



New South Wales

Gas Supply Act 1996—Order

Order under section 31 (1)

I, The Honourable PATRICK CARL SCULLY, MP, Acting Minister for Energy, pursuant to section 31 (1) of the Gas Supply Act 1996, do, by this my Order, establish the Access Code set forth hereunder.

SIGNED at Sydney this 26th day of August, 1996

CARL SCULLY, MP

Acting Minister for Energy

Explanatory note

The object of this Order is to establish a Code to regulate the reticulation and supply of natural gas within a competitive market. Part 2 of the Gas Supply Act allows the Minister, by Order published in the Gazette, to declare natural gas distribution systems to be available for third party access, subject to approval of the terms of such access by the Independent Pricing and Regulatory Tribunal and subject also to compliance with the Code.

The Code deals with:

- (a) Requirements for declaration of a natural gas distribution system under section 19 (1) of the Act,
- (b) Contents of “Access Undertakings” to be furnished by the owners of Declared Distribution Systems,
- (c) Variation of Access Undertakings,
- (d) Orders in lieu of Access Undertakings,
- (e) Agreements for the provision of access to third parties,
- (f) General requirements for third party access to Declared Distribution Systems,

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- (g) Provisions with respect to interrelated reticulation system users,
 - (h) Separation of gas reticulation and gas supply functions by system users,
 - (i) Investigation of relevant matters by the Independent Pricing and Regulatory Tribunal,
 - (j) Applications to the Minister for review of relevant decisions by the Independent Pricing and Regulatory Tribunal, or Arbitrators appointed to determine disputes between the owners of Declared Distribution Systems and parties seeking, or having access to those systems.

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Third Party Access Code for Natural Gas Distribution Networks in NSW

Preamble

This Code takes effect when proclaimed by the Minister for Energy pursuant to section 31 of the Gas Supply Act 1996. It has been developed to provide NSW with an Interim Code for third party access, and will be superseded by a National Access Code following its approval by the Council of Australian Governments and subsequent proclamation by the NSW Government.

This Interim Access Code is designed to apply to Services provided by natural gas distribution systems as defined under the Gas Supply Act 1996.

Definitions of all capitalised words can be found in the glossary at the end of this document.

1 Coverage

Application for Coverage

- 1.1 Any person may make a written application to the Regulator to request that a particular Pipeline be Covered.
- 1.2 The Regulator may recommend that the Pipeline not be Covered if the Regulator considers that the application has not been made in good faith.
- 1.3 Subject to this Code, the Regulator may, on its own initiative, recommend to the Minister that a particular Pipeline be Covered.
- 1.4 The Regulator must use reasonable endeavours following the receipt of the application for Coverage or before the Regulator proposes to make a recommendation pursuant to section 1.3 to:
 - (i) inform the Service Provider and other Interested Parties, in writing, that the Regulator has received an application for Coverage or the Regulator proposes to make a recommendation pursuant to section 1.3, and
 - (ii) publish in a national daily newspaper notification of the receipt of that application or proposed recommendation pursuant to section 1.3. The notification must include:

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- (a) a description of the Pipeline to which the application or the proposed recommendation pursuant to section 1.3 relates,
 - (b) information about how any person may obtain a copy of the application or the proposed recommendation pursuant to section 1.3, and
 - (c) a request for submissions from Interested Parties and the time by which any submissions must be received.

In the case of an application under section 1.1, the Regulator shall use its best endeavours to do these things within 14 days after receiving the application, but failure to do any or all of them within 14 days shall not invalidate any action taken or affect the application of the other provisions of this Code.

- 1.5 If the Service Provider, an Interested Party or the applicant makes a submission to the Regulator within 21 days following the date of the notification referred to in section 1.4(ii), then the Regulator must consider that submission in forming the recommendation referred to in section 1.6. The Regulator may consider submissions received after this time.
- 1.6 The Regulator must use reasonable endeavours within 35 days of the date of notification referred to in section 1.4 (ii) to:
 - (i) submit a written recommendation to the Minister:
 - (a) that the Pipeline be Covered, or
 - (b) that the Pipeline not be Covered, or
 - (c) that the Pipeline be Covered to a greater or lesser extent than is described in the application as the Minister considers appropriate, having regard to the part of the Pipeline that is necessary to satisfy the requirements of likely Prospective Users, and
 - (ii) make available the recommendation and reasons for the recommendation to all parties that made a submission pursuant to section 1.5.

Failure to do any or all of these things within the specified period of 35 days shall not invalidate any action taken or affect the application of the other provisions of this Code.

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- 1.7 The applicant may withdraw the application, or the Regulator may withdraw its recommendation pursuant to section 1.3, by notification in writing to the Minister at any time before the Minister makes a decision in respect of the Coverage of the Pipeline.
- 1.8 The applicant may be required to pay a fee as part of an application.
- 1.9 Subject to this Code:
- (i) if the Regulator is satisfied with all of the following matters, it must recommend that the Pipeline be Covered, either to the extent described, or to a greater or lesser extent than that described, in the application, and
 - (ii) if the Regulator is not satisfied with all of the following, it must recommend that the Pipeline not be Covered:
 - (a) that access (or increased access) to Services provided by means of that Pipeline would promote competition in at least one market (whether or not in Australia), other than the market for the Services catered for by that Pipeline,
 - (b) that it would be uneconomical for anyone to develop another Pipeline to provide the Services catered for by that Pipeline,
 - (c) that access (or increased access) to the Services provided by means of that Pipeline can be provided without undue risk to human health or safety, and
 - (d) that access (or increased access) to the Services provided by means of that Pipeline would not be contrary to the public interest.
- 1.10 If, at any time prior to the Regulator making a recommendation pursuant to section 1.6, the Service Provider notifies the Regulator in writing that the Service Provider would agree that the Pipeline be Covered, then the Regulator may recommend that the Pipeline be Covered without considering the matters listed in section 1.9. The Regulator must forward such a notice from the Service Provider to the Minister with its recommendation.
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Coverage Recommendation

- 1.11 After a Coverage recommendation is received by the Minister, the Minister must make a decision:
- (i) that the Pipeline be Covered, or
 - (ii) that the Pipeline not be Covered, or
 - (iii) that the Pipeline be Covered to such greater or lesser extent than that described in the application as the Minister considers appropriate, having regard to the part of the Pipeline that is necessary to satisfy the requirements of likely Prospective Users.
- 1.12 Subject to this Code:
- (i) if the Minister is satisfied with all of the matters listed in section 1.9, the Minister must decide that the Pipeline is Covered, either to the extent described, or to a greater or lesser extent than that described, in the application, and
 - (ii) if the Minister is not satisfied with all of the matters listed in section 1.9, the Minister must decide that the Pipeline is not Covered to any extent.
- 1.13 If the Regulator receives a notice under section 1.10, the Minister may decide that the Pipeline is Covered without being satisfied with the matters referred to in section 1.9.
- 1.14 The Minister may require the Regulator to provide information and other assistance and to make reports as specified for the purposes of consideration of the application or recommendation as he/she deems appropriate.
- 1.15 The Minister must use reasonable endeavours, within 21 days of receiving the Coverage recommendation to:
- (i) make a decision,
 - (ii) publish a notice of the decision in the Government Gazette, and
 - (iii) make available the reasons for the decision.

Failure to do these things within 21 days shall not invalidate any action taken at a later time, or affect the application of other provisions of this Code.

- 1.16 A decision on Coverage has effect on the date the decision is published in the Government Gazette or as otherwise specified in the decision.
- 1.17 The Regulator must establish and maintain a public register of all decisions made by the Minister pursuant to section 1.15, together with detailed descriptions of each Pipeline,
- 1.18 A decision by the Minister on whether a Pipeline should be Covered or should not be Covered is not a Determination under this Code.
- 1.19 Sections 1.1 to 1.18 of this Code do not apply to the Pipelines listed in Schedule A.

The Minister may make a decision that the Pipelines listed in Schedule A be Covered whether or not sections 1.1 to 1.18 have been complied with.

Seeking Opinion of Regulator

- 1.20 A Prospective Service Provider may request an opinion from the Regulator as to whether a proposed Pipeline would meet the criteria for Coverage pursuant to section 1.9.
- 1.21 The Regulator may provide an opinion in response to a request under section 1.20, but this opinion shall not bind the Regulator in any subsequent recommendation in respect of an application that the Pipeline be Covered.

Revocation of Coverage

- 1.22 Any person may make a written application to the Regulator to recommend to the Minister that Coverage of a particular Pipeline be revoked wholly or to an extent described in the application for revocation.
- 1.23 Where an application has been made pursuant to section 1.22, the Regulator may decide not to recommend that Coverage of the Pipeline be revoked if it considers the application has been made on trivial or vexatious grounds.

The processes, procedures and timelines for notification, submission and recommendation for revocation of Coverage are the same as those that apply for application for Coverage above (ie. sections 1.4 to 1.10) with wording substitution, where appropriate.

Revocation Recommendation

- 1.24 After a revocation recommendation is received by the Minister, the Minister must decide:
- (i) that the Coverage of the Pipeline be revoked, or
 - (ii) that the Coverage of the Pipeline not be revoked, or
 - (iii) that the Coverage of the Pipeline be revoked to a greater or lesser extent than is described in the application, having regard to the part of the Pipeline that is necessary to satisfy the requirements of likely Prospective Users.
- 1.25 If the Minister is satisfied of all of the matters listed in section 1.9, the Minister must decide not to revoke Coverage of the Pipeline to any extent. The Minister must decide to revoke Coverage of the Pipeline, either to the extent described or to a greater or lesser extent than that described in the application for revocation, if the Minister is not satisfied with all of the matters in section 1.9.
- 1.26 The Minister may require the Regulator to provide information and other assistance and to make reports as specified for the purposes of consideration of the application or recommendation as it deems appropriate.
- 1.27 The Minister must use reasonable endeavours, within 21 days of receiving the revocation recommendation to:
- (i) make a decision,
 - (ii) publish a notice of the decision in the Government Gazette, and
 - (iii) make available the reasons for the decision.

Failure to do any or all of these things within 21 days shall not invalidate any action taken after that time or affect the application of other provisions of this Code.

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- 1.28 A decision on revocation has effect on the date the decision is published in the Government Gazette or as otherwise specified in the decision.

A decision pursuant to section 1.27 is not a Determination under this Code.

- 1.29 The Regulator must update the public register referred to in section 1.17, together with detailed descriptions of each Pipeline in respect of which Coverage was revoked pursuant to those decisions.

2 Access Undertakings

Service Provider to Submit an Access Undertaking for a Covered Pipeline

- 2.1 An Access Undertaking for a Covered Pipeline must be established in accordance with sections 20(1), 20 (2) and 20(3) of the Gas Supply Act 1996.
- 2.2 The Regulator may require, or the Service Provider may propose and the Regulator may agree, that a separate Access Undertaking shall apply to different parts of a Covered Pipeline such that the separate Access Undertakings in total apply to the whole of the Covered Pipeline. In this case, section 2.1 shall require the Service Provider to submit the number of Access Undertakings corresponding to the parts of the Covered Pipeline as specified or agreed by the Regulator.
- 2.3 If a Pipeline is not Covered pursuant to section 1.16 or listed in Schedule A as referred to in section 1.19, the Service Provider may apply to the Regulator for approval of a proposed Access Undertaking for a Pipeline.
- 2.4 The proposed Access Undertaking submitted pursuant to sections 2.1 and 2.3 may include any relevant matter but must include at least the elements described in section 3. An applicable Access Undertaking Information must be submitted together with the proposed Access Undertaking.
- 2.5 The Access Undertaking should specify a period after which the Access Undertaking will lapse unless reviewed by the Regulator.

Public Consultation and Approval

- 2.6 At any time after the receipt of the applicable Access Undertaking Information and before a Determination is made under section 211, the Regulator may direct the Service Provider to make changes to the Access Undertaking Information. The Regulator must include the reasons for its decision and must specify a reasonable time by which the proposed Access Undertaking Information that rectifies the matters identified by the Regulator must be resubmitted.

This decision is not a Determination under this Code.

- 2.7 In making a decision under section 2.6, the Regulator may direct such information to be included in the Access Undertaking Information which, in the view of the Regulator, would enable Users and Prospective Users to understand the derivation of the elements in the proposed Access Undertaking. The Access Undertaking Information must include those categories of information described in Schedule B, but the Regulator may permit the re-categorisation and re-aggregation of data. The Regulator must not require the release of information that, in its view, could be harmful to the interests of a Service Provider, a User or a Prospective User.
- 2.8 If the Regulator decides that the Access Undertaking Information provided in relation to a proposed Access Undertaking is satisfactory, the Regulator must use reasonable endeavours to publish in a national daily newspaper, within 14 days after making that decision, notification of the receipt of the proposed Access Undertaking, and include in that notification at least:
- (i) a description of the Pipeline to which the proposed Access Undertaking relates,
 - (ii) information about how any Interested Parties may obtain a copy of the proposed Access Undertaking,
 - (iii) information about how any Interested Parties may obtain the Access Undertaking Information,
 - (iv) a request for submissions from any Interested Parties on the proposed Access Undertaking and the time by which any submissions must be received, and
 - (v) dates and venues of any proposed public hearings.

Failure to do any or all of these things within the specified period of 14 days shall not invalidate any action taken after that time or affect the operation of other provisions of this Code.

- 2.9 The Regulator must use reasonable endeavours to make available the proposed Access Undertaking, the Access Undertaking Information and any additional information within 7 days of receipt of a request from any Interested Party.
- 2.10 If an Interested Party or the applicant makes a submission to the Regulator on the proposed Access Undertaking within 28 days following the date of the notification referred to in section 2.8, then the Regulator must consider the submission in making the Determination referred to in section 2.11. The Regulator may consider submissions made after this time.
- 2.11 The Regulator must make a decision in relation to a Formally Lodged proposed Access Undertaking that:
- (i) approves the proposed Access Undertaking, or
 - (ii) does not approve the proposed Access Undertaking, or
 - (iii) varies and approves the proposed Access Undertaking as agreed between the Regulator and the Service Provider.

This decision by the Regulator is a Determination under this Code.

In a situation where a proposed Access Undertaking requires variations following the public consultation process, the Regulator has the discretion not to repeat the process outlined in section 2.8.

- 2.12 In assessing a proposed Access Undertaking, the Regulator must take the following into account:
- (i) whether the Access Undertaking would promote competitive market conduct, prevent the misuse of market power, and facilitate entry into the gas industry by Users,
 - (ii) the differences between Pipelines which are complex integrated networks and Pipelines which have simpler configurations,
 - (iii) the Service Provider's legitimate business interests,

- (iv) the costs to the Service Provider of providing access, including any costs of expanding the Pipeline, but not costs associated with losses arising from increased competition in upstream or downstream markets,
- (v) the economic value to the Service Provider of any additional investment that the Prospective User or the Service Provider may be required to incur,
- (vi) the legitimate business interests of all Users and Prospective Users,
- (vii) contractual or other binding obligations of the Service Provider and/or other persons already using Services provided by means of the Pipeline,
- (viii) the operational and technical requirements necessary for the safe and reliable operation of the Pipeline,
- (ix) the allocation of resources within the natural gas industry, the effect on investment, the impact on innovation and the operational efficiency of the Pipeline,
- (x) existing or proposed ring fencing arrangements, and
- (xi) the benefit to the public from having competitive markets.

2.13 The Regulator may refuse to approve a proposed Access Undertaking submitted pursuant to section 2.3 if the Regulator considers that separate Access Undertakings should apply to different parts of the Pipeline.

2.14 A Service Provider may withdraw a proposed Access Undertaking submitted pursuant to section 2.3 at any time prior to its approval by the Regulator. If a Service Provider withdraws the proposed Access Undertaking then it shall not be required to comply with a decision made pursuant to section 2.6.

2.15 A proposed Access Undertaking takes effect and becomes binding upon the Service Provider when the Determination by the Regulator to approve the proposed Access Undertaking comes into effect.

Access Orders

2.16 If an Access Undertaking is not established within the time specified under section 20 of the Gas Supply Act 1996, the Regulator may make an Access Order establishing the access conditions that are to apply to any access agreements entered into with respect to the Pipeline until an Access Undertaking is established with respect to the Pipeline.

2.17 An Access Order may include any relevant matter but must include at least the elements described in section 3.

An Access Order is a Determination under this Code.

Review of an Access Undertaking

2.18 The proposed Access Undertaking must include a date at which time the Access Undertaking will be reviewed and a proposed new Access Undertaking is submitted. The period from the date a proposed new Access Undertaking is approved to the date the Service Provider is required to submit a proposed new Access Undertaking must not be more than five years but must be of sufficient duration to enable any applicable incentive mechanisms to work effectively. The Access Undertaking may include:

- (i) a shorter review period to account for transitional issues, and/or
- (ii) definitions of specific major events that may trigger a review prior to a planned date.

2.19 Certain principles may be fixed (Fixed Principles) for a certain period and not subject to change during a review of the Access Undertaking without the agreement of the Service Provider.

2.20 A Fixed Principle may include any Structural Element, but in assessing whether any Structural Element may be a Fixed Principle regard must be had to the interests of the Service Provider and the interests of Users and Prospective Users. A Market Variable Element cannot be a Fixed Principle. The Fixed Period may be for part or all of the duration of an Access Undertaking, but in determining a Fixed Period regard must be had to the interests of the Service Provider and the interests of Users and Prospective Users.

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- 2.21 The approved Access Undertaking is current until the date of its expiry or until such time as a new Access Undertaking is established, whichever is earlier.
- 2.22 At the date provided for in the Access Undertaking, the Service Provider must submit to the Regulator a new Access Undertaking together with the applicable Access Undertaking Information.
- 2.23 At any time after the receipt of applicable Access Undertaking Information and before a Determination to approve or not approve the new Access Undertaking, the Regulator may require the Service Provider to make changes to the Access Undertaking Information. The Regulator must include the reasons for its decision and must specify a reasonable time by which the proposed Access Undertaking Information that rectifies the matters identified by the Regulator must be resubmitted.
- 2.24 The process, procedures and timelines for notification, submission and recommendation for review of a proposed new Access Undertaking are as outlined in sections 2.6 to 2.12 above, with wording substitution where appropriate.
- 2.25 A new Access Undertaking becomes binding upon the Service Provider when the Determination by the Regulator to approve the new Access Undertaking comes into effect.

Changes to an Approved Access Undertaking between Reviews

- 2.26 Other than as provided for under sections 2.18 and 2.21, once an Access Undertaking comes into effect, an Access Undertaking may only be changed:
- (i) with the agreement of the Service Provider,
 - (ii) with the approval of the Regulator, and
 - (iii) after completion the same process that would apply for the approval of an Access Undertaking, unless the proposed change to the Access Undertaking is considered minor by the Regulator, in which case the Regulator has the discretion not to use the same process which would apply to the approval of an Access Undertaking.

3 Content of an Access Undertaking

Services to be Offered

- 3.1 The Service Provider must include in the proposed Access Undertaking a policy on the Service or Services to be offered (a 'Service Policy').
- 3.2 The proposed Service Policy must comply with the following:
- (i) The Access Undertaking must include a description of one or more Services that the Service Provider will make available to Users or Prospective Users and at least one of these Services must correspond to the type of Service that is likely to be sought by a significant part of the market.
 - (ii) To the extent practicable and reasonable, a User or Prospective User must be able to obtain a Service which includes only those elements that the User or Prospective User wishes to be included in that Service.
 - (iii) A User or Prospective User must be able to obtain a Service which excludes an element which is obtainable, or is likely to be obtainable, only from a person other than the Service Provider.
 - (iv) Where an element of a Service is obtainable, or is reasonably likely to be obtainable, only from a person other than the Service Provider, then the Service Provider must provide a separate Tariff for that element of the Service if this is requested by a User or Prospective User.
 - (v) To the extent practicable and reasonable, a Service Provider shall provide a separate Tariff in regard to an element of a Service if this is requested by a User or Prospective User.

Reference Tariffs

- 3.3 The Service Provider must include in the proposed Access Undertaking one or more Reference Tariffs. At least one Reference Tariff must relate to a Service that is likely to be sought by a significant part of the market.

- 3.4 Any Reference Tariff included in the proposed Access Undertaking must comply with the Reference Tariff Principles described in section 8.

Capacity Trading

- 3.5 The Access Undertaking must include a policy that explains the rights of a User to trade its right to obtain a Service to another person (a 'Trading Policy').
- 3.6 The Trading Policy should where technically relevant include the following principles:
- (i) A User shall be permitted to make Bare Transfer of part or all of its Contracted Capacity to another person or to make a Substituted Transfer of part or all of its Contracted Capacity if it has first obtained the written approval of the Service Provider. The Service Provider may withhold its approval on reasonable commercial or technical grounds, or the Service Provider may make its approval subject to conditions being adhered to that are reasonable on commercial and technical grounds, but the Service Provider must not otherwise withhold its approval or place conditions on its approval. The Trading Policy may specify conditions in advance under which approval will or will not be given and conditions that must be adhered to as a condition of approval being given.
 - (ii) A User shall be permitted to change the Delivery Point or Receipt Point from any which may be specified in the contract for the relevant Service if it has first obtained the written approval of the Service Provider. The Service Provider may withhold its approval on reasonable commercial or technical grounds, or the Service Provider may make its approval subject to conditions being adhered to that are reasonable on commercial and technical grounds, but the Service Provider must not otherwise withhold its approval or place conditions on its approval.
 - (iii) The Trading Policy may specify conditions in advance under which approval will or will not be given and conditions that must be adhered to as a condition of approval being given.

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- (iv) The Service Provider may offer a Service which does not include the provisions of clauses 3.6 (i) and (ii), if the Service Provider also offers a Service which incorporates those provisions as an alternate Service which the User may at its option purchase.

Queuing Policy

- 3.7 The Access Undertaking must include a policy for allocating Spare Capacity and Developable Capacity between Prospective Users (a 'Queuing Policy').
- 3.8 The Queuing Policy should where practicable, comply with the following:
- (i) To be allocated a place in the Queue, persons must comply with the conditions set out in the Queuing Policy. Persons must be admitted to the Queue in order of their compliance with those conditions. The Queuing Policy may include a requirement that Prospective Users satisfy reasonable prudential requirements. The Service Provider must promptly notify Prospective Users of their acceptance onto the Queue.
 - (ii) The Queuing Policy must specify the conditions necessary to maintain a place in the Queue. The position of any person in the Queue shall not be affected by that person declining to pay a surcharge for Developable Capacity but may be affected by the person declining to accept an offer for the Service requested at the Reference Tariff.
 - (iii) Prospective Users on a Queue must not transfer their positions in the Queue to another person, except where a business that has a position in the Queue is sold in good faith, in which case the position in the Queue may be transferred together with that business.
 - (iv) To the extent that it is commercially and technically reasonable, there must be separate Queues for each Service. If there is more than one Queue, then the Queuing Policy must describe the priority relationships between the different Queues.

- (v) On being granted a position on a Queue, a Prospective User must be promptly informed of
 - (a) its position in the Queue,
 - (b) the aggregate Capacity that is sought by Prospective Users who are ahead in the Queue,
 - (c) an indication of when tranches of Developable Capacity may become available, and
 - (d) the size of any surcharge that may apply to that Developable Capacity.
 - (vi) A Prospective User must be promptly provided with updated information when there is a change in:
 - (a) the Prospective User's place in the Queue,
 - (b) the Capacity sought by the Prospective Users ahead in the Queue, and
 - (c) the timing of when a new tranche of Developable Capacity may become available.
 - (vii) A User seeking to extend its right to obtain a Service after the expiration of a contract must be treated as a Prospective User seeking to obtain the same Service unless the User has an option to renew its right to obtain the Service, in which case the option may validly extend only to the right to obtain the original Service or such other Service which does not utilise greater Capacity than the Contracted Capacity for the original Service. Notwithstanding this, the Queuing Policy may give such rights to Users who market Natural Gas to tariff consumers as are reasonably necessary to ensure the reasonable security of supply.
- 3.9 For Services provided by means of a Pipeline or a part, or parts, of a Pipeline which comprises a complex integrated network:
- (i) the Regulator may waive or modify one or more of the requirements in section 3.8 (v) and/or 3.8 (vi) if such requirements are not technically or commercially reasonable, and

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- (ii) where capacity is location dependent, the Regulator may approve a Queuing Policy that provides for the allocation of Spare Capacity or Developable Capacity to a Prospective User regardless of the order of acceptance into a Queue if such an allocation would not prejudice the prospects of a Prospective User with Priority on the Queue.

4 Ring Fencing Arrangements

Minimum Obligations

- 4.1 A person that is a Service Provider in respect of a Covered Pipeline (and which may also be a Service Provider in respect of a Pipeline that is not Covered) must within 6 months of the commencement of this Code, and thereafter continue to:
- (i) be a legal entity incorporated pursuant to the Corporations Law, a statutory corporation, a government or an entity established by royal charter,
 - (ii) not carry on any business other than a Transportation Business,
 - (iii) establish and maintain a separate set of accounts in respect of the services that are the subject of each Access Undertaking,
 - (iv) establish and maintain a separate consolidated set of accounts in respect of all of the activities undertaken by the Service Provider,
 - (v) allocate any costs that are shared between an activity that is covered by more than one set of accounts described in section 4.1 (iii) or section 4.1 (iv) and any other activity according to a methodology for allocating costs that is well accepted and is fair and reasonable,
 - (vi) ensure that all Confidential Information provided by a User or Prospective User is used only for the purpose for which that information has been provided, and to ensure that such information is not disclosed to any other person without the approval of the User or Prospective User who

provided the information, except where the Service Provider is required to disclose that information under this Code or a law of the Commonwealth, a State or Territory of Australia or the official listing rules of any relevant recognised stock exchange,

- (vii) ensure that all Confidential Information obtained by the Service Provider or by its servants, consultants, independent contractors or agents in the course of conducting its business, which might reasonably be expected to affect materially the commercial affairs of a User or Prospective User, is not disclosed to any other person without the approval of the User or Prospective User to whom that information pertains, except where the Service Provider is required to disclose that information under this Code or a law of the Commonwealth, a State or Territory of Australia or the official listing rules of any relevant recognised stock exchange, and
- (viii) ensure that the Marketing Staff of a Service Provider are not also servants, consultants, independent contractors or agents of an Affiliate that takes part in Related Business and in the event that they become or are found to be involved in Related Business contrary to this section, must procure their immediate removal from the Marketing Staff.

Additional Obligations

- 4.2 The Minister, after considering advice from the Regulator, may require the Service Provider to meet obligations in addition to those in section 4.1, having regard to the following objectives:
- (i) to ensure that a Service Provider does not have regard to the interests of an Affiliate in priority to the interests of other Users or Prospective Users with respect to the supply of Services (save as provided for on a basis dealing fairly between all Users and Prospective Users by any applicable Queuing Policy), and
 - (ii) to ensure that ring fencing measures do not impose unreasonable compliance costs on the Service Provider.

4.3 The additional measures referred to in section 4.2 may include any one or more of the following requirements:

- (i) that the Service Provider must ensure that the Additional Staff of a Service Provider are not also servants, consultants, independent contractors or agents of an Affiliate that takes part in Related Business and in the event that they become or are found to be involved in Related Business contrary to this section, must procure their immediate removal from the Additional Staff,
- (ii) that no director of the Service Provider is also a director of a company (whether or not an Affiliate) that takes part in Related Business or is or may become a User,
- (iii) that the electronic, physical and procedural security measures employed in respect of the offices of the Service Provider and of all offices of its Affiliates are satisfactory to the Regulator.

A requirement by the Minister for the Service Provider to meet additional ring fencing obligations is not a Determination under this Code.

Compliance Procedures and Compliance Reporting

4.4 The Service Provider must establish and maintain appropriate internal procedures to ensure it complies with its obligations pursuant to sections 4.1 and 4.2. The Regulator may require the Service Provider to demonstrate the adequacy of these procedures upon reasonable notice.

Any statement made or assurance given by the Regulator regarding the adequacy of the Service Provider's compliance procedures shall not vary the Service Provider's obligations under sections 4.1 and 4.2.

4.5 The Service Provider must provide a report to the Regulator, at a reasonable frequency as determined by the Regulator, describing the measures the Service Provider has undertaken to ensure compliance with the obligations under this section, and providing an accurate assessment of the extent to which those measures have achieved the objectives described in section 4.1 and 4.2.

- 4.6 The Service Provider must provide a written report of any breach of the requirements imposed by or under sections 4.1 to 4.4 inclusive to the Regulator immediately upon becoming aware that the breach has occurred.

Waiver of the Obligation to have Separate Marketing Staff

- 4.7 The Minister may vary or waive any of the Service Provider's obligations under section 4.1 (viii), where the Minister considers the administrative costs to a Service Provider from complying with that obligation outweigh any public benefit arising from the meeting of those requirements.

5 Information and Timeliness for Negotiation

General Requests from Prospective Users

- 5.1 The Service Provider must establish and maintain an Information Package in relation to each Covered Pipeline that contains at least the following information:
- (i) the Access Undertaking and Access Undertaking Information for the relevant Pipeline,
 - (ii) information relating to all Spare Capacity and Developable Capacity of the relevant Pipeline,
 - (iii) information relating to all relevant trunk and mains systems for the relevant Pipeline, and
 - (iv) a description of the Service Provider's procedures relating to specific access requests.

The Regulator, in approving an Access Undertaking, may require the Service Provider to include any information in the Information Package which the Regulator considers may assist Users or Prospective Users and may require that the Information Package be revised on a regular basis in accordance with the requirements of the Regulator.

The Service Provider must provide the Information Package to all Interested Parties making a written request for the Information Package. The Service Provider must not charge for providing the Information Package and must provide it within 14 days of receiving the request.

Specific Requests from Prospective Users

- 5.2 A Service Provider must, within 30 days (subject to the Queuing Policy contained in the Access Undertaking), respond in writing to an access request from a Prospective User:
- (i) confirming that Spare Capacity exists to satisfy the request and specifying the charges and terms and conditions upon which the Service Provider will make the Service available, or
 - (ii) advising that Spare Capacity does not exist to satisfy the request, or
 - (iii) advising that investigations are required to be undertaken prior to responding to the request.
- 5.3 If the Service Provider advises that investigations are required to be undertaken prior to responding to the request, it must also advise the Prospective User of:
- (i) the nature of the investigations,
 - (ii) the programme contemplated for completing the investigations, and
 - (iii) any costs which the Prospective User may be required to meet in respect of the investigations.
- Upon obtaining the Prospective User's consent to the programme and the proposed allocation of costs, the Service Provider shall proceed forthwith with the agreed program.
- 5.4 If the Service Provider advises that the Capacity does not exist to satisfy the request, it must provide a written explanation outlining those aspects of the request which cannot be satisfied and indicating, based on current commitments, when the requirement might be able to be satisfied. The Service Provider must also provide the Prospective User with a copy of its Queuing Policy.
- 5.5 The time limit for responding to a specific access request commences once the Prospective User has provided information reasonably sufficient to enable the Service Provider to respond to the request for access.

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- 5.6 Unless otherwise agreed, Confidential Information between the User and the Service Provider about either parties must be kept confidential to the parties except where that information is required by the Regulator or Arbitrator.

Information Provided by Users to the Service Provider

- 5.7 Where:

- (i) a User has a contract to obtain a quantity of a Service, and
- (ii) the User is not using the full contracted quantity of Service, or is projected not to use the full contracted quantity of Service, and
- (iii) the quantity of Service that is not being used or is projected to not be used, and the period during which that quantity of Service will not be used or is projected not to be used, makes the unused quantity of Service a Marketable Parcel for that Service,

the User shall notify the Service Provider that it has a Marketable Parcel of a Service. This advice shall include the quantity of that Service that is available or is projected to be available, and the period during which that quantity of Service will be available or is projected to be available and may include a summary of the proposed terms and conditions of sale relating to that capacity, including price.

Public Register of Capacity

- 5.8 The Service Provider must establish and maintain a public register which includes:
- (i) information as to any Spare Capacity that it reasonably expects to exist in relation to the Pipeline (including the quantity, type and timing of the Spare Capacity and the terms and conditions relating to its supply),
 - (ii) information as to any Developable Capacity that it reasonably expects to be available in relation to the Pipeline (including the quantity, type and timing of the Developable Capacity and the terms and conditions relating to its supply), and
 - (iii) information provided to the Service Provider by a User pursuant to section 5.7 (iii).

6 Dispute Resolution

Arbitration of Access Disputes

- 6.1 The arbitration is to be conducted pursuant to section 23 of the Gas Supply Act 1996.

Guidance for the Arbitrator

- 6.2 In arbitrating a dispute, the Arbitrator must take account of the provisions of the Access Undertaking. In addition, the Arbitrator **must** take into account:
- (i) whether access would promote competitive market conduct, prevent the misuse of market power, and facilitate entry into the gas industry by Users which are not Affiliates of the Service Provider,
 - (ii) the differences between Pipelines which are complex integrated networks and Pipelines which have simpler configurations,
 - (iii) the Service Provider's legitimate business interests,
 - (iv) the costs to the Service Provider of providing access, including any costs of expanding the Pipeline, but not costs associated with losses arising from increased competition in upstream or downstream markets,
 - (v) the economic value to the Service Provider of any additional investment that the Prospective User or the Service Provider may be required to incur,
 - (vi) the legitimate business interests of all Users and Prospective Users,
 - (vii) contractual or other binding obligations of the Service Provider and/or other persons already using Services provided by means of the Pipeline,
 - (viii) the operational and technical requirements necessary for the safe and reliable operation of the Pipeline,
 - (ix) the allocation of resources within the natural gas industry, the effect on investment, the impact on innovation and the operational efficiency of the Pipeline,
 - (x) existing or proposed ring fencing arrangements, and
 - (xi) the benefit to the public from having competitive markets.

6.3 A decision made by the Arbitrator in arbitrating a dispute is a Determination under this Code. This Determination may deal with any matter relating to the provision of a Service to a Prospective User and any other matter identified in this Code that is to be enforced through section 6. By way of example, the Determination may:

- (i) require the Service Provider to enter into a contract to provide a Service to a Prospective User at a specified Tariff and on certain terms and conditions, or
- (ii) require the Service Provider to increase the Capacity of the Pipeline, or
- (iii) require the Service Provider to allow a User to alter the delivery point specified in a contract for a Service, applying the provisions of the Access Undertaking.

The Determination does not have to require the Service Provider to enter into a contract to provide a Service to the Prospective User, nor does it have to require a Prospective User to enter into a contract with a Service Provider.

6.4 The Arbitrator may refuse to make a Determination that requires the Service Provider to provide a particular Service to a Prospective User if the Arbitrator considers there is substantial competition in the market for the provision of the Service in question.

6.5 Notwithstanding section 6.2, the Arbitrator will have regard to any Reference Tariffs in the Access Undertaking but is not bound by them in making a Determination.

Restrictions on Determinations

6.6 Unless required by section 6.7 and subject to the Queuing Policy contained in the Access Undertaking, the Arbitrator must not make a Determination that:

- (i) is inconsistent with the Access Undertaking,
- (ii) would prevent a User from obtaining a sufficient amount of the Service to be able to meet its requirements as provided for by a contract for a Service,

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- (iii) impedes the existing right of a person to use a facility unless the Arbitrator has considered whether there is a case for compensation of that person and, if appropriate, determined such compensation, or
 - (iv) affects the priority right of another person in a Queue, except where the dispute relates to the application of the Queuing Policy.

Disputes About the Capacity of a Pipeline

- 6.7 Subject to the Queuing Policy contained in the Access Undertaking, where the Arbitrator is satisfied that the Service Provider believes on reasonable grounds that there is insufficient Capacity within safe operating limits and prudent pipeline practice to accommodate a Prospective User's requirements for a Service:
- (i) the Arbitrator must not make a Determination that grants access to the Service, and
 - (ii) the Arbitrator may require the Service Provider to offer a similar Service on an interruptible basis and for the corresponding interruptible price where possible, and
 - (iii) the Service Provider must disclose to the Prospective User the assumptions it has used to calculate the Capacity of the Pipeline, and provide the Prospective User (at the cost of the Prospective User) with the option of having an independent expert provide a (non-binding) opinion regarding the Capacity of the Pipeline.

Obligation to Develop Capacity

- 6.8 The Arbitrator may require the Service Provider to install a New Facility in order to expand the Capacity of a Pipeline to meet the requirements of a Prospective User, provided that:
- (i) the Service Provider must not be required to extend the geographical range of a Service,
 - (ii) the expansion is technically and economically feasible and consistent with the safe and reliable provision of the Service,
 - (iii) the Service Provider's legitimate business interests are protected,

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- (iv) the Prospective User must not become owner of a Pipeline or part of a Pipeline without the agreement of the Service Provider,
 - (v) the terms of access for the third party must take into account the costs borne by parties for the extension and the economic benefits to the parties resulting from the extension, and
 - (vi) the Service Provider must not be required to fund part or all of the New Facility, except where the Service Provider has agreed to the expenditure on the New Facility and its timing being assumed in the calculation of the Reference Tariff, in which case the terms of the Access Undertaking shall determine the funding arrangements.

Prospective User may Decide not to Take a Service

- 6.9 Where a Determination pursuant to section 6.3 requires the Service Provider to provide a Service under terms and conditions specified in the Determination, the Prospective User must, within 14 days following the date at which the Determination is made, notify the Arbitrator and the Service Provider, in writing, if it intends to enter into a binding contract with the Service Provider in accordance with the terms and conditions specified in the Determination.

Obligation to Reflect the Determination in a Contract

- 6.10 Subject to section 6.9, the Arbitrator, in making a Determination, shall require the Service Provider and Prospective User to represent that Determination in the form of a binding contract within 28 days, with the Arbitrator resolving the form of any contract terms and conditions that have not been resolved within that time. Thereafter, the contract governs their relationship.
- 6.11 If the Service Provider or the User or Prospective User lodges an appeal against the Arbitrator's Determination, the Arbitrator may require that the Arbitrator's Determination is put into effect until the appeal is concluded, unless the parties agree not to put the Determination into effect until the appeal is heard. Any change to the Arbitrator's Determination pursuant to the appeal must not have a retrospective effect.

Reseevation of Capacity During an Access Dispute

- 6.12 No priority rights of a User or Prospective User party to an access dispute shall be altered during the period of that dispute until the Arbitrator's Determination has been made pursuant to section 6.3, or during the period of an Appeal pursuant to section 7.8.

Awarding of the Costs of Arbitration

- 6.13 Subject to the Commercial Arbitration Act 1984, the Arbitrator has the discretion to order a party or parties to pay some or all of the Arbitrator's costs.
- 6.14 Subject to the Commercial Arbitration Act 1984, the Arbitrator has the discretion to order a party or parties to pay some or all of another party's or any third party's costs.

Time Limits for the Dispute Resolution Process

- 6.15 The Arbitrator must use reasonable endeavours to make a decision in arbitrating the dispute within 42 days following the date of the notification of the dispute.
- A decision made by the Arbitrator in arbitrating a dispute is a Determination.
- 6.16 The Arbitrator may extend the time limits for any stage of the dispute resolution process where the circumstances warrant it, but may not extend the time limit to beyond double the stated limit without the agreement of the parties to the dispute.

7 General Regulatory and Miscellaneous Provisions**Hindering**

- 7.1 Persons must not undertake any activity for the purpose of hindering access to a Service that is provided by a Covered Pipeline.

Approval of Regulator Required for Affiliate Contracts

- 7.2 No Service Provider may enter into an Affiliate Contract without first obtaining the written approval of the Regulator. The Regulator shall not refuse to approve an Affiliate Contract unless

it considers that that contract would have the effect, or would be likely to have the effect, of substantially lessening, preventing or hindering competition in a market.

The decision to approve or not approve an Affiliate Contract is a Determination.

Determinations

- 7.3 A Determination by the Regulator shall be published in the Government Gazette and shall take effect from the date of its publication.
- 7.4 Prior to making a Determination, the Regulator shall make available a draft Determination to interested parties and provide such parties with the opportunity to make a written or other submission on the draft Determination, except in regard to section 7.2 where the Regulator is required to make available a draft Determination to parties to the proposed Affiliate Contract, and to seek their comments on the draft Determination.
- 7.5 The Regulator must establish and maintain a public register of all Determinations which may include, at the discretion of the Regulator, a summary of the reasons for the Determination, the parties involved, and any other information the Regulator considers relevant. Subject to section 7.6, this register must exclude information the Regulator considers may damage the legitimate business interests of a User, Prospective User or Service Provider.
- 7.6 The public register referred to in section 7.5 must include at least the information stated below for Determinations pursuant to section 2.11:
 - (i) the valuation derived from employing the different asset valuation methodologies pursuant to section 8.6, the Initial Capital Base for a Pipeline that is in existence at the commencement of the Code and reasons for that decision (as determined pursuant to sections 8.5 to 8.8), and detailed reasons if the Initial Capital Base for a Pipeline that is in existence at the commencement of the Code is outside the range of values determined according to sections 8.6 (i) and 8.6 (ii).

- (ii) details of where the assumptions behind the Access Undertaking differ from the assumptions described in the Access Undertaking Information and reasons for that difference.

7.7 The Service Provider may apply to the Minister, under section 26(1) of the Gas Supply Act 1996, for a review of a Determination of the Regulator on the grounds that the Determination contains:

- (i) a clerical error, or
- (ii) an error arising from an accidental slip or omission, or
- (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the Determination.

[The Minister will appoint the Appeal Body in accordance with section 29 of the Gas Supply Act 1996 to review the Determination.]

7.8 An Interested Party may apply to the Minister, under section 26(2) of the Gas Supply Act 1996, for a review of the Arbitrator's Determination, with respect to the terms of an access Determination, on the grounds that the Determination contains:

- (i) a clerical error, or
- (ii) an error arising from an accidental slip or omission, or
- (iii) a material miscalculation of figures or a material mistake in the description of any person, thing or matter referred to in the Determination.

[The Minister will appoint the Appeal Body in accordance with section 29 of the Gas Supply Act 1996 to review the Determination.]

7.9 The Regulator is required to provide any relevant information to the Appeal Body to assist in its decision making process.

7.10 The time limits applying for appeals against Determinations are as follows:

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- (i) A party must lodge an appeal with the Minister within 28 days after notice of the Determination was given to the Party.
 - (ii) The Appeal Body must use reasonable endeavours to make a final decision within 28 days of the Appeal Body being established under section 29 of the Gas Supply Act 1996.

7.11 The payment of costs associated with an appeal by the parties involved in the appeal process is as established by the Regulations under the Gas Supply Act 1996.

Provision of Information to the Regulator

7.12 The Regulator may require that the Service Provider provide to it any information that the Regulator reasonably considers it requires:

- (i) to fulfil its functions under this Code,
- (ii) to be able to form a view as to whether a proposed Access Undertaking or a proposed revision meets the requirements of the Code,
- (iii) to monitor compliance by a Service Provider with any approved Access Undertaking,
- (iv) to monitor any contract entered into by a Service Provider,
- (v) to conduct a review of a proposed Access Undertaking,
- (vi) to monitor a Service Provider's compliance with any of its obligations under this Code, and
- (vii) to resolve access disputes.

7.13 For example, such information may include:

- (i) all cost, volume, capacity, pricing methodology and other assumptions adopted in the calculation of any Tariff or Tariffs,
- (ii) technical information, and
- (iii) contracts entered into by the Service Provider.

- 7.14 The Regulator may commission an independent audit of:
- (i) the assets that form part of the Relevant Pipeline, and/or
 - (ii) any Non Capital Cost.
- 7.15 The Regulator may specify the content, form and due date for the submission of information that it requires.
- 7.16 The Regulator may refer any matter that it reasonably considers may give rise to an action under any law of the Commonwealth, States or Territories to the appropriate regulatory body. It must notify the relevant parties of any such action.

Regulator may Grant Extensions to Time Limits

- 7.17 The Regulator may, at its discretion, grant extensions to any time period in this Code provided that a written application for that extension has been received by it before the expiration of the time period in question.

8 Pricing Principles

Objective

- 8.1 A Reference Tariff should provide Users and Prospective Users with outcomes that replicate a competitive market, consistent with:
- (i) providing the Service Provider with a commercial sustainable revenue stream which is consistent with an appropriate return on Capital Base,
 - (ii) the safe and reliable operation of the Pipeline,
 - (iii) not distorting investment decisions in Pipeline transportation systems, or in upstream and downstream industries, and
 - (iv) the level and structure of the Reference Tariff being efficient.

Overview of Process for Initial and On-going Tariff Determination

- 8.2 The process will involve determining the asset base, the revenue requirement and/or average prices and the sales volumes of the Service Provider, then allocating the revenue requirement against the different pipeline services in a fair and equitable way that reflects the contribution of those services to costs, and finally calculating tariffs for service. The following principles will be taken into account when determining appropriate tariffs for service:
- (i) measures that give the Service Provider the incentive to reduce costs and develop the market. This could include the overall rate of return target and the Reference Tariff or Tariffs being predetermined for the period between major reviews, and an explicit sharing of revenues in excess of the target between the Service Provider and System Users such as a CPI-x price capping mechanism, and
 - (ii) overall financial performance of the Service Provider based on the selection of financial indicators and any national or international benchmarks, after allowing for the impact of external factors to be removed for those indicators for comparable situations.

Capital Base

Sections 8.3 to 8.13 of these principles are designed to provide guidance regarding the valuation of assets and the depreciation of those assets used to deliver Services over their life for tariff making purposes. It is not intended that these sections dictate the adoption of a single depreciation structure, but rather leave it open for a Regulator to approve any structure which satisfies the principles.

- 8.3 The Capital Base is the value of the part or parts of a Pipeline that is used to provide any Reference Service and which may also provide Non Reference Services (the 'Relevant Pipeline,'). The Capital Base at the beginning of the first Reference Tariff Period is the Initial Capital Base.
- 8.4 The Capital Base at the beginning of any Reference Tariff Period subsequent to the first Reference Tariff Period is:

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- (i) the Capital Base at the start of the immediately preceding Reference Tariff Period,
 - (ii) plus New Facilities Investment in the immediately preceding Reference Tariff Period,
 - (iii) less Depreciation for the immediately preceding Reference Tariff Period,
 - (iv) less Redundant Capital identified in the immediate preceding Reference Tariff Period,
 - (v) plus or minus any changes in necessary working capital and other like items.

Initial Capital Base—Existing Pipelines

- 8.5 Where a Relevant Pipeline is in existence at the commencement of the Code, the Initial Capital Base is as determined according to the principles in sections 8.6 and 8.7. Where a Relevant Pipeline comes into existence after the commencement of the Code, the Initial Capital Base is as determined pursuant to section 8.9. Where an Access Undertaking has expired, the Initial Capital Base is as determined pursuant to section 8.10.
- 8.6 In determining the Initial Capital Base at the time at which an Access Undertaking is approved (pursuant to a Determination under section 2.11) for a Pipeline that is in existence at the commencement of the Code, regard shall be had to:
- (i) the value that would result from taking the actual cost of the Relevant Pipeline and subtracting the accumulated depreciation for the Pipeline that has been charged to Users (or is thought to have been charged to Users) prior to the commencement of the Code, and
 - (ii) the value that would result from the application of the depreciated optimised replacement cost methodology.
 - (iii) the value that would result from the application of other well recognised asset valuation methodologies
 - (iv) the net working capital of the Service Provider, including cash and equivalents, inventories and supplies, unbilled transport, the effect of accounts receivable, payable, and other non-interest bearing liabilities, etc.

- 8.7 The Initial Capital Base at the time at which an Access Undertaking is approved (pursuant to a Determination under section 2.11) for a Pipeline that is in existence at the commencement of the Code normally should not fall outside the range of values determined according to sections 8.6 (i) and 8.6 (ii).
- 8.8 In determining the Initial Capital Base at the time at which an Access Undertaking is approved (pursuant to a Determination under section 2.11) for a Pipeline that is in existence at the commencement of the Code, regard must be had to the following:
- (i) the range of values determined pursuant to section 8.6 and the advantages and disadvantages that may be identified for each valuation methodology,
 - (ii) international best practice for Pipelines in comparable situations,
 - (iii) the basis on which Tariffs have been (or appear to have been) set in the past, the depreciation of the Relevant Pipeline, and the historical returns to the Service Provider from the Relevant Pipeline,
 - (iv) the contracted Tariffs for existing Users,
 - (v) the reasonable expectations of Interested Parties under the regulatory regime that applied to the Pipeline prior to the commencement of the Code,
 - (vi) the impact on the economically efficient utilisation of gas resources,
 - (vii) the comparability with the cost structure of new Pipelines that may compete with the Pipeline in question (for example, a Pipeline that may by-pass some or all of the Pipeline in question), and
 - (viii) past user contributions.

Initial Capital Base—New Pipelines

- 8.9 Where a Pipeline comes into existence after the commencement of this Code, the Initial Capital Base at the time at which the Pipeline first enters into service is the capital cost of the Relevant Pipeline.

Initial Capital Base—After the Expiry of an Access Undertaking

- 8.10 Where an Access Undertaking has expired, the Initial Capital Base at the time at which a new Access Undertaking is approved (pursuant to a Determination under section 2.11), where relevant, is the Capital Base that would have applied under section 8.4 had the previous Access Undertaking remained in force.

Depreciation Schedule

- 8.11 The Depreciation Schedule is the set of depreciation schedules (one of which may correspond to each asset or group of assets that form part of the Relevant Pipeline) that is the basis upon which the assets that form part of the Capital Base are to be depreciated for the purposes of determining Reference Tariffs.
- 8.12 The Depreciation Schedule shall be designed:
- (i) so as not to front-end a Reference Tariff artificially nor be used to protect a Service Provider from Competition and new entry,
 - (ii) so that each asset or group of assets that form part of the Relevant Pipeline is depreciated over the life of that asset or group of assets,
 - (iii) so that, to the maximum extent that is reasonable, the Depreciation Schedule for each asset (or group of assets) that form part of the Relevant Pipeline is adjusted over the life of that asset (or group of assets) to reflect changes in the expected life of that asset (or group of assets), and
 - (iv) subject to section 8.22, so that the value of the Depreciation that is attributable to any asset or group of assets is equivalent to the value of that asset or group of assets at the time at which the value of that asset or group of assets was first included in the Capital Base pursuant to sections 8.3 or 8.4 (with the present value calculated using the Rate of Return pursuant to sections 8.23 and 8.24).
- 8.13 In implementing the principles in section 8.12, regard must be had to the reasonable cash flow needs for Non Capital Costs, financing cost requirements and similar needs of the Service Provider.

New Facilities Investment

Sections 8.14 to 8.21 are intended to permit the ‘prudent’ and ‘economically feasible’ portion of New Facility Expenditure to be brought into the Capital Base of a Reference Service immediately, and to permit the remainder of any New Facility Expenditure to be brought into the Capital Base at a later date as the New Facility becomes utilised. That part of the New Facilities Expenditure will be carried forward at a rate of return that reflects the greater risk associated with its market.

- 8.14 New Facilities Investment is that portion of New Facilities Expenditure by which the value of the Capital Base may be increased pursuant to sections 8.15 to 8.21.
- 8.15 New Facilities Investment must adhere to the following principles:
- (i) New Facilities Expenditure must not exceed the costs which would be incurred by a prudent Service Provider, acting efficiently, in accordance with accepted and good industry practice, to achieve the lowest sustainable cost of delivering Services, and
 - (ii) the Anticipated Incremental Revenues generated by the New Facilities Investment must exceed the New Facilities Investment (the ‘economic feasibility’ test), or
 - (iii) the Service Provider and/or Users must convince the Regulator that the New Facility has sufficient system-wide benefits to justify the approval of a higher Reference Tariff for all Users (the ‘User benefits’ test), or
 - (iv) the New Facility will maintain the safety, integrity and Contracted Capacity of Services.
- 8.16 Where the investment would not be New Facilities Investment pursuant to section 8.15, but where a Service Provider wishes to proceed with the investment, then that portion of the investment which satisfies sections 8.15 (i) and 8.15 (iii) or 8.15 (iv) (the ‘Recoverable Portion’) is New Facilities Investment.
- 8.17 The difference between the investment and the Recoverable Portion is a Speculative Investment. The Speculative Investment may be increased annually by the Rate of Return (adjusted for risk) that would apply to the Recoverable Portion of the investment.

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- 8.18 Should, at any time, the level of use of the New Facilities increase such that all or an increased amount of that investment would be reclassified as part of the Recoverable Portion, then the value of the New Facilities Investment at the next tariff review shall be increased by the extent of such increase in the Recoverable Portion and the Speculative Investment shall be reduced accordingly.
- 8.19 The value of the New Facilities Investment need not be increased pursuant to section 8.18 where the change in the type and volume of Services provided by means of Capacity that is not attributable to the Recoverable Portion of an investment is solely or substantially due to the sale of Opportunistic Services.
- 8.20 Where an investment would not be a New Facilities Investment pursuant to section 8.15, the Service Provider may undertake the investment on the basis of an Incremental User agreeing to meet all or part of the cost of the investment which is in excess of the Recoverable Portion. Any such agreement may be structured such that subsequent Users of the Capacity that is made available as a result of the investment (and where those Users could not have been serviced if the investment had not taken place) share in meeting the cost of the investment in excess of the Recoverable Portion.
- 8.21 Where an Incremental User and a Service Provider agree that an investment as envisaged in section 8.20 will take place, the Recoverable Portion shall be New Facilities Investment. Any contribution made by the Incremental User(s) must be deducted from the value of the investment but in all other respects sections 8.18 and 8.19 shall apply to that investment.

Capital Redundancy

The purpose of section 8.22 is to ensure that assets which cease to add value to the Reference Service are not built into a Reference Tariff

- 8.22 There should be an appropriate sharing between the Service Provider and Users of the risk (and cost) of assets or groups or classes of assets that form part of the Capital Base becoming partly redundant (Redundant Capital). An appropriate mechanism to achieve this sharing of capital redundancy is to use a Deemed Sales Volume when determining a Reference Tariff.

Rate of Return and Future Revenue Stream

A range of financial indicators, including the rate of return, should be taken into account in determining the opening value of the Initial Capital Base, and as a route to assessing the reasonableness of the network operator's revenue requirement.

- 8.23 The Rate of Return should reflect a level of return which is commensurate with prevailing conditions in the market for funds and the risk involved in delivering each Reference Service (as reflected in the terms and conditions on which each Reference Service is offered and any other risk associated with delivering those Reference Services).
- 8.24 The Rate of Return may be set on the basis of a weighted average of the return that is applicable to each source of funds (equity, debt and any other source of funds). Such returns may be determined on the basis of a well accepted financial model, such as the Capital Asset Pricing Model. The weighted average of such returns may be calculated by reference to a financing structure that reflects industry standard structures for a going concern and best practice.

Non Capital Costs

- 8.25 Non Capital Costs are the lesser of the expenditure incurred by the Service Provider on operating, maintenance and other costs in relation to delivery of all Reference Services and that expenditure which would be incurred by a prudent Service Provider, acting efficiently, in accordance with accepted and good industry practice, and to achieve the lowest sustainable cost of delivering all Reference Services.

Reference Tariff

- 8.26 That portion of the Non Capital Costs, Depreciation and Rate of Return on the Capital Base that can be attributed directly to providing the Reference Service is the Direct Cost. That portion of the Non Capital Costs, Depreciation and Rate of Return on the Capital Base that is attributable to more than one Service is the Joint Cost.

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- 8.27 To the maximum extent that is commercially and technically reasonable, a Reference Tariff shall be designed, on the basis of best reasonable forecasts of all relevant factors (including the Reference Service Volume), to deliver a stream of revenue over the Reference Tariff Period given by:
- (i) the Direct Cost plus a share of the Joint Cost where that share of the Joint Cost is calculated according to a methodology that is fair and reasonable, but
 - (ii) notwithstanding (i), that stream of revenue may include part of all of the Joint Cost that would be allocated under (i) to a Rebatable Service (were that Service a Reference Service), provided that an appropriate portion of any revenue realised from sales of any such Rebatable Service is rebated to Users of the Reference Service (either through a reduction in the Reference Tariff or through a direct rebate to the relevant User or Users).
- 8.28 The structure of a cost allocation/rebate mechanism under section 8.27 (ii) should be determined having regard to:
- (i) the need to provide the Service Provider with the incentive to promote the efficient use of Capacity, including through sales of Rebatable Services, and
 - (ii) the right of Users of the Reference Service to share in the gains from additional sales of Services including from sales of Rebatable Services.
- 8.29 Where agreed by the Regulator, the stream of revenue described in section 8.27 may be calculated by deducting the forecast revenues from services sold at a price other than the Reference Tariff, where:
- (i) the nature of the market in which a User or Prospective User operates, or the price of alternative fuels available to the User or Prospective User, is such that a Service, if priced at the nearest Reference Tariff, would not be used by that User or Prospective User, and
 - (ii) Reference Tariffs calculated without regard to the revenues of that User or Prospective User would be greater than if the Reference Tariff were calculated having regard to the revenues of that User or Prospective User served at a price other than the Reference Tariff,
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- (iii) a determination by the Arbitrator shall be considered by the Regulator to have met the requirements in (i) and (ii).
 - (iv) the calculation of the revenues from services sold at a price other than the Reference Tariff may be undertaken by:
 - (a) deeming the price to be other than the price at which the Service Provider and the User or Prospective User have agreed,
 - (b) deeming the volume to be other than the volume at which the Service Provider and the User or Prospective User have agreed, or
 - (c) otherwise determining the revenue from the Service to be other than the revenue at which the Service Provider and the User or Prospective User have agreed.

8.30 The Reference Tariff shall:

- (i) reflect, to the maximum extent that is commercially and technically reasonable, the factors which influence the cost of providing the Reference Service, and
- (ii) be designed, to the maximum extent reasonable, to promote the efficient allocation of resources, lower Charges overall, and optimise New Facilities Expenditure and use of the Pipeline.

Use of Incentive Mechanisms

8.31 The Reference Tariff may contain a mechanism that permits the Service Provider to retain all, or a share of, any returns to the Service Provider from the sale of a Reference Service during a Reference Tariff Period that exceeds the level of returns expected at the beginning of a Reference Tariff Period (an “Incentive Mechanism”). Such additional returns may result, amongst other things, from lower Non Capital Costs or greater Reference Service Volumes than forecast.

8.32 An Incentive Mechanism may include (but is not limited to) the following:

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- (i) specifying the Reference Tariff that will apply during each year of the Reference Tariff Period based on forecasts of all relevant variables (and which may assume that the Service Provider can achieve defined efficiency gains) regardless of the realised values for those variables,
 - (ii) specifying a target for revenue from the sale of all Services provided by means of the Relevant Pipeline, and specifying that a certain proportion of any revenue received in excess of that target shall be retained by the Service Provider and that the remainder must be used to lower the Tariffs of all Services provided by means of the Relevant Pipeline (or to provide a rebate to Users of the Relevant Pipeline), and
 - (iii) a rebate mechanism for Rebatable Services pursuant to section 8.27 (ii) that provides for less than a full rebate of revenues from the Rebatable Services to the Users of the Reference Service.

8.33 An Incentive Mechanism should be designed to deliver the following objectives:

- (i) to provide the Service Provider with the incentive to increase the volume of sales of all Services, but to avoid providing an artificial incentive to favour the sale of one Service over another,
- (ii) to provide the Service Provider with the incentive to minimise overall costs attributable to providing those Services, consistent with the safe and reliable provision of such Services,
- (iii) to provide the Service Provider with the incentive to develop new Services in response to the needs of the market for Services,
- (iv) to provide the Service Provider with the incentive to undertake only prudent New Facilities Expenditure (section 8.15 (ii)) and to incur only prudent Non Capital Costs (section 8.25), and for this incentive to be taken into account when determining the prudence of New Facilities Expenditure and Non Capital Costs, and

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- (v) to ensure that Users and Prospective Users gain from increased efficiency, innovation and volume of sales (but not necessarily in the Reference Tariff Period during which such increased efficiency, innovation and volume of sales occurs).

Glossary

Access Order means an Order of the type referred to in section 21 of the Gas Supply Act 1996.

Access Undertaking has the same meaning as in the Gas Supply Act 1996.

Access Undertaking Information means information provided by a Service Provider to the Regulator for Interested Parties.

Additional Staff means the personnel deemed by the Regulator to be sufficiently involved in the sale, sale provision or advertising of Natural Gas.

Affiliate means, in relation to a Service Provider:

- (i) any entity controlled, directly or indirectly, by the Service Provider,
- (ii) any entity that controls, directly or indirectly, the Service Provider, or
- (iii) any entity directly or indirectly under common control with the Service Provider,

where an entity is taken to 'control' another where it:

- (i) controls the composition of the first entity's board,
- (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the first entity, or
- (iii) holds more than one half of the issued share capital of the first entity (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

Affiliate Contract means:

- (i) a contract between the Service Provider and an Affiliate for the provision of a Service, or
- (ii) a contract between the Service Provider and any person for the provision of a Service which provides a direct or indirect benefit to an Affiliate and which is not an arm's length transaction.

Anticipated Incremental Revenues means the present value (calculated at the Rate of Return) of the reasonably anticipated future revenue from the sale of Services at the Prevailing Tariffs which would not have been generated without the Incremental Capacity, minus the present value (calculated at the Rate of Return) of the best reasonable forecast of the increase in Non Capital Costs directly attributable to the sale of those Services.

Appeal Body means the Review Panel established pursuant to the Gas Supply Act 1996.

Arbitrator means the Independent Pricing and Regulatory Tribunal, or such person or persons appointed under section 23(3) of the Gas Supply Act 1996.

Backhaul Service means a Service where the direction of the contractual deliveries of Natural Gas is opposite to the physical flow of Natural Gas in the Pipeline.

Bare Transfer means a transfer or assignment of any interest in any person's right to obtain a Service (including, without limitation, a sub-licence) in which the contract between the Service Provider and the transferor or assignor remains in effect in terms identical to those existing between the Service Provider and the transferor or assignor immediately prior to that transfer or assignment.

Capacity means the measure of the potential of a Pipeline as currently configured to deliver a particular Service between a Receipt Point and a Delivery Point at a point in time.

Charge, for a Service, means the revenue that is payable by a User to the Service Provider for that Service.

Confidential Information means information that is by its nature confidential or is known by the party disclosing, or proposing to disclose, it to be confidential and includes:

- (i) any information relating to the financial position of a party and in particular includes information relating to the assets or liabilities of the party and any other matter that does or may affect the financial position or reputation of the party,

- (ii) information relating to the internal management and structure of the party or the personnel, policies and strategies of the party,
- (iii) information of the party to which the other party has access, other than information referred to in paragraphs (i) and (ii), that has any actual or potential commercial value to the first party or to the person or corporation which supplied that information, and
- (iv) any information in the party's possession relating to the other party's clients or suppliers and like information.

Contracted Capacity means that part of the Capacity which has been reserved by a User or Users pursuant to a contract entered into with the Service Provider.

Coverage means, in respect of a Pipeline, that the Pipeline is one to which the provisions of this Code apply.

Covered, in relation to a Pipeline, means declared by the Minister to be a Pipeline to which Division 2 of Part 2 of the Gas Supply Act 1996 applies.

Delivery Point means the point or points within the Pipeline at which the custody of Natural Gas is transferred from a Service Provider to a User.

Deemed Sales Volume means a volume of sales of the Reference Service that departs from the actual sales of the Reference Service or the best reasonable forecasts of sales of the Reference Service.

Depreciation means, in any year and on any asset or group of assets, the amount calculated according to the Depreciation Schedule for that year and for that asset or group of assets.

Determination means any decision identified by this Code as such (being a decision to which the provisions of section 7 apply).

Developable Capacity means the difference between the Capacity and the Capacity which would be available if additions of plant and/or pipeline were made, but does not include any extension of the geographic range of a Service.

Fixed Principle means an element of the Reference Tariff Methodology that can not be changed as a result of a review (pursuant to a Determination under section 2.11) without the agreement of the Service Provider. The period during which the Fixed Principle may not be changed is the Fixed Period.

Formally Lodged in relation to a proposed Access Undertaking means an Access Undertaking submitted to the Regulator with a request for a formal approval under section 20 of the Gas Supply Act 1996.

Government Gazette means the New South Wales Government Gazette.

Incremental Capacity means the increase in Capacity attributable to a New Facility.

Incremental User means a User that could not have been serviced without the addition of the Incremental Capacity.

Incremental Revenue means revenue generated by sales of Incremental Capacity.

Interested Party means:

- (i) in the case of a Determination under section 6, the Service Provider and the other party or parties to the dispute, and
- (ii) for other matters, any person in respect of whom the person making the relevant decision is satisfied has a sufficient interest in the matter.

Interruptible Service means a Service where there is a substantial probability that the Service may be stopped for a period according to conditions or with the occurrence of events that are specified in the contract for the Service.

Market Variable Element means a factor that has a value assumed in the calculation of a Reference Tariff, where the value of that factor will vary with changing market conditions during the Reference Tariff Period or in future Reference Tariff Periods, and includes the Reference Sales Volume, any index used to estimate the general price level, real interest rates, Non Capital Cost and any costs in the nature of capital costs.

Marketable Parcel means all or part of a User's Contracted Capacity which the User reasonably expects:

- (i) that the User will not utilise,
- (ii) to be of a size and type capable of being sold to another User or to a Prospective User, and
- (iii) to be able to be sold at a cost which is less than the price which that User would receive from another User or Prospective User.

Marketing Staff means operational personnel directly involved in the sale, sale provision and advertising of Natural Gas. Marketing Staff does not include:

- (i) officers involved in strategic decision making within the company, including the executive officer or officers to whom the operational personnel report either directly or indirectly, or
- (ii) technical, administrative, accounting or service personnel.

Minister means the Minister administering the Gas Supply Act 1996.

Natural Gas means a naturally occurring mixture of hydrocarbon and non-hydrocarbon gases, the principal constituent of which is methane.

New Facilities Expenditure means the costs, in the nature of capital costs, of a New Facility that is used to provide any Reference Service.

New Facility means an addition to a Pipeline.

Non Capital Cost means the operating, maintenance and other costs incurred in the delivery of all Reference Services.

Non Reference Service means any Service that does not have a Reference Tariff, and includes a Service provided to a foundation User where this Service does not have a Reference Tariff.

Opportunistic Service means a Service where there is substantial uncertainty surrounding the likelihood of future ongoing sales of such a Service.

Pipeline has the same meaning as the expression “distribution system” in section 19 of the Gas Supply Act 1996.

Prospective Service Provider means a person which seeks or which may seek to carry on Transportation Business in respect of a Pipeline.

Prospective User means a person which seeks or which may seek to enter into a contract for a Service and includes a User which seeks or may seek to enter into a contract for an additional Service.

Rebatable Service is a Service where:

- (i) there is substantial uncertainty regarding expected future revenue from sales of that Service due to the nature of the Service and/or the market for that Service, and
- (ii) the nature of the Service and the market for that Service is substantially different to any Reference Service and the market for that Reference Service and may include (without limitation) an Interruptible Service and a Backhaul Service.

Receipt Point means the point or points within the Pipeline at which the custody of Natural Gas is transferred from a User to a Service Provider.

Redundant Capital means an asset or class of assets that does not provide any benefit to the provision of a Service.

Reference Service means a Service which is specified in an Access Undertaking and in respect of which a Reference Tariff has been specified in that Access Undertaking.

Reference Tariff means a Tariff specified in an Access Undertaking as corresponding to a Reference Service.

Reference Tariff Period means the period from when a Reference Tariff takes effect until the time at which a new Reference Tariff takes effect.

Regulator means the Independent Pricing and Regulatory Tribunal.

Related Business means the production, purchasing or selling of Natural Gas.

Relevant Pipeline means the part or parts of a Pipeline used to calculate the Capital Base.

Required Incremental Capacity means that portion of the Incremental Capacity that is required to deliver the type and volume of Services that are assumed in calculating the Recoverable portion of New Facilities Expenditure.

Services means a haulage service provided by means of a Pipeline, and may include firm haulage, interruptible haulage, spot haulage, storage, balancing, backhaul and interconnection services and services ancillary to the operation of a Pipeline but does not include the production, sale or, purchasing of Natural Gas.

Service Provider has the same meaning as “reticulator” in Division 2 of Part 2 of the Gas Supply Act 1996.

Spare Capacity means:

- (i) the difference between the Capacity and the Contracted Capacity, plus
- (ii) the difference between the Contracted Capacity and the Contracted Capacity which is being used.

Speculative Capacity is the difference between the Incremental Capacity and the Required Incremental Capacity.

Structural Element means any principle or methodology that is used in the calculation of a Reference Tariff where that principle or methodology is independent of any market variable element, and includes the Depreciation Schedule, the financing structure that is assumed for the purposes of section 8.22, and that part of the Rate of Return that exceeds the return that could be earned on an asset that does not bear any market risk.

Substituted Transfer means a transfer or assignment of any interest in any person’s right to obtain a Service (including, without limitation, an assignment) in which the contract between the Service Provider and the transferor or assignor either does not remain in effect or remains in effect with terms not identical to those existing between the Service Provider and the transferor or assignee immediately prior to that transfer or assignment.

Tariff for a Service, means the criteria that, when applied to a User's characteristics and requirements, determine the Charge that is payable by that User to the Service Provider (this shall not provide any limitation on the Tariff that may apply to a Service).

Transportation Business means any of the following, and only the following, activities:

- (i) designing, constructing, maintaining, operating or owning Pipelines,
- (ii) providing technical consultancy services and technical support services for someone who designs, constructs, maintains, operates or owns a Pipeline,
- (iii) investing in Pipelines (and in other companies that own Pipelines), and
- (iv) marketing Services

and does not include a Related Business.

User means “system user” as defined in the Gas Supply Act 1996.

Schedule A Pipelines that may be declared by the Minister

The pipelines that may be declared by the Minister pursuant to section 19 of the Gas Supply Act 1996 as provided in section 1.19 of this Code.

- (i) Distribution systems in NSW, including any extensions thereof, owned and/or operated by the AGL Gas Company (NSW) Limited.
- (ii) Distribution systems in NSW, including any extensions thereof, owned and/or operated by the Albury Gas Company Limited.

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Schedule B Information disclosure by a service provider to interested parties

Schedule B information disclosure by a service provider to interested parties

Categories of information to be disclosed by the Service Provider to Interested Parties as part of the Access Undertaking Information

Access & Pricing Principles

Tariff determination methodology

Cost allocation approach

Incentive structures

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 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

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

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

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Information disclosure by a service provider to interested parties

Schedule B

System Capacity & Volume Assumptions

Description of system capabilities

Map of piping system—pipe sizes, distances and maximum delivery capabilities

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

Key Performance Indicators

Industry KPI’s used by regulator to assess “reasonably incurred” costs

Service Provider’s KPI’s for each pricing zone, service or category of asset