



National Third Party Access Code for Natural Gas Pipeline Systems

Access Arrangement Process Guideline

December 2005

1 Introduction

The Australian Competition and Consumer Commission (ACCC)¹ has prepared this guideline in consultation with the Australian Energy Regulator (AER). The ACCC is currently the regulator of natural gas transmission pipelines under the National Third Party Access Code for Natural Gas Pipeline Systems (the Code), however, governments have agreed that this function will be undertaken by the AER, along with regulation of natural gas distribution pipelines. This guideline will be adjusted in line with amendments to the governing legislation and provisions of the Code as they are developed by the Ministerial Council on Energy and the Australian Energy Market Commission.

The purpose of this guideline is to outline the process the ACCC and AER will employ to make timely assessment decisions for proposed access arrangements and proposed revisions. While there are plans for adjusting the gas access law and the Code, it will be some time before these processes are complete. In the interim, this guideline will assist service providers and other interested parties to understand the current assessment process.

1.1 Outline

This guideline specifies the information and time periods required to enable the ACCC to undertake the assessment of a proposed access arrangement or proposed revisions within a timely manner. It details the five stage process of assessment from the pre lodgement consultation period to the release of the final decision.

1. Pre lodgement consultation – meetings and other communication between the service provider and the ACCC to discuss both the mechanics of the assessment process and guidance on tariff and non-tariff elements.
2. Access arrangement lodgement – ACCC requirements for the proposed access arrangement or revisions, the access arrangement information and supporting information.
3. Submissions – guidance on the submission requirements for interested parties including format and deadlines.
4. Draft decision – the assessment process leading up, and after, the release of the draft decision.
5. Final decision – the completion of the assessment process.

¹ The relevant regulator of the *National Third Party Access Code for Natural Gas Pipeline Systems* is the Australian Competition and Consumer Commission (ACCC). All references in this guideline to the regulator are to the ACCC. Proposed changes to legislation, once enacted, will result in the Australian Energy Regulator (AER) becoming the relevant regulator.

This guideline does not outline the process to be followed if the ACCC is required to make a further final decision. The Code makes no provision for consultation at that stage, and aspects of the processes undertaken will depend on the circumstances.

1.2 The Code

The Code establishes a national regime for third party access to natural gas pipeline systems. Where a pipeline is covered, s. 2 of the Code prescribes that a service provider is to establish an access arrangement which complies with the terms of the Code. This access arrangement is a statement of policies and the basic terms and conditions which apply to third party access to the covered pipeline.

The objectives of the Code are:

The objective of this Code is to establish a framework for third party access to gas pipelines that:

- (a) facilitates the development and operation of a national market for natural gas; and
- (b) prevents abuse of monopoly power; and
- (c) promotes a competitive market for natural gas in which customers may choose suppliers, including producers, retailers and traders; and
- (d) provides rights of access to natural gas pipelines on conditions that are fair and reasonable for both Service Providers and User.
- (e) provides for resolution of disputes²

2 Assessment process

Under s. 2.43 of the Code, the ACCC is obliged to issue a final decision within six months of receiving a proposed access arrangement or proposed revisions to an access arrangement. The following is an indicative six month timetable based on the assumption that the service provider submits all information and supporting documentation considered necessary to meet the terms and conditions of the Code. While the ACCC has the power under the Code to extend the six month timetable by up to two months at a time (ss. 2.21 & 2.43), it is cognisant of the desire for timely decision making.

² *National Third Party Access Code for Natural Gas Pipeline Systems* - introduction

Phase	Week	Code requirement	Action/event
Pre lodgement consultation	-26		Commence pre-lodgement consultation with service provider.
Lodgement	0		The service provider submits the following documents to the ACCC: 1. a proposed access arrangement or proposed revisions; 2. access arrangement information; 3. a supporting submission for interested parties; and 4. supporting information for the ACCC
	4		If all four documents considered necessary to meet the terms and conditions of the Code are provided, the ACCC issues a public notice requesting submissions from interested parties and releases a public issues paper (if appropriate).
Submissions	8	28+ days after public notice(a)	Submissions due on service provider's proposed access arrangement or proposed revisions and accompanying access arrangement information.
Draft decision	16		The ACCC considers the submissions. If no additional information has been requested by interested parties, the ACCC issues a draft decision, together with a public notice requesting submissions from interested parties on the draft decision.
Submissions	19	14+ days after release of DD(b)	Submissions due on draft decision.
	20-25		The ACCC considers submissions received on the draft.
Final decision	26		Final decision released by the ACCC.
	28	14+ days after release of final decision(c)	Start of access arrangement period.

- a) As prescribed by s. 2.43(a) of the Code.
b) As prescribed by s. 2.43(b) of the Code.
c) As prescribed by s. 2.43(c) of the Code.

2.1 Pre lodgement consultation

Service providers are encouraged to participate in pre lodgement consultation meetings and associated exchanges of information with the ACCC prior to the lodgement of the proposed access arrangement or proposed revisions. Although these meetings are not strictly part of the assessment process, in the past both the ACCC and service providers have found the meetings useful. Firstly, it allows the ACCC to discuss the mechanics of the assessment process with the service provider to ensure that it understands the Code's requirements and the ACCC's supporting information requirements, as well as timing and confidentiality issues. For example, the ACCC believes that, as an overarching principle, information should be submitted on a public basis. If the service provider is likely to propose confidentiality for highly sensitive material, the ACCC will offer guidance on this issue during pre lodgement consultation. The ACCC will not grant confidentiality without adequate justification.

Secondly, it enables the ACCC to provide generic guidance on the reference tariff elements and non-tariff elements that it has approved in the past thereby providing an informal indication on whether particular proposals are likely to be contentious or non-contentious.

Participation in these meetings is particularly useful for service providers preparing a proposed access arrangement for a new pipeline³ or one that has not been subject to ACCC regulation. It will assist them in preparing their proposed access arrangement, access arrangement information, submission and supporting information to a standard that will assist the ACCC in delivering a timely decision.

The ACCC will provide interested parties with information on any pre lodgement consultation with the service provider through either an issues paper or the draft decision.

2.2 Access arrangement lodgement

The ACCC will consider that the lodgement starts the assessment process so long as the service provider submits the following four documents at lodgement:

- the proposed access arrangement or proposed revisions
- the access arrangement information
- a supporting submission for interested parties as background to the proposed access arrangement or proposed revisions; and
- a separate set of supporting information for the ACCC.

The ACCC expects that at the time of lodgement, this material is the service provider's final position.

³ *Greenfields guidelines for natural gas transmission pipelines (Draft)- A guide to the access regulation framework and options for new natural gas transmission pipeline developments in Australia.*

From the date of lodgement, the documents will be published on the AER website. The ACCC will then need to establish whether the documents contain enough information to enable it to effectively assess the proposed access arrangement against the provisions of the Code. This process may take up to four weeks, after which the ACCC will contact the service provider to either:

- a) inform it that the all of the four documents considered necessary to meet the terms and conditions of the Code have been provided. It will then issue a public notice calling for submissions, together with a public issues paper (if appropriate) and it will provide a copy of both the proposed access arrangement or revisions and the access arrangement information to interested parties; or
- b) inform it that the document(s) are not satisfactory and that the ACCC will require additional information/amendments to make its decision.

Should additional information/amendments be necessary, it will no longer be possible to complete the assessment within the original six month timeframe and ACCC will issue a public notice to that effect. Should the service provider fail to provide the requested information/amendments within two weeks or the provided information proves to be inadequate, the ACCC will, if necessary, issue a section 41 notice as detailed below.

When the information/amendments are provided to a satisfactory standard, the ACCC will issue a public notice calling for submissions together with a public issues paper (if appropriate).

Outlined below are the requirements for all four documents. The ACCC proposes not to request additional information from the service provider unless new issues are raised by it or interested parties in submissions.

2.2.1 Access arrangement

The ACCC may approve a proposed access arrangement or proposed revisions only if it is satisfied that it contains the elements and satisfies the principles set out in ss. 3.1 to 3.20 of the Code, which are summarised below. An access arrangement must include

- a policy on the service (or services) to be offered which includes a description of the service(s) to be offered. The policy must include one or more services that are likely to be sought by a significant part of the market and any service(s), which in the ACCC's opinion should be included in the policy. To the extent practicable and reasonable, users and prospective users must be able to obtain those portions of the service(s) that they require, and the policy must allow for a separate tariff for an element of a service if requested
- one or more reference tariffs. A reference tariff operates as a benchmark tariff for a particular service. Tariffs must be determined according to the reference tariff principles in s. 8 of the Code
- the terms and conditions on which the service provider will supply each reference service

- a statement of whether a contract carriage or market carriage capacity management policy is applicable
- a trading policy that enables a user to trade its right to obtain a service (on a contract carriage pipeline) to another person
- a queuing policy to determine users' priorities in obtaining access to spare and developable capacity on a pipeline
- an extensions and expansions policy to determine the treatment of extensions and expansions of a pipeline under the Code
- a date by which revisions to the arrangement must be submitted and
- a date by which the revisions are intended to commence

2.2.2 Access arrangement information

The Code requires that the service provider provide access arrangement information that would enable interested parties to understand the derivation of the elements of the proposed access arrangement and to form an opinion as to the compliance of the proposed access arrangement or proposed revisions (s. 2.6).

Annexure A details the access arrangement information required to be assessed by the ACCC for this purpose but at anytime before a decision, the ACCC may require changes to the access arrangement information (s. 2.30(a)). It is therefore in the interests of the service provider to ensure that the access arrangement information contains all elements that it would anticipate being required by interested parties.

2.2.3 Supporting submission

The ACCC requires the service provider to lodge a supporting submission to provide interested parties with background information on the proposed access arrangement or proposed revisions.

2.2.4 Supporting information

To enable the ACCC to analyse the data and methodologies behind the proposed access arrangement or proposed revisions, it is crucial that the service provider provide all supporting information (in addition to the access arrangement information and supporting submission for interested parties) at lodgement. Supporting information is for the sole use of the ACCC and in general, should include:

- electronic copies of models and methodologies
- justification for models and methodologies
- historical information on all tariff elements
- all data used in calculations

- details of key assumptions
- qualitative information on non-tariff elements; and
- contact information.

Specific supporting information requirements can be found at Annexure B. However, the guideline does not attempt to anticipate what information would be required in all possible situations. There are many possible scenarios which may or may not be applicable to a particular proposal (for example, setting the initial capital base).

However, after pre consultation meetings with the ACCC, the service provider will have a better understanding of the information that the ACCC will require with respect to its particular proposal and provide that information at lodgement.

2.3 Submissions

The Code provides interested parties with two opportunities to input submissions into the assessment process, after lodgement of the complete access arrangement and associated documents and after the draft decision (ss. 2.10(b)(iii) and 2.14(b) and ss, 2.31(b)(iii) and 2.36(b)). In both cases, the ACCC will inform interested parties and issue a general public notice calling for submissions.

Depending on the complexity of the proposed access arrangement or proposed revisions, the ACCC may release a public issues paper to focus submissions from interested parties on particular points. Interested parties are encouraged to comment on particular points raised in the paper and any other issues of relevance. The ACCC is also willing to meet with interested parties prior to lodgement of their submissions if appropriate.

To make the regulatory decisions within the desired timeframe, it is necessary for all submissions to be received by the due date. The ACCC will not consider submissions received after this date. All submissions, except those parts for which confidentiality is claimed, are treated as public documents and will be placed on the AER's website. To facilitate placement on the website, submissions should be sent both in paper and electronic format.

Should submissions request more detailed information and/or amendments to the access arrangement information and the ACCC consider the request appropriate, the ACCC will advise the service provider and issue a public notice stating that the decision process is delayed until the additional information is provided. The service provider will then have a reasonable time to provide the requested information/amendments. Should the service provider fail to provide the requested information/amendments within a reasonable time, the ACCC will issue a section 41 notice.

2.4 Draft Decision

The draft decision will generally be released eight weeks after the due date for submissions from interested parties provided that service provider has not unexpectedly revised its material or raised new issues. Upon release of the draft decision, the ACCC will issue a public notice to call for any further submissions, to which interested parties will have three weeks to respond.

The draft decision represents the ACCC's considered position based on its assessment of all documents and submissions received to date. It encompasses the Code requirements, current access arrangement provisions (if it is a revision being assessed), the service provider's proposal, the access arrangement information and submissions from interested parties.

2.5 Final Decision

Approximately eight weeks after the final round of submissions close, the ACCC will make a final decision which either:

- approves the proposed access arrangement; or
- does not approve the proposed access arrangement and states the revisions to the access arrangement which would be required before the ACCC would approve it; or
- approves a revised access arrangement submitted by the service provider which incorporates amendments specified by the ACCC in its draft decision.

If the ACCC does not approve the access arrangement, the service provider may propose an amended access arrangement which incorporates the revisions required by the ACCC. If the service provider does not do so, the ACCC can impose its own access arrangement (without the need for further consultation). In this case, the six month assessment process will no longer be achievable and the ACCC will issue a public notice to that effect.

3 Section 41 powers

The ACCC has the power to obtain information and documents if it has reason to believe that a person (for example, the service provider) has information or a document that may assist in its prescribed duties⁴. Section 41 of the *Gas Pipelines Access (South Australia) Act 1997* (the Act) outlines the specifics of complying with a written request from the ACCC to obtain further information and the potential penalties for non-compliance.

A s. 41 notice imposes legal obligations on a party to provide information requested by the ACCC.

A deadline for compliance will be given by the ACCC upon the issuance of the notice. Service providers are legally obliged to comply with a s. 41 notice and strict deadlines on the provision of the information requested will be enforced by the ACCC. The Act prescribes the penalty for non-compliance with a notice under s. 41(4) as a maximum penalty of \$10 000 or 12 months imprisonment.

⁴ Section 41(9) of the *Gas Pipelines Access (South Australia) Act 1997* defines “prescribed duty” as –

- a) deciding whether to approve an access arrangement under the Code;
- b) deciding whether to approve changes to an access arrangement under the Code;
- c) deciding whether to approve a contract, arrangement or understanding between a service provider and an associate of the service provider;
- ca) deciding under the Code whether to approve, disallow or make a variation of a Reference Tariff within an Access Arrangement Period (within the meaning of the Code);
- d) monitoring compliance with the Code.

Section 41(1) - If a relevant Regulator has reason to believe that a person has information or a document that may assist the Regulator in the performance of any of the Regulator's prescribed duties under this Law, the Regulator may require the person to give the Regulator the information or a copy of the document.

4 Treatment of confidential information

It is recognised that information provided in the course of an access arrangement assessment process may be commercially sensitive. It is however implicit in the notion of confidentiality that confidential information must be distinguishable from the range of information which is generally available.

The Code provides guidance on the treatment of information that has been identified as being confidential by a party in ss. 7.11-7.14. The ACCC may consider that certain information should be made publicly available to ensure interested parties are able to make informed submissions to the access arrangement process. The ACCC will not disclose information unless it “is of the opinion that the disclosure...would not be unduly harmful to the legitimate business interests” of the information provider (s. 7.12).

Confidentiality should generally be discussed in the pre lodgement consultation period to ensure that any issues surrounding disclosure of information are settled prior to the commencement of the assessment. It is requested that documents be submitted in the following manner:

Documents are to be submitted in both a confidential and public format

The confidential format should have the commercially sensitive pieces of information marked as such throughout the document to ensure confidentiality is maintained

The public format should contain blank spaces at the appropriate places to show that confidential information has been provided to the ACCC but removed for public viewing.

Submission of documents in these formats will ensure consistency across all documents which is particularly important during the public consultation process.

Where a party provides information in accordance with a s.41 notice, it may be afforded confidentiality protection under s. 42 of the Act. Under s.42 the ACCC may not disclose such information if it is subject to confidentiality claims unless it believes that the information would not cause detriment, or the public benefit outweighs the detriment.

ANNEXURE A - INFORMATION DISCLOSURE BY A SERVICE PROVIDER TO INTERESTED PARTIES

Pursuant to Section 2.7 the following categories of information must be included in the Access Arrangement Information.

The specific items of information listed under each category are examples of the minimum disclosure requirements applicable to that category but, pursuant to Sections 2.8 and 2.9, the Relevant Regulator may:

- allow some of the information disclosed to be categorised or aggregated; and
- not require some of the specific items of information to be disclosed,

if in the Relevant Regulator's opinion it is necessary in order to ensure the disclosure of the information is not unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User.

Category 1: Information Regarding Access & Pricing Principles

Tariff determination methodology
Cost allocation approach
Incentive structures

Category 2: Information Regarding Capital Costs

Asset values for each pricing zone, service or category of asset
Information as to asset valuation methodologies - historical cost or asset valuation
Assumptions on economic life of asset for depreciation
Depreciation
Accumulated depreciation
Committed capital works and capital investment
Description of nature and justification for planned capital investment
Rates of return - on equity and on debt
Capital structure - debt/equity split assumed
Equity returns assumed - variables used in derivation
Debt costs assumed - variables used in derivation

Category 3: Information Regarding Operations & Maintenance

Fixed versus variable costs
Cost allocation between zones, services or categories of asset & between regulated/unregulated
Wages & Salaries - by pricing zone, service or category of asset
Cost of services by others including rental equipment
Gas used in operations - unaccounted for gas to be separated from compressor fuel
Materials & supply
Property taxes

Category 4: Information Regarding Overheads & Marketing Costs

Total service provider costs at corporate level

Allocation of costs between regulated/unregulated segments

Allocation of costs between particular zones, services or categories of asset

Category 5: Information Regarding System Capacity & Volume Assumptions

Description of system capabilities

Map of piping system - pipe sizes, distances and maximum delivery capability

Average daily and peak demand at "city gates" defined by volume and pressure

Total annual volume delivered - existing term and expected future volumes

Annual volume across each pricing zone, service or category of asset

System load profile by month in each pricing zone, service or category of asset

Total number of customers in each pricing zone, service or category of asset

Category 6: Information Regarding Key Performance Indicators

Industry KPIs used by the Service Provider to justify "reasonably incurred" costs

Service provider's KPIs for each pricing zone, service or category of asset

ANNEXURE B – UNDERSTANDING WHAT IS MEANT BY SUPPORTING INFORMATION AND THE RATIONALE FOR THE PROPOSALS

This guideline does not attempt to anticipate what information would be required in all possible situations. There are many possible scenarios which may or may not be applicable to a particular proposal, for example the setting of the initial capital base.

The following should be seen as a ‘checklist’. The information specific to a service provider should become apparent during the pre-consultation discussions.

In all cases, the supporting information should explain not only the derivation of the elements of the proposed access arrangement or proposed revisions, but also the reasons for choosing the alternatives that have been chosen and the impact. For example, if a methodology has changed, then the information under the new and old methods, highlighting the impact(s), and the rational(es) for the change(s) should be supplied.

- *Models and methodologies:* The ACCC uses the Post Tax Revenue Model (PTRM) and methodology released in October 2001 in its regulation of service providers in the energy industry. Service providers are therefore encouraged, whilst not required to use this model to calculate reference tariffs. The PTRM may be modified in consultation to suit a particular application or purpose. If the service provider opts for a different model, the ACCC will assess the chosen model and also use the PTRM model. The service provider should provide the rationale for choosing this different model. The service provider is to supply an electronic copy of the model(s) and documentation, on operation and methodology, to enable the ACCC to understand and use its model(s).
- *Optimised Replacement Cost (ORC):* A full description of the methodology and assumptions used to determine the ORC and the rationale behind it should be provided to the ACCC. In addition, the description of system capabilities, volume and pipeline route should be sufficiently detailed to enable an experienced industry engineer to derive an independent ORC for the ACCC.

The methodology used to depreciate the ORC (for the purposes of calculating the initial capital base) and the rationale for selecting this methodology over others should be detailed. This should include details of how the ORC will be depreciated over the life(s) of the asset(s) as well as the values that would result from applying other well recognised asset valuation methodologies such as depreciated actual cost (DAC).

- *Historical tariffs information:* The basis of historical tariffs is required for the ACCC to assess the proposed initial capital base under s. 8.10(f) of the Code and includes understanding how the prior tariffs were calculated. As such, how variances between actual and forecast results were allocated may need to be explained.

The information is also used as a guide to future costs and revenues. The information provided should include the actual tariff, the methodology used to derive it and the rationale for the methodology chosen, as well as how issues such as depreciation have been treated. This typically covers details on past forecast costs, revenues, volumes and the subsequent actuals, and may include contracts.

- *Cost allocation methodology:* The service provider must provide sufficient information to enable the ACCC to understand how historically costs (capital and operating) and revenues have been apportioned between the various reference tariffs, together with the supporting rationale and their frequency of review. This is to support forward looking reviews. If changes are to be proposed, then the rationale for the change and the choice of methodology is required.
- *Costs in benchmarking reports:* Where the service provider references a benchmarking report, the ACCC must be supplied with a copy or sufficient information to enable the ACCC to derive comparable cost figures and the definitions used to determine the appropriateness.
- *Capital and operating costs:* Historical information on capital and operating costs is required for developing reasonable forecasts. This includes:
 - actual annual capital and operating costs for a minimum of five years prior to the proposed access arrangement or proposed revisions. The information provided should be suitably itemised so significant items can be identified and / or separated into appropriate consistent asset classes;
 - details of the supporting overall asset management philosophy, process and procedures should be provided, and how individual investment decisions fit within this strategy. This should cover maintenance information such as pigging schedules and major scheduled maintenance;
 - if operating costs are covered under an asset management contract, the contract should be provided;
 - supporting information for large investment decisions, such as the business case, including identifying the factors affecting the need for investment, is required;
 - information on capital and equity raising costs; and
 - treatment(s) of asymmetric risk(s).
- *Capital contributions:* Details of how new facilities investment, including upgrades, has been funded during the life of the pipeline, together with details of how proposed facilities investment is going to be funded in the future is required.

- *Incentive structures:* The Code provides an objective that the reference tariff and reference tariff methodology provide an incentive for the service provider to reduce costs and to develop the market for reference and other market services (s 8.1f). The incentive structures proposed should be detailed, along with proposed identification and sharing between the service provider and users of the efficiencies the incentives have produced.

Information is required on why the structures are considered appropriate (and if changed then why) how they will be reviewed and how the outcomes will be shared beyond the proposed access arrangement period.

- *Volume assumptions:* Volume is a key assumption in an access arrangement and needs to be supported accordingly. Key volume assumptions should reflect the supporting certainty levels such as contract volumes and durations; capacity of pipeline covered (past, present, future); changes in supply sources i.e. new fields, connections or sources of gas such as Coal Bed Methane; and possible major customers. This should be supported by independent analysis as appropriate. Again, historical forecasts and actuals are required, with explanations for variances as appropriate.
- *Trading and Queuing policies:* As well as justification for the appropriateness of the proposed policy, information is required on the likely level of activity under the trading and queuing policies i.e. how often are they likely to be used? If applicable, information on the level of activity under the current trading and queuing policies should be included. If changes are proposed, then the rationale for the changes is required.
- *Calendar year/financial year:* The period or date applicable to each portion of data should be clearly identified. Moreover, if the service provider has converted data from one date to the other, the steps undertaken should be sufficiently detailed to enable the process to be accurately reproduced.
- *Consistency and accuracy in terminology:* Consistency and accuracy is required across all aspects of the access arrangement including models and submissions. For example, a term such as depreciation should be applied in the same way across all aspects of the arrangement. Similarly, the value assigned to a particular term needs to be consistent or otherwise stated, for example, where the value is nominal or real.
- *Access arrangement period:* - Under s. 3.18 of the Code an access arrangement period may be of any length; however, if the access arrangement period is more than five years, the ACCC must not approve it without considering whether mechanisms should be included to address the risk of forecasts proving incorrect. In determining what mechanisms, such as those proposed by the service provider, may be appropriate, the ACCC may require details of the contracts in place and their duration; overall demand; potential competition and field/source life and an assessment of typical alternatives to the mechanisms proposed.
- *Contact Officer:* A contact officer(s) should be nominated and available for all of the access arrangement assessment period. The contact officer(s) should be suitably authorised by the service provider to speak on its behalf.