

Western Australia

Economic Regulation Authority (National Gas Access Funding) Regulations 2009

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Economic Regulation Authority Act 2003

Economic Regulation Authority (National Gas Access Funding) Regulations 2009

Made by the Lieutenant-Governor and deputy of the Governor in Executive Council.

1. Citation

These regulations are the *Economic Regulation Authority (National Gas Access Funding) Regulations 2009*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — when the *National Gas Access (WA) Act 2009* Part 2 comes into operation.

3. Terms used

- (1) In these regulations —

allowed period means the period referred to in regulation 5(2) or 6(6), as the case requires, or such further period as the Authority may allow;

assessment amount means the total amount payable as specified in a notice of assessment under regulation 5(1)(b)(i);

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Coordinator means the Coordinator of Energy referred to in the *Energy Coordination Act 1994* section 4;

core function costs, for a quarter, means costs that —

- (a) are incurred in the quarter in connection with the performance by the Authority of its functions under the national gas scheme laws; and
- (b) cannot be recovered through the imposition of fees or specific charges under these regulations;

Director means the Director of Energy Safety referred to in the *Energy Coordination Act 1994* section 5;

National Gas Law or **NGL** means the National Gas Access (Western Australia) Law as defined in the *National Gas Access (WA) Act 2009* section 3(1);

National Gas Rules or **NGR** means the National Gas Rules as defined in the National Gas Law section 2;

national gas scheme laws means —

- (a) the National Gas Law; and
- (b) the National Gas Rules; and
- (c) the National Gas Access (Western Australia) Regulations as defined in the *National Gas Access (WA) Act 2009* section 3(1); and
- (d) the *National Gas Access (WA) Act 2009* and any regulations made under Part 6 of that Act;

prescribed rate means an interest rate that is 5 percentage points higher than —

- (a) the rate quoted on Reuters Screen BBSW as the Bank Bill Reference Rate (Mid-Rate) for a one month bill at or about 10 a.m. (Sydney time) on the first day after the allowed period; or
- (b) if a rate is not quoted as described in paragraph (a) — the rate determined by the Authority having regard to comparable indices then available;

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quarter means a period of 3 months beginning on 1 July, 1 October, 1 January or 1 April;

specific charge means a charge under regulation 6(1);

standing charge means a charge under regulation 4(1).

- (2) A term has the same meaning in these regulations as it has in the National Gas Law unless the contrary intention appears in these regulations.

4. Standing charges

- (1) For each quarter, for each pipeline that during any of the quarter is specified in Schedule 1 and is a covered pipeline, a charge is payable in connection with the performance by the Authority of its functions under the national gas scheme laws.
- (2) A charge under subregulation (1) for a pipeline for a quarter is payable by any person who is the service provider during the quarter.
- (3) The amount of the charge under subregulation (1) payable by a person for a pipeline for a quarter is determined in accordance with the following formula —

$$S = C \times P \times \frac{D_P}{D_Q}$$

where —

- S is the amount of the standing charge;
- C is the amount of the core function costs for the quarter;
- P is the percentage specified in Schedule 1 for the pipeline;
- D_Q is the number of days in the quarter;
- D_P is the number of days in the quarter during which —
- (a) the pipeline is specified in Schedule 1 and is a covered pipeline; and
 - (b) the person is the service provider of the pipeline.

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5. Assessment and payment of standing charges

- (1) As soon as is practicable after the end of each quarter the Authority must —
 - (a) assess the standing charges payable by a person for the quarter; and
 - (b) give a notice of assessment to the person specifying —
 - (i) the amount of each of those charges and the total amount payable; and
 - (ii) the amount of the core function costs used in calculating those charges; and
 - (iii) the day on which the notice of assessment was issued.
- (2) A person given a notice of assessment must pay the assessment amount to the Authority within 30 days after the day specified under subregulation (1)(b)(iii).
- (3) If the person does not pay the assessment amount in full within the allowed period, interest on the outstanding amount is payable to the Authority at the prescribed rate calculated daily.

6. Specific charges

- (1) The Authority may give written notice to a person described in Schedule 2 requiring the person to pay a charge in connection with the performance of the corresponding functions described in that Schedule or the doing of anything that was necessary or convenient to be done for or in connection with the performance of those functions.
- (2) A notice under subregulation (1) must specify —
 - (a) the amount of the specific charge; and
 - (b) the day on which the notice was issued.

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- (3) The amount of a specific charge is to be an amount equivalent to costs described in subregulation (4) that —
 - (a) have been incurred by the Authority; and
 - (b) are directly attributable to the performance of the relevant function or to the doing of anything that was necessary or convenient to be done for or in connection with the performance of the relevant function.
- (4) For the purposes of subregulation (3), the costs are —
 - (a) costs of consultants or contractors engaged by the Authority including accommodation costs, travel costs and equipment costs; and
 - (b) photocopying, mailing, publishing and advertising costs; and
 - (c) costs associated with public consultation conducted under the national gas scheme laws.
- (5) The Authority must provide the person liable to pay a specific charge with an itemised account of the costs covered by the charge if the person so requests.
- (6) A person given a notice under subregulation (1) must pay the specific charge to the Authority within 30 days after the day specified under subregulation (2)(b).
- (7) If the person does not pay the specific charge in full within the allowed period, interest on the outstanding amount is payable to the Authority at the prescribed rate calculated daily.

7. Document fee

- (1) The Authority may require a person who requests a document prepared by or on behalf of the Authority in the performance of a function under the national gas scheme laws to pay a fee for the document.

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- (2) The amount of the fee is to be an amount calculated by the Authority according to the costs incurred in producing the document but is not in any case to exceed \$100.
- (3) The Authority cannot require the Coordinator or the Director to pay a fee under subregulation (1).

8. Meeting admission fee

- (1) The Authority may require a person to pay a fee for admission to a meeting held for the purposes of public consultation under the National Gas Rules rule 6.
- (2) The amount of the fee is to be an amount calculated by the Authority according to the costs incurred in holding the meeting.
- (3) The Authority cannot require the Coordinator, the Director, or any representative of the Coordinator or the Director, to pay a fee under subregulation (1).

9. Recovery of unpaid amounts

- (1) The Authority may recover any unpaid assessment amount or specific charge, together with any interest payable under these regulations, in a court of competent jurisdiction as a debt due to the Authority.
- (2) In proceedings under subregulation (1) a certificate —
 - (a) purporting to be signed by the chairman; and
 - (b) specifying an amount as being an assessment amount or a specific charge; and
 - (c) specifying an amount as being interest payable under regulation 5(3) or 6(7); and
 - (d) specifying a person as being liable to pay the specified amounts; and
 - (e) stating that the specified amounts are unpaid,

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is, without proof of the appointment of the chairman or of the authenticity of the signature, sufficient evidence of the matters specified or stated.

10. Matters to be included in Authority's annual report

The annual report submitted by the Authority under the *Financial Management Act 2006* section 61 must include details of the following matters in respect of the financial year to which the annual report relates —

- (a) the total amount of standing charges for each person;
- (b) the total amount of specific charges for each person;
- (c) the total amount of fees under these regulations.

11. Repeal

These regulations are repealed:

- (a) the *Economic Regulation Authority (Gas Pipelines Access Funding) Regulations 2003*;
- (b) the *Economic Regulation Authority (Transitional) Regulations 2003*.

12. Transitional provisions — standing charge

- (1) In this regulation —

first NGL period means the period beginning on the transition day and ending on 31 December 2009;

GPA funding regulations means the regulations repealed by regulation 11;

last GPA period means the period beginning on 1 October 2009 and ending on the day before the transition day;

transition day means the day on which the *National Gas Access (WA) Act 2009* section 30 comes into operation.

- (2) Despite the definition in regulation 3(1), in these regulations —
quarter includes the first NGL period.

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- (3) For the purposes of determining a standing charge for the first NGL period, the core function costs for that period include any costs incurred in the last GPA period that would have been core function costs under the GPA funding regulations for the last GPA period had those regulations not been repealed.

13. Transitional provisions — specific charges

- (1) In this regulation —

GPA charge notice means a notice under the *Economic Regulation Authority (Gas Pipelines Access Funding) Regulations 2003* regulation 6;

transition day means the day on which the *National Gas Access (WA) Act 2009* section 30 comes into operation;

transitioned GPA function means a function described in Schedule 3 that is exercised by the Authority after the transition day by reason of the operation of the transitional, application and saving provisions of the national gas scheme laws;

uncharged GPA function means a function —

- (a) that was exercised by the Authority before the transition day; and
- (b) in connection with which the Authority could have, but had not, a given GPA charge notice.
- (2) The Authority may give a notice under regulation 6 in connection with the performance of an uncharged GPA function as if —
- (a) the person to whom the GPA charge notice for that function could have been given was a person described in Schedule 2; and
- (b) the uncharged GPA function was described in Schedule 2 as a function corresponding to that person.

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- (3) The Authority may give a notice under regulation 6 in connection with the performance of a transitioned GPA function as if the persons and functions described in Schedule 3 were described in Schedule 2.
- (4) Despite regulation 3(2) a term has the same meaning in Schedule 3 as it has in the Gas Code unless the contrary intention appears in that Schedule.

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Schedule 1 Percentages for calculating
standing charges

**Schedule 1 — Percentages for calculating
standing charges**

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	Pipeline	Percentage
1.	Mid West and South West Gas Distribution System (WA:GDL8)	27.01%
2.	Dampier to Bunbury Natural Gas Pipeline (WA:PL40)	50.00%
3.	Goldfields Gas Pipeline (WA:PL24)	20.27%
4.	Kalgoorlie to Kambalda Pipeline (WA:PL27)	2.72%

Note: WA:GDL refers to a distribution licence under the *Energy Coordination Act 1994*.
WA:PL refers to a pipeline licence under the *Petroleum Pipelines Act 1969*.

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Functions for which specific charges payable **Schedule 2**

Schedule 2 — Functions for which specific charges payable

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Person liable to pay charge		Functions
Coverage matters		
1.	A person who requests the Authority to make an application under NGL s. 92.	Functions under NGL s. 92 exercised in connection with making the application.
2.	A service provider that provides light regulation services by means of a pipeline in respect of which a determination is made under NGL s. 19.	Functions under NGL s. 19 exercised in connection with making the determination.
Approval of tender process		
3.	A person who applies for approval of a proposed tender process as a competitive tender process under NGR r. 21.	Functions under NGR r. 22, 23, 25, 26 or 28 exercised in connection with — (a) the application; or (b) if the Authority makes a tender approval decision — (i) that decision; or (ii) the approved competitive tender process.
4.	A proponent who is required to give a report on a competitive tender process under NGR r. 24.	Functions under NGR r. 24 exercised in connection with the report.

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Schedule 2 Functions for which specific charges payable

Person liable to pay charge		Functions
5.	A service provider that is required to submit a CTP access arrangement proposal for approval under NGR r. 27.	Functions under NGR r. 27 exercised in connection with — (a) any application made under NGR r. 27(2) in relation to the proposal; or (b) dealing with the submission.
6.	A service provider that applies for approval to amend a CTP access arrangement under NGR r. 27(5).	Functions under NGR r. 27 exercised in connection with the application.
Light regulation matters		
7.	A service provider that applies for a light regulation determination under NGL s. 112.	Functions under NGR r. 35 exercised by the Authority in connection with the exercise by the NCC of its functions under NGL s. 113 in connection with the application.
8.	A service provider that is required to report on access negotiations under NGR r. 37.	Functions under NGR r. 37(2) exercised in connection with the service provider.
9.	A service provider that provides light regulation services in respect of which an application has been made for revocation of the light regulation determination under NGL s. 118.	Functions under NGR r. 39 exercised by the Authority in connection with the exercise by the NCC of its functions under NGL Ch. 3 Pt. 2 Div. 2 Subdiv. 2 in connection with the application.

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Functions for which specific charges payable **Schedule 2**

Person liable to pay charge		Functions
10.	A service provider that provides pipeline services by means of a designated pipeline in respect of which a review is conducted under NGL s. 125.	Functions under NGL s. 125 exercised in connection with the review.
Approval of access arrangements		
11.	A service provider that voluntarily submits or is required to submit — (a) a full access arrangement; or (b) revisions to an applicable access arrangement that is a full access arrangement, for approval under NGL s. 127 or 132.	Functions under NGR Pt. 8 Div. 2, 4, 5, 6, 8 or 9 or Pt. 9 or 10 or the <i>National Gas Access (WA) (Local Provisions) Regulations 2009</i> Part 2 exercised in connection with — (a) the requirement to make the submission; or (b) any requirement under NGR to provide information with the submission; or (c) dealing with the submission and information submitted with it.
12.	A service provider that submits or is required to submit — (a) a limited access arrangement; or (b) revisions to an applicable access arrangement that is a limited access arrangement, for approval under NGL s. 116 or 168.	Functions under NGR Pt. 8 Div. 2, 3, 5, 6, 7 or 9 or Pt. 10 or the <i>National Gas Access (WA) (Local Provisions) Regulations 2009</i> Part 2 exercised in connection with — (a) the requirement to make the submission; or (b) any requirement under NGR to provide information with the submission; or (c) dealing with the submission and information submitted with it.

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Schedule 2 Functions for which specific charges payable

Person liable to pay charge		Functions
13.	A service provider that submits a proposal for variation of an applicable access arrangement under NGR r. 65.	Functions under NGR Pt. 8 Div. 10 exercised in connection with the submission. Plus if the proposal is referred under NGR r. 66 to be dealt with — (a) as a full access arrangement proposal — the functions described in item 11; or (b) as a full access arrangement proposal — the functions described in item 12.
14.	A service provider whose applicable access arrangement is varied or revoked under NGR r. 68.	Functions under NGR r. 68 exercised in connection with the varying or revoking of the arrangement.
15.	A service provider that applies for an advance determination with regard to future capital expenditure under NGR r. 80.	Functions under NGR r. 80 exercised in connection with the application.
Matters relating to information		
16.	A service provider or related provider named in a regulatory information notice given under NGL s. 48(2).	Functions under NGL Ch. 2 Pt. 1 Div. 4 exercised in connection with the notice.
17.	A service provider to which a notice requiring provision of information to prospective users is given under NGR r. 107(2).	Functions under NGR r. 107 exercised in connection with the notice.

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Functions for which specific charges payable **Schedule 2**

Person liable to pay charge		Functions
18.	A service provider which is required to establish a register of spare capacity under NGR r. 111.	Functions under NGR r. 111 exercised in connection with the register.
19.	A person to whom an initial disclosure notice is given under NGL s. 329(2).	Functions under NGL s. 329 exercised in connection with — (a) giving the notice under NGL s. 329(2) and any related notice under NGL s. 329(3); or (b) considering representations made in response to the notices; or (c) giving a notice under NGL s. 329(6) in relation to the information.
Ring fencing requirements		
20.	A service provider named in a ring fencing determination under NGL s. 143.	Functions under NGL Ch. 4 Pt. 2 Div. 3 or NGR r. 30 exercised in connection with the determination.
21.	A service provider that applies for an exemption from the minimum ring fencing requirements under NGL s. 146.	Functions under NGL Ch. 4 Pt. 2 Div. 4 or NGR r. 31 exercised in connection with — (a) the application; or (b) if the exemption is granted — monitoring compliance with the exemption.
22.	A service provider that applies for approval of — (a) an associate contract; or (b) a variation of an approved associate contract, under NGL s. 147 or 148.	Functions under NGL Ch. 4 Pt. 2 Div. 5 or NGR r. 32 or 33 exercised in connection with the contract or variation.

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Schedule 2 Functions for which specific charges payable

Person liable to pay charge		Functions
Greenfields pipeline incentives		
23.	A person on whose application a greenfields pipeline incentive was granted if the incentive is later revoked under NGL s. 175.	Functions under NGL s. 175 exercised in connection with making an application for the revocation of the incentive.
24.	A service provider that provides or intends to provide pipeline services by means of a pipeline for which a price regulation exemption is revoked under NGL s. 176.	Functions under NGL s. 176 exercised in connection with making an application for the revocation of the exemption.
Performance matters		
25.	A service provider in respect of which the Authority prepares a performance report under NGL s. 64.	Functions under NGL s. 64 exercised in connection with the report to the extent that the report relates to that service provider.

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Transitioned GPA functions for which specific charges payable **Schedule 3**

**Schedule 3 — Transitioned GPA functions for which
specific charges payable**

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Person liable to pay charge		Function
1.	Person requesting application be made under the Gas Code s. 1.3.	Application under the Gas Code s. 1.3 at the request of another person.
2.	Service provider given notification under the Gas Code s. 2.4.	Notification of requirement to submit separate access arrangements under the Gas Code s. 2.4.
3.	Service provider submitting access arrangement information.	Assessment of access arrangement information for the purposes of the Gas Code s. 2.6 and 2.8.
4.	Service provider submitting proposed access arrangement.	Assessment and approval of a proposed access arrangement under the Gas Code s. 2.9 to 2.27.
5.	Service provider submitting proposed revisions to access arrangement.	Review of an access arrangement under the Gas Code s. 2.28 to 2.48.
6.	Service provider of covered pipeline to which access arrangement relates.	Drafting and approval of Authority's own access arrangement under the Gas Code s. 2.20 or 2.23.
7.	Service provider making application for approval to enter into an associate contract.	Assessment of an application for approval to enter into an associate contract under the Gas Code s. 7.1.

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Schedule 3 Transitioned GPA functions for which specific charges payable

Person liable to pay charge		Function
8.	Service provider to which the document provided under Gas Code s. 7.9(a), (c), (d) or (e) relates.	Provision of copy of document to Code Registrar under the Gas Code s. 7.9(a), (c), (d) or (e).
9.	Person requesting further information under Gas Code s. 7.14.	Provision of further information under the Gas Code s. 7.14.
10.	Person making application for extension of time.	Assessment of application for extension of time under the Gas Code s. 7.19.
11.	Service provider making application under the Gas Code s. 8.21.	Assessment of written application under the Gas Code s. 8.21.

By Command of the Lieutenant-Governor and deputy of the Governor,

PETER CONRAN, Clerk of the Executive Council.
