

# **National Third Party Access Code for Natural Gas Pipeline Systems: Seventh Amending Agreement**

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**BETWEEN**

**THE COMMONWEALTH OF AUSTRALIA**

**THE STATE OF NEW SOUTH WALES**

**THE STATE OF VICTORIA**

**THE STATE OF QUEENSLAND**

**THE STATE OF SOUTH AUSTRALIA**

**THE STATE OF WESTERN AUSTRALIA**

**THE AUSTRALIAN CAPITAL TERRITORY and**

**THE NORTHERN TERRITORY**

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## National Third Party Access Code for Natural Gas Pipeline Systems: Seventh Amending Agreement

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| <b>Date</b>     | 16 April 2003   |
| <b>Parties</b>  | <ol style="list-style-type: none"> <li>1. <b>The Commonwealth of Australia</b></li> <li>2. <b>The State of New South Wales</b></li> <li>3. <b>The State of Victoria</b></li> <li>4. <b>The State of Queensland</b></li> <li>5. <b>The State of South Australia</b></li> <li>6. <b>The State of Western Australia</b></li> <li>7. <b>The Australian Capital Territory</b></li> <li>8. <b>The Northern Territory</b></li> </ol>   |
| <b>Recitals</b> | <p>A On 7 November 1997, the Parties signed the Natural Gas Pipelines Access Agreement with the objective of establishing a uniform national framework for third party access to natural gas pipelines.</p> <p>B Under the Natural Gas Pipelines Access Agreement, the Parties agreed upon a uniform “Gas Pipelines Access Law”, which included a “National Third Party Access Code for Natural Gas Pipeline Systems”.</p> <p>C In accordance with the Natural Gas Pipelines Access Agreement, the State of South Australia passed the Gas Pipelines Access (South Australia) Act 1997, which applied the Gas Pipelines Access Law (comprising Schedule 1 (Third Party Access to Natural Gas Pipelines) and Schedule 2 (National Third Party Access Code for Natural Gas Pipeline Systems (the <b>Code</b>)) as a law of South Australia.</p> <p>D In accordance with the Natural Gas Pipelines Access Agreement, each other Party (except the State of Western Australia) passed application legislation applying the Gas Pipelines Access Law as set out in Schedules 1 and 2 to the Gas Pipelines Access (South Australia) Act 1997, as laws of that Party. The State of Western Australia has enacted the Gas Pipelines Access (Western Australia) Act 1998, which has essentially identical effect to the Gas Pipelines Access (South Australia) Act 1997 and applies the Gas Pipelines Access Law as set out in Schedules to the Western Australian Act as a law of the State of Western Australia.</p> |

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| E | Section 6 of Schedule 1 of the Gas Pipelines Access Law and section 9 of the Code establish a procedure whereby the Code may be amended.   |
| F | On 18 February 2003, in accordance with section 9 of the Code and section 6(1) of Schedule 1 of the Gas Pipelines Access Law, the National Gas Pipelines Advisory Committee recommended to Relevant Ministers that certain amendments be made to the Code. |
| G | The Relevant Ministers being not less than two-thirds of all Relevant Ministers, have agreed, in accordance with section 6(3) of Schedule 1 of the Gas Pipelines Access Law, to amend the Code as set out in this Agreement.                               |
| H | The purpose of the amendments made by this Agreement is to clarify the intended operation of certain sections of the Code to better reflect the underlying purposes of the Code.   |

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## Operative Provisions

### 1. Interpretation

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1.1 This Agreement may be referred to as the National Third Party Access Code for Natural Gas Pipeline Systems: Seventh Amending Agreement.

1.2 In this Agreement, unless the contrary intention appears, capitalised terms not otherwise defined have the meaning given in the Code and:

**Code** means the National Third Party Access Code for Natural Gas Pipeline Systems set out in Schedule 2 to the Gas Pipelines Access (South Australia) Act 1997 (as amended) and Schedule 2 to the Gas Pipelines Access (Western Australia) Act 1998 (as amended); and

**Parties** means the parties to this Agreement.

### 2. Commencement

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Clauses 3, 4 and 5 of this Agreement have effect on and from the day on which a copy of this Agreement is published in the South Australian Government Gazette.

### 3. Amendment of section 8

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3.1 In section 8.4 for paragraph (a) under the heading 'Cost of Service', **substitute:**

- (a) a return (**Rate of Return**) on the value of the capital assets that form the Covered Pipeline or are otherwise used to provide Services (**Capital Base**);

3.2 In section 8.9 for the words 'Covered Pipeline and as a result of parts of the Covered Pipeline' in the first paragraph **substitute:**

capital assets that are used to provide Services and as a result of capital assets

- 3.3 In sections 8.9(b) and 8.9(e) at the beginning of each paragraph **insert:**
- subject to sections 8.16(b) and sections 8.20 to 8.22,
- and from the end of each paragraph **delete:**
- (adjusted as relevant as a consequence of section 8.22 to allow for the differences between actual and forecast New Facilities Investment)
- 3.4 For section 8.15 **substitute:**
- The Capital Base for a Covered Pipeline may be increased from the commencement of a new Access Arrangement Period to recognise additional capital costs incurred in constructing, developing or acquiring New Facilities for the purpose of providing Services (***New Facilities Investment***).
- 3.5 For section 8.16 **substitute:**
- (a) Subject to sections 8.16(b) and sections 8.20 to 8.22, the Capital Base may be increased under section 8.15 by the amount of the actual New Facilities Investment in the immediately preceding Access Arrangement Period provided that:
- (i) that amount does not exceed the amount that would be invested by a prudent Service Provider acting efficiently, in accordance with accepted good industry practice, and to achieve the lowest sustainable cost of providing Services; and
- (ii) one of the following conditions is satisfied:
- (A) the Anticipated Incremental Revenue generated by the New Facility exceeds the New Facilities Investment; or
- (B) the Service Provider and/or Users satisfy the Relevant Regulator that the New Facility has system-wide benefits that, in the Relevant Regulator's opinion, justify the approval of a higher Reference Tariff for all Users; or
- (C) the New Facility is necessary to maintain the safety, integrity or Contracted Capacity of Services.
- (b) If pursuant to section 8.20 the Relevant Regulator agrees to Reference Tariffs being determined on the basis of forecast New Facilities Investment, the Capital Base may be increased by the amount of the New Facilities Investment forecast to occur within the new Access Arrangement Period determined in accordance with sections 8.20 and 8.21 and subject to adjustment in accordance with section 8.22.
- 3.6 For section 8.21 **substitute:**
- The Relevant Regulator may at any time at its discretion agree (with or without conditions or limitations) that actual New Facilities Investment by a Service Provider meets, or forecast New Facilities Investment proposed by a Service Provider will meet, the requirements of Section 8.16(a), the effect of which is to bind the Relevant Regulator's decision when the Relevant Regulator considers revisions to an Access Arrangement submitted by the Service Provider. Before giving any agreement under this section 8.21, the Relevant Regulator must conduct public consultation in accordance with the requirements for a proposed revision to the Access Arrangement submitted under section 2.28. For the avoidance of doubt, if the Relevant Regulator does not agree under this section that the New Facilities Investment meets, or (in the case of forecast New Facilities Investment) will meet, the requirements of section 8.16(a), the Relevant Regulator may consider whether those requirements are met when it considers revisions to an Access Arrangement submitted by the Service Provider.

3.7 In section 8.22 for the second sentence **substitute**:

This includes how the Capital Base at the commencement of the next Access Arrangement Period will be adjusted if the actual New Facilities Investment or Recoverable Portion (whichever is relevant) is different from the forecast New Facilities Investment (with this decision to be designed to best meet the objectives in section 8.1).

3.8 In sections 8.33(b) and (c) and in the first paragraph of section 8.34, for the words 'Covered Pipeline' **substitute** 'Capital Base'.

#### 4. Amendment of section 10

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4.1 For the definition of 'New Facility' in section 10.8 of the Code **substitute**:

**'New Facility'** means:

- (a) any extension to, or expansion of the Capacity of, a Covered Pipeline which is to be treated as part of the Covered Pipeline in accordance with the Extensions/Expansions Policy contained in the Access Arrangement for that Covered Pipeline;
- (b) any expansion of the Capacity of a Covered Pipeline required to be installed under section 6.22; and
- (c) any capital asset constructed, developed or acquired to enable the Service Provider to provide Services including, but not limited to, assets required for the purposes of facilitating competition in retail markets for Natural Gas.

4.2 For the definition of 'New Facilities Investment' in section 10.8 of the Code **substitute**:

**'New Facilities Investment'** has the meaning given in section 8.15.'

4.3 For the definition of 'Service' in section 10.8 of the Code **substitute**:

**'Service'** means:

- (d) a service provided by means of a Covered Pipeline (or when used in section 1 a service provided by means of a Pipeline) including (without limitation):
    - (i) haulage services (such as firm haulage, interruptible haulage, spot haulage and backhaul); and
    - (ii) the right to interconnect with the Covered Pipeline, and
  - (e) services ancillary to the provision of such services,
- but does not include the production, sale or purchasing of Natural Gas.

#### 5. Consequential amendments

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5.1 In sections 8.12, 8.18, 8.19, 8.20, 8.28, 8.46(d) and 8.49 of the Code, for 'section 8.16' wherever it occurs **substitute** 'section 8.16(a)';

5.2 In sections 8.17, 8.26 and 8.49 of the Code, for 'section 8.16(a)' wherever it occurs **substitute** 'section 8.16(a)(i)'; and

5.3 In section 8.49(a) of the Code, for the reference to 'section 8.16(b)(i)' **substitute** 'section 8.16(a)(ii)(A)'.

5.4 In sections 3.18(a)(ii), 8.27 and the overviews to sections 5 and 7 **delete** 'provided by means of a Covered Pipeline' or, as the case may be, 'provided by means of the Covered Pipeline' wherever it occurs.

- 5.5 In section 8.4(c), 8.33(a) and 8.34(d) **delete** 'provided by the Covered Pipeline' or, as the case may be, 'provided by the Pipeline' wherever it occurs.
- 5.6 In the overview to paragraph 8 under the heading 'Principles for determining the Total Revenue:
- (f) in the first paragraph **delete** 'provided by the Covered Pipeline'; and
  - (g) in the first bullet point (Cost of Service), after 'Covered Pipeline' **insert** 'or are otherwise used to provide Services'.
- 5.7 In section 8.19 for 'type and volume of services provided using the increase in Capacity attributable to the New Facility' **substitute** 'type or volume of Services provided using the New Facility'.

## **6. Counterparts**

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This Agreement may consist of a number of counterparts and if so the counterparts taken together constitute one and the same instrument.

**SIGNED by**

The Honourable Ian Macfarlane )  
Minister for Industry, Tourism and )  
Resources of the Commonwealth of )  
Australia )

The Honourable Kim Yeadon MP )  
Minister for Energy of the State of New )  
South Wales )

The Honourable Theo Theophanous MLA )  
Minister for Energy, Industries and )  
Resources of the State of Victoria )

The Honourable Paul Lucas MP )  
Minister for Innovation and Information )  
Economy and Minister with responsibility )  
for Energy of the State of Queensland )

The Honourable Patrick Conlon MP, )  
Minister for Energy of )  
the State of South Australia )

The Honourable Eric Ripper MLA )  
Deputy Premier, Treasurer and Minister )  
for Energy of the State of Western Australia )

Mr Ted Quinlan MLA, Treasurer )  
of the Australian Capital )  
Territory )

The Honourable Paul Henderson MLA, )  
Minister for Business, Industry and Resource )  
Development of the Northern Territory of )  
Australia )

