



Western Australia

Gas Pipelines Access (Western Australia) Act 1998 2

National Third Party Access Code for Natural Gas Pipeline Systems

National Third Party Access Code for Natural Gas Pipeline Systems

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**SCHEDULE A — PIPELINES TO
BE COVERED FROM
COMMENCEMENT OF THE
CODE**

Notes

Compilation table 188

Defined terms

Western Australia

Gas Pipelines Access (Western Australia) Act 1998 ²

[This is a copy of Schedule 2 to the Gas Pipelines Access (Western Australia) Act 1998 in its amended form.]

National Third Party Access Code for Natural Gas Pipeline Systems

[s. 3(1), 11, Sched. 1 cl. 1]

National Third Party Access Code for Natural Gas Pipeline Systems

INTRODUCTION

This Code establishes a national access regime for natural gas pipeline systems.

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

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

Under the Code, the owner or operator of a Pipeline that is Covered under the Code is required to lodge an Access Arrangement with the Relevant Regulator. The Access Arrangement is similar in many respects to an undertaking under

Part IIIA of the Trade Practices Act and is designed to allow the owner or operator of the Covered Pipeline to develop its own Tariffs and other terms and conditions under which access will be made available, subject to the requirements of the Code. The Relevant Regulator will seek comments on the Access Arrangement and then may either accept it or reject it and specify amendments it requires to be made to the Access Arrangement. If rejected, the Access Arrangement must be modified and resubmitted. Under certain circumstances, the Relevant Regulator may draft and approve its own Access Arrangement. The legislation which implements the Code provides for administrative review of certain regulatory decisions made under the Code.

Important features of the Code are:

- Coverage - the mechanism by which Pipelines (including distribution systems) become subject to the Code;*
- reliance on an up-front Access Arrangement outlining Services and Reference Tariffs applicable to a Covered Pipeline;*
- pricing principles;*
- ring fencing;*
- information disclosure requirements;*
- binding arbitration where there is a dispute; and*
- specific timelines for all processes.*

The aim of the Code is to provide sufficient prescription so as to reduce substantially the number of likely arbitrations, while at the same time incorporating enough flexibility for the parties to negotiate contracts within an appropriate framework. The Code has also been designed to provide a clear national access regime, with consistency between different jurisdictions.

This introduction to the Code and the overview in italics at the beginning of each section of the Code do not form part of the Code but in certain circumstances regard may be had to them in interpreting the Code (see Sections 10.4 and 10.5).

1. COVERAGE

This section of the Code describes the kinds of gas infrastructure which are subject to the Code and the basis on which particular infrastructure is or may become subject to the Code.

In relation to the first issue, the scope of the Code is limited to Pipelines used for the haulage of Natural Gas. The definition of Pipeline includes

gas transmission pipelines and distribution networks and related facilities, but excludes upstream facilities.

In relation to the second issue, a Pipeline may become Covered in one of four ways.

- Schedule A lists the Pipelines which are automatically Covered by the Code (section 1.1).*
- In relation to other Pipelines, a case by case approach applies under which specific criteria are applied to individual Pipelines to determine whether they are Covered (sections 1.2-1.19).*
- In addition, where a Pipeline is not Covered a Service Provider may itself request Coverage by proposing an Access Arrangement for the Pipeline to the Relevant Regulator for approval (sections 1.20 and 2.3).*
- Finally, if a competitive tender process approved by the Relevant Regulator is used to select the Service Provider for a new Pipeline, that new Pipeline will be Covered from the time the Relevant Regulator approves the outcome of the competitive tender (section 1.21).*

The Code accordingly provides a high degree of certainty for the Pipelines identified in Schedule A, while retaining the flexibility to bring in other or new Pipelines on a case-by-case basis. Additional flexibility to respond to changing circumstances exists as a result of the potential for Coverage to be Revoked where the criteria for Coverage cease to be satisfied.

In simple terms, the process for case by case Coverage is as follows:

- any person may seek Coverage of a Pipeline by applying to the National Competition Council (the NCC);*
- the NCC publishes a public notice on the application and seeks submissions, including from the Service Provider;*
- the NCC considers the submissions and makes a recommendation to the Relevant Minister, applying specified criteria; and*
- the Relevant Minister considers the recommendation and decides on Coverage.*

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The term “Pipeline” is defined in the Gas Pipelines Access Law to include part of a Pipeline. Consequently, an application can be made for the Coverage of the whole or any part of a Pipeline provided the Pipeline or the relevant part of the Pipeline is owned or operated by the same Service Provider or group of Service Providers.

The process for Revocation is similar to the process for Coverage.

As a decision to Cover a Pipeline or revoke Coverage of a Pipeline can have major commercial implications for the Service Provider and Prospective Users, the Gas Pipelines Access Law provides a mechanism for review of the decision by the Relevant Appeals Body.

An extensions/expansions policy in the Access Arrangement for a Covered Pipeline will define when an extension to, or expansion of the Capacity of, a Covered Pipeline will be treated as part of the same Covered Pipeline and when that extension or expansion is to be regarded as a separate Pipeline which may be the subject of a separate Coverage application.

1.1 Pipelines in Schedule A are Covered

Each Pipeline listed in Schedule A is a Covered Pipeline from the date of commencement of the Code.

1.2 NCC to Recommend on an Application for Coverage

Pipelines other than those listed in Schedule A may become Covered after the commencement of the Code where a person applies to the NCC for the Pipeline to be Covered and, after receiving a recommendation from the NCC, the Relevant Minister decides that the Pipeline should be Covered.

1.3

Any person, including the Relevant Regulator, may make an application to the NCC requesting that a particular Pipeline be Covered. A single application may be made under this section 1.3 for the Coverage of the whole or any part of a Pipeline, provided that all of that Pipeline, or all of that part of a Pipeline, is owned or operated by the same Service Provider or group of

Service Providers. The NCC may publish guidelines concerning the form and content of Coverage applications and specifying the amount of any fee to be paid on the making of an application. If it does so, applications must be made in accordance with those guidelines.

1.4

When the NCC receives an application under section 1.3 the NCC must:

- (a) if it considers that the application has been made on trivial or vexatious grounds, reject the application without further consideration; and
- (b) in all other cases within 14 days after receipt of the application:
 - (i) inform the Service Provider and each other person known to the NCC who the NCC believes has a sufficient interest in the matter that it has received the application; and
 - (ii) publish a notice in a national daily newspaper which at least:
 - (A) describes the Pipeline to which the application relates;
 - (B) states how copies of the application may be obtained; and
 - (C) requests submissions within 21 days after the date of the notice.

1.5

The NCC must provide a copy of the application to any person within 7 days after the person requests a copy and pays any reasonable fee required by the NCC.

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1.6

Within 35 days (but not earlier than 21 days) after the day on which a notice is published under section 1.4(b), the NCC must prepare a draft recommendation on the application and provide a copy of the draft recommendation to the applicant, the Service Provider, each person who made a submission and any other person who requests a copy. In preparing the draft recommendation the NCC must consider any submissions received within the time specified in the notice published under section 1.4(b) and it may (but is not obliged to) consider any submissions received after that time.

1.7

Within 28 days (but not earlier than 14 days) after the day on which its draft recommendation became publicly available, the NCC must submit a recommendation to the Relevant Minister:

- (a) that the Pipeline be Covered; or
- (b) that the Pipeline not be Covered.

If the NCC recommends that the Pipeline be Covered, the NCC may do so to a greater or lesser extent than requested by the applicant if, having regard to the part of the Pipeline that is necessary to provide Services that Prospective Users may seek, the NCC considers it appropriate. The NCC may not recommend Coverage of a greater part of a Pipeline than is owned or operated by the same Service Provider or group of Service Providers.

1.8

In forming its recommendation the NCC must consider any submissions received from the Service Provider, the applicant or any other person within 14 days after the date on which its draft recommendation became publicly available and it may (but is not obliged to) consider submissions received after that time.

1.9

Subject to sections 1.4(a) and 1.10, the NCC 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) if the NCC is satisfied of all of the following matters, and cannot recommend that the Pipeline be Covered, to any extent, if the NCC is not satisfied of one or more of the following matters:

- (a) that access (or increased access) to Services provided by means of the Pipeline would promote competition in at least one market (whether or not in Australia), other than the market for the Services provided by means of the Pipeline;
- (b) that it would be uneconomic for anyone to develop another Pipeline to provide the Services provided by means of the Pipeline;
- (c) that access (or increased access) to the Services provided by means of the 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 the Pipeline would not be contrary to the public interest.

1.10

At any time prior to the NCC making a recommendation the relevant Service Provider may notify the NCC that it agrees to Coverage of the Pipeline to the same extent as specified in the application. The NCC may then recommend that the Pipeline be Covered to the same extent as specified in the application without considering the matters set out in paragraphs (a) to (d) of section 1.9. The NCC must forward the Service Provider's notice to the Relevant Minister with its recommendation.

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1.11

The NCC must provide a copy of its recommendation and the reasons for the recommendation to the Service Provider, the applicant, each person who made a submission and any other person who requests a copy.

1.12

The applicant may withdraw the application by notice to the NCC at any time before the Relevant Minister makes a decision concerning Coverage of the Pipeline.

1.13 ***Relevant Minister to Decide on a Coverage Recommendation***

Within 21 days after a Coverage recommendation is received by the Relevant Minister, the Relevant Minister must make a decision:

- (a) that the Pipeline is Covered; or
- (b) that the Pipeline is not Covered.

If the Relevant Minister decides that the Pipeline is Covered, the Relevant Minister may do so to a greater or lesser extent than requested by the applicant if, having regard to the part of the Pipeline that is necessary to provide Services that Prospective Users may seek, the Relevant Minister considers it appropriate. The Relevant Minister may not decide that a greater part of a Pipeline is Covered than is owned or operated by the same Service Provider or group of Service Providers.

1.14

The Relevant Minister may require the NCC to provide such information, reports and other assistance as the Relevant Minister considers appropriate for the purpose of considering the application.

1.15

Subject to section 1.16, the Relevant 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) if the Relevant Minister is satisfied of all of the matters set out in paragraphs (a) to (d) of section 1.9, but the Relevant Minister cannot decide that the Pipeline is Covered, to any extent, if not satisfied of one or more of those matters.

1.16

If the NCC receives a notice under section 1.10, the Relevant Minister may decide that the Pipeline is a Covered Pipeline without considering the matters set out in paragraphs (a) to (d) of section 1.9.

1.17

Promptly after making a decision the Relevant Minister must provide a copy of the decision and reasons for the decision to the NCC, the Relevant Regulator, the Service Provider, the applicant, each person who made a submission to the NCC and any other person who requests a copy.

1.18

The decision on Coverage and the notice and reasons referred to in section 1.17 must contain a detailed description of the Pipeline the subject of the decision.

1.19

The decision on Coverage is subject to review by the Relevant Appeals Body under the Gas Pipelines Access Law. Subject to the Gas Pipelines Access Law, a decision on Coverage has effect on the date specified by the Relevant Minister, which date must not be earlier than 14 days after the day the decision was made.

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1.20 *Pipelines subject to Access Arrangements submitted under section 2.3 are Covered*

A Pipeline or proposed Pipeline which is subject to an Access Arrangement submitted under section 2.3 is Covered from the date that the Access Arrangement becomes effective until the expiry date, if any, as contemplated under section 3.20. An application may be made under section 1.3 requesting that such a Pipeline remain Covered after the Access Arrangement expires if the period from the date of the application to the date on which the Access Arrangement expires is not more than 90 days.

[Section 1.20 amended: Gazette 11 Jul 2003 p. 2821.]

1.21 *New Pipelines the subject of an approved competitive tender are Covered*

If the Relevant Regulator makes a decision under section 3.32 approving the outcome of a competitive tender the proposed Pipeline concerned shall be a Covered Pipeline from the time of that decision.

[Section 1.21 amended: Gazette 11 Jul 2003 p. 2821.]

1.22 *Opinion of NCC in respect of proposed Pipelines*

A Service Provider may request an opinion from the NCC as to whether a proposed Pipeline would meet the criteria for Coverage in section 1.9.

[Section 1.22 amended: Gazette 11 Jul 2003 p. 2821.]

1.23

The NCC may provide an opinion in response to a request under section 1.22 but the opinion does not bind the NCC in relation to any subsequent application for Coverage of the Pipeline.

1.24 ***Revocation of Coverage***

Pipelines listed in Schedule A and Pipelines that have become Covered after the commencement of the Code may cease to be Covered where a person applies to the NCC for Coverage of the Covered Pipeline to be revoked and, after receiving a recommendation from the NCC, the Relevant Minister determines that Coverage of the Covered Pipeline should be revoked.

1.25

Any person, including the Relevant Regulator, may make an application to the NCC requesting that Coverage of a particular Covered Pipeline be revoked. The NCC may publish guidelines concerning the form and content of revocation applications and specifying the amount of any fee to be paid on the making of an application. If it does so, applications must be made in accordance with those guidelines.

1.26

When the NCC receives an application it must:

- (a) (except where the application has been made by the Relevant Regulator) if it considers that the application has been made on trivial or vexatious grounds, reject the application without further consideration;
- (b) in all other cases within 14 days after the receipt of the application:
 - (i) inform the Service Provider and each other person known to the NCC who the NCC believes has a sufficient interest in the matter that it has received the application; and
 - (ii) publish a notice in a national daily newspaper which at least:
 - (A) describes the Covered Pipeline to which the application relates;

r. 1.27

- (B) states how copies of the application may be obtained; and
- (C) requests submissions within 21 days after the date of the notice.

1.27

The NCC must provide a copy of the application to any person within 7 days after the person requests a copy and pays any reasonable fee required by the NCC.

1.28

Within 35 days (but not earlier than 21 days) after the day on which a notice is published under section 1.26(b), the NCC must prepare a draft recommendation on the application and provide a copy of the draft recommendation to the Service Provider, the applicant, each person who made a submission and any other person who requests a copy. In preparing the draft recommendation the NCC must consider any submissions received within the time specified in the notice published under section 1.26(b) and it may (but is not obliged to) consider any submissions received after that time.

1.29

Within 28 days (but not earlier than 14 days) after the day on which its draft recommendation became publicly available, the NCC must submit a recommendation to the Relevant Minister:

- (a) that Coverage of the Covered Pipeline be revoked; or
- (b) that Coverage of the Covered Pipeline not be revoked.

If the NCC recommends that Coverage of the Covered Pipeline be revoked, it may do so to a greater or lesser extent than requested by the applicant if, having regard to the part of the Covered Pipeline that is necessary to provide services that Prospective Users may seek, the NCC considers it appropriate.

1.30

In forming its recommendation the NCC must consider any submissions received from the Service Provider, the applicant or any other person within 14 days after the date on which its draft recommendation became publicly available and it may (but is not obliged to) consider any submissions received after that time.

1.31

Subject to section 1.26(a), the NCC cannot recommend that Coverage of the Covered Pipeline be Revoked, to any extent, if the NCC is satisfied of all of the matters set out in paragraphs (a) to (d) of section 1.9, but the NCC must recommend that Coverage of the Covered Pipeline be revoked (either to the extent described, or to a greater or lesser extent than that described, in the application) if the NCC is not satisfied of one or more of those matters.

1.32

The NCC must provide a copy of its recommendation and the reasons for the recommendation to the Service Provider, the applicant, each person who made a submission and any other person who requests a copy.

1.33

The applicant may withdraw the application by notice to the NCC at any time before the Relevant Minister makes a decision concerning revocation of Coverage of the Covered Pipeline.

1.34 ***Relevant Minister to Decide on a Revocation Recommendation***

Within 21 days after a revocation recommendation is received by the Relevant Minister, the Relevant Minister must make a decision:

- (a) that Coverage of the Covered Pipeline is revoked; or
- (b) that Coverage of the Covered Pipeline is not revoked.

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If the Relevant Minister decides that Coverage of the Covered Pipeline is revoked, the Relevant Minister may do so to a greater or lesser extent than requested by the applicant if, having regard to the part of the Pipeline that is necessary to provide Services that Prospective Users may seek, the Relevant Minister considers it appropriate.

1.35

The Relevant Minister may require the NCC to provide such information, reports and other assistance as the Relevant Minister considers appropriate for the purpose of considering the application.

1.36

The Relevant Minister must decide not to revoke Coverage of the Covered Pipeline, to any extent, if the Relevant Minister is satisfied of all of the matters set out in paragraphs (a) to (d) of section 1.9, but the Relevant Minister must decide to revoke Coverage of the Covered Pipeline (either to the extent described, or to a greater or lesser extent than that described, in the application) if not satisfied of one or more of those matters.

1.37

Promptly after making a decision the Relevant Minister must provide a copy of the decision and reasons for the decision to the NCC, the Relevant Regulator, the Service Provider, the applicant, each person who made a submission to the NCC and any other person who requests a copy.

1.38

The decision on revocation and the notice and reasons referred to in section 1.37 must, if the decision is to revoke Coverage for part or all of the Covered Pipeline, contain a detailed description of the Covered Pipeline the subject of the decision.

1.39

A decision on revocation is subject to review by the Relevant Appeals Body under the Gas Pipelines Access Law. Subject to the Gas Pipelines Access Law, the decision on revocation has effect on the date specified by the Relevant Minister, which date must not be earlier than 14 days after the day the decision was made.

1.40 *Extensions/Expansions of a Covered Pipeline*

An extension to, or expansion of the Capacity of, a Covered Pipeline shall be treated as part of the Covered Pipeline for all purposes under the Code if the Extensions/Expansions Policy contained in the Access Arrangement for that Covered Pipeline provides for that extension or expansion to be treated as part of the Covered Pipeline.

1.41

The Service Provider must notify the Code Registrar of any extension to, or expansion of the Capacity of, a Covered Pipeline which is to be treated as part of the Covered Pipeline pursuant to section 1.40 when the extension or expansion would require an amendment to the description of the Covered Pipeline on the Public Register in order for that description to remain an accurate description of the Covered Pipeline.

2. ACCESS ARRANGEMENTS

Where a Pipeline is Covered, this section of the Code requires a Service Provider to establish an Access Arrangement to the satisfaction of the Relevant Regulator for that Covered Pipeline. An Access Arrangement is a statement of the policies and the basic terms and conditions which apply to third party access to a Covered Pipeline. The Service Provider and a User or Prospective User are free to agree to terms and conditions that differ from the Access Arrangement (with the exception of the Queuing Policy). If an access dispute arises, however, and is referred to the Relevant Regulator, the Relevant Regulator (or any other Arbitrator it appoints) must apply the provisions of the Access Arrangement in

r. 1.41

resolving the dispute. If a Pipeline is not Covered a Service Provider may voluntarily propose an Access Arrangement to the Relevant Regulator for approval. Upon approval the Pipeline becomes a Covered Pipeline.

An Access Arrangement must be submitted to the Relevant Regulator for approval. The Relevant Regulator may approve an Access Arrangement only if the Access Arrangement satisfies the minimum requirements set out in section 3. The Relevant Regulator must not refuse to approve an Access Arrangement solely for the reason that the proposed Access Arrangement does not address a matter that section 3 does not require an Access Arrangement to address. Subject to this limit, the Relevant Regulator has a broad discretion to refuse to accept an Access Arrangement. If section 3 permits a range of outcomes on a particular issue (for example, any Revisions Commencement Date is permitted), the Relevant Regulator may reject an outcome proposed by the Service Provider which is within the permitted range and require a particular outcome be included in the Access Arrangement (for example, a particular Revisions Commencement Date).

An Access Arrangement submitted to the Relevant Regulator for approval must be accompanied by Access Arrangement Information. Access Arrangement Information should enable Users and Prospective Users to understand the derivation of the elements of the proposed Access Arrangement and form an opinion as to the compliance of the Access Arrangement with the Code. The Access Arrangement Information must include the categories of information identified in Attachment A to the Code.

The process whereby a compulsory Access Arrangement is approved can be summarised as follows:

- The Service Provider submits a proposed Access Arrangement, together with the Access Arrangement Information, to the Relevant Regulator.*
- The Relevant Regulator may require the Service Provider to amend and resubmit the Access Arrangement Information.*
- The Relevant Regulator publishes a public notice and seeks submissions on the application.*

- *The Relevant Regulator considers the submissions, issues a draft decision and then, after considering any submissions received on the draft, makes a final decision which either:*
 - *approves the proposed Access Arrangement; or*
 - *does not approve the proposed Access Arrangement and states the revisions to the Access Arrangement which would be required before the Relevant Regulator would approve it; or*
 - *approves a revised Access Arrangement submitted by the Service Provider which incorporates amendments specified by the Relevant Regulator in its draft decision.*
- *If the Relevant Regulator does not approve the Access Arrangement, the Service Provider may propose an amended Access Arrangement which incorporates the revisions required by the Relevant Regulator. If the Service Provider does not do so, the Relevant Regulator can impose its own Access Arrangement.*
- *The Gas Pipeline Access Law provides a mechanism for the review of a decision by the Relevant Regulator to impose an Access Arrangement.*

A similar process applies in relation to voluntary Access Arrangements, except that the Service Provider may withdraw the application at any time prior to approval of the Access Arrangement and the Relevant Regulator may only approve or disapprove the Access Arrangement; it may not impose its own Access Arrangement.

An Access Arrangement must include a date for review. In addition, changes to an Access Arrangement may be made before a review date if the Relevant Regulator and the Service Provider agree. In either case if revisions to the Access Arrangement are proposed, a process of public consultation and approval by the Relevant Regulator, similar to that followed for approving a compulsory Access Arrangement, must be followed. The Relevant Regulator may, however, dispense with public consultation if changes proposed between reviews are sufficiently minor.

r. 2.1

2.1 *Submission of Access Arrangements*

The Relevant Regulator may at any time prepare and release for public comment, discussion or issues papers and hold public consultations concerning any matter relevant to its functions under the Code.

2.2

If a Pipeline is Covered, the Service Provider must submit a proposed Access Arrangement together with the applicable Access Arrangement Information for the Covered Pipeline to the Relevant Regulator:

- (a) within 90 days after the Pipeline becomes Covered under section 1.19 or 1.21 if the Covered Pipeline is not described in Schedule A; or
- (b) within 90 days after the commencement of the Code if the Covered Pipeline is described in Schedule A.

2.3

If a Pipeline or proposed Pipeline is not Covered, a Service Provider may apply to the Relevant Regulator for approval of an Access Arrangement by submitting the proposed Access Arrangement to the Relevant Regulator together with the applicable Access Arrangement Information. For the purposes of a proposed Access Arrangement submitted under this section 2.3, the term “Covered Pipeline” in the Code includes a Pipeline or proposed Pipeline the subject of the proposed Access Arrangement.

[Section 2.3 inserted: Gazette 11 Jul 2003 p. 2821-2.]

2.4

If the Relevant Regulator so requires by a notice in writing (which may be given either before or after the Service Provider submits an Access Arrangement), the Service Provider must submit separate Access Arrangements (together with Access

Arrangement Information) for different parts of the Covered Pipeline as specified by the Relevant Regulator, so that the separate Access Arrangements in total apply to the whole of the Covered Pipeline. The Service Provider may (if the Relevant Regulator agrees) voluntarily submit separate Access Arrangements (together with Access Arrangement Information) for different parts of the Covered Pipeline, so that the separate Access Arrangements in total apply to the whole of the Covered Pipeline. If separate Access Arrangements are submitted in accordance with this clause each part of a Pipeline that is the subject of an Access Arrangement will be treated as a separate Covered Pipeline for all purposes under the Code.

2.4A

The Service Provider may (if the Relevant Regulator agrees and subject to any conditions that the Relevant Regulator may require, having regard to the matters set out in section 2.24) submit a single Access Arrangement for two or more Covered Pipelines that have the same Relevant Regulator and Service Provider. If a single Access Arrangement is submitted in accordance with this section 2.4A:

- (a) the Covered Pipelines that are the subject of that Access Arrangement will be treated as a single Covered Pipeline for all purposes under the Code; and
- (b) the Relevant Regulator may not (unless the Service Provider agrees) require the Service Provider to submit separate Access Arrangements for those Covered Pipelines (or parts of them) under section 2.4.

[Section 2.4A inserted: Gazette 2 May 2003 p. 1518.]

2.5

An Access Arrangement may include any relevant matter but must include at least the elements described in sections 3.1 to 3.20.

r. 2.6

2.6

Access Arrangement Information must contain such information as in the opinion of the Relevant Regulator would enable Users and Prospective Users to understand the derivation of the elements in the proposed Access Arrangement and to form an opinion as to the compliance of the Access Arrangement with the provisions of the Code.

2.7

The Access Arrangement Information may include any relevant information but must include at least the categories of information described in Attachment A.

2.8

Information included in Access Arrangement Information, including information of a type described in Attachment A, may be categorised or aggregated to the extent necessary to ensure the disclosure of the information is, in the opinion of the Relevant Regulator, not unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User. However, nothing in this section 2.8 limits the Relevant Regulator's power under the Gas Pipelines Access Law to obtain information, including information in an unclassified or unaggregated form.

2.9 ***Public Consultation and Approval***

At any time after the receipt of the applicable Access Arrangement Information under section 2.2 or 2.3 and before a decision is made to approve an Access Arrangement, the Relevant Regulator:

- (a) may, of its own volition, require the Service Provider to make changes to the Access Arrangement Information if the Relevant Regulator is not satisfied that the Access Arrangement Information meets the requirements of sections 2.6 and 2.7; and

- (b) must, if requested to do so by any person, consider whether the Access Arrangement Information meets the requirements of sections 2.6 and 2.7 and decide whether or not to require the Service Provider to make changes to the Access Arrangement Information accordingly.

If the Relevant Regulator requires the Service Provider to make changes to the Access Arrangement Information it must specify the reasons for its decision and must specify a reasonable time by which the proposed Access Arrangement Information that rectifies the matters identified by the Relevant Regulator must be resubmitted. The Relevant Regulator must not require information to be included in Access Arrangement Information the release of which in the Relevant Regulator's opinion could be unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User. If the Relevant Regulator requires the Service Provider to make changes to the Access Arrangement Information, the Service Provider must submit Access Arrangement Information amended as required by the Relevant Regulator, by the date specified by the Relevant Regulator.

2.10

After receiving a proposed Access Arrangement the Relevant Regulator must:

- (a) inform each person known to the Relevant Regulator who the Relevant Regulator believes has a sufficient interest in the matter that it has received the proposed Access Arrangement and Access Arrangement Information; and
- (b) publish a notice in a national daily newspaper which at least:
 - (i) describes the Covered Pipeline to which the proposed Access Arrangement relates;

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- (ii) states how copies of the proposed Access Arrangement and the Access Arrangement Information may be obtained; and
- (iii) requests submissions by a date specified in the notice.

2.11

The Relevant Regulator must provide a copy of the proposed Access Arrangement and the Access Arrangement Information to any person within 7 days after the person requests a copy and pays any reasonable fee required by the Relevant Regulator.

2.12

The Relevant Regulator must consider any submissions received by the date specified in the notice published under section 2.10(b) and it may (but is not obliged) to consider any submissions received after that date.

2.13

After considering submissions received by the date specified in the notice published under section 2.10(b) the Relevant Regulator must issue a draft decision which either:

- (a) proposes to approve the Access Arrangement; or
- (b) proposes not to approve the Access Arrangement and states the amendments (or nature of the amendments) which would have to be made to the Access Arrangement in order for the Relevant Regulator to approve it.

2.14

The Relevant Regulator must:

- (a) provide a copy of its draft decision to the Service Provider, any person who made a submission on the matter and any other person who requests a copy; and

- (b) request submissions from persons to whom it provides the draft decision by a date specified by the Relevant Regulator.

2.15

The Relevant Regulator must consider any submissions received by the date specified by the Relevant Regulator under section 2.14 and it may (but is not obliged) to consider any submissions received after that date.

2.15A

The Service Provider may, after the date of the draft decision, resubmit the Access Arrangement, revised so as to incorporate or substantially incorporate the amendments specified by the Relevant Regulator in its draft decision or otherwise address the matters the Relevant Regulator identified in its draft decision as being the reasons for requiring the amendments specified in its draft decision.

[Section 2.15A inserted: Gazette 22 November 2000 p. 6537.]

2.16

After considering any submissions received by the date specified by the Relevant Regulator under section 2.14, the Relevant Regulator must issue a final decision that:

- (a) if the Service Provider has not submitted a revised Access Arrangement under section 2.15A:
 - (i) approves the Access Arrangement originally proposed by the Service Provider; or
 - (ii) does not approve the Access Arrangement originally proposed by the Service Provider and states the amendments (or nature of the amendments) which would have to be made to the Access Arrangement in order for the Relevant Regulator to approve it and the date by

r. 2.16A

- which a revised Access Arrangement must be resubmitted by the Service Provider; or
- (b) if the Service Provider has submitted a revised Access Arrangement under section 2.15A:
- (i) subject to section 2.16A, approves the revised Access Arrangement; or
 - (ii) does not approve the revised Access Arrangement and states the amendments (or nature of the amendments) which would have to be made to the revised Access Arrangement in order for the Relevant Regulator to approve it and the date by which a revised Access Arrangement must be resubmitted by the Service Provider.

[Section 2.16 inserted: Gazette 22 November 2000 p. 6538.]

2.16A

The Relevant Regulator may (in the Relevant Regulator's discretion) approve a revised Access Arrangement under section 2.16(b)(i) only if the Relevant Regulator is satisfied that the revised Access Arrangement:

- (a) incorporates or substantially incorporates the amendments specified by the Relevant Regulator in its draft decision; or
- (b) otherwise addresses to the Relevant Regulator's satisfaction the matters the Relevant Regulator identified in its draft decision as being the reasons for requiring the amendments specified in its draft decision.

[Section 2.16A inserted: Gazette 22 November 2000 p. 6538.]

2.17

The Relevant Regulator must provide a copy of its final decision to the Service Provider, any person who made a submission on the matter and any other person who requests a copy.

2.18

If the Relevant Regulator decides not to approve the Access Arrangement under section 2.16(a)(ii) or (b)(ii), the Service Provider must by the date specified by the Relevant Regulator under section 2.16(a)(ii) or (b)(ii) submit a revised Access Arrangement to the Relevant Regulator.

[Section 2.18 amended: Gazette 22 November 2000 p. 6538.]

2.19

If the Service Provider submits a revised Access Arrangement by the date specified by the Relevant Regulator under section 2.16(a)(ii) or (b)(ii) then the Relevant Regulator must issue a further final decision that:

- (a) if the Relevant Regulator is satisfied that the revised Access Arrangement incorporates the amendments specified by the Relevant Regulator in its final decision under Section 2.16(a)(ii) or (b)(ii), approves the revised Access Arrangement; or
- (b) if the Relevant Regulator is satisfied that the revised Access Arrangement either substantially incorporates the amendments specified by the Relevant Regulator or otherwise addresses to the Relevant Regulator's satisfaction the matters the Relevant Regulator identified in its final decision as being the reasons for requiring the amendments specified in its final decision under section 2.16(a)(ii) or (b)(ii), either approves or does not approve the revised Access Arrangement (in the Relevant Regulator's discretion); or
- (c) in any other case, does not approve the revised Access Arrangement.

[Section 2.19 inserted: Gazette 22 November 2000 p. 6539.]

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2.20

If the Service Provider does not submit a revised Access Arrangement by the date specified by the Relevant Regulator under section 2.16(a)(ii) or (b)(ii) or the Relevant Regulator does not approve the revised Access Arrangement under section 2.19, the Relevant Regulator must:

- (a) in the case of an Access Arrangement submitted under section 2.2, draft and approve its own Access Arrangement, instead of the Access Arrangement proposed by the Service Provider; or
- (b) in the case of an Access Arrangement submitted voluntarily under section 2.3, not approve the Access Arrangement.

[Section 2.20 inserted: Gazette 22 November 2000 p. 6539.]

2.21

The Relevant Regulator must issue a final decision under section 2.16 (and sections 2.19 and 2.20, if applicable) within six months of receiving a proposed Access Arrangement. The Relevant Regulator must also ensure that:

- (a) there is a period of at least 28 days between the publication of a notice under section 2.10(b) and the last day for submissions specified in that notice; and
- (b) there is a period of at least 14 days between the publication of a draft decision under section 2.14 and the last day for submissions on the draft decision specified by the Relevant Regulator; and
- (c) there is a period of at least 14 days between the publication of a final decision under section 2.16(a)(ii) or (b)(ii) and the date specified by the Relevant Regulator as the last day for the Service Provider to submit a revised Access Arrangement.

In all other respects the timing for the taking of each of the steps set out in sections 2.9, 2.10 and 2.12 to 2.20 (inclusive) is a matter for the Relevant Regulator to determine.

[Section 2.21 amended: Gazette 22 November 2000 p. 6538.]

2.22

The Relevant Regulator may increase the period of six months specified in section 2.21 by periods of up to two months on one or more occasions provided it publishes in a national newspaper notice of the decision to increase the period.

2.23

If a Service Provider fails to submit a proposed Access Arrangement within the time required under section 2.2, the Relevant Regulator may draft and approve its own Access Arrangement. Before approving its own Access Arrangement under this section 2.23 the Relevant Regulator must:

- (a) prepare an information package which, to the extent practicable, meets the requirements of sections 2.6 and 2.7; and
- (b) follow the process set out in sections 2.10 to 2.15 (inclusive) to the extent practicable as though the Access Arrangement drafted by the Relevant Regulator had been proposed by the Service Provider and the information package prepared by the Relevant Regulator had been Access Arrangement Information proposed by the Service Provider.

2.24

The Relevant Regulator may approve a proposed Access Arrangement only if it is satisfied the proposed Access Arrangement contains the elements and satisfies the principles set out in sections 3.1 to 3.20. The Relevant Regulator must not refuse to approve a proposed Access Arrangement solely for the reason that the proposed Access Arrangement does not address a

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matter that sections 3.1 to 3.20 do not require an Access Arrangement to address. In assessing a proposed Access Arrangement, the Relevant Regulator must take the following into account:

- (a) the Service Provider's legitimate business interests and investment in the Covered Pipeline;
- (b) firm and binding contractual obligations of the Service Provider or other persons (or both) already using the Covered Pipeline;
- (c) the operational and technical requirements necessary for the safe and reliable operation of the Covered Pipeline;
- (d) the economically efficient operation of the Covered Pipeline;
- (e) the public interest, including the public interest in having competition in markets (whether or not in Australia);
- (f) the interests of Users and Prospective Users;
- (g) any other matters that the Relevant Regulator considers are relevant.

2.25

The Relevant Regulator must not approve an Access Arrangement (or draft and approve its own Access Arrangement) any provision of which would, if applied, deprive any person of a contractual right in existence prior to the date the proposed Access Arrangement was submitted (or required to be submitted), other than an Exclusivity Right which arose on or after 30 March 1995.

2.26

A decision by the Relevant Regulator under section 2.20(a) or 2.23 is subject to review by the Relevant Appeals Body under the Gas Pipelines Access Law. Subject to the Gas Pipelines Access Law, the Relevant Regulator's decision to approve the

proposed Access Arrangement has effect on the date specified by the Relevant Regulator, which date must be not less than 14 days after the day the decision was made.

2.27

A Service Provider may withdraw a proposed Access Arrangement submitted under section 2.3 at any time before it is approved by the Relevant Regulator. In those circumstances the Service Provider is not required to comply with a related decision made under section 2.9.

2.28 *Review of an Access Arrangement*

By the date provided for in the Access Arrangement as the Revisions Submission Date (or as otherwise required by an Access Arrangement), the Service Provider must, and at any other time the Service Provider may, submit to the Relevant Regulator proposed revisions to the Access Arrangement together with the applicable Access Arrangement Information.

Proposed revisions may include:

- (a) a proposal that the Access Arrangement be terminated if the Covered Pipeline to which the Access Arrangement relates is the subject of proposed revisions to an Access Arrangement under section 2.28A; or
- (b) separate Access Arrangements for different parts of a Covered Pipeline that is the subject of proposed revisions to an Access Arrangement under section 2.28B, so that the separate Access Arrangements in total apply to the whole of the Covered Pipeline.

[Section 2.28 amended: Gazette 2 May 2003 p. 1519.]

2.28A

If the Relevant Regulator agrees and subject to any conditions that the Relevant Regulator may require, having regard to the matters set out in section 2.46, proposed revisions and Access

r. 2.28B

Arrangement Information submitted by a Service Provider under section 2.28 may have the effect of applying the revised Access Arrangement to one or more other Covered Pipelines that have the same Relevant Regulator and Service Provider as the Covered Pipeline to which the proposed revisions and Access Arrangement Information relate. If this section 2.28A applies:

- (a) the Reference Tariff Principles described in Section 8 apply in the aggregate to all of the Covered Pipelines that are the subject of the proposed revisions and Access Arrangement Information; and
- (b) the Covered Pipelines that are the subject of that Access Arrangement will be treated as a single Covered Pipeline for all purposes under the Code.

[Section 2.28A inserted: Gazette 2 May 2003 p. 1519.]

2.28B

If the Relevant Regulator agrees and subject to any conditions that the Relevant Regulator may require, having regard to the matters set out in section 2.46, proposed revisions and Access Arrangement Information submitted by a Service Provider under section 2.28 may have the effect of applying separate Access Arrangements (together with Access Arrangement Information) to different parts of the Covered Pipeline, so that the separate Access Arrangements in total apply to the whole of the Covered Pipeline. If this section 2.28B applies:

- (a) the Reference Tariff Principles described in Section 8 apply separately to each part of a Pipeline to which it is proposed that a separate Access Arrangement would apply; and
- (b) each part of a Pipeline that is the subject of an Access Arrangement will be treated as a separate Covered Pipeline for all purposes under the Code.

[Section 2.28B inserted: Gazette 2 May 2003 p. 1519.]

2.29

The Access Arrangement as revised by the proposed revisions may include any relevant matter but must include at least the elements described in sections 3.1 to 3.20.

2.30

At any time after receipt of the applicable Access Arrangement Information under section 2.28 and before a decision is made to approve revisions to an Access Arrangement the Relevant Regulator:

- (a) may, of its own volition, require the Service Provider to make changes to the Access Arrangement Information if the Relevant Regulator is not satisfied that the Access Arrangement Information meets the requirements of sections 2.6 and 2.7; and
- (b) must, if requested to do so by any person, consider whether the Access Arrangement Information meets the requirements of sections 2.6 and 2.7 and decide whether or not to require the Service Provider to make changes to the Access Arrangement Information accordingly.

If the Relevant Regulator requires the Service Provider to make changes to the Access Arrangement Information it must specify the reasons for its decision and must specify a reasonable time by which the proposed Access Arrangement Information that rectifies the matters identified by the Relevant Regulator must be resubmitted. The Relevant Regulator must not require information to be included in the Access Arrangement Information the release of which in the Relevant Regulator's opinion could be unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User. If the Relevant Regulator requires the Service Provider to make changes to the Access Arrangement Information, the Service Provider must submit Access Arrangement Information amended as required by the Relevant Regulator, by the date specified by the Relevant Regulator.

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2.31

After receiving a proposed revision to an Access Arrangement the Relevant Regulator must:

- (a) inform each person known to the Relevant Regulator who the Relevant Regulator believes has a sufficient interest in the matter that it has received the proposed revision to the Access Arrangement and Access Arrangement Information; and
- (b) publish a notice in a national daily newspaper which at least:
 - (i) describes the Covered Pipeline to which the proposed revisions to the Access Arrangement relates;
 - (ii) states how copies of the revisions to the Access Arrangement and the Access Arrangement Information may be obtained; and
 - (iii) requests submissions by a date specified in the notice.

2.32

The Relevant Regulator must provide a copy of the proposed revisions to the Access Arrangement and the Access Arrangement Information to any person within 7 days after the person requests a copy and pays any reasonable fee required by the Relevant Regulator.

2.33

The Relevant Regulator may dispense with the requirement to produce Access Arrangement Information in respect of proposed revisions and may approve or not approve the proposed revisions without consultation with, or receiving submissions from, persons other than the Service Provider if:

- (a) the revisions have been proposed by the Service Provider other than as required by the Access Arrangement; and
- (b) the Relevant Regulator considers that the revisions proposed are not material and will not result in changes to Reference Tariffs or to the Services that are Reference Services.

2.34

The Relevant Regulator must consider any submissions received by the date specified in the notice published under section 2.31(b) and it may (but is not obliged) to consider any submissions received after that date.

2.35

After considering submissions received by the date specified in the notice published under section 2.31(b) the Relevant Regulator must issue a draft decision which either:

- (a) proposes to approve the revisions to the Access Arrangement; or
- (b) proposes not to approve the revisions to the Access Arrangement and provides reasons why the Relevant Regulator proposes not to approve the revisions to the Access Arrangement (and, if the revisions have been proposed by the Service Provider as required by the Access Arrangement, states the amendments (or nature of the amendments) which would have to be made to the revisions in order for the Relevant Regulator to approve them).

2.36

The Relevant Regulator must:

- (a) provide a copy of its draft decision to the Service Provider, any person who made a submission on the matter and any other person who requests a copy; and

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- (b) request submissions on the draft decision from persons to whom it provides the draft decision by a date specified by the Relevant Regulator.

2.37

The Relevant Regulator must consider any submissions received by the date specified by the Relevant Regulator under section 2.36 and it may (but is not obliged) to consider submissions received after that date.

2.37A

The Service Provider may, after the date of the draft decision, resubmit the revisions to the Access Arrangement, amended so as to incorporate or substantially incorporate the amendments specified by the Relevant Regulator in its draft decision or otherwise address the matters the Relevant Regulator identified in its draft decision as being the reasons for requiring the amendments specified in its draft decision.

[Section 2.37A inserted: Gazette 22 November 2000 p. 6539.]

2.38

After considering any submissions received by the date specified by the Relevant Regulator under section 2.36, the Relevant Regulator must issue a final decision that:

- (a) if the Service Provider has not submitted amended revisions to the Access Arrangement under section 2.37A:
 - (i) approves the revisions to the Access Arrangement originally proposed by the Service Provider; or
 - (ii) does not approve the revisions to the Access Arrangement originally proposed by the Service Provider and, if the revisions have been proposed by the Service Provider as required by the Access Arrangement, states the amendments (or nature

of the amendments) which would have to be made to the revisions in order for the Relevant Regulator to approve them and the date by which the amended revisions must be resubmitted by the Service Provider; or

- (b) if the Service Provider has submitted amended revisions to the Access Arrangement under section 2.37A:
 - (i) subject to section 2.38A, approves the amended revisions to the Access Arrangement; or
 - (ii) does not approve the amended revisions to the Access Arrangement and, if the revisions have been proposed by the Service Provider as required by the Access Arrangement, states the amendments (or nature of the amendments) which would have to be made to the revisions in order for the Relevant Regulator to approve them and the date by which the amended revisions must be resubmitted by the Service Provider.

[Section 2.38 inserted: Gazette 22 November 2000 p. 6540.]

2.38A

The Relevant Regulator may (in the Relevant Regulator's discretion) approve amended revisions to an Access Arrangement under section 2.38(b)(i) only if the Relevant Regulator is satisfied that the amended revisions:

- (a) incorporate or substantially incorporate the amendments specified by the Relevant Regulator in its draft decision; or
- (b) otherwise address to the Relevant Regulator's satisfaction the matters the Relevant Regulator identified in its draft decision as being the reasons for requiring the amendments specified in its draft decision.

[Section 2.38A inserted: Gazette 22 November 2000 p. 6540-1.]

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2.39

The Relevant Regulator must provide a copy of its final decision to the Service Provider, any person who made a submission on the matter and other any person who requests a copy.

2.40

If the Relevant Regulator decides not to approve the revisions to the Access Arrangement under section 2.38(a)(ii) or (b)(ii) the Service Provider must, if the revisions it proposed were proposed as required by the Access Arrangement, submit amended revisions to the Relevant Regulator by the date specified by the Relevant Regulator under section 2.38(a)(ii) or (b)(ii).

[Section 2.40 amended: Gazette 22 November 2000 p. 6541.]

2.41

If the Service Provider submits amended revisions to the Access Arrangement by the date specified by the Relevant Regulator under section 2.38(a)(ii) or (b)(ii) then the Relevant Regulator must issue a further final decision that:

- (a) if the Relevant Regulator is satisfied that the amended revisions to the Access Arrangement incorporate the amendments specified by the Relevant Regulator in its final decision under section 2.38(a)(ii) or (b)(ii), approves the amended revisions to the Access Arrangement; or
- (b) if the Relevant Regulator is satisfied that the amended revisions to the Access Arrangement either substantially incorporate the amendments specified by the Relevant Regulator or otherwise address to the Relevant Regulator's satisfaction the matters the Relevant Regulator identified in its final decision as being the reasons for requiring the amendments specified in its final decision under section 2.38(a)(ii) or (b)(ii), either approves or does not approve the amended revisions to

the Access Arrangement (in the Relevant Regulator's discretion); or

- (c) in any other case, does not approve the amended revisions to the Access Arrangement.

[Section 2.41 inserted: Gazette 22 November 2000 p. 6541.]

2.42

If the Service Provider does not submit amended revisions to the Access Arrangement by the date specified by the Relevant Regulator under section 2.38(a)(ii) or (b)(ii) or the Relevant Regulator does not approve the amended revisions to the Access Arrangement under section 2.41, the Relevant Regulator must draft and approve its own amended revisions to the Access Arrangement, instead of the revisions proposed by the Service Provider.

[Section 2.42 inserted: Gazette 22 November 2000 p. 6541.]

2.43

The Relevant Regulator must issue a final decision under section 2.38 (and sections 2.41 or 2.42 if applicable) within six months of receiving proposed revisions to an Access Arrangement. The Relevant Regulator must also ensure that:

- (a) there is a period of at least 28 days between the publication of a notice under section 2.31(b) and the last day for submissions specified in that notice;
- (b) there is a period of at least 14 days between the publication of a draft decision under section 2.36(b) and the last day for submissions on the draft decision specified by the Relevant Regulator; and
- (c) there is a period of at least 14 days between the publication of a final decision under section 2.38(a)(ii) or (b)(ii) and the date specified by the Relevant Regulator as the last day for the Service Provider to submit amended revisions to the Access Arrangement.

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In all other respects the timing for the taking of each of the steps set out in sections 2.30, 2.31 and 2.33 to 2.42 (inclusive) is a matter for the Relevant Regulator to determine.

[Section 2.43 amended: Gazette 22 November 2000 p. 6541.]

2.44

The Relevant Regulator may increase the period of six months specified in section 2.43 by periods of up to two months on one or more occasions provided it publishes in a national newspaper notice of the decision to increase the period.

2.45

If the Service Provider fails to submit revisions to an Access Arrangement as required by the Access Arrangement, the Relevant Regulator may draft and approve its own revisions to the Access Arrangement. Before approving its own revisions to an Access Arrangement under this section 2.45 the Relevant Regulator must:

- (a) prepare an information package which, to the extent practicable, meets the requirements of sections 2.6 and 2.7; and
- (b) follow the process set out in sections 2.31 to 2.37 to the extent practicable as though the revisions to the Access Arrangement drafted by the Relevant Regulator had been proposed by the Service Provider and the information package drafted by the Relevant Regulator had been Access Arrangement Information proposed by the Service Provider.

2.46

The Relevant Regulator may approve proposed revisions to an Access Arrangement only if it is satisfied the Access Arrangement as revised would contain the elements and satisfy the principles set out in sections 3.1 to 3.20. The Relevant Regulator must not refuse to approve proposed revisions to the

Access Arrangement solely for the reason that the Access Arrangement as revised would not address a matter that sections 3.1 to 3.20 do not require an Access Arrangement to address. In assessing proposed revisions to the Access Arrangement, the Relevant Regulator:

- (a) must take into account the factors described in section 2.24; and
- (b) must take into account the provisions of the Access Arrangement.

2.47

The Relevant Regulator must not approve revisions to an Access Arrangement (or draft and approve its own revisions to an Access Arrangement) if a provision of the Access Arrangement as revised would, if applied, deprive any person of a contractual right in existence prior to the date the revisions to the Access Arrangement were submitted (or were required to be submitted), other than an Exclusivity Right which arose on or after 30 March 1995.

2.48

A decision by the Relevant Regulator under section 2.42 or 2.45 is subject to review by the Relevant Appeals Body under the Gas Pipelines Access Law. Subject to the Gas Pipelines Access Law, revisions to an Access Arrangement come into effect on the date specified by the Relevant Regulator in its decision to approve the revisions (which date must not be earlier than either a date 14 days after the day the decision was made or, except where the Service Provider submitted the revisions voluntarily or because a mechanism of a type referred to in section 3.18(a) included in the Access Arrangement was triggered, the Revisions Commencement Date).

2.49.

An Access Arrangement that has become effective may be changed only pursuant to this section 2 or pursuant to the

r. 2.50

implementation of an Approved Reference Tariff Variation Method as provided for in sections 8.3B to 8.3H.

[Section 2.49 inserted: Gazette 11 Jul 2003 p. 2822.]

2.50 *Access Arrangement not to limit Access*

For the avoidance of doubt, nothing (except for the Queuing Policy) contained in an Access Arrangement (including the description of Services in a Services Policy) limits:

- (a) the Services a Service Provider can agree to provide to a User or Prospective User;
- (b) the Services which can be the subject of a dispute under section 6;
- (c) the terms and conditions a Service Provider can agree with a User or Prospective User; or
- (d) the terms and conditions which can be the subject of a dispute under section 6.

2.51 *Previous Access Arrangements*

If an Access Arrangement or Access Arrangement Information or both with respect to a Covered Pipeline have been accepted by the Relevant Regulator under the Gas Supply Act 1996 (NSW) prior to the commencement of the Gas Pipeline Access Law in New South Wales a Service Provider need not submit a proposed Access Arrangement in accordance with section 2.2 with respect to the Covered Pipeline concerned. In such circumstances the Access Arrangement or Access Arrangement Information or both accepted under the Gas Supply Act 1996 (NSW) shall be deemed to have been accepted under this Code and to be the Access Arrangement or Access Arrangement Information with respect to the relevant Covered Pipeline for all purposes under this Code.

2.52

A Service Provider need not submit a proposed Access Arrangement or Access Arrangement Information in accordance with section 2.2 with respect to a Covered Pipeline where:

- (a) before the date on which this Code takes effect, the Service Provider (or, where the Service Provider does not at the relevant time yet exist, a person able to represent and bind the future Service Provider) has submitted a proposed Access Arrangement with respect to the Covered Pipeline together with the applicable Access Arrangement Information (if relevant) to the person who is under this Code the Relevant Regulator for that Covered Pipeline; and
- (b) that Relevant Regulator, having:
 - (i) in substance done the things it would have been required to do in relation to the proposed Access Arrangement and the applicable Access Arrangement Information submitted in accordance with section 2.2; and
 - (ii) certified in writing that those things have been done,

has approved the proposed Access Arrangement and Access Arrangement Information.

In such circumstances the proposed Access Arrangement and Access Arrangement Information shall be deemed to have been accepted under this Code and to be the Access Arrangement and Access Arrangement Information with respect to the relevant Covered Pipeline for all purposes under this Code.

3. CONTENT OF AN ACCESS ARRANGEMENT

An Access Arrangement must, as a minimum, include the elements described in section 3 of the Code. Section 3 establishes the following requirements:

Services Policy - An Access Arrangement must include a policy on the Services to be offered. The Services Policy must:

- include a description of one or more Services which are to be offered;
- where reasonable and practical, allow Prospective Users to obtain a Service that includes only those elements that the User wishes to be included in the Service; and
- where reasonable and practical, allow Prospective Users to obtain a separate tariff in regard to a separate element of a Service.

Reference Tariff - An Access Arrangement must contain one or more Reference Tariffs (the Relevant Regulator may require more than one Reference Tariff when appropriate). A Reference Tariff operates as a benchmark tariff for a specific Service, in effect giving the User a right of access to the specific Service at the Reference Tariff, and giving the Service Provider the right to levy the Reference Tariff for that Service. Ordinarily a Reference Tariff must be set in accordance with the principles set out in section 8.

As an alternative it is possible to have Reference Tariffs for a new Pipeline set by a competitive tender process. Any person may conduct a competitive tender to determine Reference Tariffs for a new Pipeline (and a review date for those Reference Tariffs). The person conducting a tender must first obtain the approval of the Relevant Regulator for the tender process proposed. Before granting approval the Relevant Regulator must be satisfied, amongst other things, that the successful tenderer will be selected principally on the basis that the tender will deliver the lowest sustainable tariffs to users generally over the life of the proposed Pipeline.

After the tender process has been conducted and the successful tender selected, the person conducting the tender must submit the outcome of the process to the Relevant Regulator for the Relevant Regulator's final approval. Before granting final approval the Relevant Regulator must be satisfied, amongst other things, that the tender process proposed was followed and that the successful tenderer was selected in accordance with the selection criteria set out in the tender approval request. Once final approval is granted the Reference Tariffs proposed by the successful tenderer will become the Reference Tariffs for the proposed Pipeline.

It is intended that by using this process, Reference Tariffs will have been set in a competitive market and will therefore naturally achieve the objectives in section 8.1.

Terms and Conditions - *An Access Arrangement must include the terms and conditions on which the Service Provider will supply each Reference Service.*

Capacity Management Policy - *An Access Arrangement must state whether the Covered Pipeline is a Contract Carriage Pipeline or a Market Carriage Pipeline.*

Trading Policy - *An Access Arrangement for a Contract Carriage Pipeline must include a policy on the trading of capacity. The Trading Policy must, amongst other things, allow a User to transfer capacity:*

- *without the Service Provider's consent, if the contract between the User and the Service Provider is unaltered by the Transfer; and*
- *with the Service Provider's consent, in any other case. Consent may be withheld only on reasonable commercial or technical grounds.*

Queuing Policy - *An Access Arrangement must include a policy for defining the priority that Prospective Users have to negotiate for specific Capacity (a Queuing Policy).*

Extensions/Expansions Policy - *An Access Arrangement must include a policy setting out a method for determining whether an extension or expansion to the Covered Pipeline is or is not to be treated as part of the Covered Pipeline for the purposes of the Code.*

Review Date - *An Access Arrangement must include a date on or by which revisions to the Access Arrangement must be submitted and a date on which the revised Access Arrangement is intended to commence.*

3.1 Services to be Offered

An Access Arrangement must include a policy on the Service or Services to be offered (a *Services Policy*).

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3.2

The Services Policy must comply with the following principles:

- (a) The Access Arrangement must include a description of one or more Services that the Service Provider will make available to Users or Prospective Users, including:
 - (i) one or more Services that are likely to be sought by a significant part of the market; and
 - (ii) any Service or Services which in the Relevant Regulator's opinion should be included in the Services Policy.
- (b) 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 the Service.
- (c) To the extent practicable and reasonable, a Service Provider must provide a separate Tariff for an element of a Service if this is requested by a User or Prospective User.

3.3 Reference Tariffs and Reference Tariff Policy

An Access Arrangement must include a Reference Tariff for:

- (a) at least one Service that is likely to be sought by a significant part of the market; and
- (b) each Service that is likely to be sought by a significant part of the market and for which the Relevant Regulator considers a Reference Tariff should be included.

3.4

Unless a Reference Tariff has been determined through a competitive tender process as outlined in sections 3.21 to 3.36, an Access Arrangement and any Reference Tariff included in an Access Arrangement must, in the Relevant Regulator's opinion, comply with the Reference Tariff Principles described in section 8.

3.5

An Access Arrangement must also include a policy describing the principles that are to be used to determine a Reference Tariff (a Reference Tariff Policy). A Reference Tariff Policy must, in the Relevant Regulator's opinion, comply with the Reference Tariff Principles described in section 8.

3.6 *Terms and Conditions*

An Access Arrangement must include the terms and conditions on which the Service Provider will supply each Reference Service. The terms and conditions included must, in the Relevant Regulator's opinion, be reasonable.

3.7 *Capacity Management Policy*

An Access Arrangement must include a statement (a *Capacity Management Policy*) that the Covered Pipeline is either:

- (a) a Contract Carriage Pipeline; or
- (b) a Market Carriage Pipeline.

3.8

The Relevant Regulator must not accept an Access Arrangement which states that the Covered Pipeline is a Market Carriage Pipeline unless the Relevant Minister of each Scheme Participant in whose Jurisdictional Area the Pipeline is wholly or partly located has given a notice to the Relevant Regulator permitting the Covered Pipeline to be a Market Carriage Pipeline.

3.9 *Trading Policy*

The Access Arrangement for a Covered Pipeline which is described in the Access Arrangement as a Contract Carriage Pipeline 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*).

3.10

The Trading Policy must comply with the following principles:

- (a) A User must be permitted to transfer or assign all or part of its Contracted Capacity without the consent of the Service Provider concerned if:
 - (i) the User's obligations under the contract with the Service Provider remain in full force and effect after the transfer or assignment; and
 - (ii) the terms of the contract with the Service Provider are not altered as a result of the transfer or assignment (a Bare Transfer).

In these circumstances the Trading Policy may require that the transferee notify the Service Provider prior to utilising the portion of the Contracted Capacity subject to the Bare Transfer and of the nature of the Contracted Capacity subject to the Bare Transfer, but the Trading Policy must not require any other details regarding the transaction to be provided to the Service Provider.

- (b) Where commercially and technically reasonable, a User must be permitted to transfer or assign all or part of its Contracted Capacity other than by way of a Bare Transfer with the prior consent of the Service Provider. The Service Provider may withhold its consent only on reasonable commercial or technical grounds and may make its consent subject to conditions only if they are reasonable on commercial and technical grounds. The Trading Policy may specify conditions in advance under which consent will or will not be given and conditions that must be adhered to as a condition of consent being given.
- (c) Where commercially and technically reasonable, a User must be permitted to change the Delivery Point or Receipt Point from that specified in any contract for the relevant Service with the prior written consent of the Service Provider. The Service Provider may withhold its

consent only on reasonable commercial or technical grounds and may make its consent subject to conditions only if they are reasonable on commercial and technical grounds. The Trading Policy may specify conditions in advance under which consent will or will not be given and conditions that must be adhered to as a condition of consent being given.

3.11

Examples of things that would be reasonable for the purposes of section 3.10(b) and (c) are:

- (a) the Service Provider refusing to agree to a User's request to change its Delivery Point where a reduction in the amount of the Service provided to the original Delivery Point will not result in a corresponding increase in the Service Provider's ability to provide that Service to the alternative Delivery Point; and
- (b) the Service Provider specifying that, as a condition of its agreement to a change in the Delivery Point or Receipt Point, the Service Provider must receive the same amount of revenue it would have received before the change.

3.12.

In respect of:

- (a) a Covered Pipeline that is a Transmission Pipeline; and
- (b) any other Covered Pipeline if the Relevant Regulator so requires, taking into account:
 - (i) the nature of the Covered Pipeline;
 - (ii) the Services likely to be sought by Prospective Users; and
 - (iii) any other matters that the Relevant Regulator considers are relevant,

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an Access Arrangement must include a policy for determining the priority that a Prospective User has, as against any other Prospective User, to obtain access to Spare Capacity and Developable Capacity (and to seek dispute resolution under section 6) where the provision of the Service sought by that Prospective User may impede the ability of the Service Provider to provide a Service that is sought or which may be sought by another Prospective User (a ***Queuing Policy***).

[Section 3.12 inserted: Gazette 11 Jul 2003 p. 2822.]

3.13

The Queuing Policy must:

- (a) set out sufficient detail to enable Users and Prospective Users to understand in advance how the Queuing Policy will operate;
- (b) accommodate, to the extent reasonably possible, the legitimate business interests of the Service Provider and of Users and Prospective Users; and
- (c) generate, to the extent reasonably possible, economically efficient outcomes.

3.14

The Relevant Regulator may require the Queuing Policy to deal with any other matter the Relevant Regulator thinks fit taking into account the matters listed in section 2.24.

3.15

Notwithstanding anything else contained in this Code, the Service Provider must comply with the Queuing Policy specified in the Service Provider's Access Arrangement.

3.16 ***Extensions/Expansions Policy***

An Access Arrangement must include a policy (an ***Extensions/Expansions Policy***) which sets out:

- (a) the method to be applied to determine whether any extension to, or expansion of the Capacity of, the Covered Pipeline:
 - (i) should be treated as part of the Covered Pipeline for all purposes under the Code; or
 - (ii) should not be treated as part of the Covered Pipeline for any purpose under the Code;

(for example, the Extensions/Expansions Policy could provide that the Service Provider may, with the Relevant Regulator's consent, elect at some point in time whether or not an extension or expansion will be part of the Covered Pipeline or will not be part of the Covered Pipeline);

- (b) specify how any extension or expansion which is to be treated as part of the Covered Pipeline will affect Reference Tariffs (for example, the Extensions/Expansions Policy could provide:
 - (i) Reference Tariffs will remain unchanged but a Surcharge may be levied on Incremental Users where permitted by sections 8.25 and 8.26; or
 - (ii) specify that a review will be triggered and that the Service Provider must submit revisions to the Access Arrangement pursuant to section 2.28);
- (c) if the Service Provider agrees to fund New Facilities if certain conditions are met, a description of those New Facilities and the conditions on which the Service Provider will fund the New Facilities.

The Relevant Regulator may not require the Extensions/Expansions Policy to state that the Service Provider will fund New Facilities unless the Service Provider agrees.

3.17 *Review and Expiry of the Access Arrangement*

An Access Arrangement must include:

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- (a) a date upon which the Service Provider must submit revisions to the Access Arrangement (a Revisions Submission Date); and
- (b) a date upon which the next revisions to the Access Arrangement are intended to commence (a Revisions Commencement Date).

In approving the Revisions Submissions Date and Revisions Commencement Date, the Relevant Regulator must have regard to the objectives in section 8.1, and may in making its decision on an Access Arrangement (or revisions to an Access Arrangement), if it considers it necessary having had regard to the objectives in section 8.1:

- (i) require an earlier or later Revisions Submission Date and Revisions Commencement Date than proposed by the Service Provider in its proposed Access Arrangement;
- (ii) require that specific major events be defined that trigger an obligation on the Service Provider to submit revisions prior to the Revisions Submission Date.

3.18

An Access Arrangement Period accepted by the Relevant Regulator may be of any length; however, if the Access Arrangement Period is more than five years, the Relevant Regulator must not approve the Access Arrangement without considering whether mechanisms should be included to address the risk of forecasts on which the terms of the Access Arrangement were based and approved proving incorrect. These mechanisms may include:

- (a) requiring the Service Provider to submit revisions to the Access Arrangement prior to the Revisions Submission Date if certain events occur, for example:
 - (i) if a Service Provider's profits derived from a Covered Pipeline are outside a specified range or

- if the value of Services reserved in contracts with Users are outside a specified range;
- (ii) if the type or mix of Services changes in a certain way; or
- (b) a Service Provider returning some or all revenue or profits in excess of a certain amount to Users, whether in the form of lower charges or some other form.

Where a mechanism is included in an Access Arrangement pursuant to section 3.18(a), the Relevant Regulator must investigate no less frequently than once every five years whether a review event identified in the mechanism has occurred.

[Section 3.18 amended: Gazette 2 May 2003 p. 1526.]

3.19

Nothing in section 3.18 shall be taken to imply that the Relevant Regulator may not approve an Access Arrangement Period longer than 5 years if the Relevant Regulator considers this appropriate, having regard to the objectives of section 8.1.

3.20

An Access Arrangement submitted under section 2.3 may include a date at which time the Access Arrangement will expire. If an Access Arrangement submitted under section 2.3 expires, the Covered Pipeline the subject of the Access Arrangement ceases to be Covered on the expiry date. The Service Provider must notify the Code Registrar if a Pipeline ceases to be Covered under this section and the Code Registrar must update the Public Register accordingly.

3.21 *Determining Reference Tariffs through a Competitive Tender Process*

Any person who wishes to conduct a tender in relation to a Pipeline that has not been built may make an application to the Relevant Regulator (a *Tender Approval Request*) requesting the

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Relevant Regulator to approve the use of a tender process to determine:

- (a) Reference Tariffs for certain Reference Services to be provided by means of the proposed Pipeline;
- (b) other specified items which are required to be included in an Access Arrangement and which are directly relevant to the determination of the Reference Tariffs concerned (including, without limitation, the Revisions Submission Date and Revisions Commencement Date).

3.22

A Tender Approval Request must:

- (a) nominate the location or locations from where the proposed Pipeline will take gas and the location or locations of the gas market to which the proposed Pipeline will deliver gas;
- (b) detail the process (including procedures and rules) proposed to be followed in conducting the tender process, including the minimum requirements which a tender must meet before it will be accepted as a conforming tender (for example, the date by which tenders must be received);
- (c) detail the selection criteria to be applied in selecting the successful tender; and
- (d) specify a possible Revisions Commencement Date or a series of possible Revisions Commencement Dates to be established for the proposed Pipeline, in relation to which tenderers are asked to submit tenders and propose Reference Tariffs.

The specification of a Revisions Commencement Date in a Tender Approval Request and a decision to approve such a Tender Approval Request do not limit in any way the Relevant Regulator's discretion to approve or not approve a Revisions Commencement Date pursuant to section 3.33(d).

3.23

Subject to section 3.27, within 14 days after receiving a Tender Approval Request which conforms with section 3.22 the Relevant Regulator must:

- (a) inform each person known to the Relevant Regulator who the Relevant Regulator believes has a sufficient interest in the matter that it has received a Tender Approval Request; and
- (b) publish a notice in a national daily newspaper which at least:
 - (i) describes the proposed Pipeline to which the Tender Approval Request relates;
 - (ii) states how copies of the Tender Approval Request can be obtained; and
 - (iii) requests submissions by a date specified in the notice (not being a date earlier than 14 days, or later than 28 days, after the date of the notice).

3.24

The Relevant Regulator must provide a copy of those parts of the Tender Approval Request that it has not agreed to keep confidential to any person within seven days after the person requests a copy and pays any reasonable fee required by the Relevant Regulator.

3.25

Within 28 days of the date specified in the notice published under section 3.23(b), the Relevant Regulator must make a decision in relation to a Tender Approval Request that:

- (a) approves the Tender Approval Request; or
- (b) does not approve the Tender Approval Request.

In making a decision under this section 3.25 the Relevant Regulator must consider any submissions received within the

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time specified in the notice published under section 3.23(b) and may (but is not obliged to) consider any submissions received after the time.

3.26

The Relevant Regulator may reject a Tender Approval Request without further consideration if it is of the opinion that the application has been made on trivial or vexatious grounds.

3.27

The Relevant Regulator may at any time decide not to approve a Tender Approval Request if it is of the opinion that the person who submitted the Tender Approval Request may have, or may appear to have, a conflict of interest if it conducted the tender process. The Relevant Regulator may decide not to approve a Tender Approval Request under this section 3.27 without conducting the public consultation required under section 3.23. If the Relevant Regulator decides not to approve a Tender Approval Request under this section 3.27 on conflict of interest grounds, another person may submit a new Tender Approval Request under section 3.21 in relation to the same proposed Pipeline.

3.28

The Relevant Regulator must decide to approve a Tender Approval Request if satisfied of all of the following and must decide not to approve a Tender Approval Request if not satisfied of all of the following:

- (a) (***new pipeline***): that the proposed Pipeline will be a new Pipeline;
- (b) (***public interest and Reference Tariff objectives***): that using the tender process as outlined in the Tender Approval Request to determine Reference Tariffs is in the public interest and is an appropriate mechanism in the circumstances for ensuring that Reference Tariffs achieve the objectives in section 8.1;

- (c) (***tender process will be competitive***): that the number and character of tenders likely to be received would be such as to ensure a competitive outcome; and
- (d) (***exclusion of certain tenders***): that the proposed procedures and rules to be followed in conducting the proposed tender will result in a tender being excluded from consideration if it:
 - (i) does not include a statement of the Reference Tariffs the tenderer proposes and the Reference Services to which those Reference Tariffs would apply;
 - (ii) does not include a policy on whether the additional revenue which would result if the volume of gas actually transported by the proposed Pipeline exceeds a certain volume will either be retained by the Service Provider or returned in whole or in part to Users in the form of lower charges or some other form (an Additional Revenue Policy);
 - (iii) does not provide that the residual value of the proposed Pipeline after the expiration of the initial Reference Tariff will be based on depreciation over the Pipeline's economic life;
 - (iv) limits or purports to limit the Services to which access might be sought under this Code; or
 - (v) otherwise includes elements inconsistent with this Code except as contemplated by section 3.34;
- (e) (***consideration of all conforming tenders***): that the proposed procedures and rules to be followed in conducting the proposed tender will result in no tender being excluded from consideration except in the circumstances outlined in paragraph (d) or if the tender does not conform to other reasonable requirements in the

- request for tenders or does not meet reasonable prudential and technical requirements;
- (f) (***selection criteria***): that the selection criteria to be applied in conducting the proposed tender:
- (i) will result in the successful tender being selected principally on the basis that the tender will deliver the lowest sustainable tariffs (including but not limited to Reference Tariffs) to Users generally over the economic life of the proposed Pipeline; and
 - (ii) are likely to result in Reference Tariffs that meet the criteria specified in section 3.33(c);
- (g) (***determination of items with the Reference Tariffs***): that the tender documents specify which items required to be included in an Access Arrangement other than Reference Tariffs will be determined by the tender and that those items are directly relevant to the determination of Reference Tariffs;
- (h) (***configuration of Pipeline not limited***): that the tender documents published by the person conducting the tender will not specify the configuration of the proposed Pipeline, including the areas the proposed Pipeline will service, pipeline dimensions, level of compression or other technical specifications, unless the Relevant Regulator is satisfied it would be appropriate to do so;
- (i) (***other documents***): that any document supporting or relating to the tender process is consistent with this Code and does not purport to limit:
- (i) the Services which the Service Provider may provide or to which access may be sought under this Code;
 - (ii) the configuration of the proposed Pipeline including the areas the Proposed Pipeline will service, pipeline dimensions, level of compression and other technical specifications

- unless the Relevant Regulator is satisfied it would be appropriate to do so; or
- (iii) the construction or operation of other Pipelines which could deliver gas to the same gas market as the proposed Pipeline.

3.29

If the Relevant Regulator has made a decision under section 3.25 approving a Tender Approval Request and a tender process has been conducted, the person who conducted the tender process may apply in writing to the Relevant Regulator for final approval under section 3.32 (a *Final Approval Request*). A Final Approval Request must include a statement of which tender was selected and the reasons for that selection based on the selection criteria.

3.30

After the successful tenderer has been selected, the Relevant Regulator may permit the person who conducted the tender process and the successful tenderer to agree to changes to the terms of the tender which result in minor changes to the Reference Tariffs proposed in the tender, provided the Relevant Regulator is satisfied the changes are consistent with the requirements in section 3.28(a) to (i). The amended Reference Tariffs shall be considered to be the Reference Tariffs determined in accordance with the tender process for the purposes of the Relevant Regulator making a decision to approve or not approve a Final Approval Request.

3.31

The Relevant Regulator may before it makes a decision under section 3.32 require the person who submitted the Final Approval Request to provide the Relevant Regulator with any information or assistance the Relevant Regulator reasonably requires.

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3.32

If the Relevant Regulator receives a Final Approval Request, the Relevant Regulator must within 28 days of receiving all information it requires under section 3.31 make a decision that:

- (a) approves the Final Approval Request; or
- (b) does not approve the Final Approval Request.

3.33

The Relevant Regulator must decide to approve the Final Approval Request if satisfied of all of the following and must decide not to approve the Final Approval Request if not satisfied of all of the following:

- (a) that the successful tender was selected in accordance with the selection criteria specified in the Tender Approval Request approved by the Relevant Regulator under section 3.25;
- (b) that the tender process was conducted in accordance with the procedures and rules specified in the Tender Approval Request approved by the Relevant Regulator under section 3.25;
- (c) that the Reference Tariffs determined in accordance with the tender process:
 - (i) achieve the objectives in section 8.1; and
 - (ii) contain or reflect an allocation of costs between Services and an allocation of costs between Users which is fair and reasonable;
- (d) that the Revisions Commencement Date in the Access Arrangement for the proposed Pipeline is not later than 15 years after the Access Arrangement for the proposed Pipeline is approved or such later date as the Relevant Regulator considers appropriate for the proposed Pipeline on the basis of the proposed tariffs (including but not limited to Reference Tariffs); and

- (e) that the successful tenderer's Access Arrangement for the proposed Pipeline will contain an Additional Revenue Policy that is appropriate for the proposed Pipeline on the basis of the proposed tariffs (including but not limited to Reference Tariffs).

3.34

If the Relevant Regulator makes a decision under section 3.32 approving a Final Approval Request then the proposed Pipeline concerned shall be a Covered Pipeline from the time of that decision. In any Access Arrangement for that Covered Pipeline:

- (a) for each Reference Service for which a Reference Tariff was determined by the tender process, the Reference Tariff shall be the Reference Tariff that was determined in accordance with the tender process and approved by the Relevant Regulator; and
- (b) each other item required to be included in an Access Arrangement, which the tender documents specified would be determined by the tender process, shall be as determined in accordance with the tender process and approved by the Relevant Regulator.

Nothing in this section 3.34 limits the Reference Services for which the Relevant Regulator can require a Reference Tariff to be established.

3.35

If the Relevant Regulator makes a decision under section 3.32 approving a Final Approval Request, then the Access Arrangement Information for that Covered Pipeline need not contain the information required by sections 2.6 and 2.7, or any other information, in respect of Reference Tariffs determined pursuant to section 3.34(a).

3.36

Nothing in section 3.34 limits or affects the operation of any provision of this Code except the provisions of section 3 relating to the content of an Access Arrangement to the extent that a Reference Tariff or other item included in the Access Arrangement may, under section 3.34, be determined in accordance with the tender process.

4. RING FENCING ARRANGEMENTS

This section of the Code requires a Service Provider to establish arrangements to segregate or “ring fence” its business of providing Services using a Covered Pipeline. As a minimum, a Service Provider must:

- *be a legal entity;*
- *not carry on a Related Business (essentially a business of producing, purchasing or selling Natural Gas);*
- *establish and maintain separate accounts for the activity that is the subject of each Access Arrangement;*
- *establish and maintain a consolidated set of accounts for all the activities undertaken by the Service Provider;*
- *allocate costs shared between different accounts in a fair and reasonable manner;*
- *ensure that Confidential Information provided by a User or a Prospective User is used only for the purposes for which it was provided and is not disclosed without the User or Prospective User’s consent;*
- *ensure that Confidential Information obtained by a Service Provider which might reasonably be expected to materially affect the commercial interests of a User or Prospective User is not disclosed to any other person without the permission of the User or Prospective User to whom the information pertains;*
- *ensure that Marketing Staff of a Service Provider are not also working for an Associate that takes part in a Related Business; and*

- *ensure that Marketing Staff of an Associate that takes part in a Related Business are not also working for the Service Provider.*

In addition to these minimum requirements, the Relevant Regulator may require the Service Provider to meet additional ring fencing obligations. The Relevant Regulator also has a discretion to dispense with some of the ring fencing obligations. The Gas Pipelines Access Law provides a mechanism for review by the Relevant Appeals Body of a decision by the Relevant Regulator in relation to imposing additional ring fencing obligations or waiving minimum ring fencing obligations.

This section of the Code also requires the Service Provider to establish procedures to ensure compliance with the ring fencing obligations.

4.1 Ring Fencing Minimum Obligations

A person who is a Service Provider in respect of a Covered Pipeline (regardless of whether they are also a Service Provider in respect of a Pipeline that is not Covered) must comply with the following (but in the case of paragraphs (a), (b), (h) and (i), as from the date that is 6 months after the relevant Pipeline became Covered):

- (a) be a legal entity registered under the Corporations Law, a foreign company within the meaning of the Corporations Law that has appointed a local agent in accordance with sections 601CF and 601CG of the Corporations Law, a statutory corporation, a government or an entity established by royal charter.
- (b) not carry on a Related Business;
- (c) establish and maintain a separate set of accounts in respect of the Services provided by each Covered Pipeline in respect of which the person is a Service Provider;
- (d) establish and maintain a separate consolidated set of accounts in respect of the entire business of the Service Provider;
- (e) allocate any costs that are shared between an activity that is covered by a set of accounts described in section

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- 4.1(c) and any other activity according to a methodology for allocating costs that is consistent with the principles in section 8.1 and is otherwise fair and reasonable;
- (f) ensure that all Confidential Information provided by a User or Prospective User is used only for the purpose for which that information was provided and that such information is not disclosed to any other person without the approval of the User or Prospective User who provided it, except:
 - (i) if the Confidential Information comes into the public domain otherwise than by disclosure by the Service Provider; or
 - (ii) to comply with any law, any legally binding order of a court, government, government or semi-government authority or administrative body or the listing rules of any relevant recognised Stock Exchange;
 - (g) 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 and which might reasonably be expected to affect materially the commercial interests 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:
 - (i) if the Confidential Information comes into the public domain otherwise than by disclosure by the Service Provider; or
 - (ii) to comply with any law, any legally binding order of a court, government, government or semi-government authority or administrative body or the listing rules of any relevant recognised Stock Exchange;
 - (h) ensure that its Marketing Staff are not also servants, consultants, independent contractors or agents of an

Associate that takes part in a Related Business and, in the event that they become or are found to be involved in a Related Business contrary to this section, must procure their immediate removal from its Marketing Staff; and

- (i) ensure that none of its servants, consultants, independent contractors or agents are Marketing Staff of an Associate that takes part in a Related Business and, in the event that any servants, consultants, independent contractors or agents are found to be the Marketing Staff of such an Associate contrary to this section, must procure their immediate removal from their position with the Service Provider.

[Section 4.1 amended: Gazette 22 November 2000 p. 6541.]

4.1A

If requested to do so in writing by an End User, a Service Provider may disclose End User Information about that End User to the End User or to any other person or persons nominated by the End User who carry on, or propose to carry on, a business of supplying Natural Gas, notwithstanding and without contravening either section 4.1(f) or 4.1(g).

[Section 4.1A inserted: Gazette 7 January 2000 p. 61.]

4.2

In complying with sections 4.1(c), (d) and (e) a Service Provider must:

- (a) if the Relevant Regulator has published general accounting guidelines for Service Providers which apply to the accounts being prepared, comply with those guidelines; or
- (b) if the Relevant Regulator has not published such guidelines, comply with guidelines prepared by the Service Provider and approved by the Relevant Regulator or, if there are no such guidelines, comply

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with such guidelines (if any) as the Relevant Regulator advises the Service Provider apply to that Service Provider from time to time.

Such guidelines may, amongst other things, require the accounts to contain sufficient information, and to be presented in such a manner, as would enable the verification by the Relevant Regulator of the calculation of the Reference Tariffs for Covered Pipelines.

4.3 *Ring Fencing Obligations*

The Relevant Regulator may by notice to a Service Provider require the Service Provider to comply with obligations in addition to those contained in section 4.1, having regard to the following objectives:

- (a) ensuring that the Service Provider does not have regard to the interests of an Associate in priority to the interests of other Users or Prospective Users with respect to the supply of Services (except as provided for on a basis that deals fairly between all Users and Prospective Users under an applicable Queuing Policy); and
- (b) ensuring that ring fencing obligations do not impose unreasonable compliance costs on the Service Provider or its Associates.

The Service Provider must comply with any additional obligations imposed under this section 4.3.

4.4

Without limiting the additional obligations that may be imposed under section 4.3, the Relevant Regulator may require that:

- (a) the Service Provider ensure its Additional Staff are not also servants, consultants, independent contractors or agents of an Associate that takes part in a Related Business and, in the event that they become or are found

- to be involved in a Related Business, ensure their immediate removal from the Additional Staff;
- (b) at least one director of the Service Provider is not also a director of a company (whether or not an Associate) that takes part in a Related Business or is or may become a User; and
 - (c) the electronic, physical and procedural security measures employed in respect of the offices of the Service Provider and of all offices of its Associates are satisfactory to the Relevant Regulator.

The examples given in this section 4.4 shall not be construed as limiting the types of action a Service Provider may have to take in order to comply with section 4.1.

4.5 *Procedures for Adding Ring Fencing Obligations*

The Relevant Regulator must before issuing a notice under section 4.3:

- (a) inform each person known to the Relevant Regulator who the Relevant Regulator believes has a sufficient interest in the matter that it is considering issuing a notice under section 4.3 with respect to a particular Service Provider; and
- (b) publish a notice in a national daily newspaper which at least:
 - (i) states who the Service Provider concerned is and the obligations the Relevant Regulator is considering adding;
 - (ii) requests submissions by a date specified in the notice (not being a date earlier than 14 days after the date of the notice).

4.6

The Relevant Regulator must consider any submissions received by the date specified in the notice published under section 4.5(b)

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and may (but is not obliged) to consider any submissions received after that date.

4.7

Within 14 days after the last day for submissions specified in the notice published under section 4.5(b) the Relevant Regulator must issue a draft decision stating whether or not it intends to issue a notice under section 4.3.

4.8

The Relevant Regulator must:

- (a) provide a copy of its draft decision to the Service Provider, any person who made a submission on the matter and any other person who requests a copy; and
- (b) request submissions from persons to whom it provides the draft decision by a specified date (not being a date earlier than 14 days after the date the draft decision was issued).

4.9

The Relevant Regulator must consider any submissions it receives by the date specified by the Relevant Regulator under section 4.8 and it may (but is not obliged) to consider any submissions received after that date.

4.10

Within 21 days after the last day for submissions on the draft decision specified by the Relevant Regulator, the Relevant Regulator must issue a final decision stating whether or not it will issue a notice under section 4.3.

4.11

Subject to the Gas Pipelines Access Law, a notice under section 4.3 has effect 14 days after the notice is given to the Service Provider or such later date as the Relevant Regulator specifies in

the notice. A Service Provider may under the Gas Pipelines Access Law have a decision to issue a notice under section 4.3 reviewed by the Relevant Appeals Body.

4.12 *Compliance Procedures and Compliance Reporting*

A Service Provider must establish and maintain appropriate internal procedures to ensure it complies with its obligations under this section 4. The Relevant Regulator may require the Service Provider to demonstrate the adequacy of these procedures upon reasonable notice. However, any statement made or assurance given by the Relevant Regulator concerning the adequacy of the Service Provider's compliance procedures does not affect the Service Provider's obligations under this section 4.

4.13

A Service Provider must provide a report to the Relevant Regulator, at reasonable intervals determined by the Relevant Regulator, describing the measures taken by the Service Provider to ensure compliance with its obligations under this section 4, and providing an accurate assessment of the effect of those measures.

4.14

A Service Provider must provide a report of any breach of any of its obligations under this section 4 to the Relevant Regulator immediately upon becoming aware that the breach has occurred.

4.15 *Waiver of Ring Fencing Obligations*

The Relevant Regulator may by notice to a Service Provider waive any of a Service Provider's obligations under:

- (a) section 4.1(b) where the Relevant Regulator is satisfied that:
 - (i) either the Covered Pipeline is not a significant part of the Pipeline system in any State or

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Territory in which it is located or there is more than one Service Provider in relation to the Covered Pipeline and the Service Provider concerned does not have a significant interest in the Covered Pipeline and does not actively participate in the management or operation of the Covered Pipeline; and

- (ii) the costs to the Service Provider and its Associates that would be incurred solely as a result of complying with that obligation (other than costs associated with losses arising from increased competition in upstream or downstream markets) outweigh any public benefits that would arise from the Service Provider complying with the obligation, taking into account arrangements put in place by the Service Provider (if any) to ensure that Confidential Information the subject of sections 4.1(f) and (g) is not disclosed to the Service Provider or is not disclosed to the servants, consultants, independent contractors or agents of the Service Provider who take part in a Related Business; and
 - (iii) an arrangement has been established between the Service Provider and the Relevant Regulator which the Relevant Regulator is satisfied replicates the manner in which section 7.1 would operate if the Service Provider complied with section 4.1(b); and
- (b) sections 4.1(h) and (i) where the Relevant Regulator is satisfied that the costs to the Service Provider and its Associates that would be incurred solely as a result of complying with that obligation (other than costs associated with losses arising from increased competition in upstream or downstream markets)

outweigh any public benefits that would arise from the Service Provider complying with the obligation.

[Section 4.15 amended: Gazette 22 November 2000 p. 6542.]

4.15A

In making a decision under section 4.15 of the Code, the Relevant Regulator may treat a tax liability arising from an Exempt Matter as a cost for the purposes of sections 4.15(a)(ii) and 4.15(b).

[Section 4.15A inserted: Gazette 22 November 2000 p. 6542.]

4.16 *Procedures for Waiving Ring Fencing Obligations*

A Service Provider may apply to the Relevant Regulator requesting the Relevant Regulator to issue a notice under section 4.15.

4.17

When the Relevant Regulator receives an application under section 4.16 the Relevant Regulator must:

- (a) if it considers that the application has been made on trivial or vexatious grounds, reject the application without further consideration; or
- (b) in all other cases within 14 days after receipt of the application:
 - (i) inform each person known to the Relevant Regulator who the Relevant Regulator believes has a sufficient interest in the matter that it has received the application; and
 - (ii) publish a notice in a national daily newspaper which at least:
 - (A) states who the Service Provider concerned is and the obligations that the application seeks to have waived;

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- (B) states how copies of the application can be obtained;
- (C) requests submissions by a date specified in the notice (not being a date earlier than 14 days after the date of the notice).

4.18

The Relevant Regulator must provide a copy of the application to any person within 7 days after the person requests a copy and pays any reasonable fee required by the Relevant Regulator.

4.19

The Relevant Regulator must consider any submissions received by the date specified in the notice published under section 4.17(b) and it may (but is not obliged) to consider any submissions received after that date.

4.20

Within 14 days after the last day for submissions specified in the notice published under section 4.17(b) the Relevant Regulator must issue a draft decision stating whether or not it intends to issue a notice under section 4.15.

4.21

The Relevant Regulator must:

- (a) provide a copy of its draft decision to the Service Provider, any person who made a submission on the matter and any other person who requests a copy; and
- (b) request submissions from persons to whom it provides the draft decision by a specified date (not being a date earlier than 14 days after the date the draft decision was issued).

4.22

The Relevant Regulator must consider any submissions it receives by the date specified by the Relevant Regulator under section 4.21 and it may (but is not obliged) to consider any submissions received after that date.

4.23

Within 21 days after the last day for submissions on the draft decision specified by the Relevant Regulator, the Relevant Regulator must issue a final decision stating whether or not it will issue a notice under section 4.15.

4.24

Subject to the Gas Pipelines Access Law, a notice under section 4.15 has effect 14 days after the notice is given to the Service Provider or such later date as the Relevant Regulator specifies in the notice. A Service Provider or other person adversely affected may under the Gas Pipelines Access Law have a decision by the Relevant Regulator to issue or not issue a notice under section 4.15 reviewed by the Relevant Appeals Body.

5. INFORMATION AND TIMELINES FOR NEGOTIATION

This section of the Code places obligations on Service Providers and Users to disclose to the market information relevant to obtaining access to Services.

Service Providers are required to:

- *establish, and provide to bona fide Prospective Users who request it, an Information Package containing general information on the terms and conditions of access and explaining how to make a specific access request;*
- *respond within 30 days to a specific request for access; and*
- *establish and maintain a public register of Spare and Developable Capacity.*

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Users with Contracted Capacity which they do not expect to use must make available to any person who requests it information about the quantity, type and timing of that unutilised Contracted Capacity. The User may notify the Service Provider of its unutilised Contracted Capacity so that it is included on the Service Provider's public register.

[Overview to section 5 amended: Gazette 2 May 2003 p. 1526.]

5.1 General Requests from Prospective Users

A Service Provider must establish and maintain an Information Package in relation to each Covered Pipeline that contains at least the following information:

- (a) the Access Arrangement and Access Arrangement Information for the relevant Covered Pipeline;
- (b) a summary of the contents of the public register referred to in section 5.9, updated at reasonable intervals;
- (c) information relating to all major trunk and mains pipes comprised in the relevant Covered Pipeline (for example, a map showing the location and size of those pipes);
- (d) a description of the Service Provider's procedures relating to specific access requests, including a detailed description of the information the Service Provider requires in order to consider an access request; and
- (e) any other information the Relevant Regulator reasonably requires to be included under section 5.2.

5.2

The Relevant Regulator may require the Service Provider to amend or include additional information in the Information Package if the Relevant Regulator considers the amendment or additional information will assist Prospective Users to decide whether or not to seek Services from the Service Provider or to determine how to go about seeking Services from the Service Provider. The Relevant Regulator must not require information to be included in the Information Package if its disclosure could

in the Relevant Regulator's opinion be unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User.

5.3

The Service Provider must provide a copy of the Information Package to any bona fide Prospective User within 14 days after the Prospective User requests a copy and pays any applicable fee. The Service Provider may require the payment of a reasonable fee (determined in a manner approved by the Relevant Regulator) for copying the Access Arrangement Information, but must not charge a fee for any other item included in the Information Package.

5.4 *Specific Requests from Prospective Users*

If a Service Provider receives a specific request for access to a Service provided by means of a Covered Pipeline it must, within 30 days after it has received the information required to consider the request (as set out in the Information Package), respond to the Prospective User:

- (a) confirming that Spare Capacity exists to satisfy the request and specifying the charges and terms and conditions upon which it will make the Service available; or
- (b) advising that Spare Capacity does not exist to satisfy the request; or
- (c) advising that investigations are required to be undertaken prior to responding to the request.

5.5

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:

- (a) the nature of the investigations;

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- (b) a plan, including a time schedule, for completing the investigations; and
- (c) any reasonable costs which the Prospective User may be required to meet in respect of the investigations.

Upon obtaining the Prospective User's consent to the plan and the proposed allocation of costs, the Service Provider must proceed forthwith with the agreed plan.

5.6

If the Service Provider advises that Capacity does not exist to satisfy the request, it must provide an 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.

5.7

If a Prospective User or a Service Provider provides the other with information pursuant to section 5.4, 5.5 or 5.6 which it notifies the other is confidential, the recipient must not disclose that information to any other person except:

- (a) if the information comes into the public domain otherwise than by disclosure by the recipient; or
- (b) to comply with any law, any legally binding order of a court, government, government or semi-government authority or administrative body or the listing rules of any relevant recognised Stock Exchange.

5.8 *Information Provided by Users to the Market*

Notwithstanding anything contained in an Access Arrangement, where a User does not expect to utilise fully its Contracted Capacity and where the unutilised Contracted Capacity is a Marketable Parcel then the User:

- (a) must promptly provide to any person who requests it information about the quantity, type and timing of the

unutilised Contracted Capacity and may make publicly available the proposed terms and conditions (which may include price) for the sale of the unutilised Contracted Capacity; and

- (b) may notify the Service Provider of the unutilised Contracted Capacity, including the quantity, type and timing of the unutilised Contracted Capacity and the proposed terms and conditions (which may include price) for the sale of the unutilised Contracted Capacity.

5.9

In respect of:

- (a) a Covered Pipeline that is a Transmission Pipeline; and
- (b) any other Covered Pipeline if the Relevant Regulator so requires, taking into account:
 - (i) the nature of the Covered Pipeline;
 - (ii) the Services likely to be sought by Prospective Users; and
 - (iii) any other matters that the Relevant Regulator considers are relevant,

the Service Provider must establish and maintain a public register which includes:

- (c) an indication of the Spare Capacity that it reasonably believes exists for delivery to defined points along the Covered Pipeline (being defined points that are likely to be relevant commercially for a significant number of Prospective Users and the number of which is reasonable on commercial and technical grounds);
- (d) to the extent that it is commercially and technically reasonable to include it, information on planned or committed Developable Capacity and reasonably expected additions to Spare Capacity at the defined points along the Covered Pipeline referred to in paragraph (a), except where such disclosure may be

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- unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User; and
- (e) information provided to the Service Provider by a User under section 5.8(b).

Where a Covered Pipeline comprises a hierarchy of pipes that are differentiated by, amongst other things, pipeline operating pressure and pipeline diameter, the information referred to in paragraphs (a) and (b) may be limited to the trunk and mains pipes.

[Section 5.9 amended: Gazette 11 Jul 2003 p. 2822.]

6. DISPUTE RESOLUTION

This section of the Code establishes a mechanism whereby disputes between Prospective Users and Service Providers about the terms and conditions of access can be submitted to the Arbitrator for arbitration. This section of the Code sets out rules relating to notification of a dispute, withdrawal and termination of a dispute, the nature of the arbitration decision to be made and certain guidelines and restrictions the Arbitrator must follow in making its decision. The Gas Pipelines Access Law contains the detailed procedural rules that will apply in an arbitration.

The Code does not limit the ability of a Service Provider and User to reach an agreement about access without recourse to these dispute resolution procedures. The Code also does not limit the terms and conditions on which a Service Provider and User can reach agreement. In particular, parties can agree to a Tariff other than the Reference Tariff. The provisions in section 6 will apply only if parties cannot reach agreement and a dispute is notified to the Relevant Regulator.

The dispute resolution mechanism applies only to a dispute about Service provided by means of a Covered Pipeline (for example, a dispute about access to Spare or Developable Capacity or a dispute about interconnection). Spare Capacity is defined as meaning, in the case of a Contract Carriage Pipeline, essentially, capacity that has not already been reserved in a contract plus

contractually reserved capacity that is not being used. Although the Arbitrator can determine that access should be provided to contractually reserved capacity that is not being used, it must not make a decision that deprives a person of a contractual right. Consequently, access to contracted but unused capacity can be ordered on an interruptible basis but the original contract holder retains a priority right to that capacity.

Although an Access Arrangement (apart from the Queuing Policy) cannot limit the scope for commercial negotiation, or limit the range of matters that can be the subject of an access dispute, the Arbitrator is bound to apply the provisions of the Access Arrangement in an access arbitration. The implications of this are that:

- except in relation to the Queuing Policy, the dispute resolution procedure is the mechanism through which a User can require the Service Provider to grant access according to the terms of the Access Arrangement (for example, to grant access to the Reference Service at the Reference Tariff); and*
- the Access Arrangement provides a degree of certainty as to the outcome of an access dispute.*

The Arbitrator may before arbitrating a dispute:

- require the parties to continue negotiations or engage in some alternative dispute resolution process; and*
- require written reports from the parties.*

If the Arbitrator decides the sole subject of dispute is what tariff should apply to a Reference Service, the Arbitrator may short cut the dispute resolution process and make an immediate decision requiring the Reference Service to be provided at the Reference Tariff.

In any other case, the arbitrator must in reaching a decision:

- apply the provisions of the Access Arrangement; and*

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- *take into account the factors listed in section 6.15.*

The Arbitrator must not make a decision that:

- *is inconsistent with the Access Arrangement;*
- *would prevent a User from obtaining a Service to the extent provided for in a contract;*
- *deprives a person of any contractual right that existed prior to the notification of the dispute, other than an Exclusivity Right which arose on or after 30 March 1995;*
- *affects the valid priority rights of another person under the Queuing Policy; or*
- *requires a Service Provider, User or Prospective User to accept a tariff for a Reference Service other than the Reference Tariff.*

Because the Arbitrator cannot deprive a person of a contractual right, “foundation shippers” contracts cannot be overturned by the Arbitrator at either the Service Provider’s or foundation shipper’s request.

The Arbitrator is also precluded from granting access where the Service Provider reasonably believes that access is incompatible with the safe operation of the Covered Pipeline and prudent pipeline practice accepted in the industry. If the Arbitrator is precluded from granting access on these grounds, the Service Provider must disclose to the Prospective User the assumptions it used in forming its belief. The Prospective User also has the option of requiring an independent expert to provide an opinion on the matter. The expert opinion cannot override the Service Provider’s reasonable belief on safety. In certain circumstances, however, further action could be taken by the Relevant Regulator or the Prospective User under the hindering provisions of the Gas Pipelines Access Law if the advice of the expert contradicts the position of the Service Provider. In certain circumstances, the Arbitrator may require a Service Provider to install a New Facility to expand capacity.

The final decision has effect 14 days after the decision is made. The Service Provider is bound by the decision. The Prospective User is also bound by the decision unless it notifies the Arbitrator within 14 days of the decision that it does not intend to be bound by the decision. As part of a decision, the Arbitrator may require the parties to represent the decision in the form of a binding contract.

6.1 Notification of a Dispute

If a Prospective User and a Service Provider are unable to agree on one or more aspects of access to a Service the Prospective User or Service Provider may notify the Relevant Regulator in writing that a dispute exists. A Prospective User or Service Provider may not give a notice to the Relevant Regulator under this section unless an Access Arrangement has been accepted by the Relevant Regulator (or the Relevant Regulator has drafted and approved its own Access Arrangement) with respect to the Covered Pipeline concerned.

6.2

On receiving the notification, the Relevant Regulator must give notice in writing of the access dispute to:

- (a) the Service Provider, if another person notified the access dispute;
- (b) the other person, if the Service Provider notified the access dispute.

The parties to an arbitration are the Prospective User or Users and the Service Provider or Providers who are in dispute and no other persons.

6.3

Before arbitrating a dispute, the Arbitrator may:

- (a) require the parties to continue negotiations or engage in an alternative dispute resolution process; and

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- (b) require reports from each party setting out the nature of the latest offers, the basis upon which those offers were made and the nature of any conflicts of interest that the Service Provider may have that may affect its willingness to resolve the dispute with the Prospective User.

6.4

Unless the Arbitrator makes a decision under section 6.3, the Arbitrator must require the parties to make submissions to the Arbitrator regarding the dispute by a specified date.

6.5 ***Withdrawal and Termination of a Dispute***

The person who notified the dispute under section 6.1 or the Prospective User may withdraw notification of a dispute at any time by notice to the Arbitrator. If the notification is withdrawn, it is taken for the purposes of this section 6 never to have been given.

6.6

The Relevant Regulator may at any time terminate an arbitration (without making a decision) if the Relevant Regulator considers that:

- (a) the notification of the dispute was vexatious; or
- (b) the subject-matter of the dispute is trivial, misconceived or lacking in substance; or
- (c) the party who notified the dispute has not engaged in negotiations in good faith.

6.7 ***The Arbitration***

Unless the Arbitrator terminates the arbitration under section 6.6, the Arbitrator must make a decision on access by the Prospective User to a Service.

6.8

The Arbitrator's decision may deal with any matter relating to the provision of a Service to a Prospective User. By way of example, the decision may:

- (a) require the Service Provider to offer to enter into a contract to provide a Service to the Prospective User at a specified Tariff and on specified terms and conditions; or
- (b) require the Service Provider to install a New Facility to increase the Capacity of the Covered Pipeline pursuant to section 6.22.

The decision does not have to require the Service Provider to provide a Service to the Prospective User.

6.9

Subject to section 6.14, in making a decision under section 6.7 the Arbitrator must:

- (a) consider submissions received from the parties before the date specified by the Arbitrator under section 6.4;
- (b) after considering submissions received by the date specified by the Arbitrator under section 6.4, provide a draft decision to the parties and request submissions from the parties by a specified date;
- (c) consider submissions received from the parties before the date specified by the Arbitrator under paragraph (b); and
- (d) after considering submissions received by the date specified by the Arbitrator under paragraph (b) provide a final decision to the parties.

6.10

The Arbitrator may, but need not, by whatever means it considers appropriate seek written submissions from persons

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who are not parties to the dispute and take those submissions into account in making its decision under section 6.7.

6.11

The Arbitrator must provide a final decision under section 6.7 within three months of requiring parties to make submissions under section 6.4. The Arbitrator must also ensure that there is a period of at least 14 days:

- (a) between requiring parties to make submissions under section 6.4 and the last day for such submissions specified by the Arbitrator; and
- (b) between providing a draft decision to the parties under section 6.9(b) and the last day for submissions on the draft decision specified by the Arbitrator.

In all other respects the timing for the taking of each of the steps set out in section 6.9 is a matter for the Arbitrator to determine.

6.12

The Arbitrator may increase the period of three months specified in section 6.11 by periods of up to one month on one or more occasions provided it provides the parties (and each person who has made a written submission to the Arbitrator) with a notice of the decision to increase the period.

6.13

Subject to sections 6.19 and 6.20, if:

- (a) the sole subject of a dispute is the question of which Tariff should apply to a Reference Service; and
- (b) a decision requiring the Service Provider to provide the Prospective User with the Reference Service that the Prospective User seeks would not be inconsistent with sections 6.18 and 6.21,

the Arbitrator must make a decision requiring the Service Provider to provide the Prospective User with the Reference

Service that the Prospective User seeks at the Reference Tariff and on the terms and conditions specified under section 3.6.

6.14

The Arbitrator need not before making a decision under section 6.13 issue a draft decision.

6.15 ***Guidance for the Arbitrator***

When arbitrating a dispute the Arbitrator must, subject to sections 6.18(b), (c) and (d), apply the provisions of the Access Arrangement for the Covered Pipeline concerned. In addition, the Arbitrator must take into account:

- (a) the Service Provider's legitimate business interests and investment in the Covered Pipeline;
- (b) the costs to the Service Provider of providing access, including any costs of extending the Covered Pipeline, but not costs associated with losses arising from increased competition in upstream or downstream markets;
- (c) the economic value to the Service Provider of any additional investment that the Prospective User or the Service Provider has agreed to undertake;
- (d) the interests of all Users;
- (e) firm and binding contractual obligations of the Service Provider or other persons (or both) already using the Covered Pipeline;
- (f) the operational and technical requirements necessary for the safe and reliable operation of the Covered Pipeline;
- (g) the economically efficient operation of the Covered Pipeline; and
- (h) the benefit to the public from having competitive markets.

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6.16

A Service Provider must comply with a decision of the Arbitrator made under this section 6 from the date specified by the Arbitrator.

6.17

The Arbitrator may refuse to make a decision that requires the Service Provider to provide a particular Service to the Prospective User if, without limitation, the Arbitrator considers there is substantial competition in the market for the provision of the Service in question.

6.18 ***Restrictions on Decisions***

Subject to sections 6.19 and 6.20 and to the Queuing Policy contained in the Access Arrangement, the Arbitrator must not make a decision that:

- (a) subject to paragraphs (b), (c) and (d), is inconsistent with the Access Arrangement;
- (b) would impede the existing right of a User to obtain Services;
- (c) would deprive any person of a contractual right that existed prior to the notification of the dispute, other than an Exclusivity Right which arose on or after 30 March 1995;
- (d) is inconsistent with the applicable Queuing Policy; or
- (e) requires the Service Provider to provide, or the User or Prospective User to accept, a Reference Service at a Tariff other than the Reference Tariff.

6.19 ***Effect of a Surcharge***

If:

- (a) a dispute relates (wholly or partly) to the Tariff to be charged for a Service; and

- (b) but for this section, the Arbitrator would have made a decision requiring the Service Provider to provide a specified Service at a specified Tariff (which could be the Reference Service at the Reference Tariff); and
- (c) the Prospective User is a Prospective Incremental User; and
- (d) there is a Surcharge relating to the relevant Incremental Capacity,

the Arbitrator's decision under section 6.7 or section 6.13 may require the Service Provider to provide the Service that would (but for this section) have been specified under paragraph (b) at a Tariff equal to the Tariff that would (but for this section) have been specified under paragraph (b) plus the Surcharge.

6.20 *Prior Capital Contributions*

If a User or Prospective User claims it has funded the construction of all or part of a Covered Pipeline, either directly or by agreeing to pay the Service Provider a higher charge than it would have paid in the absence of such a capital contribution, then in making a decision the Arbitrator must:

- (a) consider whether the User or Prospective User did make a capital contribution to the construction of all or part of the Covered Pipeline; and
- (b) consider the extent to which the User or Prospective User has recouped any such capital contribution.

If the Arbitrator considers that the User or Prospective User has made a capital contribution which has not been fully recouped, the Arbitrator's decision under section 6.7 or section 6.13 may require the Service Provider to provide the Service at a Tariff set in a way that allows the User or Prospective User to recoup some or all of the unrecouped portion of the capital contribution.

6.21 *Safe Operation of a Covered Pipeline*

Where the Service Provider reasonably believes that it is not possible to accommodate a Prospective User's requirement for a Service consistently with the safe operation of the Covered Pipeline and prudent pipeline practices accepted in the industry:

- (a) the Arbitrator must not make a decision that the Service Provider reasonably believes is not consistent with the safe operation of the Covered Pipeline and prudent pipeline practices accepted in the industry;
- (b) where the Service is being sought by the Prospective User on a non interruptible basis, the Arbitrator may require the Service Provider to offer a similar Service on an interruptible basis and for the corresponding interruptible price, where that would be consistent with the safe operation of the Covered Pipeline and prudent pipeline practices accepted in the industry; and
- (c) the Service Provider must disclose to the Prospective User the assumptions it has used in determining that it is not possible to accommodate the Prospective User's requirement for a Service consistently with the safe operation of the Covered Pipeline and prudent pipeline practices accepted in the industry and must provide the Prospective User with the option of having an independent expert nominated by the Service Provider, at the cost of the Prospective User, give a (nonbinding) opinion on the matter.

6.22 *Obligation to Develop Capacity*

In making a decision under section 6.7 or section 6.13 the Arbitrator may require the Service Provider to expand the Capacity of a Covered Pipeline to meet the requirements of a Prospective User, provided that:

- (a) the Service Provider is not required to extend the geographical range of a Covered Pipeline;

- (b) the expansion is technically and economically feasible and consistent with the safe and reliable provision of the Service;
- (c) the Service Provider's legitimate business interests are protected;
- (d) the Prospective User does not become the owner of a Covered Pipeline or part of a Covered Pipeline without the agreement of the Service Provider; and
- (e) the Service Provider is not required to fund part or all of the expansion (except where the Extensions/Expansions Policy in the Access Arrangement for the Covered Pipeline states that the Service Provider will fund the New Facility and the conditions specified in the Extensions/Expansions Policy have been met).

6.23

If the Arbitrator requires the Service Provider to install a New Facility under section 6.22 and the Prospective User bears the cost of the expenditure on the New Facility, then:

- (a) all expenditure on the New Facility constitutes New Facilities Investment by the Service Provider for the purposes of determining the Reference Tariffs;
- (b) the Service Provider must levy a Surcharge on Incremental Users (apart from the Prospective User) consistent with the principles for Surcharges contained in section 8 (with the Prospective User treated as if it were paying a Surcharge for the purposes of calculating a fair and reasonable Surcharge for other Incremental Users); and
- (c) the terms of access for the Prospective User shall reflect the value to the Service Provider of the contribution made by the Prospective User.

6.24 ***Prospective User May Decide Not to Take a Service***

Where a decision made under section 6.7 or section 6.13 requires the Service Provider to provide, and the Prospective User to accept, a Service on terms and conditions specified in the decision, then:

- (a) subject to paragraph (b), the Prospective User becomes bound by the decision on the 14th day after the day on which the decision was made, or, if earlier, on the day the Prospective User notifies the Service Provider that it intends to be bound by the decision; and
- (b) the Prospective User is not bound by the decision if it notifies the Arbitrator that it does not intend to be bound by the decision within 14 days after the day on which the decision was made (unless it has previously notified the Service Provider under paragraph (a), in which case paragraph (a) applies).

6.25 ***Reservation of Capacity During an Access Dispute***

No priority rights of a User or Prospective User who is a party to a dispute shall be altered during the period of that dispute until the Arbitrator's decision has been made under section 6.7 or section 6.13.

6.26 ***Obligation to Reflect the Decision in a Draft Contract***

Where a decision under section 6.7 or section 6.13 requires the Service Provider to provide a Service to the Prospective User on terms and conditions specified in the decision, the Arbitrator may, as part of that decision, require the Service Provider and Prospective User to represent that decision in the form of a contract between the parties and to submit to the Arbitrator, within 14 days following the date the decision comes into effect, either (at the choice of the Service Provider or Prospective User):

- (a) a copy of a draft contract; or
- (b) a copy of a signed contract.

6.27

If the parties do not submit the draft contract (or a copy of a signed contract) to the Arbitrator within the 14 day period referred to in section 6.26, then the Arbitrator may make a decision on the form of any terms and conditions in the draft contract that have not been resolved within that time.

7. GENERAL REGULATORY AND MISCELLANEOUS PROVISIONS

This section of the Code contains a number of miscellaneous provisions, including provisions dealing with the following.

Associate Contracts - A Service Provider is required to obtain the Relevant Regulator's consent before entering into certain contracts (principally any contract with an Associate for the provision of a Service). The Relevant Regulator's decision to not approve an Associate Contract may be subject to review by the Relevant Appeals Body under the Gas Pipelines Access Law.

Decisions of the NCC, Relevant Minister, Relevant Regulator and Arbitrator - Each decision to be made by the NCC, Relevant Minister, Relevant Regulator or Arbitrator under the Code must include reasons. A copy of the decision and the reasons for it should be placed on a Public Register.

Extensions to Time Limits - Provision is made for the extension of certain time limits in the Code.

[Overview to section 7 amended: Gazette 2 May 2003 p. 1526.]

7.1 Approval of Relevant Regulator Required for Associate Contracts

A Service Provider must not enter into an Associate Contract without first obtaining the approval of the Relevant Regulator. The Relevant Regulator must not refuse to approve a proposed Associate Contract unless it considers that the contract would have the effect, or would be likely to have the effect, of substantially lessening, preventing or hindering competition in a market.

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7.2

If an Associate Contract provides for the supply of Services at the Reference Tariff the Relevant Regulator may make a decision under section 7.1 without conducting public consultation.

7.3

In all other cases the Relevant Regulator must, prior to making a decision under section 7.1, conduct such public consultations as it considers appropriate. In conducting such public consultations the Relevant Regulator may, but need not, make public the content of part or all of the Associate Contract. The Relevant Regulator must not make public any part of the Associate Contract which the Service Provider claims is confidential or commercially sensitive except where the Relevant Regulator is of the opinion the disclosure of the part of the Associate Contract concerned would not be unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User.

7.4

The Relevant Regulator is deemed to have approved an Associate Contract if it does not notify the Service Provider that it does not approve the Contract within:

- (a) 21 days after the day on which the Service Provider's application to enter into the Associate Contract was received by the Relevant Regulator; or
- (b) if, within that 21 day period, the Relevant Regulator notifies the Service Provider that it requires additional information from the Service Provider to consider the application - the period of 21 days after the day on which the Service Provider's application to enter into the Associate Contract was received by the Relevant Regulator plus the number of days in the period commencing on the day on which the Relevant

Regulator gave notice to the Service Provider and ending on the day on which the Relevant Regulator receives the additional information from the Service Provider.

7.5

If the Relevant Regulator conducts a public consultation in relation to an Associate Contract the references in clause 7.4 to 21 days shall be read as references to 49 days.

7.6

A decision by the Relevant Regulator not to approve an Associate Contract is subject to review by the Relevant Appeals Body under the Gas Pipelines Access Law.

7.7 *Decisions by the NCC, Relevant Minister, Relevant Regulator and Arbitrator*

If the NCC, Relevant Minister, Relevant Regulator or Arbitrator is required under this Code to make a draft decision or a final decision, the NCC, Relevant Minister, Relevant Regulator or Arbitrator concerned must include its reasons in its draft decision or final decision.

7.8

Subject to section 7.12, the NCC shall as soon as possible provide to the Code Registrar to place on the Public Register a copy of:

- (a) each application for Coverage of a Pipeline and application for revocation of Coverage of a Pipeline;
- (b) each submission received by the NCC in relation to any such application;
- (c) each recommendation made by the NCC in relation to any such application and the reasons given for such a recommendation; and

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- (d) each decision made by the Relevant Minister (and the Relevant Appeals Body under the Gas Pipelines Access Law, if applicable) in relation to any such application and the reasons given for such a decision, including a description of the Pipeline the subject of that decision.

7.9

Subject to section 7.12, each Relevant Regulator shall as soon as possible provide to the Code Registrar to place on the Public Register:

- (a) in relation to Access Arrangements a copy of:
 - (i) each proposed Access Arrangement or proposed revisions of an Access Arrangement and each proposed variation of a Reference Tariff pursuant to the implementation of an Approved Reference Tariff Variation Method;
 - (ii) each proposed Access Arrangement Information or proposed revisions of Access Arrangement Information;
 - (iii) each submission received by the Relevant Regulator in relation to the Access Arrangement, revisions to the Access Arrangement or proposed variation of a Reference Tariff pursuant to the implementation of an Approved Reference Tariff Variation Method;
 - (iv) each submission received by the Relevant Regulator in relation to the Access Arrangement Information or revisions to the Access Arrangement Information;
 - (v) each draft decision and final decision made by the Relevant Regulator (and the Relevant Appeals Body under the Gas Pipelines Access Law if applicable) in relation to a proposed Access Arrangement, proposed revisions to an Access Arrangement, variation or proposed

- variation of a Reference Tariff pursuant to the implementation of an Approved Reference Tariff Variation Method, proposed Access Arrangement Information or proposed revisions to Access Arrangement Information and the reasons given for each such draft or final decision;
- (vi) if an Access Arrangement submitted under section 2.3 is accepted, a description of the Pipeline or proposed Pipeline which thereby became Covered;
- (b) in relation to competitive tender processes a copy of:
- (i) each Tender Approval Request and Final Approval Request the Relevant Regulator receives;
 - (ii) each submission and other document the Relevant Regulator receives relating to a Tender Approval Request and Final Approval Request;
 - (iii) each decision by the Relevant Regulator relating to a Tender Approval Request or Final Approval Request and the reasons given for each such decision;
 - (iv) a description of any proposed Pipeline that becomes a Covered Pipeline pursuant to section 3.34;
- (c) in relation to arbitrations, if the Regulator considers it appropriate, a copy of each draft or final decision of the Relevant Regulator (or an Arbitrator appointed by it) under section 6 of the Code and the reasons given for each such draft or final decision;
- (d) in relation to ring fencing a copy of:
- (i) each application received by the Relevant Regulator under section 4;

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- (ii) each submission received by the Relevant Regulator in relation to adding to or waiving ring fencing obligations;
- (iii) any draft or final decision by the Relevant Regulator (and the Relevant Appeals Body under the Gas Pipelines Access Law if applicable) to add to or waive ring fencing obligations and the reasons given for any such draft or final decision;
- (e) in relation to Associate Contracts a copy of:
 - (i) each decision made by the Relevant Regulator under section 7.1 and the reasons given for any such decision;
 - (ii) if the Relevant Regulator considers it appropriate, the proposed Associate Contract.

[Section 7.9 amended: Gazette 11 Jul 2003 p. 2822-3.]

7.10 *Public Register*

Subject to section 7.12 the Code Registrar shall keep a Public Register and place on that register:

- (a) a description of each Covered Pipeline;
- (b) each document provided to it by the NCC under section 7.8 of the Code and section 10 or 11 of the Gas Pipelines Access Law;
- (c) each document provided to it by a Relevant Regulator under section 7.9; and
- (d) each document provided to it by a Service Provider under either section 1.41 or section 3.20.

7.11 *Treatment of Confidential Information*

Where a person furnishes information or a document to the NCC, Relevant Minister or Relevant Regulator (other than in compliance with a notice given by the Relevant Regulator under section 41 of the Gas Pipelines Access Law) the person may, at the time when the document is furnished, state that the

information or document or part of the information or document is of a confidential or commercially sensitive nature.

7.12

The NCC, Relevant Minister and Relevant Regulator must not disclose the contents of any such information or document or any such part of the information or document to any person or provide it to the Code Registrar to place on the Public Register except where the NCC, Relevant Minister or Relevant Regulator is of the opinion that the disclosure of the information or document or part of the information or document would not be unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User.

7.13

Notwithstanding section 7.12 the information provided to the Code Registrar by the Relevant Regulator under section 7.9 must include at least the information stated below for the decision identified:

- (a) A decision in relation to an Access Arrangement or revisions to an Access Arrangement:
 - (i) the valuations derived from employing each asset valuation methodology to which regard was had pursuant to section 8.10(a) and (b) and the assumptions on which those valuations were based;
 - (ii) the Initial Capital Base for a Covered Pipeline that is in existence at the Commencement of the Code;
 - (iii) a summary of the assumptions and reasoning that resulted in the figure adopted as the Initial Capital Base for a Covered Pipeline that is in existence at the commencement of the Code, including if the Initial Capital Base for a Covered Pipeline that is in existence at the

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commencement of the Code is outside the range of values determined according to sections 8.10(a) and (b), detailed reasons as to why a figure outside that range was selected.

- (b) A decision in relation to an Access Arrangement or revisions to an Access Arrangement where the decision was to approve a proposed Access Arrangement or proposed revisions: details of where the assumptions adopted by the Regulator in approving the (or drafting and approving its own) Access Arrangement differ from the assumptions described in the Access Arrangement Information and reasons for that difference.

7.14

The Relevant Regulator may provide a person who makes a request for further information with such further information relevant to the decision as it sees fit, other than information which could not be provided to the Code Registrar under section 7.12.

7.15 ***Operational Guidelines***

In exercising any functions under the Code the Relevant Regulator and the Arbitrator may take into account any guidelines on operational procedures approved by the Relevant Ministers of all the Scheme Participants on the recommendation of the NGPAC.

7.16 ***Extensions to Time Limits***

If any section of this Code requires the NCC or the Relevant Minister to do something within a certain period, the NCC or the Relevant Minister, as the case may be, may, in a particular case, increase the period it has to do the thing in question by the period originally specified in the section of the Code concerned.

7.17

The NCC or the Relevant Minister may only increase the period it has to do a thing under section 7.16 if, before the day on which the Code would have required the thing to be done, it publishes in a national newspaper notice of the decision to increase the period.

7.18

The NCC and the Relevant Minister may increase the period it has to do a thing any number of times provided on each occasion it does so it complies with section 7.17.

7.19

The Relevant Regulator may on one or more occasions, at its discretion, grant extensions to any time period in this Code that applies to a person other than the Relevant Regulator, the NCC or the Relevant Minister, provided that an application for that extension has been received by it before the expiration of the time period in question. Time periods applying to the Relevant Regulator, NCC or Relevant Minister may be extended as otherwise provided in this Code.

Disclosure of End User Information

[Heading inserted: Gazette 22 November 2000 p. 6542.]

7.20

Subject to section 7.22, if requested to do so in writing by an End User, a Service Provider must disclose any End User Information about that End User of a type described in the End User's written request that is in the Service Provider's possession or under its control, to the End User or to any other person nominated by the End User who carries on, or proposes to carry on, a business of supplying Natural Gas.

[Section 7.20 inserted: Gazette 22 November 2000 p. 6542.]

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7.21

A Service Provider must not disclose the fact that an End User has made a request under section 7.20 to any person (other than a person nominated by the End User under section 7.20).

[Section 7.21 inserted: Gazette 22 November 2000 p. 6542.]

7.22

A Service Provider may, prior to disclosing any End User Information under paragraph 7.20, require the End User or other recipient of the End User Information to pay the Service Provider a fee to compensate the Service Provider for its reasonable costs of providing the End User Information, provided that fee has been approved in writing by the Relevant Regulator.

[Section 7.22 inserted: Gazette 22 November 2000 p. 6542-3.]

8. REFERENCE TARIFF PRINCIPLES

This section of the Code sets out the principles with which Reference Tariffs and a Reference Tariff Policy (the principles underlying the calculation of Reference Tariffs) included in an Access Arrangement must comply.

General Principles

The Reference Tariff Principles are designed to ensure that certain key principles are reflected in the Reference Tariff Policy and in the calculation of all Reference Tariffs. Within these parameters, the Reference Tariff Principles are designed to provide a high degree of flexibility so that the Reference Tariff Policy can be designed to meet the specific needs of each pipeline system. The overarching requirement is that when Reference Tariffs are determined and reviewed, they should be based on the efficient cost (or anticipated efficient cost) of providing the Reference Services.

The Principles also require that, where appropriate, Reference Tariffs be designed to provide the Service Provider with the ability

to earn greater profits (or less profits) than anticipated between reviews if it outperforms (or underperforms against) the benchmarks that were adopted in setting the Reference Tariffs. The intention is that, to the extent possible, Service Providers be given a market-based incentive to improve efficiency and to promote efficient growth of the gas market (an Incentive Mechanism).

The Reference Tariff Policy and all Reference Tariffs should be designed to achieve a number of objectives, including providing the Service Provider with the opportunity to earn a stream of revenue that recovers the costs of delivering the Reference Service over the expected life of the assets used in delivering that Service, to replicate the outcome of a competitive market, and to be efficient in level and structure.

Principles for determining the Total Revenue

Reference Tariffs are to be set on the basis of the sales of all Services delivering (or being forecast to deliver) a certain amount of revenue (Total Revenue) over the period for which the Reference Tariffs remain in effect (the Reference Tariff Period).

The Reference Tariff Principles specify three methodologies for determining the Total Revenue:

- Cost of Service: where the Total Revenue is set to recover 'costs' with those costs to be calculated on the basis of a return (Rate of Return) on the value of the assets that form the Covered Pipeline or are otherwise used to provide Services (Capital Base), depreciation on the Capital Base (Depreciation) and the operating, maintenance and other non-capital costs (Non-Capital Costs) incurred in delivering all Services.*
- IRR: where the Total Revenue is set to provide an acceptable Internal Rate of Return (IRR) for the Covered Pipeline on the basis of forecast costs and sales.*
- NPV: where the Total Revenue is set to deliver a Net Present Value (NPV) for the Covered Pipeline (on the basis of*

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forecast costs and sales) equal to zero, using an acceptable discount rate.

While these methodologies are different ways of assessing the Total Revenue, their outcomes should be consistent (for example, it is possible to express any NPV calculation in terms of a Cost of Service calculation by the choice of an appropriate depreciation schedule). In addition, other methodologies that can be translated into one of these forms are acceptable (such as a method that provides a real rate of return on an inflation-indexed capital base).

The principles that guide the determination of the Reference Tariff Period are set out in Section 3 of the Code. These principles permit the Reference Tariff Period to be any length of time that is consistent with the objectives for setting Reference Tariffs. However, the Relevant Regulator must consider (but is not bound to require) inserting safeguards against excessive forecast error if the Reference Tariff Period is over five years.

The Reference Tariff Principles recognise that these methods for calculating the Total Revenue may provide a range of feasible outcomes. In narrowing this range, the Relevant Regulator is permitted to have regard to various financial and performance indicators.

Broad principles for establishing the Capital Base when Reference Tariffs are set initially and reviewed are set out, including principles for:

- establishing the Initial Capital Base (including principles for valuing pipelines in existence at the commencement of the Code and those that come into existence after the commencement of the Code);*
- valuing investment in new facilities (including principles for determining whether New Facilities Investment may be included in the Capital Base, and for addressing differences between forecast and actual capital expenditure) and*

- *reducing the Capital Base where assets cease to contribute, or make a reduced contribution, to the delivery of Services.*

These principles apply equally to all of the methodologies for assessing Total Revenue, and to clarify this, certain detailed principles are translated into a form that is applicable to the IRR and NPV methodologies.

Broad principles for determining the Rate of Return are also set out, essentially requiring a return which is commensurate with the prevailing conditions in the market for funds and the risks involved in delivering the Reference Service.

A number of principles are specified for the Depreciation Schedule, which include that:

- *the time-path for Reference Tariffs that is implied by the Depreciation Schedule be consistent with efficient market growth, and in particular, to avoid delivering Reference Tariffs that are excessively high in early years and low in later years;*
- *depreciation should be over the economic life of the assets that form the Covered Pipeline; and*
- *assets be depreciated only once for the purposes of setting Reference Tariffs.*

Again, these principles apply equally to all of the methodologies for assessing Total Revenue, and to clarify this, certain detailed principles are translated into a form that is applicable to the IRR and NPV methodologies.

Finally, the Reference Tariff Principles specify that Non Capital Costs are the operating, maintenance and other costs incurred (or forecast to be incurred) in the delivery of all Services provided by the Pipeline, and provide that these can be factored into Reference Tariffs if 'prudent'.

Allocation of the Total Revenue

r. 8.1

The Reference Tariff Principles set out broad principles for determining the portion of the Total Revenue that a Reference Tariff should be designed to recover from sales of the Reference Service, and the portion of revenue that should be recovered from each User of that Reference Service. These principles essentially require that the Charge paid by any User of a Reference Service be cost reflective, although substantial flexibility is provided.

An exception to the allocation rule is the case of 'prudent discounts'. Where a User is receiving a discount (which implies the Service Provider is receiving less revenue from that User than that assumed in the calculation of Reference Tariffs), and such a discount is 'prudent', the Relevant Regulator has the discretion (when Reference Tariffs are set initially or reviewed) to permit the Service Provider to recover some or all of that shortfall in revenue by raising Reference Tariffs to other Users (if the discount is prudent, the Reference Tariff would be lower for all Users).

Other Principles

This section also establishes:

- principles concerning the use and design of Incentive Mechanisms;*
- a mechanism whereby certain parts of the Reference Tariff Policy cannot be changed at a review of the Access Arrangement for a certain period; and*
- principles for the charging of Surcharges in relation to Incremental Capacity.*

[Overview to section 8 amended: Gazette 2 May 2003 p. 1527.]

8.1 General Principles

A Reference Tariff and Reference Tariff Policy should be designed with a view to achieving the following objectives:

- (a) providing the Service Provider with the opportunity to earn a stream of revenue that recovers the efficient costs

- of delivering the Reference Service over the expected life of the assets used in delivering that Service;
- (b) replicating the outcome of a competitive market;
- (c) ensuring the safe and reliable operation of the Pipeline;
- (d) not distorting investment decisions in Pipeline transportation systems or in upstream and downstream industries;
- (e) efficiency in the level and structure of the Reference Tariff; and
- (f) providing an incentive to the Service Provider to reduce costs and to develop the market for Reference and other Services.

To the extent that any of these objectives conflict in their application to a particular Reference Tariff determination, the Relevant Regulator may determine the manner in which they can best be reconciled or which of them should prevail.

8.2

The factors about which the Relevant Regulator must be satisfied in determining to approve a Reference Tariff and Reference Tariff Policy are that:

- (a) the revenue to be generated from the sales (or forecast sales) of all Services over the Access Arrangement Period (the Total Revenue) should be established consistently with the principles and according to one of the methodologies contained in this section 8;
- (b) to the extent that the Covered Pipeline is used to provide a number of Services, that portion of Total Revenue that a Reference Tariff is designed to recover (which may be based upon forecasts) is calculated consistently with the principles contained in this section 8;
- (c) a Reference Tariff (which may be based upon forecasts) is designed so that the portion of Total Revenue to be recovered from a Reference Service (referred to in

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paragraph (b)) is recovered from the Users of that Reference Service consistently with the principles contained in this section 8;

- (d) Incentive Mechanisms are incorporated into the Reference Tariff Policy wherever the Relevant Regulator considers appropriate and such Incentive Mechanisms are consistent with the principles contained in this section 8; and
- (e) any forecasts required in setting the Reference Tariff represent best estimates arrived at on a reasonable basis.

8.3 Form of Regulation and Variation of Reference Tariff

Subject to section 8.3A and to the Relevant Regulator being satisfied that its is consistent with the objectives contained in section 8.1, the manner in which a Reference Tariff may vary within an Access Arrangement Period through the implementation of a Reference Tariff Policy is within the discretion of the Service Provider. For example, the Reference Tariff Policy may specify that Reference Tariffs will vary within an Access Arrangement Period through the implementation of:

- (a) a Cost of Service Approach;
- (b) a Price Path Approach;
- (c) a Reference Tariff Control Formula Approach;
- (d) a Trigger Event Adjustment Approach; or
- (e) any variation or combination of the above..

[Section 8.3 inserted: Gazette 11 Jul 2003 p. 2823.]

8.3A

A Reference Tariff may vary within an Access Arrangement Period only through implementation of the approved Reference Tariff Variation Method as provided for in sections 8.3B to 8.3H.

[Section 8.3A inserted: Gazette 11 Jul 2003 p. 2823.]

8.3B

- (a) If a Specified Event occurs the Service Provider must, within the time provided for in the Reference Tariff Policy, provide a notice to the Relevant Regulator containing the information set out in section 8.3C.
- (b) If the Service Provider otherwise wishes to vary a Reference Tariff in accordance with the Approved Reference Tariff Variation Method, the Service Provider must provide a notice to the Relevant Regulator containing the information set out in section 8.3C.

[Section 8.3B inserted: Gazette 11 Jul 2003 p. 2823.]

8.3C

The Service Provider's notice under section 8.3B must contain:

- (a) the Service Provider's proposed variations to the Reference Tariff and the proposed effective date for those variations; and
- (b) an explanation of how the variations proposed are consistent with the Approved Reference Tariff Variation Method contained in the Reference Tariff Policy.

Notwithstanding any other section of the Code, the Relevant Regulator must make public, and must provide the Code Registrar with a copy of, any information provided under paragraphs (a) and (b) above.

[Section 8.3C inserted: Gazette 11 Jul 2003 p. 2823.]

8.3D

Unless the Relevant Regulator has disallowed the variation under section 8.3E, the Reference Tariff will be varied automatically on and from the later of:

- (a) the date specified in a notice from the Service Provider given in accordance with section 8.3B;

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- (b) (i) if the Reference Tariff Policy specifies a minimum notice period for the variation, the expiry of that period after the date of the notice form the Service Provider given in accordance with section 8.3B; or
- (ii) if the Reference Tariff Policy does not specify a minimum notice period for the variation, 35 days after the date of the notice form the Service Provider given in accordance with section 8.3B,

but if, before the end of the relevant period in paragraph (i) or (ii) above, the Relevant Regulator notifies the Service Provider that it requires additional information from the Service Provider, which the Relevant Regulator has reason to believe may assist the Relevant Regulator to determine whether the variations proposed are consistent with the Approved Reference Tariff Variation Method, the relevant period will be extended by the number of days commencing on the day on which the Relevant Regulator gave notice to the Service Provider and ending on the day on which the Relevant Regulator receives the additional information from the Service Provider.

[Section 8.3D inserted: Gazette 11 Jul 2003 p. 2824.]

8.3E

The Relevant Regulator may, by notice to the Service Provider before the variation is due to come into effect under section 8.3D, disallow a variation of a Reference Tariff. The Relevant Regulator may disallow a variation only if the Relevant Regulator considers, on reasonable grounds, that the proposed variation is inconsistent with, or not permitted under, the Approved Reference Tariff Variation Method. If the Relevant Regulator disallows a variation because it considers that it is inconsistent with, or not permitted under, the Approved Reference Tariff Variation Method, the Relevant Regulator may specify a variation that is consistent with the Approved

Reference Tariff Variation Method. Any such variation comes into effect on the date determined in accordance with section 8.3D.

[Section 8.3E inserted: Gazette 11 Jul 2003 p. 2824.]

8.3F

The Relevant Regulator must publish its reasons for:

- (a) allowing a variation of the Reference Tariff (including if the variation is allowed because of the effluxion of time under section 8.3D);
- (b) disallowing a variation of a Reference Tariff; or
- (c) specifying any variation specified by the Relevant Regulator under section 8.3E,

at the time of allowing, disallowing or specifying that variation.

[Section 8.3F inserted: Gazette 11 Jul 2003 p. 2824.]

8.3G

If a Specified Event occurs and the Service Provider does not serve a notice on the Relevant Regulator as required by section 8.3B(a), then the Relevant Regulator may itself vary the Reference Tariff concerned but only in accordance with the Approved Reference Tariff Variation Method. Any such variation comes into effect on the date specified in, or determined in accordance with, the Access Arrangement. The Relevant Regulator must publish its reasons for any variation of the Reference Tariff made under this section 8.3G at the time of making that variation.

[Section 8.3G inserted: Gazette 11 Jul 2003 p. 2824.]

8.3H

The Relevant Regulator may:

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- (a) on application by the Service Provider, grant extensions to any time period in sections 8.3B to 8.3G that applies to the Service Provider; and
- (b) extend any time period in section 8.3G that applies to the Relevant Regulator.

[Section 8.3H inserted: Gazette 11 Jul 2003 p. 2825.]

8.4 Total Revenue

The Total Revenue (a portion of which will be recovered from sales of Reference Services) should be calculated according to one of the following methodologies:

Cost of Service: The Total Revenue is equal to the cost of providing all Services (some of which may be the forecast of such costs), and with this cost to be calculated on the basis of:

- (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**);
- (b) depreciation of the Capital Base (**Depreciation**); and
- (c) the operating, maintenance and other non-capital costs incurred in providing all Services (**Non-Capital Costs**).

IRR: The Total Revenue will provide a forecast Internal Rate of Return (IRR) for the Covered Pipeline that is consistent with the principles in sections 8.30 and 8.31. The IRR should be calculated on the basis of a forecast of all costs to be incurred in providing such Services (including capital costs) during the Access Arrangement Period.

The initial value of the Covered Pipeline in the IRR calculation is to be given by the Capital Base at the commencement of the Access Arrangement Period and the assumed residual value of the Covered Pipeline at the end of the Access Arrangement Period (Residual Value) should be calculated consistently with the principles in this section 8.

NPV: The Total Revenue will provide a forecast Net Present Value (NPV) for the Covered Pipeline equal to zero. The NPV should be calculated on the basis of a forecast of all costs to be incurred in providing such Services (including capital costs) during the Access Arrangement Period, and using a discount rate that would provide the Service Provider with a return consistent with the principles in sections 8.30 and 8.31.

The initial value of the Covered Pipeline in the NPV calculation is to be given by the Capital Base at the commencement of the Access Arrangement Period and the assumed Residual Value at the end of the Access Arrangement Period should be calculated consistently with the principles in this section 8.

The methodology used to calculate the Cost of Service, an IRR or NPV should be in accordance with generally accepted industry practice.

However, the methodology used to calculate the Cost of Service, an IRR or NPV may also allow the Service Provider to retain some or all of the benefits arising from efficiency gains under an Incentive Mechanism. The amount of the benefit will be determined by the Relevant Regulator in the range of between 100% and 0% of the total efficiency gains achieved.

[Section 8.4 amended: Gazette 23 January 2002 p. 439; 2 May 2003 p. 1524 and 1527.]

8.5

Other methodologies may be used provided the resulting Total Revenue can be expressed in terms of one of the methodologies described above.

8.5A.

Any of the methodologies described in section 8.4 or permitted under section 8.5, may be applied:

- (a) on a nominal basis (under which the Capital Base and Depreciation are expressed in historical cost terms and

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- all other costs and revenues are expressed in current prices and a nominal Rate of Return is allowed); or
- (b) on a real basis under which the Capital Base, Depreciation and all costs and revenues are expressed in constant prices and a real Rate of Return is allowed); or
 - (c) on any other basis in dealing with the effects of inflation,

provided that the basis used is specified in the Access Arrangement, is approved by the Relevant Regulator and is applied consistently in determining the Total Revenue and Reference Tarrifs.

[Section 8.5A inserted: Gazette 7 January 2000 p. 62.]

8.6

In view of the manner in which the Rate of Return, Capital Base, Depreciation Schedule and Non Capital Costs may be determined (in each case involving various discretions), it is possible that a range of values may be attributed to the Total Revenue described in section 8.4. In order to determine an appropriate value within this range the Relevant Regulator may have regard to any financial and operational performance indicators it considers relevant in order to determine the level of costs within the range of feasible outcomes under section 8.4 that is most consistent with the objectives contained in section 8.1.

8.7

If the Relevant Regulator has considered financial and operational performance indicators for the purposes of section 8.6, it must identify the indicators and provide an explanation of how they have been taken into account.

8.8 ***Principles for Establishing the Capital Base***

Principles for establishing the Capital Base for the Covered Pipeline when a Reference Tariff is first proposed for a Reference Service (ie, for the first Access Arrangement Period) are set out in sections 8.10 to 8.14.

8.9

Sections 8.15 to 8.29 then describe the principles to be applied in adjusting the value of the Capital Base over time as a result of additions to the capital assets that are used to provide Services and as a result of capital assets ceasing to be used for the delivery of Services. Consistently with those principles, the Capital Base at the commencement of each Access Arrangement Period after the first, for the Cost of Service methodology, is determined as:

- (a) the Capital Base at the start of the immediately preceding Access Arrangement Period; plus
- (b) subject to sections 8.16(b) and sections 8.20 to 8.22, the New Facilities Investment or Recoverable Portion (whichever is relevant) in the immediately preceding Access Arrangement Period; less
- (c) Depreciation for the immediately preceding Access Arrangement Period; less
- (d) Redundant Capital identified prior to the commencement of that Access Arrangement Period,

and for the IRR or NPV methodology, is determined as:

- (e) subject to sections 8.16(b) and sections 8.20 to 8.22, the Residual Value assumed in the previous Access Arrangement Period; less
- (f) Redundant Capital identified prior to the commencement of that Access Arrangement Period,

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subject, irrespective of which methodology is applied, to such adjustment for inflation (if any) as is appropriate given the approach to inflation adopted pursuant to section 8.5A.

*[Section 8.9 amended: Gazette 7 January 2000 p. 62;
2 May 2003 p. 1524-5.]*

8.10 *Initial Capital Base - Existing Pipelines*

When a Reference Tariff is first proposed for a Reference Service provided by a Covered Pipeline that was in existence at the commencement of the Code, the following factors should be considered in establishing the initial Capital Base for that Pipeline:

- (a) the value that would result from taking the actual capital cost of the Covered Pipeline and subtracting the accumulated depreciation for those assets charged to Users (or thought to have been charged to Users) prior to the commencement of the Code;
- (b) the value that would result from applying the “depreciated optimised replacement cost” methodology in valuing the Covered Pipeline;
- (c) the value that would result from applying other well recognised asset valuation methodologies in valuing the Covered Pipeline;
- (d) the advantages and disadvantages of each valuation methodology applied under paragraphs (a), (b) and (c);
- (e) international best practice of Pipelines in comparable situations and the impact on the international competitiveness of energy consuming industries;
- (f) the basis on which Tariffs have been (or appear to have been) set in the past, the economic depreciation of the Covered Pipeline, and the historical returns to the Service Provider from the Covered Pipeline;

- (g) the reasonable expectations of persons under the regulatory regime that applied to the Pipeline prior to the commencement of the Code;
- (h) the impact on the economically efficient utilisation of gas resources;
- (i) 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);
- (j) the price paid for any asset recently purchased by the Service Provider and the circumstances of that purchase; and
- (k) any other factors the Relevant Regulator considers relevant.

8.11

The initial Capital Base for Covered Pipelines that were in existence at the commencement of the Code normally should not fall outside the range of values determined under paragraphs (a) and (b) of section 8.10.

8.12 *Initial Capital Base - New Pipelines*

When a Reference Tariff is first proposed for a Reference Service provided by a Covered Pipeline that has come into existence after the commencement of the Code, the initial Capital Base for the Covered Pipeline is, subject to section 8.13, the actual capital cost of those assets at the time they first enter service. A new Pipeline does not need to pass the tests described in section 8.16(a).

[Section 8.12 amended: Gazette 2 May 2003 p. 1526.]

8.13

If the period between the time the Covered Pipeline first enters service and the time the Reference Tariff is proposed is such as

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reasonably to warrant adjustment to the actual capital cost in establishing the initial Capital Base, then that cost should be adjusted to account for New Facilities Investment or the Recoverable Portion (whichever is relevant), Depreciation and Redundant Capital incurred or identified during that period (as described in section 8.9).

8.14 *Initial Capital Base - After the Expiry of an Access Arrangement*

Where an Access Arrangement has expired, the initial Capital Base at the time a new Access Arrangement is approved is the Capital Base applying at the expiry of the previous Access Arrangement adjusted to account for the New Facilities Investment or the Recoverable Portion (whichever is relevant), Depreciation and Redundant Capital (as described in section 8.9) as if the previous Access Arrangement had remained in force.

8.15 *New Facilities Investment*

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***).

[Section 8.15 inserted: Gazette 2 May 2003 p. 1525.]

8.16

- (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.

[Section 8.16 inserted: Gazette 2 May 2003 p. 1525.]

8.17

For the purposes of administering section 8.16(a)(i), the Relevant Regulator must consider:

- (a) whether the New Facility exhibits economies of scale or scope and the increments in which Capacity can be added; and
- (b) whether the lowest sustainable cost of delivering Services over a reasonable time frame may require the installation of a New Facility with Capacity sufficient to meet forecast sales of Services over that time frame.

[Section 8.17 amended: Gazette 2 May 2003 p. 1526.]

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8.18

A Reference Tariff Policy may, at the discretion of the Service Provider, state that the Service Provider will undertake New Facilities Investment that does not satisfy the requirements of section 8.16(a). If the Service Provider incurs such New Facilities Investment, the Capital Base may be increased by that part of the New Facilities Investment which does satisfy section 8.16(a) (the Recoverable Portion).

[Section 8.18 amended: Gazette 2 May 2003 p. 1526.]

8.19

The Reference Tariff Policy may also provide that an amount in respect of the balance of the New Facilities Investment may subsequently be added to the Capital Base if at any time the type or volume of Services provided using the New Facility change such that any part of the Speculative Investment Fund (as defined below) would then satisfy the requirements of section 8.16(a). The amount of the Speculative Investment Fund at any time is equal to:

- (a) the difference between the New Facilities Investment and the Recoverable Portion, less any amount the Service Provider notifies the Relevant Regulator (at the time the expenditure is incurred) that it has elected to recover through a Surcharge under section 8.25 (Speculative Investment); plus
- (b) an annual increase in that amount calculated on a compounded basis at a rate of return approved by the Relevant Regulator which rate of return may, but need not, be different from the rate of return implied in the Reference Tariff; less
- (c) any part of the Speculative Investment Fund previously added to the Capital Base under this section 8.19.

[Section 8.19 amended: Gazette 2 May 2003 p. 1526 and 1527.]

8.20 ***Forecast Capital Expenditure***

Consistent with the methodologies described in section 8.4, Reference Tariffs may be determined on the basis of New Facilities Investment that is forecast to occur within the Access Arrangement Period provided that the New Facilities Investment is reasonably expected to pass the requirements in section 8.16(a) when the New Facilities Investment is forecast to occur.

[Section 8.20 amended: Gazette 2 May 2003 p. 1526.]

8.21

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.

[Section 8.21 inserted: Gazette 2 May 2003 p. 1525.]

8.22

For the purposes of calculating the Capital Base at the commencement of the subsequent Access Arrangement Period, either the Reference Tariff Policy should describe or the

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Relevant Regulator shall determine when the Relevant Regulator considers revisions to an Access Arrangement submitted by a Service Provider, how the New Facilities Investment is to be determined for the purposes of section 8.9. 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).

[Section 8.22 amended: Gazette 2 May 2003 p. 1526.]

8.23 *Capital Contributions*

New Facilities Investment may also be added to the Capital Base when a User makes a Capital Contribution (as defined below) in respect of a New Facility. Nothing in this Code prevents a User agreeing to pay the Service Provider a Charge which exceeds the Charge that would apply under a Reference Tariff for a Reference Service (or, in relation to another Service, under the Equivalent Tariff) in any circumstance including, without limitation, if the excess is paid in respect of the funding of a New Facility (in which case the extra payment is a Capital Contribution).

8.24

Any expenditure on a New Facility in respect of which a User makes a Capital Contribution constitutes New Facilities Investment incurred by the Service Provider for the purposes of this section 8. The User's obligations to the Service Provider and the Service Provider's obligations to the User with respect to the Capital Contribution shall be as agreed between the Service Provider and User.

8.25 *Surcharges*

As contemplated in section 8.19(a), unless precluded by the Service Provider's Extensions/Expansions Policy, a Service

Provider may elect by written notice to the Relevant Regulator to recover all or part of an amount that it would not recover at the Prevailing Tariffs through a Surcharge (after commencement of the next Access Arrangement Period, this amount is that amount that would otherwise constitute Speculative Investment). A Surcharge is a Charge in addition to the Charge that would apply under a Reference Tariff for a Reference Service (or, in relation to another Service, under the Tariff that would be determined by the Arbitrator in arbitrating an access dispute under section 6) that is levied on Users of Incremental Capacity in order for the Service Provider to recover some or all of the cost of New Facilities Investment that can not be recovered at the Prevailing Tariffs (and so cannot be included in the Capital Base in subsequent Access Arrangement Periods). If the Relevant Regulator receives such a written notice, it may approve the Surcharge, with an approval having the effect of binding the Arbitrator in an access dispute under section 6. For the purposes of public consultation, the notice shall be treated as if it were a proposed revision to the Access Arrangement submitted under section 2.28.

8.26

A Service Provider may levy a Surcharge on Users of Incremental Capacity provided the following principles apply:

- (a) the Surcharges are designed to recover only that part of the New Facilities Investment that satisfies the requirement in section 8.16(a)(i);
- (b) the costs that the Surcharges are designed to recover do not include any costs that are included in the Speculative Investment Fund; and
- (c) the structure of the Surcharges reflect a fair and reasonable sharing of the total recoverable cost between Incremental Users (and for this purpose any User who is paying a Capital Contribution should be assumed to be paying a Surcharge).

[Section 8.26 amended: Gazette 2 May 2003 p. 1526.]

8.27 ***Capital Redundancy***

A Reference Tariff Policy may include (and the Relevant Regulator may require that it include) a mechanism that will, with effect from the commencement of the next Access Arrangement Period, remove an amount from the Capital Base (Redundant Capital) for a Covered Pipeline so as to:

- (a) ensure that assets which cease to contribute in anyway to the delivery of Services are not reflected in the Capital Base; and
- (b) share costs associated with a decline in the volume of sales of Services between the Service Provider and Users.

Before approving a Reference Tariff which includes such a mechanism, the Relevant Regulator must take into account the uncertainty such a mechanism would cause and the effect that uncertainty would have on the Service Provider, Users and Prospective Users. If a Reference Tariff does include such a mechanism, the determination of the Rate of Return (under sections 8.30 and 8.31) and the economic life of the assets (under section 8.33) should take account of the resulting risk (and cost) to the Service Provider of a fall in the revenue received from sales of Services or part of the Covered Pipeline.

[Section 8.27 amended: Gazette 2 May 2003 p. 1526.]

8.28

If assets that are the subject of Redundant Capital subsequently contribute, or make an enhanced contribution, to the delivery of Services, the assets may be treated as a New Facility having New Facilities Investment (for the purpose of section 8.16(a), 8.17, 8.18 and 8.19) equal to the Redundant Capital Value increased annually on a compounded basis by the Rate of Return from the time the Redundant Capital Value was removed from the Capital Base.

[Section 8.28 amended: Gazette 2 May 2003 p. 1526.]

8.29

A Reference Tariff Policy may include (and the Relevant Regulator may require it to include) other mechanisms that have the same effect on Reference Tariffs as the above but which do not result in the removal of any amount from the Capital Base.

8.30 ***Rate of Return***

The Rate of Return used in determining a Reference Tariff should provide a return which is commensurate with prevailing conditions in the market for funds and the risk involved in delivering the Reference Service (as reflected in the terms and conditions on which the Reference Service is offered and any other risk associated with delivering the Reference Service).

8.31

By way of example, the Rate of Return may be set on the basis of a weighted average of the return applicable to each source of funds (equity, debt and any other relevant source of funds). Such returns may be determined on the basis of a well accepted financial model, such as the Capital Asset Pricing Model. In general, the weighted average of the return on funds should be calculated by reference to a financing structure that reflects standard industry structures for a going concern and best practice. However, other approaches may be adopted where the Relevant Regulator is satisfied that to do so would be consistent with the objectives contained in section 8.1.

8.32 ***Depreciation Schedule - Cost of Service***

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 Covered 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 a Reference Tariff (the Depreciation Schedule).

8.33

The Depreciation Schedule should be designed:

- (a) so as to result in the Reference Tariff changing over time in a manner that is consistent with the efficient growth of the market for the Services (and which may involve a substantial portion of the depreciation taking place in future periods, particularly where the calculation of the Reference Tariffs has assumed significant market growth and the Pipeline has been sized accordingly);
- (b) so that each asset or group of assets that form part of the Capital Base is depreciated over the economic life of that asset or group of assets;
- (c) so that, to the maximum extent that is reasonable, the depreciation schedule for each asset or group of assets that form part of the Capital Base is adjusted over the life of that asset or group of assets to reflect changes in the expected economic life of that asset or group of assets; and
- (d) subject to section 8.27, so that an asset is depreciated only once (that is, so that the sum of the Depreciation that is attributable to any asset or group of assets over the life of those 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, subject to such adjustment for inflation (if any) as is appropriate given the approach to inflation adopted pursuant to section 8.5A).

*[Section 8.33 amended: Gazette 7 January 2000 p. 62;
2 May 2003 p. 1526 and 1527.]*

8.34 ***Application of Depreciation Principles to the IRR/NPV Methodology***

If the IRR or NPV methodology is used, then the notional depreciation over the Access Arrangement Period for each asset or group of assets that form part of the Capital Base is:

- (a) for an asset that was in existence at the commencement of the Access Arrangement Period, the difference between the value of that asset in the Capital Base at the commencement of the Access Arrangement Period and the value of that asset that is reflected in the Residual Value; and
- (b) for a New Facility installed during the Access Arrangement Period, the difference between the actual cost or forecast cost of the Facility (whichever is relevant) and the value of that asset that is reflected in the Residual Value,

and, to comply with section 8.33:

- (c) the Residual Value of the Covered Pipeline should reflect notional depreciation that meets the principles of section 8.33; and
- (d) the Reference Tariff should change over the Access Arrangement Period in a manner that is consistent with the efficient growth of the market for the Services (and which may involve a substantial portion of the depreciation taking place towards the end of the Access Arrangement Period, particularly where the calculation of the Reference Tariffs has assumed significant market growth and the Pipeline has been sized accordingly).

[Section 8.34 amended: Gazette 2 May 2003 p. 1526 and 1527.]

8.35

In implementing the principles in section 8.33 or 8.34, regard must be had to the reasonable cash flow needs for Non Capital Costs, financing cost requirements and similar needs of the Service Provider.

8.36 *Non Capital Costs*

Non Capital Costs are the operating, maintenance and other costs incurred in the delivery of the Reference Service. Non Capital Costs may include, but are not limited to, costs incurred

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for generic market development activities aimed at increasing long-term demand for the delivery of the Reference Service.

[Section 8.36 amended: Gazette 19 Sep 2002 p. 4689.]

8.37

A Reference Tariff may provide for the recovery of all Non Capital Costs (or forecast Non Capital Costs, as relevant) except for any such costs that would not 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 the Reference Service.

8.38 ***Allocation of Revenue (Costs) between Services***

Subject to sections 8.40 and 8.43, to the maximum extent that is commercially and technically reasonable, the portion of the Total Revenue (referred to in section 8.4) that a Reference Tariff should be designed to recover (which may be based on forecasts) should include:

- (a) all of the Total Revenue that reflects costs incurred (including capital costs) that are directly attributable to the Reference Service; and
- (b) a share of the Total Revenue that reflects costs incurred (including capital costs) that are attributable to providing the Reference Service jointly with other Services, with this share to be determined in accordance with a methodology that meets the objectives in section 8.1 and is otherwise fair and reasonable.

8.39

If the Relevant Regulator requires that a different methodology be used to determine the portion of Total Revenue to be recovered from particular Reference Services pursuant to section 8.38 than that proposed by the Service Provider and described in the Access Arrangement Information, the Relevant Regulator shall in its decision on the Access Arrangement or

revisions to an Access Arrangement concerned provide a detailed explanation of the methodology that it requires be used to allocate costs pursuant to section 8.38.

8.40

Notwithstanding section 8.38, if the revenue assumed in the Total Revenue calculation under section 8.4 reflects costs (including capital costs) that are attributable to providing the Reference Service jointly with a Rebatable Service, then all or part of the Total Revenue that would have been recovered from the Rebatable Service under section 8.38 (if that Service was a Reference Service) may be recovered from the 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). The structure of such a rebate mechanism should be determined having regard to the following objectives:

- (a) providing the Service Provider with an incentive to promote the efficient use of Capacity, including through the sale of Rebatable Services; and
- (b) Users of the Reference Service sharing in the gains from additional sales of Services, including from sales of Rebatable Services.

8.41

Alternative approaches to allocating the costs described in section 8.4 may be used provided they have substantially the same effect as the approach outlined in sections 8.38 and 8.40.

8.42 *Allocation of Revenue (Costs) between Users*

Subject to section 8.43, a Reference Tariff should, to the maximum extent that is technically and commercially reasonable, be designed so that a particular User's share of the portion of Total Revenue to be recovered from sales of a

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Reference Service (which may be on the basis of forecasts) is consistent with the principles described in section 8.38.

8.43 *Prudent Discounts*

If:

- (a) the nature of the market in which a User or Prospective User of a Reference Service or some other Service operates, or the price of alternative fuels available to such a User or Prospective User, is such that the Service, if priced at the nearest Reference Tariff (or, if the Service is not a Reference Service, at the Equivalent Tariff) would not be used by that User or Prospective User; and
- (b) a Reference Tariff (or Equivalent Tariff) calculated without regard to revenues from that User or Prospective User would be greater than the Reference Tariff (or Equivalent Tariff) if calculated having regard to revenues received from that User or Prospective User on the basis that it is served at a price less than the Reference Tariff (or Equivalent Tariff),

then the Relevant Regulator may, with effect from the commencement of an Access Arrangement Period, permit some or all of any discount given to, or to be given to, that User or Prospective User (where the discount is the difference between the Reference Tariff (or the Equivalent Tariff) and the Tariff actually paid or to be paid by the User or Prospective User) to be either:

- (c) recovered from other Users of the Reference Service under section 8.42, in a manner that the Relevant Regulator is satisfied is fair and reasonable; or
- (d) recovered from the Reference Service or some other Service or Services under section 8.38 in a manner that the Relevant Regulator is satisfied is fair and reasonable.

8.44 Use of Incentive Mechanisms

The Reference Tariff Policy should, wherever the Relevant Regulator considers appropriate, contain a mechanism (an *Incentive Mechanism*) that permits the Service Provider to retain all, or any share of, any returns to the Service Provider from the sale of the Reference Service:

- (a) during an Access Arrangement Period, that exceed the level of returns expected for that Access Arrangement Period; or
- (b) during a period (commencing at the start of an Access Arrangement and including two or more Access Arrangement Periods) approved by the Relevant Regulator, that exceed the level of returns expected for that period,

particularly where the Relevant Regulator is of the view that the additional returns are attributable (at least in part), to the efforts of the Service Provider. Such additional returns may result, amongst other things, from lower Non Capital Costs or greater sales of Services than forecast.

[Section 8.44 inserted: Gazette 23 January 2002 p. 440.]

8.45

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

- (a) specifying the Reference Tariff that will apply during each year of the Access Arrangement 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;
- (b) specifying a target for revenue from the sale of all Services provided by means of the Covered Pipeline, and specifying that a certain proportion of any revenue received in excess of that target shall be retained by the

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Service Provider and that the remainder must be used to reduce the Tariffs for all Services provided by means of the Covered Pipeline (or to provide a rebate to Users of the Covered Pipeline); and

- (c) a rebate mechanism for Rebatable Services pursuant to section 8.40 that provides for less than a full rebate of revenues from the Rebatable Services to the Users of the Reference Service.

8.46

An Incentive Mechanism should be designed with a view to achieving the following objectives:

- (a) to provide the Service Provider with an 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;
- (b) to provide the Service Provider with an incentive to minimise the overall costs attributable to providing those Services, consistent with the safe and reliable provision of such Services;
- (c) to provide the Service Provider with an incentive to develop new Services in response to the needs of the market for Services;
- (d) to provide the Service Provider with an incentive to undertake only prudent New Facilities Investment and to incur only prudent Non Capital Costs, and for this incentive to be taken into account when determining the prudence of New Facilities Investment and Non Capital Costs for the purposes of section 8.16(a) and 8.37; and
- (e) to ensure that Users and Prospective Users gain from increased efficiency, innovation and volume of sales (but not necessarily in the Access Arrangement Period during which such increased efficiency, innovation or volume of sales occur).

[Section 8.46 amended: Gazette 2 May 2003 p. 1526.]

8.47 ***Certain Reference Tariff Principles Not Subject to Periodic Review***

The Reference Tariff Policy may provide that certain principles are fixed for a specified period and not subject to change when a Service Provider submits reviews to an Access Arrangement without the agreement of the Service Provider. A Fixed Principle is an element of the Reference Tariff Policy that can not be changed without the agreement of the Service Provider (Fixed Principle). The period during which the Fixed Principle may not be changed is the Fixed Period (Fixed Period).

8.48

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 can not be a Fixed Principle. The Fixed Period may be for all or part of the duration of an Access Arrangement, 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.

8.49 ***Assessment of Compliance with Section 8***

Subject to the requirement for public consultation, the Relevant Regulator may determine its own policies for assessing whether a Reference Tariff meets the requirements of this section 8. For example, the Relevant Regulator may:

- (a) draw an inference that an appropriate Incentive Mechanism will result in:
 - (i) New Facilities Investment that meets the requirements of section 8.16(a)(i) and section 8.16(a)(ii)(A); and/or
 - (ii) that Non Capital Costs meet the requirements of section 8.37;

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- (b) draw an inference that an appropriate policy by the Service Provider in relation to New Facilities Investment and/or Non Capital Costs will, if adhered to, result in:
 - (i) New Facilities Investment that meets the requirements of section 8.16(a); and/or
 - (ii) Non Capital Costs that meet the requirements of section 8.37;
- (c) assess whether New Facilities Investment in relation to a number of New Facilities (for example, an investment program) considered together meet the requirements of section 8.16(a), and then use this to draw an inference as to whether the New Facilities Investment when considered in relation to each individual New Facility meets the requirements of section 8.16(a).

[Section 8.49 amended: Gazette 2 May 2003 p. 1526.]

9. CODE CHANGE

9.1

This Code may be amended by agreement between the Relevant Ministers of the Scheme Participants in accordance with the Gas Pipelines Access Law if, not earlier than eight weeks prior to the agreement, the NGPAC has provided a report to all Relevant Ministers of the Scheme Participants in accordance with section 9.2 which:

- (a) makes a recommendation in relation to an amendment to the Code;
- (b) sets out reasons for that recommendation; and
- (c) sets out a summary of the views of any member of the NGPAC who does not agree with the recommendation.

9.2

A report by the NGPAC for the purposes of section 9.1(a) must state whether the NGPAC considers the amendment it recommends to be significant or not significant. If the

amendment is considered to be significant, the report must confirm that the recommendation is made following a public consultation process under which the NGPAC has:

- (a) prepared an information memorandum setting out the amendment being considered and a statement of why such amendment may be desirable;
- (b) published a notice in a national daily newspaper which at least:
 - (i) stated that the NGPAC was considering recommending an amendment to the Code;
 - (ii) stated how copies of the information memorandum could be obtained; and
 - (iii) requested submissions by a specified date, being a date not less than 21 days after the date of the notice; and
- (c) considered any submissions received within the time period specified in the notice.

9.3

In accordance with the Gas Pipelines Access Law, the Relevant Ministers of the Scheme Participants must ensure that:

- (a) a copy of each agreement amending the Code is published in the South Australian Government Gazette; and
- (b) a notice of the making of each such agreement is published in a newspaper circulating generally in Australia.

9.4

In accordance with the Gas Pipelines Access Law an amendment to the Code has effect on and from the day on which a copy of the agreement for the amendment is published in the South Australian Government Gazette or, if the agreement

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provides the amendment is to come into effect on a later day, on that later day.

10. INTERPRETATION

10.1 How this Code applies to Multiple Service Providers

- (a) This section 10.1 applies if there is more than one Service Provider in connection with a Covered Pipeline, including if:
 - (i) the Covered Pipeline is owned or operated by two or more persons as a joint venture or partnership; or
 - (ii) the Covered Pipeline is owned and operated by different persons; or
 - (iii) a Covered Pipeline is legally owned by a person or persons on trust for others.

In such a case each Service Provider in connection with the Covered Pipeline is referred to in this section 10.1 as a “Participant”.

- (b) If this Code requires or permits something to be done by the Service Provider, that thing may be done by one of the Participants on behalf of all the Participants. So, for example, a proposed Access Arrangement may be submitted under section 2.2 by one Participant on behalf of all Participants.
- (c) If a provision of this Code refers to the Service Provider bearing any costs, the provision applies as if the provision referred to any of the Participants bearing any costs.
- (d) If a provision of this Code, other than section 4, refers to the Service Provider doing something, the provision applies as if the provision referred to one or more of the Participants doing the thing on behalf of all the Participants.

10.2

Where:

- (a) there is more than one Service Provider in connection with a Covered Pipeline;
- (b) one is the owner and another is the operator; and
- (c) responsibility for complying with the obligations imposed by this Code on the Service Provider is allocated among them by their Access Arrangements or their Access Arrangement,

each Service Provider is responsible for complying with the obligations allocated to it.

10.3 **How this Code applies to successor Service Providers**

If a person becomes a Service Provider in relation to a Covered Pipeline (for example, if the person purchases a Covered Pipeline):

- (a) the Covered Pipeline shall remain a Covered Pipeline;
- (b) any Access Arrangement approved pursuant to the Code shall continue to apply to the Covered Pipeline concerned despite the change in Service Provider and shall bind the person in the same way it bound other Service Providers immediately before the person became a Service Provider with respect to the Covered Pipeline concerned; and
- (c) any arbitration decision made pursuant to the Code shall continue to apply to the Covered Pipeline concerned despite the change in Service Provider and shall bind the person in the same way it bound other Service Providers immediately before the person became a Service Provider with respect to the Covered Pipeline concerned.

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10.4 Overviews

The introduction to this Code and the overview in italics at the beginning of each section of this Code do not form part of this Code.

10.5

In interpreting a provision of this Code consideration should be given to the introduction to this Code and the overview in italics at the beginning of the relevant section of this Code:

- (a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision;
or
- (b) to determine the meaning of the provision when:
 - (i) the provision is ambiguous or obscure; or
 - (ii) the ordinary meaning conveyed by the text of the provision leads to a result that is manifestly absurd or unreasonable.

10.6 Notices

Where this Code requires or contemplates the giving or making of any notice, application, submission, opinion, consent, approval, agreement, reason, explanation, report or other communication it must be given or made in writing.

10.7 Regulatory and Conduct Provisions

For the purposes of the Gas Pipelines Access Law:

- (a) The following sections shall be Regulatory Provisions:
 - 2.2 and 2.28 (Service Provider must submit a proposed Access Arrangement or proposed revisions to the Access Arrangement, together with Access Arrangement Information);
 - 2.4 (Relevant Regulator may require more than one Access Arrangement);

- 2.9 and 2.30 (Relevant Regulator may require changes to Access Arrangement Information);
 - 4.1(a), (b), (c), (d), (e), (h) and (i) and 4.2 (basic ring fencing obligations other than in relation to confidential information);
 - 4.3 (additional ring fencing obligations);
 - 4.12 (establishing compliance procedures);
 - 4.13 (report to the Relevant Regulator);
 - 4.14 (reporting own non-compliance);
 - 5.1 and 5.2 (establishing information package);
 - 5.3 (provide information package);
 - 5.4 to 5.6 (inclusive) (response to access request);
 - 5.8 (information to be provided to the market about unutilised contract capacity);
 - 5.9 (public register of capacity);
- (b) the following sections shall be Conduct Provisions:
- 3.15 (enforcement of queuing policy);
 - 4.1(f) and (g) (basic ring fencing obligations in relation to confidential information);
 - 5.7 (keeping additional information confidential);
 - 6.16, 6.24(a) and 6.26 (requiring compliance with outcome of arbitration);
 - 7.1 (Associate contracts).
 - 7.20 and 7.21 (Disclosure of End User Information).

[Section 10.7 amended: Gazette 22 November 2000 p. 6543.]

10.8 Definitions

The following definitions apply unless the context otherwise requires:

Access Arrangement means an arrangement for access to a Covered Pipeline that has been approved by the Relevant Regulator.

Access Arrangement Information means information provided by a Service Provider to the Relevant Regulator pursuant to section 2.2, 2.3, 2.9, 2.28 or 2.30.

Access Arrangement Period means the period from when an Access Arrangement or revisions to an Access Arrangement take effect (by virtue of a decision pursuant to section 2) until the next Revisions Commencement Date.

Additional Staff means servants, consultants, independent consultants and agents of a Service Provider who are not Marketing Staff and who the Regulator regards as indirectly involved in the sale or advertising of Services.

Additional Revenue Policy has the meaning given in section 3.28(d).

Anticipated Incremental Revenue 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.

Approved Reference Tariff Variation Method means the Reference Tariff Variation Method or Methods specified in a Reference Tariff Policy in an Access Arrangement.

Arbitrator has the meaning given the Gas Pipelines Access Law.

Associate, in relation to a person, has the meaning it would have under Division 2 of Part 1.2 of the Corporations Law if sections 13, 14, 16(2) and 17 of that Law were repealed, except that a person will not be considered to be an Associate of a Service Provider solely because that person proposes to enter, or has entered, into a contract, arrangement or understanding with the Service Provider for the provision of a Service.

Associate Contract means;

- (a) a contract, arrangement or understanding between the Service Provider and an Associate in connection with the provision of a Service; or
- (b) a contract, arrangement or understanding between the Service Provider and any person in connection with the provision of a Service which provides a direct or indirect benefit to an Associate and which is not an arm's length transaction.

Bare Transfer has the meaning given in section 3.10.

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

Capacity Management Policy has the meaning given in section 3.7.

Capital Base has the meaning given in section 8.4.

Capital Contribution has the meaning given in section 8.23.

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

Code means this National Third Party Access Code for Natural Gas Pipeline Systems as changed from time to time in accordance with the Gas Pipelines Access Law.

Code Registrar has the meaning given in the Gas Pipelines Access Law.

Confidential Information means information that is by its nature confidential or is known by the Service Provider to be confidential and includes:

- (a) any information relating to the financial position of a User or Prospective User and, in particular, includes information relating to the assets or liabilities of the User or Prospective User and any other matter that affects or may affect the financial position or reputation of the User or Prospective User;

- (b) information relating to the internal management and structure of the User or Prospective User or the personnel, policies and strategies of a User or Prospective User;
- (c) information of a User or Prospective User to which the Service Provider has access, other than information referred to in paragraphs (a) and (b), that has any actual or potential commercial value to the User or Prospective User or the person or corporation which supplied that information; and
- (d) any information in the Service Provider's possession relating to the User's or Prospective User's customers 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.

Contract Carriage is a system of managing third party access whereby:

- (a) the Service Provider normally manages its ability to provide Services primarily by requiring Users to use no more than the quantity of Service specified in a contract;
- (b) Users normally are required to enter into a contract that specifies a quantity of Service;
- (c) charges for use of a Service normally are based at least in part upon the quantity of Service specified in a contract; and
- (d) a User normally has the right to trade its right to obtain a Service to another User.

Core Provisions means sections 2.24, 3.1 to 3.4 (inclusive), 3.28, 3.33, 3.34, 4.1 to 4.4 (inclusive), 6.15, 6.18, 8.1 and 9.1 to 9.4 (inclusive) and this definition of Core Provisions.

Cost of Service Approach means a Reference Tariff Variation Method whereby initial Reference Tariffs are set on the basis of the anticipated costs of providing the Reference Services and are

adjusted continuously in light of actual outcomes (such as sales volumes and actual costs) to ensure that the Reference Tariffs recover the actual costs of providing the Reference Services.

Coverage/Covered means, in relation to a Pipeline or part of a Pipeline, that that Pipeline or part of a Pipeline is subject to the provisions of this Code pursuant to sections 1.1, 1.13, 1.20 or 1.21.

Covered Pipeline means, subject to sections 2.3 and 2.4, the whole or a particular part of a Pipeline or proposed Pipeline which is Covered and any extension to, or expansion of the Capacity of, that 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 and any expansion of that Covered Pipeline required to be installed under section 6.22.

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

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.

Depreciation Schedule has the meaning given in section 8.32.

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 Covered Pipeline.

End User means:

- (a) a person who acquires or proposes to acquire National Gas from a User; or
- (b) a person who proposes to acquire Natural Gas from a Prospective User.

End User Information means, in relation to an End User information obtained by a Service Provider, or by its servants,

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consultants, independent contractors or agents, in the course of conducting its business that relates to the actual Natural Gas usage and usage patterns of that End User, but does not include any such information provided by a User or Prospective User to the Service Provider.

Equivalent Tariff means, in relation to a Service that is not a Reference Service, the Tariff that it is reasonably likely would have been set as the Reference Tariff had the Service been a Reference Service.

Exclusivity Right means a contractual right that by its terms either:

- (a) expressly prevents a Service Provider supplying Services to persons who are not parties to the contract; or
- (b) expressly places a limitation on the Service Provider's ability to supply Services to persons who are not parties to the contract,

but does not include a User's contractual right to obtain a certain volume of Services.

Exempt Matter means an Exempt Matter within the meaning of the Gas Pipelines Access Legislation of any Scheme Participant.

Final Approval Request has the meaning given in section 3.29.

Fixed Period has the meaning given in section 8.47.

Fixed Principle has the meaning given in section 8.47.

Gas Pipelines Access Law, in relation to a Scheme Participant, means:

- (a) in the case of South Australia:
 - (i) the provisions referred to in paragraph (a) of the definition of "Gas Pipelines Access Law" in section 3(1) of the Gas Pipelines Access (South Australia) Act 1997 of South Australia, as applying as a law of South Australia; and
 - (ii) Regulations in force under Part 3 of that Act; and

- (b) in the case of Western Australia:
 - (i) the provisions of an Act of Western Australia corresponding to the provisions of the South Australian Act that are referred to in paragraph (a)(i); and
 - (ii) Regulations in force under the Western Australian Act that make provisions corresponding to the provisions of Regulation under Part 3 of the South Australian Act; and
- (c) in the case of any other Scheme Participant:
 - (i) the provisions referred to in paragraph (a) of the definition of “Gas Pipelines Access Law” in section 3(1) of the South Australian Act, as applying as a law of that Scheme Participant; and
 - (ii) Regulations in force under Part 3 of the South Australian Act, as applying as a law of that Scheme Participant.

Gas Pipelines Access Legislation has the meaning given in the Gas Pipelines Access Law.

Incentive Mechanism has the meaning given in section 8.44.

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

Incremental Revenue means revenue generated by sales of Incremental Capacity.

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

Information Package means the Information Package described in section 5.1.

Jurisdictional Area has the meaning given in the Gas Pipelines Access Law.

Market Carriage is a system of managing third party access whereby:

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- (a) the Service Provider does not normally manage its ability to provide Services primarily by requiring Users to use no more than the quantity of Service specified in a contract;
- (b) Users are normally not required to enter a contract that specifies a quantity of Service;
- (c) charges for use of Services are normally based on actual usage of Services; and
- (d) a User normally does not have a right to trade its right to obtain a Service to another User.

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 Access Arrangement Period or in future Access Arrangement Periods, and includes the sales or forecast sales of Services, 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:

- (a) that the User will not utilise and does not require for technical or safety reasons;
- (b) to be of a size and type capable of being sold to another User or to a Prospective User; and
- (c) to be able to sell without incurring transaction costs which exceed the price which that User would receive from another User or Prospective User.

Marketing Staff means servants, consultants, independent contractors or agents directly involved in sales, sale provision or advertising (whether or not they are also involved in other functions) but does not include servants, consultants, independent contractors or agents involved only in:

- (a) strategic decision making, including the executive officer or officers to whom Marketing Staff report either directly or indirectly;
- (b) technical, administrative, accounting or service functions.

Natural Gas has the meaning given in the Gas Pipelines Access Law.

NCC means the National Competition Council established by section 29A of the Trade Practices Act, 1974 (Commonwealth).

New Facilities Investment has the meaning given in section 8.15.

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.

NGPAC means the National Gas Pipelines Advisory Committee to be established under the National Gas Agreement (which term has the meaning given in the Gas Pipelines Access Law).

Non Capital Costs has the meaning given in section 8.4.

Pipeline has the meaning given in the Gas Pipelines Access Law.

Prevailing Tariff for a Reference Service means the applicable Reference Tariff, and for any other Service, means the Equivalent Tariff.

Price Path Approach means a Reference Tariff Variation Method whereby Reference Tariffs are determined in advance for the Access Arrangement Period to follow a path or paths over time forecast to deliver a revenue stream, with that price path or paths not being adjusted to account for subsequent events until the commencement of the next Access Arrangement Period.

Prospective Incremental User means a person which may become an Incremental User.

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

Public Register means the public register to be kept by the Code Registrar pursuant to section 7.10.

Queuing Policy has the meaning given in section 3.12.

Rate of Return has the meaning given in section 8.4.

Rebatable Service is a Service where:

- (a) 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
- (b) 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.

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

Recoverable Portion has the meaning given in section 8.18.

Redundant Capital has the meaning given in section 8.27.

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

Reference Tariff means a Tariff specified in an Access Arrangement as corresponding to a Reference Service and which has the operation that is described in sections 6.13 and 6.18.

Reference Tariff Control Formula Approach means a Reference Tariff Variation Method whereby an initial set of Reference Tariffs may vary over the Access Arrangement Period in accordance with a specified formula or process.

Reference Tariff Policy has the meaning given in section 3.5.

Reference Tariff Variation Method means a method of varying a Reference Tariff during an Access Arrangement Period, including, without limitation:

- (a) a Cost of Service Approach;
- (b) a Price Path Approach;
- (c) a Reference Tariff Control Formula Approach; and
- (d) a Trigger Event Adjustment Approach.

Related Business means the business of producing, purchasing or selling Natural Gas, but does not include purchasing or selling of Natural Gas to the extent necessary:

- (a) for the safe and reliable operation of a Covered Pipeline;
or
- (b) to enable a Service Provider to provide balancing services in connection with a Covered Pipeline.

Relevant Appeals Body has the meaning given in the Gas Pipelines Access Law.

Relevant Minister has the meaning given in the Gas Pipelines Access Law.

Relevant Regulator has the meaning given in the Gas Pipelines Access Law.

Residual Value has the meaning given in section 8.4.

Revisions Commencement Date has the meaning given in section 3.17.

Revisions Submission Date has the meaning given in section 3.17.

Scheme Participant has the meaning given in the Gas Pipelines Access Law.

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.

Services Policy has the meaning given in section 3.1.

Service Provider has the meaning given in the Gas Pipelines Access Law.

Spare Capacity means:

- (a) in relation to a Covered Pipeline described in the Access Arrangement as a Contract Carriage Pipeline:
 - (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; and
- (b) in relation to a Covered Pipeline described in the Access Arrangement as a Market Carriage Pipeline, the capacity to provide a Service without impeding the provision of the Service to any other User.

Specified Event means an event that is specified in a Reference Tariff Policy as triggering a variation in a Reference Tariff pursuant to the Approved Reference Tariff Variation Method.

Speculative Investment has the meaning given in section 8.19.

Speculative Investment Fund has the meaning given in section 8.19.

Structural Element means any principle or methodology that is used in the calculation of a Reference Tariff where that principle or methodology is not a Market Variable Element and has been structured for Reference Tariff making purposes over a longer period than a single Access Arrangement Period, and includes the Depreciation Schedule, the financing structure that is assumed for the purposes of section 8.30, and that part of the Rate of Return (calculated pursuant to section 8.30) that exceeds the return that could be earned on an asset that does not bear any market risk.

Surcharge has the meaning given in sections 8.25 and which has the effect defined in section 6.19.

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).

Tender Approval Request has the meaning given in section 3.21.

Total Revenue has the meaning given in section 8.2.

Trading Policy has the meaning given in section 3.9.

Transmission Pipeline has the meaning given in the Gas Pipelines Access Law.

Trigger Event Adjustment Approach means a Reference Tariff Variation Method whereby Reference Tariffs are varied in the manner specified in a Reference Tariff Policy upon the occurrence of a Specified Event.

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User means a person who has a current contract for a Service or an entitlement to a Service as a result of an arbitration.

[Section 10.8 amended: Gazette 7 January 2000 p. 62-3; 22 November 2000 p. 6543; 2 May 2003 p. 1526; 11 Jul 2003 p. 2825.]

10.9

Schedule 1 to the Gas Pipelines Access Law contains miscellaneous provisions which relate to the interpretation of the Gas Pipelines Access Law and this Code.

ATTACHMENT A — INFORMATION DISCLOSURE BY A SERVICE PROVIDER TO INTERESTED PARTIES

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

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

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

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

Category 1: Information Regarding Access & Pricing Principles

Tariff determination methodology
Cost allocation approach
Incentive structures

Category 2: Information Regarding Capital Costs

Asset values for each pricing zone, service or category of asset
Information as to asset valuation methodologies - historical cost or asset valuation

Assumptions on economic life of asset for depreciation
Depreciation
Accumulated depreciation
Committed capital works and capital investment
Description of nature and justification for planned capital investment
Rates of return - on equity and on debt
Capital structure - debt/equity split assumed
Equity returns assumed - variables used in derivation
Debt costs assumed - variables used in derivation

Category 3: Information Regarding Operations & Maintenance

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

Category 4: Information Regarding Overheads & Marketing Costs

Total service provider costs at corporate level
Allocation of costs between regulated/unregulated segments
Allocation of costs between particular zones, services or categories of asset

Category 5: Information Regarding System Capacity & Volume Assumptions

Description of system capabilities
Map of piping system - pipe sizes, distances and maximum delivery capability
Average daily and peak demand at “city gates” defined by volume and pressure

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Total annual volume delivered - existing term and expected future volumes

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

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

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

Category 6: Information Regarding Key Performance Indicators

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

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

**SCHEDULE A — PIPELINES TO BE COVERED FROM
COMMENCEMENT OF THE CODE**

This schedule includes a complete list of Gas Transmission and Distribution Systems that are agreed jointly by governments as passing the coverage tests and are to be covered at the commencement of the Code.

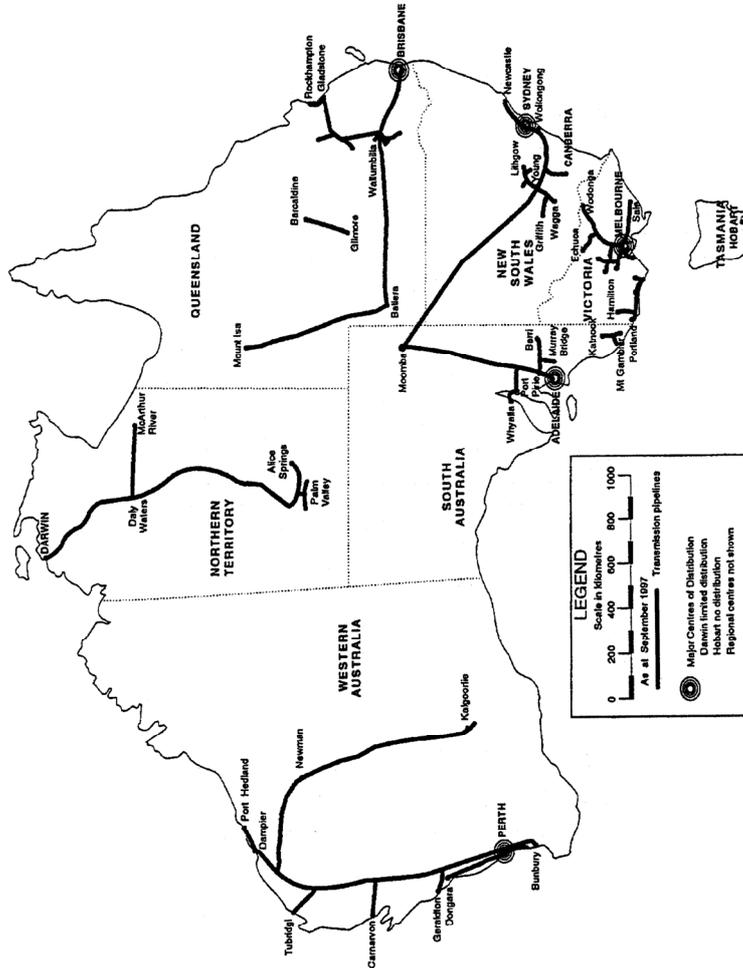
The assets described within each box shown in this Schedule constitute a Covered Pipeline for the purposes of section 1.1.

I N D E X

	Page No. (as appearing at top right of pages)
GENERAL MAP (Identifies existing natural gas transmission pipelines and major centres of distribution.)	
Queensland - Natural Gas Transmission Pipelines	1
Queensland - Natural Gas Distribution Systems	2
New South Wales & Australian Capital Territory - Natural Gas Transmission Pipelines	3
New South Wales & Australian Capital Territory - Natural Gas Distribution Systems	4
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SCHEDULE A PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE

Natural Gas Transmission Pipelines and Major Centres of Distribution



PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE **SCHEDULE A**

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AUSTRALIAN NATURAL GAS TRANSMISSION PIPELINES

QUEENSLAND

LISTS AND MAPS

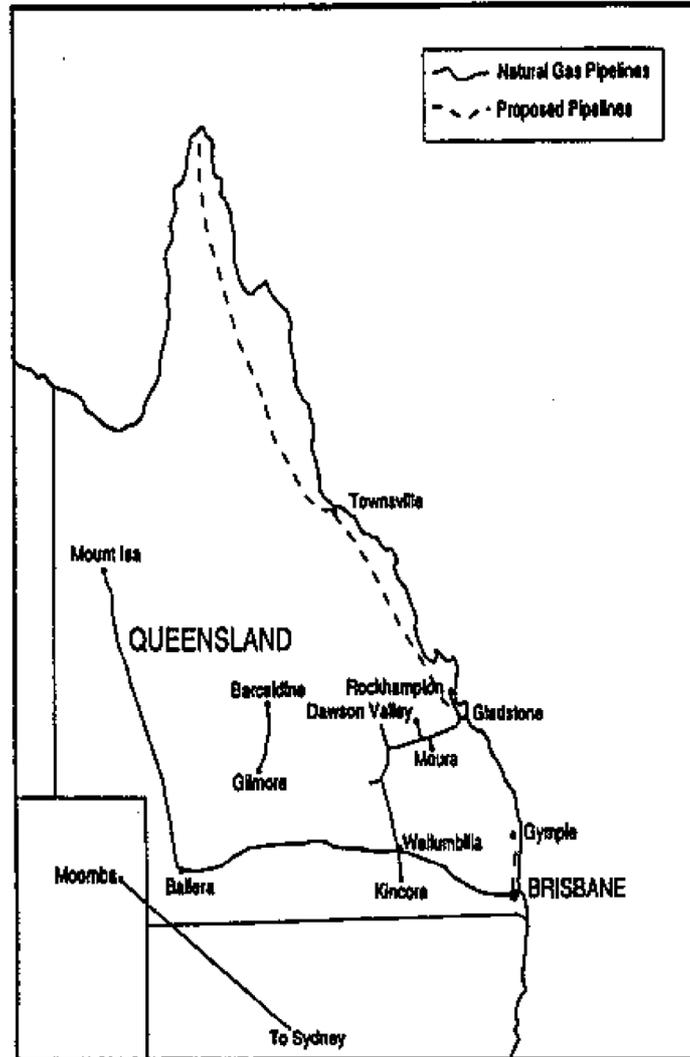
Pipeline Licence	Locality/Route	Operator	Length (km)	Pipe Diameter (mm)	Regulator
Qld:PPL2	Wallumbilla to Brisbane	AGL Pipeline Ltd	434	273	ACCC
Qld:PPL3	Kincora to Wallumbilla	Oil Co of Aust Ltd	53	219.1	ACCC
Qld:PPL24	Ballera to Wallumbilla	Epic Energy Pty Ltd	750	406.4	ACCC
Qld:PPL26	Dawson Valley to PG&E Qld Gas Pipeline	Conoco Australia Pipelines Pty Ltd	47	168.3	ACCC
Qld:PPL30	Wallumbilla to Rockhampton System	PG&E Gas Transmission Australia			ACCC
	Wallumbilla to Gladstone		530.4	323.9	
	Gladstone to Rockhampton		96.7	219.1	
Qld2:ML 80032	Moura Mine to PG&E Qld Gas Pipeline	BHP Mitsui Coal P/L	23	219.1	ACCC

Qld = Pipeline Licence issued under the Petroleum Act 1923 (Qld)
Qld2 = A Mining Lease under the Mineral Resources Act 1989 (Qld)

continued....

SCHEDULE A PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE

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NOTE: The Mt Isa pipeline is currently under construction

AUSTRALIAN NATURAL GAS DISTRIBUTION SYSTEMS

QUEENSLAND

Pipeline Licence	Location/Route	Operator	Description	Regulator
	Dalby System	Dalby Town Council		QCA
	Gas Corporation of Qld System Gladstone Ipswich North Brisbane Rockhampton	Gas Corporation of Qld		QCA
	Allgas Energy System Gold Coast Oakey South Brisbane Toowoomba	Allgas Energy		QCA
	Roma System	Roma Town Council		QCA

SCHEDULE A PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE

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**AUSTRALIAN NATURAL GAS TRANSMISSION PIPELINES
LISTS AND MAPS**

NEW SOUTH WALES & THE AUSTRALIAN CAPITAL TERRITORY

Pipeline Licence	Location/Route	Operator	Length (km)	Pipe Diameter (mm)	Regulator		
SA:PL7	Moomba to Sydney Pipeline System Moomba to Queensland border	East Australian Pipeline Ltd	111 (incl.10km loop at Moomba)	864 660	ACCC		
Qld:PPL21	SA border to NSW border		56.2	864			
NSW:16	Qld/NSW border to Wilton		1,142	864			
NSW:19	Young to Wagga Wagga		131	864			
NSW:19	Cootamundra Spur		2.7	324/89			
NSW:20	June to Griffith/Leeton		180	89			
NSW:17	Young to Lithgow		212	168/114			
NSW:18	Oberon Spur		31	168			
NSW:18	Orange Spur		24	168			
NSW:22	Bathurst Spur		2	114			
NSW:17	Dalton to ACT border		52	114			
NSW:21	ACT/NSW border to North Watson		6	273 273			
NSW:1	Wilton to Newcastle		AGL Gas Networks Limited				IPART*
NSW:3	Wilton to Horsley Park			51		864	
NSW:7	Horsley Park to Plumpton	9.6		508			
NSW:8	Plumpton to Killingworth	141		508			
NSW:8	Killingworth to Walsh Point	32.9		508/355			
NSW:2	Wilton to Wollongong	AGL Gas Networks Limited	33	508	IPART*		
NSW:25	Marsden to Dubbo	AGL Pipelines (NSW) Pty Ltd	251	168	ACCC		

SA = Pipeline Licence issued under the Petroleum Act 1940 (SA)

Qld = Pipeline Licence issued under the Petroleum Act 1940 (Qld)

NSW = Pipeline Licence issued under the Petroleum Act 1940 (NSW)

* NSW has sought derogation for these pipelines to be deemed to be distribution pipelines for the purposes of the Gas Pipeline Access Law and the Access Code under 1 July 2002, unless Regulations provide otherwise.

continued...

PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE **SCHEDULE A**

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SCHEDULE A PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE

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AUSTRALIAN NATURAL GAS DISTRIBUTION SYSTEMS

NEW SOUTH WALES & THE AUSTRALIAN CAPITAL TERRITORY

Pipeline Licence	Location/Route	Operator	Description	Regulator
	AGL NSW Distribution	AGL Gas Networks Limited		IPART
	Ashfield			
	Auburn			
	Bankstown			
	Bathurst		MP/LP	
	Baulkham Hills			
	Blacktown			
	Bland		MP	
	Blayney		MP210 kPa	
	Blue Mountains		MP300 kPa	
	Boorowa		MP210 kPa	
	Botany			
	Burwood			
	Camden			
	Campbelltown			
	Canterbury			
	Cessnock			
	Concord			
	Coolamon		MP210 kPa	
	Cootamundra		MP	
	Cowra		MP	
	Evans			
	Fairfield			
	Gosford		MP210 kPa	
	Goulburn		MP/LP	
	Greater Lithgow		MP/LP	
	Griffith		MP210 kPa	
	Hawkesbury			
	Holroyd			
	Hornsby			
	Hunters Hill			
	Hurstville			
	Junee		MP210 kPa	
	Kiama		MP300 kPa	

HP = High Pressure MP = Medium Pressure LP = Low Pressure

National Third Party Access Code for Natural Gas Pipeline Systems

PIPELINES TO BE COVERED FROM COMMENCEMENT OF **SCHEDULE A**
THE CODE

continued...

National Third Party Access Code for Natural Gas Pipeline Systems

PIPELINES TO BE COVERED FROM COMMENCEMENT OF **SCHEDULE A**
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Pipeline Licence	Location/Route	Operator	Description	Regulator
	Waverley			

HP = High Pressure MP = Medium Pressure LP = Low Pressure

continued...

SCHEDULE A PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE

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**AUSTRALIAN NATURAL GAS DISTRIBUTION SYSTEMS
NEW SOUTH WALES & THE AUSTRALIAN CAPITAL TERRITORY**

continued...

Pipeline Licence	Location/Route	Operator	Description	Regulator
	AGL NSW Distribution cont Willoughby Wingecarribee Woollahra Wollondilly Wollongong Wyong Yass Young	AGL Gas Networks Limited	MP 210 kPa MP 400 kPa MP/LP MP 210 kPa MP 210 kPa MP 210 kPa	IPART
	AGL Central West System Dubbo Forbes Narromine Parkes Weddin Wellington			
	Albury Gas Company System * Albury Corowa Hume	Albury Gas Company (Stratus)		IPART
	Great Southern Energy System Wagga Wagga	Great Southern Energy	LP	IPART
	Canberra System Canberra ** Queanbeyan * Yarrowlumla *	AGL Gas Networks	MP 210 kPa MP 210 kPa	IPART

HP = High Pressure MP = Medium Pressure LP = Low Pressure

PIPELINES TO BE COVERED FROM COMMENCEMENT OF **SCHEDULE A**
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- * The AGL pipeline system in Queanbeyan and Yarrowlumla Shire and Albury Gas Company's systems in a number of Central Murray townships have been excluded from coverage under the NSW Access Regime pending the establishment of access regimes in Victoria and the Act which would allow cross-vesting/cross-border issues to be resolved.
- ** Cross vesting arrangement with NSW to be formalised.

SCHEDULE A PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE

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AUSTRALIAN NATURAL GAS TRANSMISSION PIPELINES

VICTORIA

LISTS AND MAPS

Pipeline Licence	T No	Location/Route	Operator	Length (km)	Pipe Diameter (mm)	Regulator
		GTC Systems	GTC			ACCC
Vic:50	T1	Rural Eastern Dandenong to Morwell to Traralgon		128.8	450, 100, 80	
Vic:107	T32	Clyde North		2	100	
Vic:67	T37	Tyers Maryvale		5.6	150	
Vic:91	T44	Lardner to Warragul		4.7	100	
Vic:75	T60	Longford Dandenong		173.5	750	
Vic:117 & Vic:120	T60	Longford to Rosedale to Tyers		65.1	750	
Vic:121	T63	Tyers to Morwell		15.7	500	
Vic:135	T60	Bunyip Pakenham		19	750	
Vic:141	T61	Pakenham to Wollert		91	750	
Vic:Pt101	T74, T59	Rural Central Northern Wollert to Wodonga/Euroa, Shepparton		326.37	300, 200	
Vic:Pt132	T71	Shepparton to Tatura		16	200	
Vic:136	T71	Tatura to Kyabram		22	200	
Vic:152	T85	Kyabram to Echuca		30.5	150	
	T85	Chiltern to Rutherglen		14.3	200	
	T98	Rutherglen to Koonoomoo		88.1	200	
Vic:Pt78	T56, T57 T70	Rural Central Brookland, Ballan, Ballarat, Bendigo		196.8	200, 150	
Vic:125	T67	Guildford to Maryborough		33	150	
Vic:128	T66	Mt Franklin to Kyneton		24	300	
Vic:131	T70	Mt Franklin to Bendigo		53	300	
Vic:134	T57	Ballan to Ballarat		23	300	
Vic:143	T75	Wandong to Kyneton		59	300	
Vic:145	T81	Rural Western Paaratte to Allansford		34	150	
Vic:155	T86	Allansford to Portland		115	150	
Vic:168	T91	Curdie Vale to Cobden		27.7	150	
Vic:171	T93	Codrington to Hamilton		54.5	150	

Vic = Pipeline Licence issued under the Pipelines Act 1967 (Vic)

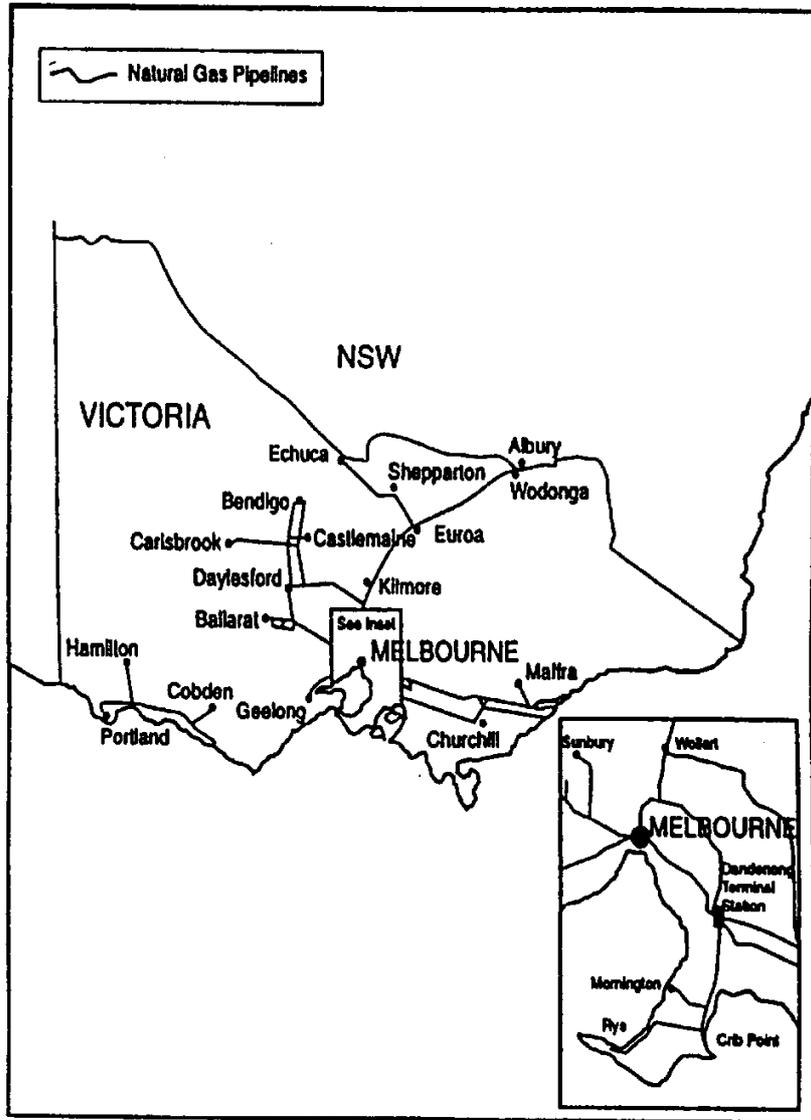
National Third Party Access Code for Natural Gas Pipeline Systems

PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE **SCHEDULE A**

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SCHEDULE A PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE

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PIPELINES TO BE COVERED FROM COMMENCEMENT OF **SCHEDULE A**
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AUSTRALIAN NATURAL GAS TRANSMISSION PIPELINES

VICTORIA continued...

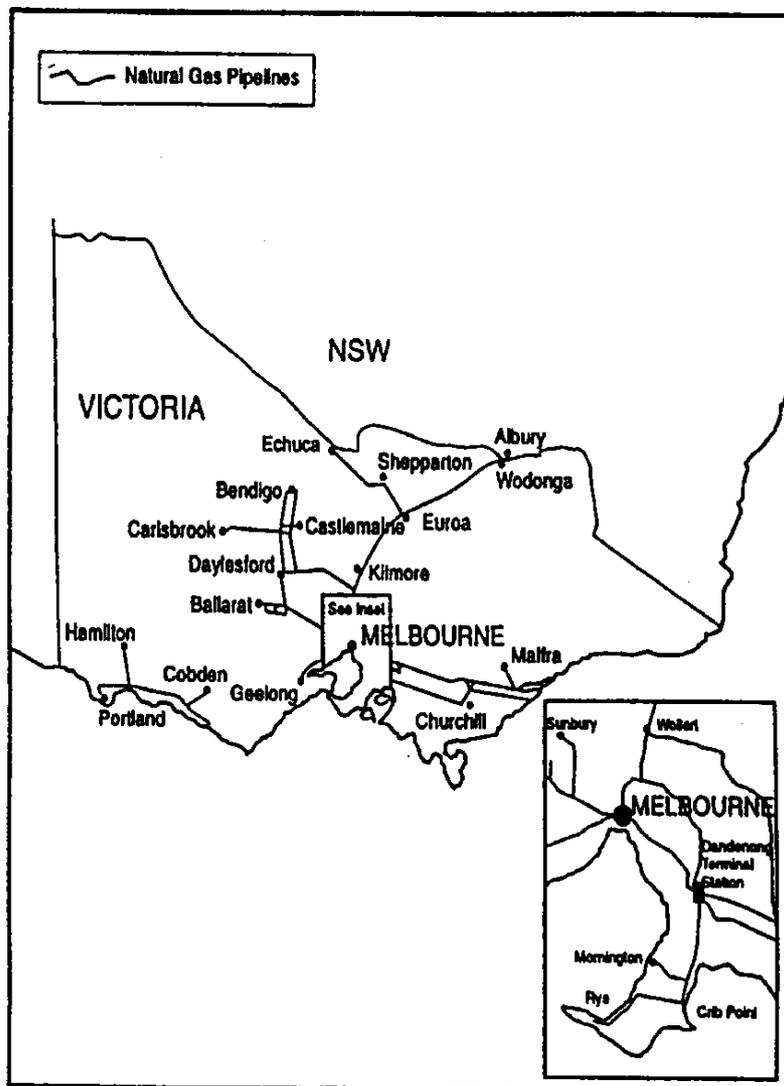
LISTS AND MAPS

Pipeline Licence	T No	Location/Route	Operator	Length (km)	Pipe Diameter (mm)	Regulator
		GTC Systems contd..	GTC			ACCC
Vic:Pt101	T74	Northern Metropolitan Keon Park to Wollert		13.58	600	
Vic:36	T16	South Eastern Metropolitan Dandenong to West Melbourne		35.6	750, 200	
Vic:129	T65	Dandenong to Princes Highway		5	750, 500	
Vic:108	T33	Western Metropolitan South Melbourne to Brookland		12.1	750	
Vic:122	T62	Derrimut to Sunbury		24	150	
Vic:164	T89	Port Melbourne Boundary Road		0.44	150	
Vic:162	T88	Laverton North to BHPP Geelong		1.6	150	
Vic:81	T24	Brookland Corio		53.4	350, 400	

Vic = Pipeline Licence issued under the Pipelines Act 1967 (Vic)
continued...

SCHEDULE A PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE

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National Third Party Access Code for Natural Gas Pipeline Systems

PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE **SCHEDULE A**

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AUSTRALIAN NATURAL GAS DISTRIBUTION SYSTEMS

VICTORIA

Pipeline Licence	T No	Location/Route	Operator	Description	Regulator
		Stratus Networks Systems *	Stratus Networks		ORG
Vic:11	T13	Mornington Peninsula BP (Crib Point) to Dandenong			
Vic:61	T51	Hastings Long Island PT (Esso)			
Vic:62	T34	Tyabb Mornington			
Vic:115	T49	Hastings (Lysaght)			
Vic:137	T72	Bittern to Dromana			
Vic:139	T69	Pearcedale to Frankston			
Vic:167	T90	Dromana to Rye			
		South Eastern Metropolitan			
Vic:Pt49	T14	Dandenong to Frankston			
		Northern Metropolitan			
Vic:66	T36	North Melbourne to Fairfield (CSL) Parkville			
Vic:Pt.40	T18	Dandenong to West Melbourne (Ring Main)			
		Rural Central			
Vic:103	T28	Shepparton New Dookie Road			
		Rural Eastern			
Vic:43 & Vic:44	T27	Longford, Sale, Maffra			
Vic:50	T82	BCLV Supply			
Vic:Pt101	T73	Wodonga Murray River			

Vic = Pipeline Licence issued under the Pipelines Act 1967 (Vic)

* Includes those distribution pipelines owned by the Operator downstream of the points listed as at 1 December 1997

continued...

SCHEDULE A PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE

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AUSTRALIAN NATURAL GAS DISTRIBUTION SYSTEMS

VICTORIA

Pipeline Licence	T No	Location/Route	Operator	Description	Regulator
Vic:Pt102	T31	Stratus Networks Systems * contd... Wodonga West to Wodonga Melbourne (northern & south-eastern suburbs) Benalla Broadford Churchill Clyde Darnum Drouin Echuca Euroa Girgarre Hastings Healesville Kyabram Longwarry Loy Yang Power Stn Maffra Merrigum Moe Morwell Officer Pakenham Puckapunyal Rochester Sale Seymour Shepparton Stanhope Tatura Tongala	Stratus Networks		ORG

Vic = Pipeline Licence issued under the Pipelines Act 1967 (Vic)

National Third Party Access Code for Natural Gas Pipeline Systems

PIPELINES TO BE COVERED FROM COMMENCEMENT OF **SCHEDULE A**
THE CODE

* Includes those distribution pipelines owned by the Operator downstream of the points listed as at 1 December 1997

continued...

SCHEDULE A PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE

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AUSTRALIAN NATURAL GAS DISTRIBUTION SYSTEMS

VICTORIA continued...

Pipeline Licence	T No	Location/Route	Operator	Description	Regulator
		Stratus Networks Systems * contd... Trafalgar Traralgon Tyabb Wallan Wangaratta Warragul Wodonga Yarragon	Stratus Networks		ORG
Vic:28 Vic:51 Vic:51, Vic:100 & Vic:77 Vic:13 Vic:14 Vic:Pt56 Vic:Pt36 Vic:33 Vic:Pt56	T26 T40 T40 T2 T3 T7 T25 T21 T17	Multinet Gas Systems * Eastern Metropolitan Area Ringwood to Vermont Ringwood to Lilydale Ringwood, Croydon, Mooroolbark, Lilydale South Eastern Metropolitan Area Dandenong to Highett Highett to Spencer St Bridge and Park St, South Melbourne Murrumbeena Highett South Melbourne Cecil to Pickles St Dandenong to Edithvale Dandenong, Queens Wharf Road, West Melbourne	Multinet Gas		ORG

Vic = Pipeline Licence issued under the Pipelines Act 1967 (Vic)

* Includes those distribution pipelines owned by the Operator downstream of the points listed as at 1 December 1997

continued...

PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE **SCHEDULE A**

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AUSTRALIAN NATURAL GAS DISTRIBUTION SYSTEMS

VICTORIA continued...

Pipeline Licence	T No	Location/Route	Operator	Description	Regulator
Vic:Pt49	T14	Multinet Gas Systems * contd Dandenong to Frankston	Multinet Gas		ORG
Vic:Pt56	T6	Dandenong Clow and Hutton Streets			
Vic:47	T29	Dandenong Aust Fibre Glass to GMH			
Vic:85	T48	Bangholme to MMBW			
Vic:142	T76	Rowville to Ferntree Gully			
Vic:Pt40	T18	Dandenong to West Melbourne (Ring Main)			
		Melbourne (eastern suburbs)			
Vic:15	T4	Westar Energy Systems * Western Metropolitan PRA Altona to West Melbourne	Westar Energy		ORG
Vic:16	T9	Altona to Derrimut			
Vic:17	T10	Derrimut to West Melbourne			
Vic:79	T11	Altona Carbon Black			
Vic:Pt40	T18	Dandenong to West Melbourne (Ring Main)			
Vic:54	T30	Campbellfield to Coburg			
Vic:82	T42	Forest St, Sunshine			
Vic:Pt84	T43	Francis St, Yarraville			
Vic:18	T53	Footscray to Sunshine			
Vic:19 & Vic:Pt84	T43 & T52	West Footscray to Williamstown			

Vic = Pipeline Licence issued under the Pipelines Act 1967 (Vic)

* Includes those distribution pipelines owned by the Operator downstream of the points listed as at 1 December 1997

continued...

SCHEDULE A PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE

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AUSTRALIAN NATURAL GAS DISTRIBUTION SYSTEMS

VICTORIA continued...

Pipeline Licence	T No	Location/Route	Operator	Description	Regulator
Vic:64	T35	Westar Energy Systems * contd... Campbellfield to Craigieburn	Westar Energy		ORG
Vic:113	T54	Brookland Altona			
Vic:18	T78	Footscray, Kinnear Street			
Vic:76	T79	Maidstone to Braybrook			
Vic:57	T19 & T22	Geelong Ballarat Corio – Malop Street, Belmont, Pt Henry			
Vic:80 & Vic:99	T23	North Geelong to Fyansford to Waurn Ponds			
Vic:97	T46	Corio Shell			
Vic:Pt78	T39	Ballarat CG to Dana Street			
Vic:90	T47	Exford to Melton			
Vic:Pt78	T41	Bendigo CG to Able Street			
Vic:Pt155	T87	Rural Western Portland to PSS Melbourne (western suburbs) Bacchus Marsh Ballan Ballarat Bendigo Castlemaine Daylesford Diggers Rest Geelong & Avalon Airport Kyneton Lara			

National Third Party Access Code for Natural Gas Pipeline Systems

PIPELINES TO BE COVERED FROM COMMENCEMENT OF **SCHEDULE A**
THE CODE

Vic = Pipeline Licence issued under the Pipelines Act 1967 (Vic)

* Includes those distribution pipelines owned by the Operator downstream of the points listed as at 1 December 1997

continued...

SCHEDULE A PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE

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AUSTRALIAN NATURAL GAS DISTRIBUTION SYSTEMS

VICTORIA continued...

Pipeline Licence	T No	Location/Route	Operator	Description	Regulator
		Westar Energy Systems * contd... Maryborough Melton Point Cook Portland Sunbury Wallace Warrnambool Werribee	Westar Energy		ORG

Vic = Pipeline Licence issued under the Pipelines Act 1967 (Vic)

* Includes those distribution pipelines owned by the Operator downstream of the points listed as at 1 December 1997

PIPELINES TO BE COVERED FROM COMMENCEMENT OF **SCHEDULE A**
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AUSTRALIAN NATURAL GAS TRANSMISSION PIPELINES

SOUTH AUSTRALIA

LISTS AND MAPS

Pipeline Licence	Location/Route	Operator	Length (km)	Pipe Diameter (mm)	Regulator
SA:PL1	Moomba to Adelaide Pipeline System	Epic Energy Pty Ltd			ACCC
	Moomba to Adelaide Pipeline		781	559	
	Angaston Lateral		38.7	219	
	Taperoo Lateral		1.2	323	
	Dry-Creek Lateral		1.3	323	
	Peterborough Lateral		1.9	89	
	Nuriootpa Lateral		1.6	114	
	Burra Lateral		15	89	
	Port Pirie Lateral		77.8	168	
	Mintaro Lateral		0.3	219	
	Wasleys to Torrens Island Loop		42	508	
	Whyalla Lateral		87.7	219	
	Port Bonython Lateral		5.5	114	
	Tarac		0.4	89	
	Port Douglas Lateral		11.5	114	
Osborne Lateral	1.3	273			
	Riverland Pipeline System	Epic Energy Pty Ltd *			ACCC
SA:PL6	Angaston Berri Main Line		166	114	
	Sedan to Murray River		65	114	
	South East Pipeline	Epic Energy Pty Ltd			ACCC
SA:PL3	Katnook to Safries		4.5	60.3	
SA:PL4	Katnook to Glencoe		26.7	168	
	Glencoe to Mt Gambier		18.9	168	
	Glencoe to Snuggery	19.4	168		

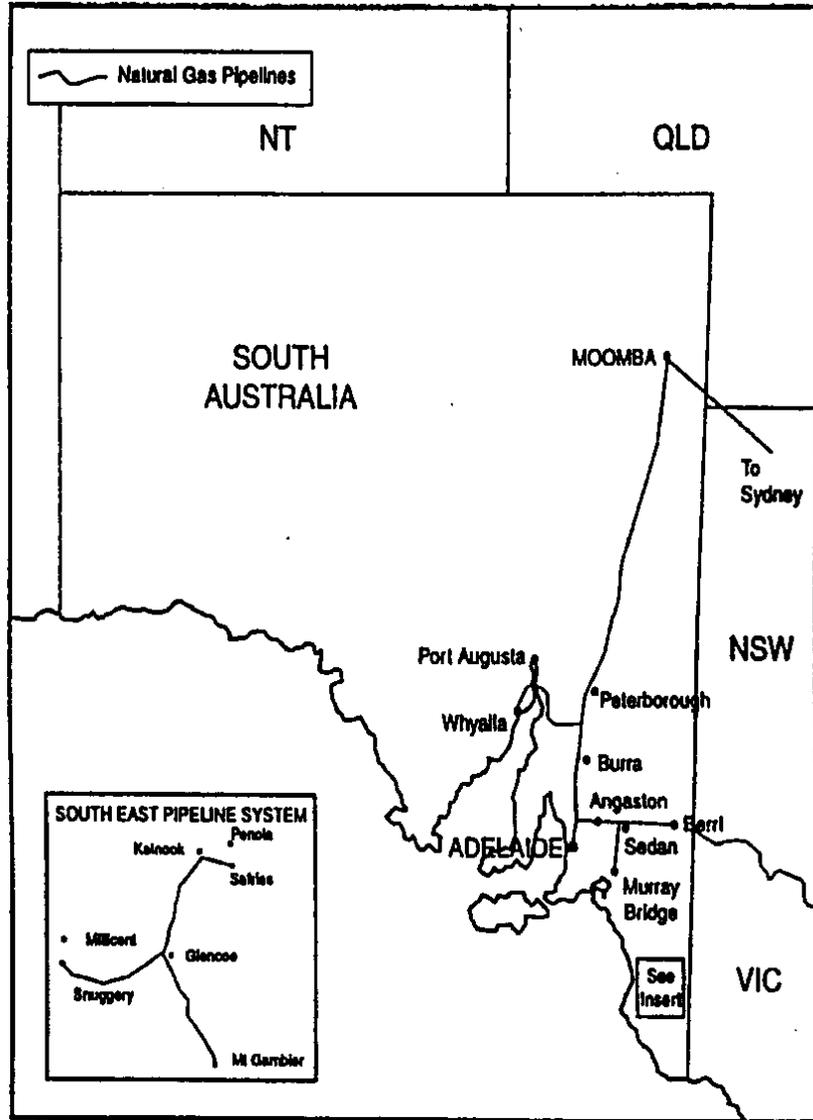
SA = Pipeline Licence issued under the Petroleum Act 1940 (SA)

* Owned by Envestra Ltd

continued...

SCHEDULE A PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE

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AUSTRALIAN NATURAL GAS DISTRIBUTION SYSTEMS

SOUTH AUSTRALIA

Pipeline Licence	Location/Route	Operator	Description	Regulator
	Envestra SA Distribution Systems Adelaide Reticulation Barossa Valley Berri Reticulation Peterborough Reticulation Port Pirie Reticulation Mt Gambier Reticulation Murray Bridge Whyalla Reticulation	Envestra Ltd		SA Independent Pricing and Access Regulator

SCHEDULE A PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE

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AUSTRALIAN NATURAL GAS TRANSMISSION PIPELINES

WESTERN AUSTRALIA

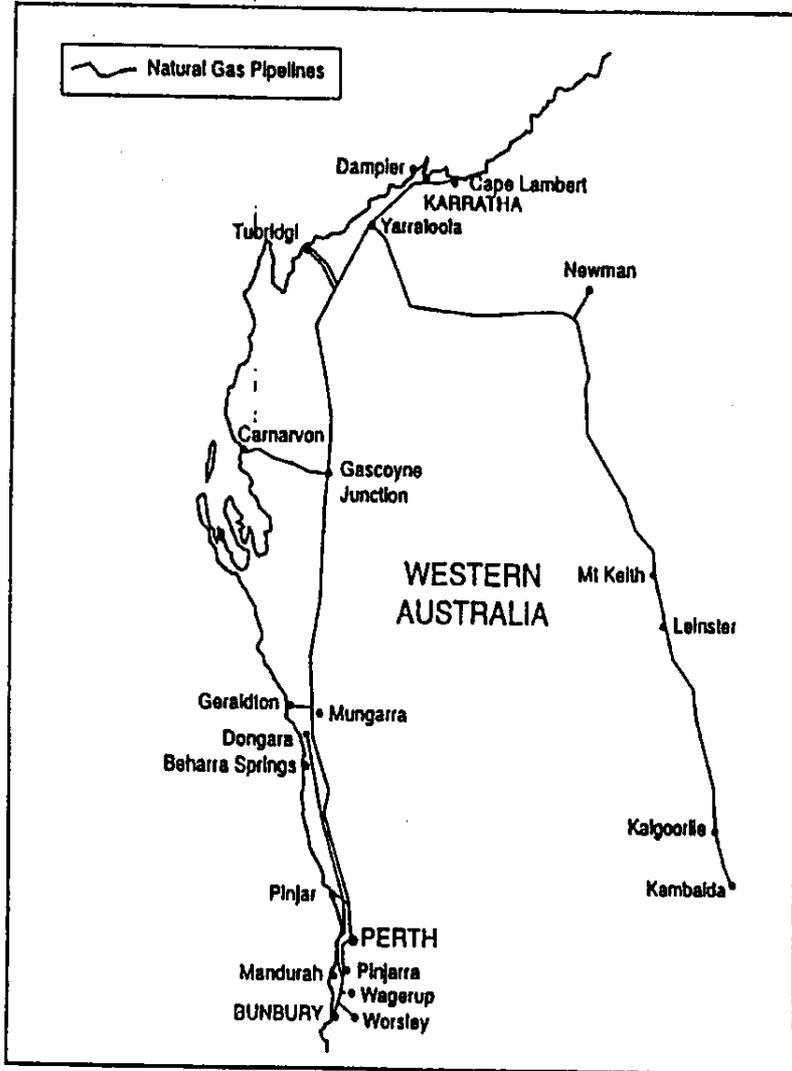
LISTS AND MAPS

Pipeline Licence	Location/Route	Operator	Length (km)	Pipe Diameter (mm)	Regulator
WA:PL1-3, 5	CMS Pipeline Dongara to Pinjarra (incl. Fremantle & Rockingham Laterals)	CMS Gas Transmission of Australia	445	356, 168, 114	A WA Independent Regulator
WA:PL23	CMS Pipeline to DBNGP (Dongara Area)		0.5	168	
WA:PL8	Karratha to Cape Lambert Pipeline	Alinta Gas	57	273	A WA Independent Regulator
WA:PL18	Beharra Springs to CMSG Pipeline	Boral Energy Developments Pty Ltd	1.6	168	A WA Independent Regulator
na	Dampier to Bunbury Pipeline System	Alinta Gas			A WA Independent Regulator
na	Withnell Bay to Wagerup		1,488	660,508	
na	Wagerup to Bunbury		58	273,219,168	
na	Hamersley Lateral		0.5	219	
na	Gascoyne Junction to Carnarvon		171	168	
na	Mungarra Lateral		2.5	168	
na	Pinjar Lateral		14	355	
na	Kwinana West Lateral		6.3	508,355,219	
na	Kwinana/Russel Road		7.3	323	
na	KNC/BP Lateral		1.6	273	
na	Rockingham Lateral		5.9	323,168	
na	Alcoa Pinjarra Lateral		5.4	323	
na	Alcoa Wagerup Lateral		9.5	355	
na	Worsley Lateral		33	273	

WA = Pipeline Licence issued under the Petroleum Pipelines Act 1969 (WA)
continued...

PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE **SCHEDULE A**

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continued...

SCHEDULE A PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE

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Part 9(iii)

AUSTRALIAN NATURAL GAS TRANSMISSION PIPELINES

WESTERN AUSTRALIA continued...

LISTS AND MAPS

Pipeline Licence	Location/Route	Operator	Length (km)	Pipe Diameter (mm)	Regulator
WA:PL16 WA:PL19	Tubridgi Pipeline System Tubridgi to DBNGP Compressor Station No 2 Tubridgi to DBNGP Compressor Station No 2	Sagasco SE Inc	87.5 87	168 273	A WA Independent Regulator
WA:PL24	Goldfields Gas Pipeline System Goldfields Gas Pipeline GGT Newman Lateral	GGT *	1,380 47	400, 350 219	A WA Independent Regulator
WA:PL25 WA:PL26 WA:PL27	WMC Lateral GGT to Mt Keith Power Station GGT to Leinster Power Station Kalgoorlie to Kambalda	WMC Resources Ltd	8.1 5.2 44.3	219 219 219	A WA Independent Regulator
WA:PL28	GGT to Kalgoorlie Power Station	Normandy Pipelines Pty Ltd	8.2	219	A WA Independent Regulator

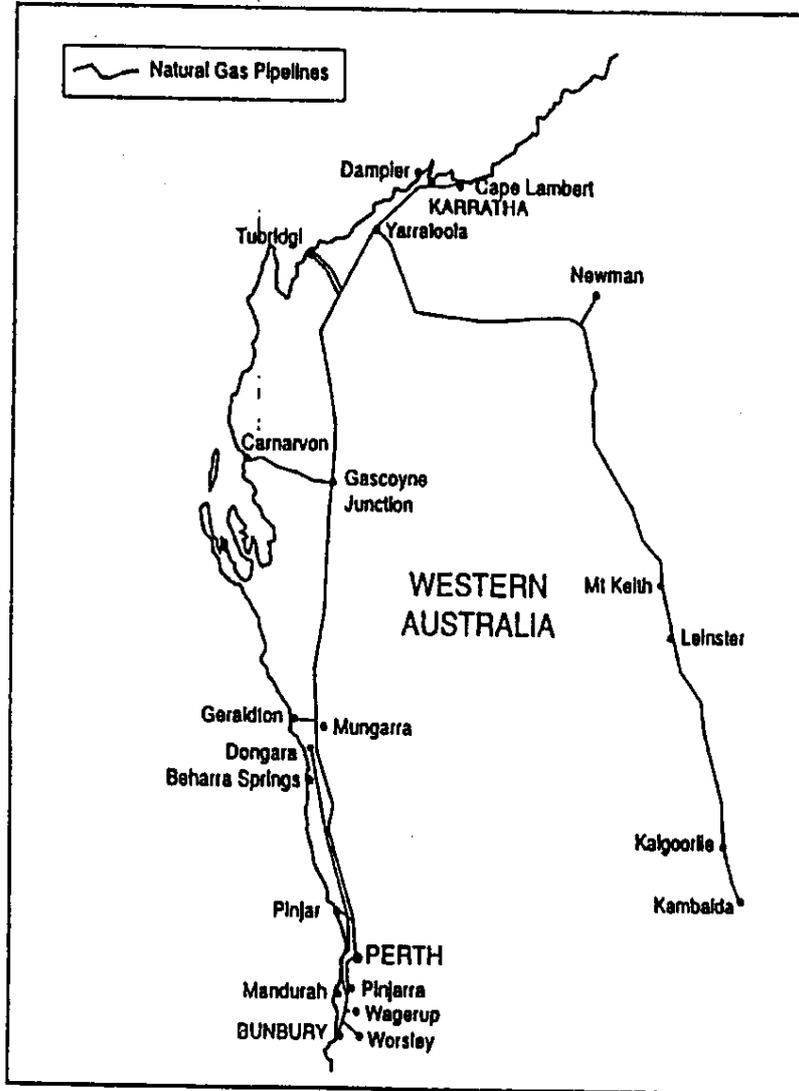
WA = Pipeline Licence issued under the Petroleum Pipelines Act 1969 (WA)

* AGL has been approved to operate the pipeline on behalf of GGT

continued...

PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE **SCHEDULE A**

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SCHEDULE A PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE

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AUSTRALIAN NATURAL GAS DISTRIBUTION SYSTEMS

WESTERN AUSTRALIA

Pipeline Licence	Location/Route	Operator	Description	Regulator
	Alinta Gas Distribution Systems Geraldton (incl Geraldton Lateral) Perth (incl East Perth/Viveash Lateral) Mandurah Bunbury Busselton * (incl Main Line Valve (MLV) 157 to MLV 159 (DBNGP) and Boyanup to Capel pipeline)	Alinta Gas		A WA Independent Regulator

* Under Construction

PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE **SCHEDULE A**

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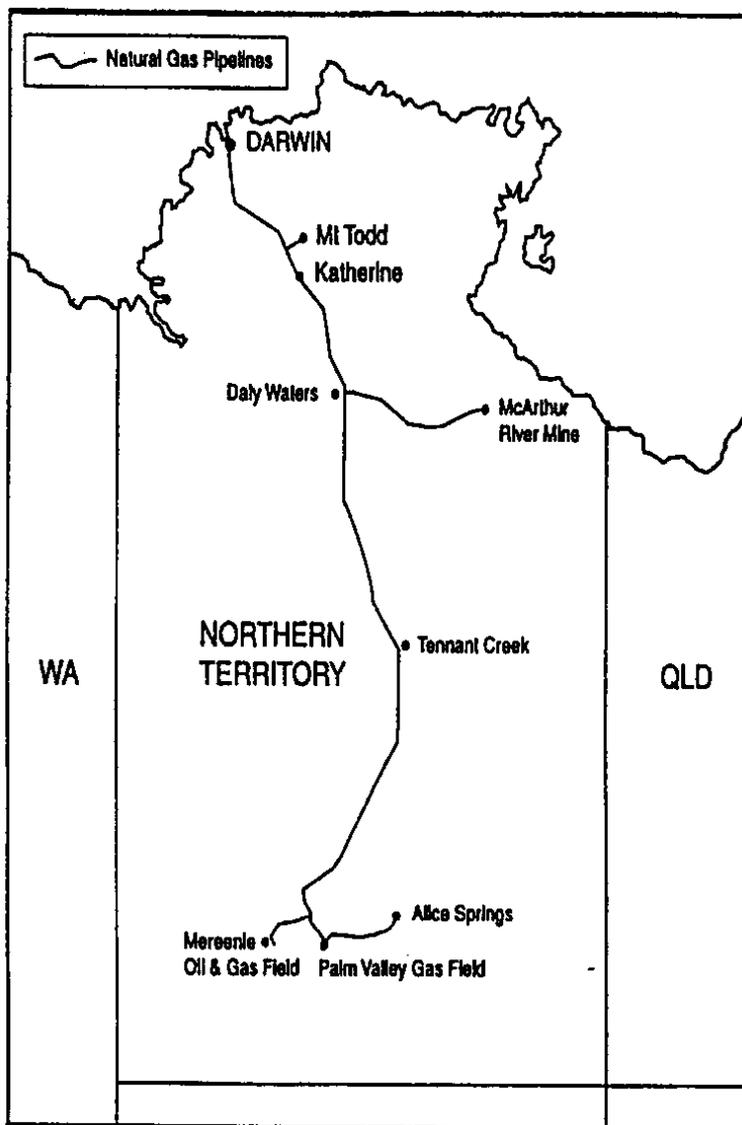
AUSTRALIAN NATURAL GAS TRANSMISSION PIPELINES
NORTHERN TERRITORY LISTS AND MAPS

Pipeline Licence	Location/Route	Operator	Length (km)	Pipe Diameter (mm)	Regulator
NT:PL1	Amadeus Basin to Darwin System	NT Gas Pty Ltd			ACCC
NT:PL4	Palm Valley to Alice Springs		140	219	
	Amadeus Basin to Darwin		1512	356, 324	
	Mereenie to Tylers Pass		116	273	
	Tennant Creek Lateral		21.3	114	
NT:PL18	Katherine Lateral		6.8	114	
	City Gate to Berrimah		19	150	

NT = Pipeline Licence issued under the Energy Pipelines Act 1983 (NT)
continued...

SCHEDULE A PIPELINES TO BE COVERED FROM COMMENCEMENT OF THE CODE

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AUSTRALIAN NATURAL GAS DISTRIBUTION SYSTEMS

NORTHERN TERRITORY

Pipeline Licence	Location/Route	Operator	Description	Regulator
not licenced * NT:PL5	Centre Gas Systems Alice Springs Town Reticulation P/L downstream of the first flange after the processing place Alice Springs Metering and Pressure Stations	Centre Gas Pty Ltd		ACCC

NT = Pipeline Licence issued under the Energy Pipelines Act 1983 (NT)

* Note: A pipelined declared under ss.4(2) of the Energy Pipelines Act does not require a licence.

Notes

¹ This is a compilation of the *National Third Party Access Code for Natural Gas Pipeline Systems* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>National Third Party Access Code for Natural Gas Pipeline Systems</i>	Published as Schedule 2 to the <i>Gas Pipelines Access (Western Australia) Act 1998 (No. 65 of 1998)</i>	
<i>National Third Party Access Code for Natural Gas Pipeline Systems: First Amending Agreement</i>	7 Jan 2000 p. 57-64 (Correction in <i>Gazette</i> 4 Feb 2000 p. 423)	23 Dec 1999 (see cl. 2 and <i>South Australian Government Gazette</i> 23 Dec 1999 p. 3783)
<i>National Third Party Access Code for Natural Gas Pipeline Systems: Second Amending Agreement</i>	22 Nov 2000 p. 6533-44	9 Nov 2000 (see cl. 2 and <i>South Australian Government Gazette</i> 9 Nov 2000 p. 3076-87)
<i>National Third Party Access Code for Natural Gas Pipeline Systems: Third Amending Agreement</i>	23 Jan 2002 p. 435-41	22 Nov 2001 (see cl. 2 and <i>South Australian Government Gazette</i> 22 Nov 2001 p. 5092-7)
<i>National Third Party Access Code for Natural Gas Pipeline Systems: Fifth Amending Agreement</i>	19 Sep 2002	27 Jun 2002 (see cl. 2 and <i>South Australian Government Gazette</i> 27 Jun 2002 p. 2719-23)
<i>National Third Party Access Code for Natural Gas Pipeline Systems: Sixth Amending Agreement</i>	2 May 2003 p. 1515-20	24 Apr 2003 (see cl. 2 and <i>South Australian Government Gazette</i> 24 Apr 2003 p. 1805-11)
<i>National Third Party Access Code for Natural Gas Pipeline Systems: Seventh Amending Agreement</i>	2 May 2003 p. 1521-8	17 Apr 2003 (see cl. 2 and <i>South Australian Government Gazette</i> 17 Apr 2003 p. 1737-44)
<i>National Third Party Access Code for Natural Gas Pipeline Systems: Fourth Amending Agreement</i>	11 Jul 2003 p. 2817-26	6 Feb 2003 (see cl. 2 and <i>South Australian Gazette</i> 6 Feb 2003 p. 473-82)

² Now known as the *Energy Arbitration and Review Act 1998*; (see Act No. 16 of 2009 s. 26 and *Gazette* 31 Dec 2009 p. 5327)

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
Access Arrangement	10
Access Arrangement Information	10
Access Arrangement Period.....	10
Additional Revenue Policy	10
Additional Staff.....	10
Anticipated Incremental Revenue	10
Approved Reference Tariff Variation Method.....	10
Arbitrator	10
Associate.....	10
Associate Contract	10
Bare Transfer	10
Capacity	10
Capacity Management Policy	10
Capital Base	10
Capital Contribution	10
Charge.....	10
Code.....	10
Code Registrar	10
Confidential Information	10
Contract Carriage	10
Contracted Capacity.....	10
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Covered Pipeline.....	10
Delivery Point	10
Depreciation.....	10
Depreciation Schedule	10
Developable Capacity	10
End User	10
End User Information	10
Equivalent Tariff.....	10
Exclusivity Right	10
Exempt Matter	10
Final Approval Request	10
Fixed Period.....	10
Fixed Principle.....	10
Gas Pipelines Access Law	10
Gas Pipelines Access Legislation	10
Incentive Mechanism.....	10

Incremental Capacity	10
Incremental Revenue	10
Incremental User	10
Information Package	10
Jurisdictional Area	10
Market Carriage	10
Market Variable Element	10
Marketable Parcel	10
Marketing Staff	10
Natural Gas	10
NCC	10
New Facilities Investment	10
New Facility	10
NGPAC	10
Non Capital Costs	10
Pipeline	10
Prevailing Tariff	10
Price Path Approach	10
Prospective Incremental User	10
Prospective User	10
Public Register	10
Queuing Policy	10
Rate of Return	10
Rebatable Service	10
Receipt Point	10
Recoverable Portion	10
Redundant Capital	10
Reference Service	10
Reference Tariff	10
Reference Tariff Control Formula Approach	10
Reference Tariff Policy	10
Reference Tariff Variation Method	10
Related Business	10
Relevant Appeals Body	10
Relevant Minister	10
Relevant Regulator	10
Residual Value	10
Revisions Commencement Date	10
Revisions Submission Date	10
Scheme Participant	10
Service	10
Service Provider	10
Services Policy	10
Spare Capacity	10
Specified Event	10

Defined terms

Speculative Investment	10
Speculative Investment Fund	10
Structural Element	10
Surcharge	10
Tariff	10
Tender Approval Request	10
Total Revenue	10
Trading Policy	10
Transmission Pipeline	10
Trigger Event Adjustment Approach	10
User	10