction application registration;

(ii) the required financial security in the form and amount specified by the Service Provider; and

(iii) the terms and conditions relevant to the Service to which the bid applies in a form that is capable of immediate acceptance by the Service Provider.

Similarly clauses 6.3.4(c) and 6.3.4(d) provide for developable capacity:

(c) Service Provider may provide the following documents or information together with the Notice of Auction for Developable Capacity:

(i) an auction application registration form;

(ii) the form of financial security required to participate in the auction, which may take the form of a parent company guarantee, bank guarantee or similar security as reasonably determined by Service Provider and in the amount reasonably determined by Service Provider. The form and amount of security required may vary as between Prospective Users, with any variation to be reasonably based; and

(iii) the terms and conditions upon which the Developable Capacity may be made available. These terms and conditions may vary depending on the category or categories of Services that may be provided by the Developable Capacity.

(d) In order to submit a complying bid, Prospective Users must complete and provide to Service Provider by the date specified in the Notice of Auction for Developable Capacity:

(i) the completed auction application registration;

(ii) the required financial security in the form and amount specified by Service Provider; and

(iii) the terms and conditions relevant to the Service to which the bid applies in a form that is capable of immediate acceptance by Service Provider.

Bids as irrevocable requests for capacity

For the case when all complying bids do not exceed the capacity available in the auction, clause 6.2.4 (b) of the access arrangement proposal provides:

In such case, each complying bid for Existing Capacity will be deemed to be an irrevocable request for Existing Capacity capable of immediate acceptance.

Similarly for developable capacity clause 6.3.5 provides:

In such case, each complying bid for Developable Capacity will be deemed to be an irrevocable request for Developable Capacity capable of immediate acceptance.

5 Conclusion and next steps

This paper has outlined the current considerations surrounding queuing requirements for the RBP. To summarise:

- APTPPL's proposed queuing requirements suggest moving from first-come-first-served to a public auction process.
- There is a desire from industry and the AER to address the issues related to the current first-come-first-served queuing arrangements.
- There is interest from industry and the AER in developing a competitive process for capacity allocation.
- The industry workshop will provide an opportunity to discuss the proposal before AER staff.

Any questions about this paper or the workshop can be directed by email to John Skinner, Director Network Regulation, at rbp@aer.gov.au.

Attachment A: Section 6 of APTPL's access arrangement proposal

6 Queuing

6.1 Queuing requirements – determination of the order of priority

6.1.1 Registration of interest for Services to be provided by Existing Capacity or Developable Capacity

- (a) Prospective Users may lodge with Service Provider a registration of interest for Services. A registration of interest must be made in the form set out in Schedule 6b. A registration of interest may specify that the registration of interest is made in respect of Existing Capacity and/or Developable Capacity
- (b) A registration of interest is valid for 12 months from receipt of the registration of interest by Service Provider.
- (c) A Prospective User may submit a revised registration of interest at any time and the registration of interest as revised will be valid for a period of 12 months.
- (d) The order of receipt of registrations of interest does not determine and is not relevant to the priority of any request.

6.1.2 Service Provider to respond to registrations of interest

Upon receipt of a registration of interest pursuant to section 6.1.1 Service Provider must notify the Prospective User:

- (a) that the registration of interest has been received and the date of its receipt;
- (b) of its estimate as to when the Existing Capacity or Developable Capacity sought may become available; and
- (c) if the registration of interest is for Existing Capacity, whether the Service sought may be able to be provided by Developable Capacity and any estimate of when that Developable Capacity may become available.

6.1.3 Service Provider to keep registrations of interest for Services under review

Service Provider will keep registrations of interest under review in order to determine whether there is likely to be sufficient demand for Services that could be provided by means of Developable Capacity.

6.2 Unutilised Existing Capacity

6.2.1 Unutilised Existing Capacity – less than 2 terajoules

- (a) Where the volume of unutilised Existing Capacity that is, or is likely to become, available is less than 2 terajoules Service Provider may elect not to run an open season and auction process for that Existing Capacity, and if so, Service Provider must make that unutilised Existing Capacity available by placing it on the spare capacity register maintained pursuant to Rule 111.
- (b) Unutilised Existing Capacity that is placed on the spare capacity register pursuant to section 6.2.1(a) will be made available to Prospective Users on a first-come-first-served basis who will enter into an agreement for that unutilised Existing Capacity within 2 Months of it becoming unutilised and at a rate which is at or above the Reference Tariff.

6.2.2 Existing Capacity – open season

- (a) Where unutilised Existing Capacity is or is likely to become available the Service Provider must conduct an open season process in respect of that Existing Capacity by:
 - (i) providing all Prospective Users who have submitted a registration of interest for Existing Capacity with an Existing Capacity Notice;and
 - (ii) publishing on the Service Provider's website a copy of the Existing Capacity Notice.
- (b) Service Provider may deal with Existing Capacity that is or is likely to become available at different times in the one open season process where it is efficient to do so.
- (c) The Existing Capacity Notice must advise that expressions of interest for Services to be provided by Existing Capacity are to be received by Service Provider by a date not less than 30 Days after the date that the Existing Capacity Notice is published in the national daily newspaper (Open Season Existing Capacity Closing Date).
- (d) Where all expressions of interest for Services to be provided by Existing Capacity can be met with the available Existing Capacity, Service Provider will enter into negotiations with all Prospective Users that lodge expressions of interest, for the provision of Services using the available Existing Capacity. Service Provider may deal with complying expressions of interest in any order provided that no complying expression of interest is ultimately disadvantaged as a result.

6.2.3 Auction for unutilised Existing Capacity

- (a) In the event Service Provider determines that there is sufficient demand to proceed with an auction for the unutilised Existing Capacity (and that the available Existing Capacity is not sufficient to meet the expressions of interest for Services to be provided by Existing Capacity), Service Provider will notify all Prospective Users that lodged expressions of interest for Existing Capacity in response to the Existing Capacity Notice that Service Provider will accept bids for unutilised Existing Capacity (Notice of Auction for Existing Capacity).
- (b) Service Provider may deal with Existing Capacity that is or is likely to become available at different times in the one auction process where it is efficient to do so.
- (c) The Notice of Auction for Existing Capacity must identify the unutilised Existing Capacity that will be the subject of the auction and specify the date by which bids must be lodged. The date for the lodgement of bids must be at least 30 Days after the date of the Notice of Auction for Existing Capacity.
- (d) Service Provider may provide the following documents or information together with the Notice of Auction for Existing Capacity:
 - (i) an auction application registration form;
 - (ii) the form of financial security required to participate in the auction, which may take the form of a parent company guarantee, bank guarantee or similar security as reasonably determined by Service Provider and in the amount reasonably determined by the Service Provider. The form and amount of security required may vary as between Prospective Users, with any variation to be reasonably based; and
 - (iii) the terms and conditions upon which the unutilised Existing Capacity may be made available. These terms and conditions may vary depending on the category or categories of Services that may be provided by the unutilised Existing Capacity.
- (e) In order to submit a complying bid, Prospective Users must complete and provide to Service Provider by the date specified in the Notice of Auction for Existing Capacity:
 - (i) the completed auction application registration;

- (ii) the required financial security in the form and amount specified by the Service Provider; and
- (iii) the terms and conditions relevant to the Service to which the bid applies in a form that is capable of immediate acceptance by the Service Provider.

6.2.4 If complying bids do not exceed unutilised Existing Capacity

- (a) This section 6.2.4 applies only if the aggregate of all complying bids for Existing Capacity in the auction does not exceed the unutilised Existing Capacity stated in the Notice of Auction for Existing Capacity.
- (b) In such case, each complying bid for Existing Capacity will be deemed to be an irrevocable request for Existing Capacity capable of immediate acceptance.
- (c) Service Provider may deal with complying bids for Existing Capacity in any order provided that no complying bid is ultimately disadvantaged as a result.
- (d) Existing Capacity that has not been taken up in the auction will be placed on the RBP spare capacity register maintained pursuant to Rule 111 and will be made available on a first come first served basis to Prospective Users. A Prospective User seeking to take up unutilised Existing Capacity made available under this clause must contract for that capacity within 2 Months of it being offered to the Prospective User, otherwise that Prospective User will lose its priority in respect of that capacity.

6.2.5 If complying bids exceed unutilised Existing Capacity

- (a) This section 6.2.5 applies if the aggregate of all complying bids received on or before the auction cannot be satisfied by the unutilised Existing Capacity stated in the Notice of Auction for Existing Capacity.
- (b) Immediately after the auction, Service Provider will rank the applications on the basis of its assessment of the net present value of the respective bids, taking into account all of the terms of the offers and commercial factors including risk, from highest to lowest. The assessment process may result in bids for Negotiated Services at tariffs that exceed the Reference Tariff having priority over bids for the Reference Service.
- (c) Service Provider will then allocate the unutilised Existing Capacity amongst all of the auction participants on the basis of the ranking performed pursuant to section 6.2.5(b).

6.2.6 Reserve price

Service Provider may set a reserve price for the auction. For the provision of Reference Services the reserve price will not exceed the Reference Tariff. If a reserve price applies this must be stated in the Notice of Auction for Existing Capacity.

6.3 Developable Capacity

6.3.1 Service provider to undertake investigations to determine if Developable Capacity is available

- (a) If Service Provider determines on the basis of the registrations of interest for Services and any other available information that there is likely to be sufficient demand for a category or categories of Services that could be provided by means of Developable Capacity, and investigations are required to determine whether Developable Capacity can be made available, Service Provider will notify each Prospective User that has lodged a registration of interest that Service Provider may commence to undertake such investigations.
- (b) Service Provider may notify Prospective Users that have not lodged a registration of interest that it may be commencing investigations to determine whether Developable Capacity can be made available and that if the Prospective User wishes to acquire Services provided by that

Developable Capacity in the event that it becomes available, that the Prospective User should lodge a registration of interest with Service Provider within 30 Days.

- (c) Where Service Provider decides that it will undertake an investigation to determine whether Developable Capacity can be made available, Service Provider will advise each of the Prospective Users that have lodged registrations of interest of the nature, likely duration and, where Service Provider is seeking contributions to the cost of the investigations, the cost of the investigations.
- (d) Service Provider may seek contributions to the cost of the investigations referred to in subsection (c). In these circumstances, and where there is more than one Prospective User considering participating in the investigation, Service Provider will advise the Prospective User of its share of the estimated cost of the investigations, with such share to be determined on a fair and equitable basis taking into account expected capacity utilisation.
- (e) Where Service Provider is seeking contributions to the cost of the investigations, Service Provider is only obliged to undertake investigations if one or more Prospective Users agree to bear the costs of the investigation.
- (f) Prospective Users will, on entering into appropriate confidentiality arrangements, receive a written report that:
 - (i) describes the options considered to provide the Developable Capacity; and
 - (ii) describes Service Provider's preferred option to provide the Developable Capacity or provides reasons why no recommendation is made. Where Service Provider sought contributions to the cost of investigations and a Prospective User elected not to contribute to the cost of those investigations, Service Provider is not required to provide that Prospective User with a copy of the report.

6.3.2 Procedures when Services can be provided with investment in Developable Capacity

- (a) Where Service Provider has determined on the basis of the investigations undertaken and the registrations of interest for Services that have been lodged that Developable Capacity may be made available, Service Provider may conduct negotiations with Prospective Users with respect to that Developable Capacity or hold an auction to determine the allocation of that Capacity in the event that the investment in the Developable Capacity proceeds.

6.3.3 Negotiations for Developable Capacity

- (a) Where Service Provider has determined that it will conduct negotiations with Prospective Users for Developable Capacity, the order of priority between Prospective Users will be determined on the basis of Service Provider's assessment of the net present value of the respective bids, taking into account all of the terms of the offers and commercial factors including risk, from highest to lowest.

6.3.4 Auction for Developable Capacity

- (a) Where Service Provider has determined that it will hold an auction for Developable Capacity, Service Provider must advise each of the Prospective Users that lodged registrations of interest for the relevant category or categories of Services that could be provided by means of Developable Capacity of its plans to undertake the investment and invite bids to be made for the Developable Capacity (Notice of Auction for Developable Capacity).
- (b) The Notice of Auction for Developable Capacity must specify:
 - (i) the date for the lodgement of bids, which must be at least 30 Days after the date of the Notice of Auction for Developable Capacity;
 - (ii) the approximate Developable Capacity that Service Provider has determined that it may develop;

- (iii) an indication of the tariff, or range of tariffs, that may apply to any of the Services that may be provided by means of the Developable Capacity; and
 - (iv) the date or dates from which Services may be able to be provided by means of the Developable Capacity.
- (c) Service Provider may provide the following documents or information together with the Notice of Auction for Developable Capacity:
- (i) an auction application registration form;
 - (ii) the form of financial security required to participate in the auction, which may take the form of a parent company guarantee, bank guarantee or similar security as reasonably determined by Service Provider and in the amount reasonably determined by Service Provider. The form and amount of security required may vary as between Prospective Users, with any variation to be reasonably based; and
 - (iii) the terms and conditions upon which the Developable Capacity may be made available. These terms and conditions may vary depending on the category or categories of Services that may be provided by the Developable Capacity.
- (d) In order to submit a complying bid, Prospective Users must complete and provide to Service Provider by the date specified in the Notice of Auction for Developable Capacity:
- (i) the completed auction application registration;
 - (ii) the required financial security in the form and amount specified by Service Provider; and
 - (iii) the terms and conditions relevant to the Service to which the bid applies in a form that is capable of immediate acceptance by Service Provider.

6.3.5 If complying bids for Developable Capacity do not exceed Developable Capacity

- (a) This section 6.3.5 applies only if the aggregate of all complying bids for Developable Capacity does not exceed the Developable Capacity stated in the information accompanying the invitation to bid.
- (b) In such case, each complying bid for Developable Capacity will be deemed to be an irrevocable request for Developable Capacity capable of immediate acceptance.
- (c) Service Provider may deal with complying bids for Developable Capacity in any order provided that no complying bid for Developable Capacity is ultimately disadvantaged as a result.
- (d) Service Provider may enter into bilateral negotiations with any Prospective Users with respect to any part of the Developable Capacity that is not taken up through the auction process.

6.3.6 If complying bids exceed Developable Capacity

- (a) This section 6.3.6 applies if the aggregate of all complying bids for Developable Capacity cannot be satisfied by the Developable Capacity stated in the information accompanying the invitation to bid.
- (b) Immediately after the close of the auction, Service Provider will rank the applications on the basis of its assessment of the net present value of the respective bids, taking into account all of the terms of the offers and commercial factors including risk, from highest to lowest.
- (c) Service Provider will then allocate the Developable Capacity amongst all of the auction participants on the basis of the ranking performed pursuant to section 6.3.6(b).

6.3.7 Service Provider not bound to undertake development of capacity

- (a) Regardless of the outcome of an auction process for Developable Capacity, Service Provider is not bound to undertake the relevant development.

6.3.8 Reserve price

- (a) Service Provider may set a reserve price for the auction. For the avoidance of doubt, the reserve price may exceed the Reference Tariff.

6.4 Provision of auction materials to the AER

6.4.1 Service provider to provide auction materials to the AER

- (a) Where Service Provider proposes to conduct an auction to determine the allocation of Existing Capacity or Developable Capacity, the Service Provider will provide the AER with the Notice of Auction for Existing Capacity and the Notice of Auction for Developable Capacity, together with the other relevant information that is provided to Prospective Users who may be participating in the auction.
- (b) Following the close of an auction for Existing Capacity or Developable Capacity, the Service Provider will provide to the AER a report detailing the outcome of the auction process.

6.5 Queues formed under previous access arrangement queuing requirements

6.5.1 Existing queues set aside

- (a) To the extent queues have been formed under queuing requirements in previous access arrangements, those queues are set aside and have no effect as from the commencement date of this Access Arrangement.

Attachment B: Relevant Legislation

National Gas Law

23—National gas objective

The objective of this Law 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.

24—Revenue and pricing principles

- (1) The revenue and pricing principles are the principles set out in subsections (2) to (7).
- (2) A service provider should be provided with a reasonable opportunity to recover at least the efficient costs the service provider incurs in—
 - (a) providing reference services; and
 - (b) complying with a regulatory obligation or requirement or making a regulatory payment.
- (3) A service provider should be provided with effective incentives in order to promote economic efficiency with respect to reference services the service provider provides. The economic efficiency that should be promoted includes—
 - (a) efficient investment in, or in connection with, a pipeline with which the service provider provides reference services; and
 - (b) the efficient provision of pipeline services; and
 - (c) the efficient use of the pipeline.
- (4) Regard should be had to the capital base with respect to a pipeline adopted—
 - (a) in any previous—
 - (i) full access arrangement decision; or
 - (ii) decision of a relevant Regulator under section 2 of the Gas Code;
 - (b) in the Rules.
- (5) A reference tariff should allow for a return commensurate with the regulatory and commercial risks involved in providing the reference service to which that tariff relates.
- (6) Regard should be had to the economic costs and risks of the potential for under and over investment by a service provider in a pipeline with which the service provider provides pipeline services.
- (7) Regard should be had to the economic costs and risks of the potential for under and over utilisation of a pipeline with which a service provider provides pipeline services.

27—Functions and powers of the AER

- (1) The AER has the following functions and powers:
 - (a) to monitor compliance by persons (including AEMO) with this Law, the Regulations and the Rules, including compliance with an applicable access arrangement, an access determination and a ring fencing decision; and
 - (b) to investigate breaches or possible breaches of provisions of this Law, the Regulations or the Rules, including offences against this Law; and
 - (c) to institute and conduct proceedings in relation to breaches of provisions of this Law, the Regulations or the Rules, including offences against this Law; and

- (d) to institute and conduct appeals from decisions in proceedings referred to in paragraph (c); and
 - (e) AER economic regulatory functions or powers; and
 - (f) to prepare and publish reports on the financial and operational performance of service providers in providing pipeline services by means of covered pipelines; and
 - (g) to approve compliance programs of service providers relating to compliance by service providers with this Law or the Rules; and
 - (h) any other functions and powers conferred on it under this Law or the Rules.
- (1a) The AER has the following functions and powers in relation to the Procedures:
- (a) to investigate breaches or possible breaches of the Procedures referred to the AER by AEMO; and
 - (b) to institute and conduct proceedings in relation to breaches of the Procedures referred to the AER by AEMO; and
 - (c) to institute and conduct appeals from decisions in proceedings referred to in paragraph (b); and
 - (d) to approve, in consultation with AEMO, compliance programs relating to compliance by Registered participants with the Procedures.
- (2) The AER has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

28—Manner in which AER must perform or exercise AER economic regulatory functions or powers

- (1) The AER must, in performing or exercising an AER economic regulatory function or power, perform or exercise that function or power in a manner that will or is likely to contribute to the achievement of the national gas objective.
- (2) In addition, the AER-
- (a) must take into account the revenue and pricing principles-
 - (i) when exercising a discretion in approving or making those parts of an access arrangement relating to a reference tariff; or
 - (ii) when making an access determination relating to a rate or charge for a pipeline service; and
 - (b) may take into account the revenue and pricing principles when performing or exercising any other AER economic regulatory function or power, if the AER considers it appropriate to do so.
- (3) For the purposes of subsection (2)(a)(ii), a reference to a "reference service" in the revenue and pricing principles must be read as a reference to a "pipeline service".

321—Protection of certain pre-existing contractual rights

- (1) An applicable access arrangement must not have the effect of depriving a person of a relevant protected contractual right.
- (2) In this section-
- relevant exclusivity right** means an express contractual right that arose on or after 30 March 1995 that-
- (a) prevents a service provider supplying pipeline services to persons who are not parties to the contract; or

- (b) limits or controls a service provider's ability to supply pipeline services to persons who are not parties to the contract,

but does not include a user's contractual right to obtain a certain amount of pipeline services;

relevant protected contractual right means-

- (a) in the case of an applicable access arrangement approved under an applicable arrangement decision-a right under a contract (other than a relevant exclusivity right) in force immediately before that access arrangement was submitted for approval under this Law;
- (b) in the case of an applicable access arrangement made under an applicable arrangement decision because-
 - (i) a full access arrangement was not submitted for approval as required under section 132-a right under a contract (other than a relevant exclusivity right) in force immediately before the date on which an access arrangement was required to be submitted for approval;
 - (ii) an access arrangement was not approved under an applicable arrangement decision-a right under a contract (other than a relevant exclusivity right) in force immediately before the date on which that access arrangement was submitted for approval.

National Gas Rules

59 Access arrangement draft decision

- (1) After considering the submissions made within the time allowed in the initiating notice, and any other matters the AER considers relevant, the AER must make an access arrangement draft decision.
- (2) An access arrangement draft decision indicates whether the AER is prepared to approve the access arrangement proposal as submitted and, if not, the nature of the amendments that are required in order to make the proposal acceptable to the AER.

Examples:

- 1. If the AER is not satisfied that the access arrangement proposal adequately describes the pipeline services offered, or to be offered, by the service provider, the decision might indicate the amendment or the nature of the amendment required to correct the deficiency.
 - 2. If the AER is not satisfied that the access arrangement proposal designates as reference services all pipeline services that are sought, or likely to be sought, by a significant part of the market, the decision might indicate that further or other pipeline services should be designated as reference services.
 - 3. The decision might indicate that specified changes, or changes of a specified nature, should be made to a reference tariff.
 - 4. The decision might indicate changes to queuing requirements, capacity trading requirements, or extension and expansion requirements needed to make the access arrangement acceptable to the AER.
- (3) If an access arrangement draft decision indicates that revision of the access arrangement proposal is necessary to make the proposal acceptable to the AER, the decision must fix a period (at least 15 business days) for revision of the proposal (the revision period).
 - (4) An access arrangement draft decision must include a statement of the reasons for the decision.
 - (5) When the AER makes an access arrangement draft decision, it must:
 - (a) give a copy of the decision to the service provider; and

- (b) publish the decision on the AER's website and make it available for inspection, during business hours, at the AER's public offices; and
- (c) publish on its website and in a newspaper circulating generally throughout Australia a notice:
 - (i) stating that an access arrangement draft decision has been made and giving a reference to a website at which the relevant access arrangement proposal and the relevant draft decision may be inspected; and
 - (ii) if a period has been allowed for revision of the proposal – specifying the revision period; and
 - (iii) inviting written submissions within the time allowed in the notice (which must be at least 20 business days from the end of the revision period).

62 Access arrangement final decision

- (1) After considering the submissions made in response to the access arrangement draft decision within the time allowed in the notice, and any other matters the AER considers relevant, the AER must make an access arrangement final decision.
- (2) An access arrangement final decision is a decision to approve, or to refuse to approve, an access arrangement proposal.
- (3) If the access arrangement proposal has been revised since its original submission, the access arrangement final decision relates to the proposal as revised.
- (4) An access arrangement final decision must include a statement of the reasons for the decision.
- (5) When the AER makes an access arrangement final decision, it must:
 - (a) give a copy of the decision to the service provider; and
 - (b) publish the decision on the AER's website and make it available for inspection, during business hours, at the AER's public offices.
- (6) If an access arrangement final decision approves an access arrangement proposal, the access arrangement, or the revision or variation, to which the decision relates, takes effect on a date fixed in the final decision or, if no date is so fixed, 10 business days after the date of the final decision.

Note:

In the case of an access arrangement revision proposal, this date may, but will not necessarily, be the revision commencement date fixed in the access arrangement.

- (7) An access arrangement final decision must be made within 6 months of the date of receipt of the access arrangement proposal.
- (8) The time limit fixed by subrule (7) cannot be extended by more than a further 2 months.

64 AER's power to make or revise access arrangement on refusing to approve an access arrangement proposal

- (1) If, in an access arrangement final decision, the AER refuses to approve an access arrangement proposal (other than a variation proposal), the AER must itself propose an access arrangement or revisions to the access arrangement (as the case requires) for the relevant pipeline.

Exception:

If the access arrangement proposal is for a limited access arrangement for an international pipeline to which a price regulation exemption applies, the AER may (but need not) exercise its powers under this rule. (See section 167(2) of the NGL)

- (2) The AER's proposal for an access arrangement or revisions is to be formulated with regard to:
 - (a) the matters that the Law requires an access arrangement to include; and
 - (b) the service provider's access arrangement proposal; and
 - (c) the AER's reasons for refusing to approve that proposal.
- (3) The AER may (but is not obliged to) consult on its proposal.
- (4) The AER must, within 2 months after the access arrangement final decision, make a decision giving effect to its proposal.
- (5) When the AER makes a decision under this rule, it must:
 - (a) give a copy of the decision to the service provider; and
 - (b) publish the decision on the AER's website and make it available for inspection, during business hours, at the AER's public offices.
- (6) The access arrangement or the revisions to which the decision relates takes effect on a date fixed in the determination or, if no date is so fixed, 10 business days after the date of the decision.

95 Tariffs – transmission pipelines

- (1) A tariff for a reference service provided by means of a transmission pipeline must be designed:
 - (a) to generate from the provision of each reference service the portion of total revenue referable to that reference service; and
 - (b) as far as is practicable consistently with paragraph (a), to generate from the user, or the class of users, to which the reference service is provided, the portion of total revenue referable to providing the reference service to the particular user or class of users.
- (2) The portion of total revenue referable to a particular reference service is determined as follows:
 - (a) costs directly attributable to each reference service are to be allocated to that service; and
 - (b) other costs attributable to reference services are to be allocated between them on a basis (which must be consistent with the revenue and pricing principles) determined or approved by the AER.
- (3) The portion of total revenue referable to providing a reference service to a particular user or class of users is determined as follows:
 - (a) costs directly attributable to supplying the user or class of users are to be allocated to the relevant user or class; and
 - (b) other costs are to be allocated between the user or class of users and other users or classes of users on a basis (which must be consistent with the revenue and pricing principles) determined or approved by the AER.
- (4) The AER's discretion under this rule is limited.

Note:

See rule 40(2).

100 General requirement for consistency

The provisions of an access arrangement must be consistent with:

- (a) the national gas objective; and
- (b) these rules and the Procedures as in force when the terms and conditions of the access arrangement are determined or revised.

103 Queuing requirements

- (1) An access arrangement must contain queuing requirements if:
 - (a) the access arrangement is for a transmission pipeline; or
 - (b) the access arrangement is for a distribution pipeline and the AER notifies the service provider that the access arrangement must contain queuing requirements.
- (2) If the AER gives a notification under subrule (1), the access arrangement must contain queuing requirements as from the commencement of the first access arrangement period to commence after the date of the notification (but this requirement lapses if the AER, by notice to the service provider, withdraws the notification).
- (3) Queuing requirements must establish a process or mechanism (or both) for establishing an order of priority between prospective users of spare or developable capacity (or both) in which all prospective users (whether associates of, or unrelated to, the service provider) are treated on a fair and equal basis.
- (4) Queuing requirements might (for example) provide that the order of priority is to be determined:
 - (a) on a first-come-first-served basis; or
 - (b) on the basis of a publicly notified auction in which all prospective users of the relevant spare capacity or developable capacity are able to participate.
- (5) Queuing requirements must be sufficiently detailed to enable prospective users:
 - (a) to understand the basis on which an order of priority between them has been, or will be, determined; and
 - (b) if an order of priority has been determined – to determine the prospective user's position in the queue.

104 Extension and expansion requirements

- (1) Extension and expansion requirements may state whether the applicable 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.
- (2) Extension and expansion requirements included in a full access arrangement must, if they provide that an applicable access arrangement is to apply to incremental services, deal with the effect of the extension or expansion on tariffs.
- (3) The extension and expansion requirements cannot require the service provider to provide funds for work involved in making an extension or expansion unless the service provider agrees.

105 Capacity trading requirements

- (1) Capacity trading requirements must provide for transfer of capacity:
 - (a) if the service provider is registered as a participant in a particular gas market – in accordance with rules or Procedures governing the relevant gas market; or

- (b) if the service provider is not so registered, or the relevant rules or Procedures do not deal with capacity trading – in accordance with this rule.
- (2) A user may, without the service provider's consent, transfer, by way of subcontract, all or any of the user's contracted capacity to another (the third party) with the following consequences:
 - (a) the transferor's rights against, and obligations to, the service provider are (subject to paragraph (b)) unaffected by the transfer; but
 - (b) the transferor must immediately give notice to the service provider of:
 - (i) the subcontract and its likely duration; and
 - (ii) the identity of the third party; and
 - (iii) the amount of the contracted capacity transferred.
- (3) A user may, with the service provider's consent, transfer all or any of the user's contracted capacity to another (the third party) with the following consequences:
 - (a) the transferor's rights against, and obligations to, the service provider are terminated or modified in accordance with the capacity trading requirements; and
 - (b) a contract arises between the service provider and the third party on terms and conditions determined by or in accordance with the capacity trading requirements.
- (4) The service provider must not withhold its consent under subrule (3) unless it has reasonable grounds, based on technical or commercial considerations, for doing so.
- (5) An adjustment of rights and liabilities under subrule (3) does not affect rights or liabilities that had accrued under, or in relation to, the contract before the transfer took effect.
- (6) The capacity trading requirements may specify in advance conditions under which consent will or will not be given, and conditions to be complied with if consent is given.