

# Annual Compliance Order

## Relevant Class to whom this order applies

This order applies to the following classes of pipeline service providers (Specified Class):

- service providers of covered pipeline services provided by a transmission pipeline, and
- service providers of covered pipeline services provided by a distribution pipeline.

This Order does not apply, in part or in whole, to any person belonging to the Specified Class where that person has been granted a conditional or unconditional exemption under section 58 of the *National Gas Law*.

*Made under section 48(1)(b) of the National Gas Law  
on 7 November 2008.*

## Order

Pursuant to sections 43 – 63 of the *National Gas Law* (NGL) the Australian Energy Regulator (AER) makes the following order:

1. Service providers or related providers are required to do certain things including provide information to the AER and prepare, maintain or keep information under the NGL, *National Gas Rules* (NGR) and Regulations.<sup>1</sup>
2. The AER's primary purpose in making this Order is to monitor compliance with the NGL, Regulations and NGR of service providers; and undertake the AER's economic regulatory functions or powers (under sections 27 (1)(a) and (e) of the *National Gas Law*). In addition to the monitoring of compliance of persons and service providers under the NGL, NGR and Regulations, the AER may also use this information to investigate breaches or possible breaches of provisions under section 27(1)(b). However, this Order is not made solely for this purpose.
3. The Specified Class of service providers must provide to the AER the information and documentation specified in this Order by doing the following:
  - (a) provide the information and documentation covering the 12 month period ending 30 June of that year (Compliance Period)
  - (b) provide the information and documentation **by 5.00 pm A.E.D.T. on 31 October of that year, or where this day falls on a weekend or a**

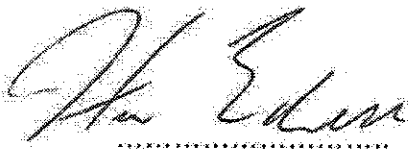
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<sup>1</sup> Regulations means the regulations made under Part 3 of the *National Gas (South Australia) Act 2008* of South Australia that apply as a law of this jurisdiction.

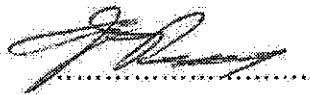
**public holiday, by 9.00 am A.E.D.T. on the next business day after 31 October, and**

- (c) provide the information and documentation to the **nominated contact officer** as outlined by the AER in correspondence provided from time to time about the annual compliance process.
4. The information and documentation provided must answer information requests contained in the Attachment 1 to this Order. Specified Class of service providers should refer to Attachment 2 for guidance in addressing the information and documentation requests contained in this order. Attachment 2 also contains the relevant references to the NGL and NGR for each question.
  5. Information and documentation provided must be verified by way of a Statement of Compliance by an officer of the covered pipeline service provider or of a related provider to which the Order applies. The AER requires that the officer providing the Statement of Compliance to be a Director of the service provider or if there is no Director a person making or participating in the decisions that affect the whole, or a substantial part, of the business of the corporation or have the capacity to affect significantly the service provider's financial standing such as a member of the Board of the service provider.
  6. The Statement of Compliance must address the following issues:
    - (a) verification by a Director or member of the Board of the service provider per clause 5 of this Order, that the information and documentation provided in compliance with this Order are accurate and can be relied on to provide a true and fair representation of the service provider's operations or ownership of a pipeline that can be relied on by the AER in the performance or exercise of its functions or powers under the NGL or the NGR,
    - (b) verification by a Director or member of the Board of the service provider per clause 5 of this Order, that the information and documentation provided in compliance with this Order in reliance on information and documentation that is prepared, kept or maintained is accurately represented,
    - (c) verification by a Director or member of the Board of the service provider per clause 5 of this Order, that the information and documentation provided is not false and misleading,
    - (d) verification by a Director or member of the Board of the service provider per clause 5 of this Order, that the information and documentation provided is in accordance with the Order and is complete, and
    - (e) in instances where the Order is not complied with, the Director or member of the Board of the service provider sets out the reasons why the Order is not complied with including all relevant references to any exemptions or provisions of the NGL as applicable.
  7. The information and documentation must, where practicable:

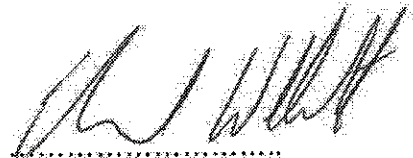
- (a) be provided in a soft copy format (MS Word or PDF) that will allow the AER to 'copy and paste' text. In addition a read-only PDF copy of the information and documentation may be submitted to the AER;
  - (b) include as attachments a copy of any extraneous material (such as consultants' reports or quotes from court or tribunal decisions) that is relied on with the relevant referenced sections clearly marked.
8. The information and documentation that contains confidential information should be provided in accordance with the Annual Compliance Guideline.
  9. This Order is subject to any future Orders that may be inconsistent with these Orders.
  10. This Order shall take effect as and from the date it is made, and will remain in force until this Order is varied or revoked.



Steve Edwell



Andrew Reeves



Edward Willett

Dated this 7<sup>th</sup> day of November 2008

# **Attachment 1 - Matters to be specifically addressed annually by service providers and related providers**

Note: In addressing these matters, the information and documentation provided must only cover the relevant Compliance Period as defined in the Order.

## **1. General duties for the provision of pipeline services of covered pipeline services by a service provider**

### **1.1 Legal entity**

- (a) Nominate the type of legal entity the service provider is according to the specified kinds of legal entity in section 131 of the NGL.*
- (b) What is the registered business name and ABN of the service provider legal entity providing the covered pipeline service?*
- (c) Provide an outline of the group structure which is controlled by or which the service provider is a part (including identification of the head company, nature of investment or entity, relationship to the service provider and proportion of assets owned/share of investment within the group). This should include any assets (businesses) it owns or that own it. The group structure should include business that are beneficially controlled such as trustee companies, jointly owned or operated business such as partnerships or joint ventures, businesses that are significant investments or controlled. This can also be represented as an organisational chart.*

### **1.2 Preventing or hindering access**

- (a) Is the service provider aware of any claims that it has prevented or hindered access to services on the covered pipeline within the terms of section 133 of the NGL?*

### **1.3 Supply and haulage of natural gas**

- (a) Does a producer supply natural gas through the covered pipeline at a place other than the exit flange of the producer's processing plant?*

### **1.4 Queuing requirements**

- (a) Has the service provider complied with the queuing requirements of the applicable access arrangement during the year?*

### **1.5 Service provider providing light regulation services must not price discriminate**

- (a) Does the service provider provide light regulation services?*

- (b) If so, are there any differences in the prices of the provision of those services?  
Please provide an explanation as to why these price differences exist.*

## **2. Structural and Operational Separation Requirements (Ring Fencing)**

### **2.1 Carrying on of a related business**

- (a) Provide a list of associates of the service provider that take part in a related business and for each associate describe what the nature of the related business is.*
- (b) Provide a list of associates that are service providers and/or provide pipeline services.*

### **2.2 Marketing staff and the taking part in related businesses**

- (a) Provide a list of associates of the service provider that are directly involved in the sale, marketing or advertising of pipeline services.*
- (b) Provide a statement as to whether or not any of the service provider's marketing staff are also officers, employees, consultants, independent contractors or agents of an associate of the service provider that takes part in a related business.*
- (c) Provide a statement as to whether or not any of the service provider's officers, employees, consultants, independent contractors or agents are also marketing staff of an associate of the service provider that takes part in a related business.*

### **2.3 Separate accounts must be prepared, maintained and kept**

- (a) Provide a statement as to whether or not the service provider has prepared, maintained and kept a separate set of accounts in respect of the services provided by every covered pipeline owned or operated by the service provider.*
- (b) Name the legal entity or entities in which the separate accounts are reported, maintained or kept for the services provided by each covered pipeline owner or operator?*
- (c) Provide a statement as to whether or not the service provider has prepared, maintained and kept a consolidated set of accounts in respect of the whole of the business of the service provider.*
- (d) Name the legal entity in which the consolidated set of accounts are reported, maintained or kept for the services provided by each covered pipeline owner or operator?*
- (e) Provide a copy of the most recently lodged annual financial reports with the Australian Securities and Investments Commission or if no such reports exists*

*other similar audited financial reports prepared for or provided to a state or territory department, agency or body under relevant state or territory legislation. These financial reports may be the consolidated set of accounts in respect to the whole of the business of the service provider, and if also separately lodged with the Australian Securities and Investments Commission the most recently lodged annual separate set of accounts in respect of the services provided by the service provider.*

## **2.4 Additional ring fencing requirements or exemptions**

- (a) Does the service provider have any additional ring fencing requirements?*
- (b) What are these requirements?*
- (c) Provide a statement that these additional ring fencing requirements have or have not been met.*
- (d) Does the service provider have any exemptions for the minimum ring fencing requirements?*
- (e) What are these exemptions?*
- (f) By what jurisdictional regulator and when where these exemptions granted?*

## **2.5 Associate contracts**

- (a) Has the service provider entered into or given effect to any new associate contracts, or varied the terms and conditions of an existing associate contract?*
- (b) For each new or varied associate contract, please indicate the date the new or varied associate contract was entered into or given effect?*
- (c) For each new or varied associate contract, please indicate if the contract or variation was approved by the AER and the date that it was approved?*
- (d) If the associate contract was not approved by the AER, please indicate what date the new or varied associate contract was provided to the AER?*

Note: An 'associate contract' is defined under the NGL to include arrangements or understandings and is not limited to written contracts.

## **3. Other requirements**

### **3.1 Making access arrangement or terms and conditions of access available**

- (i) Ensuring applicable access arrangement and other specified information is available on website**

- (a) *Has the service provider published the approved access arrangement on its website?*
- (b) *Please provide the website address where this access arrangement can be accessed and the date that this access arrangement was provided on the website.*
- (c) *Has the service provider received any requests from the AER to provide to prospective users generally other information specified as reasonably necessary to determine if access should be sought.*
- (d) *Please provide details of when and how this request was met.*

(ii) Publishing approved competitive tender process access arrangement

- (a) *Where there is an approved competitive tender process access arrangement in place for a covered pipeline, has the service provider published the approved access arrangement on its website?*
- (b) *Please provide the website address where this access arrangement can be accessed and the date that this access arrangement was provided on the website.*

(iii) Publishing terms and conditions of access to light regulation services

- (a) *Where there is access to light regulation services on a covered pipeline, has the service provider published tariffs and other terms and conditions for these services on its website?*
- (b) *Please provide the website address where this information can be accessed and the date that this information was first made available on the website.*
- (c) *Has the service provider had access negotiations regarding light regulation services? If so, the following will need to be reported, the name of the party requesting the service, the pipeline service requested, and the outcome of the access negotiations.*

*The following table format may be of assistance in reporting this information.*

<i>Party requesting access</i>	<i>Date negotiations commenced</i>	<i>Pipeline service subject to access negotiation</i>	<i>Date negotiations completed</i>	<i>Outcome of access negotiations</i>
1. <i>[ name of party]</i>	<i>[date]</i>	<i>[name the service]</i>	<i>[date]</i>	<i>[Note:</i> <ul style="list-style-type: none"> <li>▪ <i>if negotiation resulted in access being provided/ not provided</i></li> <li>▪ <i>if service provider was not able to meet all aspects of</i></li> </ul>

				<i>access requested]</i> <i>[Name any contracts made, varied or revoked as a result of access negotiations]</i>
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**3.2 Access determinations**

- (a) Has the service provider been party to an access determination?*
- (b) When did the access determination become operative?*
- (c) For what period is the access determination in place?*

**3.3 Confidentiality**

- (a) Provide a statement that the confidentiality requirements under rule 137 of the National Gas Rules have or have not been met.*
- (b) Has the service provider established an internal protocol or policy guideline or procedure manual for the handling of confidential information?*

*If so please provide the AER with the relevant policy document*

**3.4 Bundling**

- (a) Has the service provider bundled any of its services when providing access or negotiating access with a prospective user?*
- (b) If so, provide a description of the bundled services and related conditions of access.*



## **Attachment 2 - Guide to complying with Information order – Annual compliance process**

### **Reference only**

This document outlines the relevant statutory requirements to assist service providers and related providers in understanding their obligations under the NGL and the NGR and for providing information requested in this Order.

The NGL and NGR references and explanations are in the same sequence and numbering as they appear in Attachment 1 to the Order.

Service providers are also directed for further guidance on providing information and documentation for this Order and about the annual compliance process to the Annual Compliance Guideline.

#### **R. 1 General duties for the provision of covered pipeline services by service providers**

The first set of questions relate to the general duties of a service provider under the NGL as set out in Chapter 4 Part 1.

##### **R.1.1 Legal entity**

Section 131 of the NGL stipulates that a service provider must be a legal entity of a specified kind to provide pipeline services by covered pipeline.

The service provider must be:

- (a) a legal entity registered under the *Corporations Act 2001* of the Commonwealth; or
- (b) a foreign company; or
- (c) a corporation established by or under a law of this jurisdiction or another participating jurisdiction, whether or not that corporation has been established for a public purpose; or
- (d) the Crown in right of this jurisdiction or another participating jurisdiction; or
- (e) a person referred to in (a) to (d) and that person provides a pipeline service by means of a covered pipeline together with another person referred to in (a) to (d).

## **R. 1.2 Preventing or hindering access**

A service provider; or a person who is party to an agreement with a service provider relating to pipeline services provided on a covered pipeline; or a person who is entitled to a pipeline service on a covered pipeline; or an associate of a service provider or a person referred to above, must not engage in conduct for the purposes of preventing or hindering the access of another person to a pipeline service on the covered pipeline (s.133).

Rule 112 requires that when a service provider receives a request for a pipeline service from a prospective user, the service provider must respond within a certain time and deal with the request in a specified way. That is, the service provider must respond within 20 days and inform the prospective user:

- whether the service provider can provide the pipeline service
- whether any further investigations need to be conducted before provision is decided
- of the terms and conditions, if providing the service
- of the reasons if refusing to provide the service and
- whether there is prospect of provision in the future if the service can not be presently provided.

## **R. 1.3 Supply and haulage of natural gas**

If there is a difference in the tariff stated, the producer must include in the terms offered for the supply of gas at the exit flange a statement of the reasons for the difference (s.134).

## **R. 1.4 Queuing requirements**

A service provider must in providing a service by means of a covered pipeline, comply with the queuing requirements of an applicable access arrangement (s.135).

## **R. 1.5 Service provider providing light regulation services must not price discriminate**

A service provider must not engage in price discrimination when providing light regulation services. The exception is when it is conducive to the efficient provision of the service (s.136).

## **R. 2 Structural and Operational Separation Requirements (Ring Fencing)**

The second set of questions relate to the structural and operational separation requirements (including minimum ring fencing requirements) under the NGL as set out in Chapter 4 Part 2.

### **R. 2.1 Carrying on of a related business**

Section 139 of the *National Gas Law* requires that a service provider not carry on a related business.

### **R. 2.2 Marketing staff and the taking part in related businesses**

Section 140 of the *National Gas Law* requires that a service provider ensures that none of its marketing staff are officers, employees, consultants, contractors or agents of an associate of the service provider that takes part in a related business, and its employees, consultants, contractors or agents are not marketing staff of an associate that takes part in a related business.

An associate in relation to a service provider has the same meaning it would have under Division 2 of Part 1.2 of the *Corporations Act 2001*.

Part 1.2 section 11 of the *Corporations Act 2001* states that *(if the primary person is a body corporate, the associate reference includes a reference to:*

- (a) a director or secretary of the body;*
- (b) a related body corporate; and*
- (c) a director or secretary of a related body corporate.*

### **R. 2.3 Separate accounts must be prepared, maintained and kept**

Section 141 of the *National Gas Law* requires that a service provider must prepare, maintain and keep:

- (a) separate accounts in respect of services provided by means of every covered pipeline owned or operated by the service provider; and
- (b) a consolidated set of accounts in respect of the whole of the business of the service provider.

### **R. 2.4 Additional ring fencing requirements and exemptions**

The AER may make a determination requiring a covered pipeline service provider or an associate named in the determination to do, or refrain from doing, a thing specified in the determination (s.143).

The service provider or an associate named must comply with every additional ring fencing determination on and from the notified compliance date.

The AER subject to and in accordance with the NGR, may exempt a covered pipeline service provider from the minimum ring fencing requirements under sections 139, 140 or 141 (s. 146).

## **R. 2.5 Associate contracts**

Sections 147-148 requires that a service provider must not:

- (a) enter into an associate contract that has or
- (b) vary an associate contract so that contract, as varied, is; or
- (c) give an effect to a provision of an associate contract

that would have or is likely to substantially lessen competition or is inconsistent with the competitive parity rule unless approved.

A service provider may apply to the AER for approval of an associate contract or a proposed associate contract; or a proposed variation of an approved associate contract (r. 32 (1)).

Within 5 business days after entering into, or varying, an associate contract (whether approved or not), a service provider must give written notice to the AER of the contract or variation together with a copy of the contract or contract as varied (r. 33). By complying with this rule a service provider incurs no liability for breach of contract, breach of confidence, or any other civil wrong.

## **R. 3 Other requirements**

The third set of questions relate to other requirements of a service provider (including publishing requirements under Parts 5 and 7 of the NGR, compliance with access determinations under Chapter 6 Part 5 of the NGL and confidentiality requirements under Part 16 of the NGR).

### **R. 3.1 Making access arrangement or terms and conditions of access available**

- (i) Ensuring applicable access arrangement is available on website

A scheme pipeline service provider must ensure that the applicable access arrangement is accessible on the service provider's website (r. 107(1)).

- (ii) Publishing approved competitive tender process access arrangement

An approved competitive tender process access arrangement must be published on the service provider's website (r. 27(4)).

- (iii) Publishing terms and conditions of access to light regulation services

A service provider for a light regulation pipeline must publish on its website the tariffs on offer for light regulation services and other terms and conditions of access to those services. If, however, a limited access arrangement is in force and is accessible on the service provider's website, the terms and conditions of access (other than tariff) need not be separately published on the website (r. 36).

A service provider for a light regulation pipeline must also report to the AER on access negotiations relating to light regulation services (r. 37).

### **R. 3.2 Access determinations**

A party to an access dispute in respect of which an access determination is made must comply with the access determination (s. 195).

### **R. 3.3 Confidentiality**

Under rule 137, the service provider must not:

- (a) disclose relevant confidential information; or
- (b) use relevant confidential information for a purpose other than the purpose for which the information was given to the service provider.

The service provider must take all practicable steps to protect relevant confidential information in the service provider's possession against improper disclosure or use. This does not prevent:

- (a) disclosure or use of relevant confidential information with consent of the person to whom the information relates; or
- (b) disclosure of information that is in the public domain; or
- (c) disclosure or use of relevant confidential information in order to comply with:
  - the law of a participating jurisdiction; or
  - an order of a court or tribunal of a participating jurisdiction; or
  - a requirement imposed by or under the NGL; or
  - the listing rules of a recognized stock exchange.

The duty imposed by this rule is a non-delegable duty.

### **R. 3.4 Bundling**

Under rule 109, a service provider must not make it a condition of the provision of a particular pipeline service to a prospective user that the prospective user accept another non-gratuitous service from the service provider unless the bundling of the services is reasonably necessary.

The description of pipeline services in an access arrangement must conform with this principle.

# Attachment 3 - Annual compliance checklist

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NGL/NGR

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## 1. General duties for the provision of pipeline services of covered pipeline services by a service provider

**1.1 Legal entity** s. 131

- (a)
- (b)
- (c)

**1.2 Preventing or hindering access** s. 133, r. 112

- (a)

**1.3 Supply and haulage of natural gas** s. 134

- (a)

**1.4 Queuing requirements** s. 135

- (a)

**1.5 Service provider providing light regulation services must not price discriminate** s. 136

- (a)
- (b)

## 2. Structural and Operational Separation Requirements (Ring Fencing)

**2.1 Carrying on of a related business** s. 139

- (a)
- (b)

**2.2 Marketing staff and the taking part in related businesses** s. 140

- (a)
- (b)
- (c)

**2.3 Separate accounts must be prepared, maintained and kept** s. 141

- (a)
- (b)
- (c)
- (d)
- (e)

**2.4 Additional ring fencing requirements or exemptions** ss. 143, 146

- (a)
  - (b)
  - (c)
  - (d)
  - (e)
-

- (f)

**2.5 Associate contracts**

ss. 147, 148,  
rr. 32(1),33

- (a)
- (b)
- (c)
- (d)

**3. Other requirements**

**3.1 Making access arrangements or terms and conditions of access available**

rr. 107(1)(3),  
27(4), 36, 37

(i) Ensuring applicable access arrangement and other specified information is available on website

- (a)
- (b)
- (c)
- (d)

(ii) Publishing approved competitive tender process access arrangement

- (a)
- (b)

(iii) Publishing terms and conditions of access to light regulation services

- (a)
- (b)
- (c)

**3.2 Access determinations**

s. 195

- (a)
- (b)
- (c)

**3.3 Confidentiality**

r. 137

- (a)
- (b)

**3.4 Bundling**

r. 109

- (a)
  - (b)
-