

# Draft Gas Access Arrangement Guideline

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**Economic Regulation Authority**

WESTERN AUSTRALIA

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# 1 Introduction

## 1.1 Access arrangement framework

1. The *National Gas Law (NGL)* and *National Gas Rules (NGR)* provide the framework for the independent regulation of certain gas pipelines in Australia. *The National Gas Access (WA) Act 2009* amends and implements the NGL in Western Australia (**NGL(WA)**). The NGL(WA) also gives effect to the NGR as relevant to gas access regulation.
2. The Economic Regulation Authority (**Authority**) is responsible for regulating third party access to regulated gas pipelines in Western Australia, including the approval of access arrangements. The NGR requires the service provider of a full regulated pipeline to have an access arrangement. The purpose of an access arrangement is to provide details of the terms and conditions, including price, upon which an independent third party user can gain access to the pipeline.
3. At the time of publication, there are three regulated gas pipelines in Western Australia with access arrangements in place. These pipelines are as follows:
  - Mid-West and South-West Gas Distribution Systems
  - Goldfields Gas Pipeline
  - Dampier to Bunbury Natural Gas Pipeline
4. This publication sets out the Authority's Draft Access Arrangement Guideline (**Guideline**) for regulated gas transmission and distribution service providers (**service providers**).
5. This Guideline considers issues relevant to the Authority's economic regulatory function relating only to full access arrangements.
6. Under rule 100 of the NGR, all provisions of an access arrangement are required to be consistent with the National Gas Objective.
7. The National Gas Objective is defined in section 23 of the NGL(WA) as:

The objective of this Law is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.
8. Section 28 of the NGL(WA), sets out the manner in which the Authority is required to carry out its functions that will or is likely to contribute to the achievement of the national gas objective:
  28. Manner in which [ERA] must perform or exercise [ERA] economic regulatory functions or powers
    - 1) The [ERA] must, in performing or exercising an [ERA] economic regulatory function or power, perform or exercise that function or power in a manner that will or is likely to contribute to the achievement of the national gas objective.
    - 2) In addition, the [ERA]—
      - (a) must take into account the revenue and pricing principles—

- (i) when exercising a discretion in approving or making those parts of an access arrangement relating to a reference tariff; or
    - (ii) when making an access determination relating to a rate or charge for a pipeline service; and
  - (b) may take into account the revenue and pricing principles when performing or exercising any other [ERA] economic regulatory function or power, if the [ERA] considers it appropriate to do so.
9. The Authority is required to approve or not approve an access arrangement proposal. As per rule 40 of the NGR, the Authority has limited or no approval discretion in some aspects of the access arrangement proposal. In other cases, the Authority has full discretion and can put forward a more preferable alternative if it considers that it complies with the NGL(WA).
10. If the Authority does not approve one element of the access arrangement proposal, then the Authority cannot approve the access arrangement proposal.

## **1.2 Purpose of access arrangement guideline**

11. The Authority has prepared this Guideline to provide an overview of the rules, requirements and processes applying to the regulation of full access arrangements for regulated service providers, consumers and other interested parties.
12. This Guideline should not be read as a substitute for the relevant statutory provisions. All interested parties should still refer to the NGL(WA) and NGR to understand the provisions relating to access arrangements that are discussed in this Guideline. If there is inconsistency between this Guideline and the application of the NGL(WA) or NGR, then clearly the application of the NGL(WA) and NGR prevails.

## 2 Access Arrangement Revision Process

### 2.1 Pre-submission conference

13. A service provider may request a pre-submission conference with representatives of the Authority before submitting its access arrangement proposal as per rule 57(1) of the NGR.
14. The Authority must comply with such a request unless the request appears to be unreasonable under rule 57(2) of the NGR.
15. Examples of issues that could be discussed at a pre-submission conference include:
  - information that is required to be submitted with a proposal;
  - any proposed changes to the current access arrangement; and
  - any proposed discretionary consultation processes.

### 2.2 Access arrangement revision proposal

16. A service provider must, on or before the review submission date of an applicable access arrangement, submit an access arrangement revision proposal (**access arrangement proposal**) to the Authority in accordance with rule 52 of the NGR.
17. The service provider must also provide information necessary to understand the proposal as well as the basis for deriving elements of the proposal which is referred to as **access arrangement information** as per rule 43(1) of the NGR. In addition, a service provider may wish to provide further information to support its proposal (**access arrangement supporting information**).
18. Once the service provider submits its proposal, the Authority is required to form a view as to whether the proposal complies with the requirements.
19. If the Authority finds that the proposal is complete, then it must as soon as practicable publish an initiating notice. The purpose of the initiating notice is to notify receipt of, describe, and provide a website location for, the access arrangement proposal, as per rule 58(1) of the NGR. The initiating notice must also include an invitation for written submissions on the access arrangement proposal of at least 20 business days, in accordance with rule 58(1)(c) of the NGR.
20. If the Authority finds the proposal deficient, it may defer publication of the initiating notice for up to 30 business days, to allow the service provider an opportunity to correct the deficiency in accordance with rule 58(2) of the NGR. If the Authority is still not satisfied that the service provider's corrections are compliant, the Authority may use its acquisition of information powers under the NGL(WA).
21. A service provider may revise its proposal, with the consent of the Authority, after the initiating notice has been published under rule 58(3) of the NGR.

## 2.3 Public consultation on proposal

22. Public submissions from interested parties are an important part of the decision making process.
23. Under rule 58 of the NGR, the Authority must invite written submissions on the access arrangement proposal by a specified date that should be at least 20 business days following the publication of the access arrangement proposal.
24. The Authority will outline the consultation process (including the timeframe) for making submissions on the proposal on the Authority's website. Section 3.3 of this Guideline outlines how interested persons can make submissions to the Authority.
25. The Authority may also consider holding a public meeting so that the service provider can explain the basis of its access arrangement proposal. Public meetings are not required under the NGR and would usually only be held by the Authority where there are complex issues and if there is interest amongst pipeline users in participating in a public meeting.
26. The Authority generally prepares an issues paper to assist interested parties in making submissions on the access arrangement revision proposal, although this is not required under the NGR.

## 2.4 Draft decision

27. After considering the access arrangement proposal, the Authority must make a draft decision under rule 59(1) of the NGR.
28. The draft decision must include a statement of the reasons for the decision as per rule 59(4) of the NGR. The draft decision represents the Authority's assessment of the proposed requirements under the NGL(WA) and NGR, current access arrangement provisions, the service provider's access arrangement submission, and submissions from interested parties.
29. As per rule 59(2) of the NGR, the draft decision indicates whether the Authority is prepared to approve or not approve the access arrangement proposal.
30. If the draft decision indicates that the Authority will not approve the proposal, then the Authority must indicate in its draft decisions the nature of the amendments that the service provider is required to make to the proposal.
31. When the Authority makes a draft decision, it must:
  - provide a copy of the draft decision to the service provider as required under rule 59(5)(a) of the NGR;
  - publish the decision on its website and make it available for inspection, during business hours, at the Authority's public offices as required under rule 59(5)(b) of the NGR; and
  - publish a notice on its website and a national newspaper as required under rule 59(5)(c) of the NGR.



## 2.5 Public consultation and revised access arrangement

32. If the Authority indicates that it is prepared to approve the revised access arrangement proposal as submitted, it must consult for at least 20 business days from the draft decision as per rule 59(5)(c)(iii) of the NGR.
33. If the draft decision indicates that the Authority will not approve the proposal, then the Authority must give the service provider at least 15 business days to submit revisions to its proposal as required by rule 59(3) of the NGR. The service provider may, within this period, submit additions or other amendments to the access arrangement proposal to address matters raised in the draft decision under rule 60(1) of the NGR.
34. The service provider's amendments must be limited to those necessary to address matters raised in the draft decision, unless the Authority approves further amendments as per rule 60(2) of the NGR. For example, the Authority may approve amendments to deal with a change in circumstances to the service provider's business.
35. The service provider must provide amendments to the Authority in a revised access arrangement proposal as per rule 60(3) of the NGR. The Authority must publish the revised access arrangement proposal on its website as soon as practicable under rule 60(4) of the NGR.
36. The Authority must allow at least a further 20 business days for interested parties to make a submission on the revised proposal as per rule 59(5)(c)(iii) of the NGR.
37. The Authority may, on its own initiative or upon request by any person, hold a hearing about a draft decision as per rule 61(1) of the NGR.
38. Under rule 61(2) of the NGR, a request for a hearing must:
  - be made in writing within 10 business days after publication of the draft decision;
  - state the applicant's name and contact details; and
  - state the applicant's reasons for a hearing.
39. If the Authority refuses a request for a hearing, it must give the applicant written reasons for the refusal as per rule 61(3) of the NGR. If the Authority decides to hold a hearing, it must give notice for a time and place for the hearing on its website, as required by rule 61(4).

## 2.6 Final decision

40. After the Authority considers the revised access arrangement proposal (if submitted), submissions from interested parties, and any other matters the Authority considers relevant, the Authority must make a final decision as required under rule 62(1) of the NGR.
41. The final decision is a decision to approve or refuse to approve the access arrangement proposal as per rule 62(2) of the NGR. The final decision relates to the access arrangement proposal as first submitted by the service provider, or a

revised access arrangement proposal submitted in response to the draft decision under rule 62(3) of the NGR.

42. A final decision must include a statement of the reasons in accordance with rule 62(4) of the NGR.
43. In accordance with rule 62(5) of the NGR, when the Authority makes an access arrangement final decision, it must:
  - give a copy of the decision to the service provider; and
  - publish the decision on the Authority's website, and make it available for inspection, during business hours, at the Authority's public offices.
44. If a final decision approves an access arrangement proposal, the access arrangement, or the revision or variation, to which the decision relates, takes effect on a date fixed in the final decision or, if no date is so fixed, 10 business days after the date of the final decision as per rule 62(6) of the NGR.

## 2.7 Authority approved access arrangement

45. If the Authority's final decision refuses to approve an access arrangement proposal (as submitted or as revised after the draft decision), the Authority must itself propose an access arrangement or revisions to the access arrangement under rule 64(1) of the NGR.
46. In accordance with rule 64(2) of the NGR, the Authority's proposal for an access arrangement or revisions must be formulated with regard to:
  - the matters that the applicable legislation requires an access arrangement to include;
  - the service provider's access arrangement proposal; and
  - the Authority's reasons for refusing to approve the access arrangement proposal.
47. The Authority may (but is not obliged to) consult on its proposal as per rule 64(3) of the NGR. The Authority must make a decision giving effect to its proposal within two months after the final decision as per rule 64(4) of the NGR.
48. When the Authority makes a decision under rule 64 of the NGR, it must:
  - give a copy of the decision to the service provider; and
  - publish the decision on the Authority's website and make it available for inspection, during business hours, at the Authority's public offices.
49. The access arrangement or the revisions to which the decision relates takes effect on a date fixed in the determination or, if no date is so fixed, 10 business days after the date of the decision as required under rule 64(6) of the NGR.
50. The service provider is also required to place this access arrangement on its website in accordance with rule 107 of the NGR.

## 2.8 Decision-making timeline

51. Rule 62 of the NGR states that an access arrangement final decision must be made within six months of the date of receipt of the access arrangement proposal. This rule also states that this time limit can be extended by a maximum of two months.
52. Rule 11 of the NGR sets out the periods of time that the Authority can disregard when calculating time, if the law fixes a time within which a decision must be made. The following periods of time may be disregarded:
  - time allowed for the service provider to correct or revise its proposal;
  - time taken by service provider or any other person to provide information relevant to the Authority's decision, in response to a notice or requirement issued by the Authority under the law;
  - time allowed for public submissions on the access arrangement proposal or draft decision;
  - time allowed for submissions on a proposal by the Authority to disclose confidential information, any period taken by the Authority to consider the submissions and decide whether to disclose the information, and any period occupied by a review of the decision; and
  - time between commencement and conclusion of court proceedings to determine a question arising from the proposal or the Authority's handling of the proposal.
53. Rule 12 of the NGR sets out the instances when the Authority can use its power to extend time limits.
54. Rule 13 of the NGR stipulates an absolute overall time limit of 13 months between the date on which a service provider submits an access arrangement proposal to the Authority, and the date the Authority makes a final decision on the proposal. This time limit cannot be extended, and is not affected by decisions to disregard particular elapsed time periods.
55. Rule 14 of the NGR further stipulates that if the Authority fails to issue a final decision on the access arrangement proposal within the overall time limit, it must report this failure to the Ministerial Council for Energy. The report must state the extent of the delay in issuing the final decision, describe the process and provide reasons for the delay. The Authority must publish this report on its website. The Authority's final decision would remain valid.
56. A summary of the decision-making process is at **Appendix 1**.

## 3 Consultation

### 3.1 Introduction

57. The Authority is guided by the principles of openness, transparency, consistency and accountability.
58. The NGR provides interested parties two opportunities to provide submissions to the Authority. Firstly, following lodgement of the access arrangement proposal, access arrangement information and access arrangement supporting information; and, secondly, after issue of the draft decision as per rules 58(1)(c) and 59(5)(c)(iii) of the NGR.

### 3.2 Stakeholder notification

59. The Authority must notify stakeholders of the public consultation processes during the access arrangement decision making process, by publishing a notice on its website and in a newspaper circulating throughout Australia as required under rule 58(1) and rule 59(5)(c) of the NGR.
60. The Authority also notifies interested parties that have registered with the Authority by email of any public consultation processes. The Authority notifies subscribers when it adds key documents to the Authority's website. Interested parties can subscribe to receive email alerts by visiting the Authority's website ([www.erawa.com.au](http://www.erawa.com.au)).
61. The Authority's notices usually include background information about the proposal, contact details about where the submission should be sent to, and a date by which submissions should be sent. In some cases, a notice will also refer interested parties to background material or key issues that may assist them in making a submission.

### 3.3 How to make a submission

62. Parties are encouraged to make written submissions and send them by email to [publicsubmissions@erawa.com.au](mailto:publicsubmissions@erawa.com.au) or the nominated contact point specified in the consultation notice. Parties may arrange to deliver a hard copy of the submission to the Authority's office with prior consent from the relevant contact officer.
63. Parties should ensure that their submissions correctly reference third party information. When parties wish to rely on material from, for example, consultants or experts' reports, they should include a copy of the relevant documentation and information in the access arrangement supporting information.
64. When parties wish to reference a document that is publicly available, they should submit the relevant part of the document that is relied on (for example, this may be a relevant paragraph, page or section). The relevant text should be highlighted in the document.
65. Microsoft Excel spreadsheets should not be password protected, as this prevents the Authority from carrying out a review of the information. In the circumstances

that information needs to be hard-coded, it should be appropriately referenced to relevant source data.

### 3.4 Timelines for consultation

66. The Authority is required to consider every submission it receives within a submission period that it sets for public consultation for its key regulatory decision making processes under rule 71(2) of the NGR and section 65(a) of the NGL(WA).
67. The Authority will exercise its discretion as to whether it takes into consideration submissions it receives outside of the specified period as permitted under section 65(b) of the NGL(WA).
68. Given the provisions about when the Authority must and may consider a submission under the NGL(WA) and NGR, when making submissions, parties should observe the timeframes that the Authority has set out in any public notices or other correspondence during the course of the decision making process.
69. The NGR prescribes a 20 business day minimum timeline for the two consultation periods for interested parties to make submissions. The first consultation follows publication of the initial service provider proposal under rule 58(1)(c) of the NGR, and the second follows the Authority's draft decision under rule 59(5)(c)(iii) of the NGR.

### 3.5 Confidential information

70. The Authority appreciates that parties may wish to submit commercial-in-confidence material to support the access arrangement proposal or submissions.
71. Under rule 43(2) of the NGR, the Authority may allow service providers to submit access arrangement information, which contains confidential information.
72. The Australian Energy Regulator (AER) as part of its Better Regulation Program has published a Confidentiality Guideline to provide better certainty to interested parties on how it will assess confidentiality claims <http://www.aer.gov.au/node/18888>.
73. The AER has identified three stages for handling confidentiality claims. The Authority has adopted the AER's three-stage approach for handling confidentiality claims.
74. The three stages are:
  - Pre-submission conference discussions with stakeholders
  - Confidential information submission process
  - Information disclosure process
75. This section refers to all parties that provide information to the Authority as "information providers". This includes service providers and interested parties.

### 3.5.1 *Pre-submission conference*

76. The Authority would prefer that information providers raise any issues in relation to potential confidential material in the pre-submission period and that agreement on confidentiality claims is reached during this pre-submission phase.
77. To facilitate these discussions, information providers should:
- Identify the information that the information provider is claiming confidentiality over, and the reasons for this claim.
  - Identify the specific items that should be protected or disclosed, and in which form.
  - Ensure that when submitting material from third parties that the third parties are aware of the confidentiality processes described in this guideline. Information providers should also make sure that confidentiality claims in third party documents comply with the confidential submission process outlined below.
78. The Authority expects that information providers will present information in a way that maintains confidentiality, while simultaneously providing other stakeholders with enough information to assess issues affecting their interests.
79. This could be achieved through any of the following:
- minimal redactions
  - more specific confidentiality claims
  - provision of detailed information that is adjusted to protect sensitive elements
  - limited release of confidential information to certain stakeholders, such as through a service provider initiated confidentiality undertaking<sup>1</sup>

### 3.5.2 *Confidential information submission process*

80. The Authority requires all information providers to complete a confidentiality template when making a confidentiality claim. A copy of the Authority's confidentiality template is available at **Appendix 2**. The purpose of the template is to help the Authority to identify and assess confidential information claims. The template categories are similar to the AER's confidentiality guidelines template, which were approved as part of its Better Regulation Reform Program.
81. An information provider must ensure that the confidentiality template does not contain confidential information.
82. A description of the details that an information provider must provide for each of the columns of the confidentiality template are set out below:
- Identify the document containing confidential information: The information provider must list the title of the document, in addition to the page and paragraph number of the confidential information.
  - Identify the topic the confidential information relates to, for example, capital expenditure, operating expenditure or the rate of return.

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<sup>1</sup> AER, Explanatory Statement Draft Confidentiality Guideline, August 2013, p.11.

- Describe the confidential information: The information provider must provide a description of the information, which includes enough detail for stakeholders to understand the nature of the confidential information.
  - Identify the recognised confidentiality category that the confidential information falls within, from the categories below:
    - *Information affecting the security of the network* - information which, if made public, may jeopardise network security or a service provider's ability to effectively plan and operate its network.
    - *Market sensitive cost inputs* - information such as supplier prices, internal labour costs, and other information that would affect the service provider's ability to obtain competitive prices in future infrastructure transactions, such as tender processes.
    - *Market intelligence* - information that may provide an advantage to a service provider's competitors for non-regulated or contestable activities.
    - *Strategic information* – information such as the acquisition of land and easements, where the release of this information might adversely impact the service provider's ability to negotiate a fair market price for these items.
    - *Personal information* - information about an individual or customer whose identity is apparent, or can reasonably be ascertained.
    - *Other* - information that the information provider claims is confidential, but does not fit into one of the above categories.
  - Explain why the confidential information falls within the selected category.
  - Provide reasons supporting how and why disclosure of the confidential information would cause detriment to the information provider.
  - Provide reasons as to why the information provider considers the identified detriment is not outweighed by the public benefit in disclosing the confidential information.
83. In addition to completing the confidentiality template, an information provider must also make confidentiality claims in the following manner:
- Provide the Authority with a confidential soft copy of documents, which highlights the confidential information in yellow shading.
  - Provide the Authority with a public soft copy of the documents, which contain the confidential information. The public version must clearly identify the information that the information provider wishes to claim as confidential by 'blacking out' or otherwise hiding the confidential information. This ensures the public version maintains the same formatting as the confidential version<sup>2</sup>.
  - For electronic documents, specify in the filename whether it is "public" or "confidential."

### 3.5.3 Information disclosure process

84. The Authority would prefer that confidentiality issues are resolved through pre-submission discussions. However, for those confidentiality issues that are not resolved, the Authority may use its information disclosure powers (see section 3.6).

<sup>2</sup> This approach will help the Authority to easily identify the confidential information.

85. The most common circumstances where these powers allow the Authority to disclose confidential information are where disclosure:
- Would not cause detriment to the information provider; or the public benefit in disclosing the information outweighs any detriment.<sup>3</sup>
  - Will accord a person affected by the Authority's decision natural justice.<sup>4</sup>
86. The Authority will assess each confidentiality claim on a case-by-case basis. Where the Authority agrees with the claim, the Authority will protect the information. Where the Authority disagrees, the Authority will examine the claim against its information disclosure powers.
87. In determining whether to use information disclosure powers, the Authority will look beyond the content of the information. Specifically, the following will be taken into account:
- How the information claimed to be confidential could affect the interests of any stakeholder seeking access.
  - Whether the information that the claim relates to is already in the public domain.
  - Whether the service provider discussed the issue with the Authority during the pre-submission conference.
  - The reasons the service provider claimed confidentiality.
  - Whether, in the past, other service providers have claimed confidentiality over or publicly disclosed the same type of information.

#### 3.5.3.1 *Disclosure of information if detriment does not outweigh public benefit*

88. The Authority will use the power that section 329 of the NGL(WA) provides it. Under these provisions, the Authority must decide whether:
- disclosing the information would cause detriment to the person that has provided the information to the Authority, or to the person from whom that person received it; or
  - the public benefit in disclosing the information outweighs any detriment.
89. If the Authority is considering whether to disclose the information under section 329 of the NGL(WA), the Authority will issue the information provider with an initial disclosure notice. This notice will outline:
- the Authority's intention to disclose the information
  - the nature of the Authority's intended disclosure
  - short, document-by-document reasons as to why the Authority believes that:
    - disclosing the information would not cause detriment to the information provider; or
    - the public benefit in disclosing the information outweighs any detriment.

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<sup>3</sup> Section 329 of the NGL(WA).

<sup>4</sup> Section 326(c) of the NGL(WA).



- that within the timeframe specified, the information provider may make representations to the Authority on why it should not disclose the information
90. The Authority must give the information provider a minimum of 5 business days to respond to the initial disclosure notice,<sup>5</sup> but the actual time the Authority allows depends on the volume and complexity of information it proposes to disclose.
91. If the information provider responds to the initial disclosure notice within the prescribed timeframe, the Authority will consider the response. The Authority will disclose any information that the information provider has consented to placing in the public domain. In addition, where the Authority agrees with the service provider's response to maintain confidentiality, the Authority will protect the relevant information. Where the Authority disagrees, the Authority will issue a further disclosure notice that outlines:<sup>6</sup>
- the Authority's intention to disclose the information;
  - the nature of the intended disclosure; and
  - reasons as to why the Authority considers that:
    - disclosing the information would not cause detriment to the service provider (or third party); or
    - the public benefit in disclosing the information outweighs any detriment to the information provider.
92. The Authority will then proceed to disclose the information.

### 3.5.3.2 *Disclosure to accord natural justice*

93. The Authority will use the powers under section 326(c) of the NGL(WA) to disclose information for the purposes of according natural justice to a person affected by the Authority's decision. This may involve limited information disclosure to the person affected by the decision subject to the person entering into a relevant confidentiality undertaking with the information provider. Having a confidentiality undertaking as a condition for disclosure would give service providers a remedy for any breach of that undertaking. Disclosure under a confidentiality undertaking involves the following steps:
- As soon as possible after receiving a service provider's completed confidentiality template, the Authority will publish it on the Authority's website.
  - A stakeholder that wants access to confidential information would apply to the Authority. The stakeholder must provide a signed confidentiality undertaking.<sup>7</sup> The undertaking must specify the information sought, using the document titles the service provider uses in its confidentiality template.
  - The stakeholder must provide the undertaking to the service provider and the Authority. The stakeholder must also provide a covering note that explains why the stakeholder wants access to the information. The Authority will then forward the signed undertaking and covering note to the service provider, in order to seek its views.

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<sup>5</sup> Section 329(5) of the NGL(WA).

<sup>6</sup> Section 329(6) of the NGL(WA).

- The Authority would consider the covering note and any service provider views in order to decide whether to grant access to all or some of the information requested.

## 3.6 Information requests

94. The Authority is able to request information that will assist it in exercising its functions and powers. The Authority can request information from any party that the Authority has reason to believe can produce or provide the requested information, including but not limited to service providers.
95. The Authority can request information to inform a decision about an access arrangement proposal, or to follow up on the implementation of the Access Arrangement. Sections 54 and 55 of the NGL(WA) describe the content and form of requested information.
96. When deciding whether it is reasonable in making an information request the Authority will take into consideration the likely costs that may be incurred by an efficient service provider or related service provider in providing or producing the information against the benefits of having that information, as required by section 48(2)(b) of the NGL(WA).
97. Service providers and other parties can only avoid compliance with an information request if they have reasonable grounds to do so, as allowed under sections 42, 61, 62 and 63 of the NGL(WA). Reasonable grounds may include incrimination risk or lack of capability, but not on the ground of any duty of confidence. Service providers and other parties can be penalised for not complying with an information request, and for providing false or misleading information. Penalties are detailed in sections 42(3), 42(4) and 60 of the NGL(WA).
98. If the information sought by the Authority is claimed to contain confidential information, the service provider must follow the confidentiality procedures outlined in section 3.5 of this Guideline.
99. The Authority can request information through a Relevant Notice, Regulatory Information Notice or a Regulatory Information Order. The Authority will decide between serving a Regulatory Information Notice or making a Regulatory Information Order based on the matter to be addressed and the related costs of producing or providing the information, in line with sections 48(2) and 49 of the NGL(WA). The process the Authority will undertake is summarised in 3.6.4 (Figure 1).

### 3.6.1 *Relevant Notice*

100. The Authority may issue a Relevant Notice to any person that the Authority believes is capable of producing or providing information that the Authority requires to exercise its functions and powers. The relevant party is required to comply with the notice in accordance with section 42(2) of the NGL(WA).

### 3.6.2 *Regulatory Information Notice (RIN)*

101. Section 46 of the NGL(WA) establishes that a RIN requires a scheme pipeline service provider to: provide to the Authority the information specified in the notice;

and prepare, maintain or keep information specified in the notice in a manner and form specified in the notice.

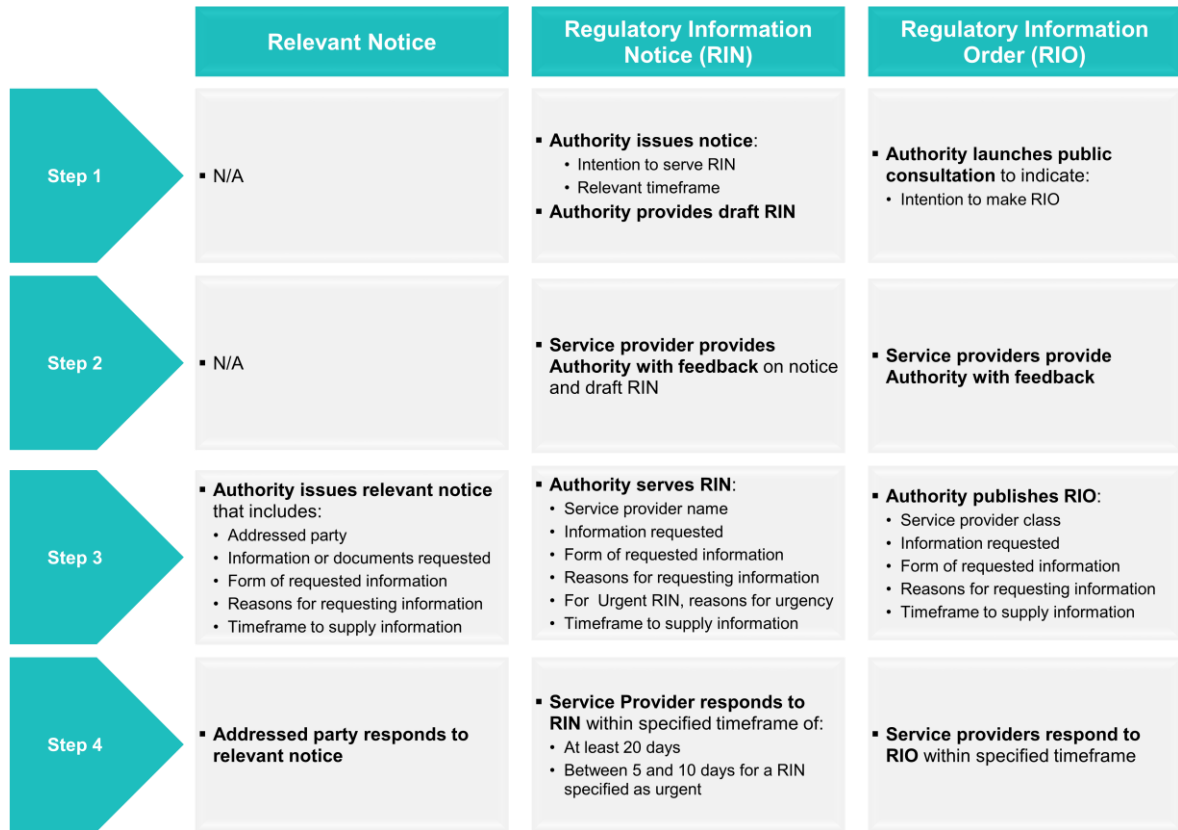
102. The Authority can serve a RIN on more than one service provider at one time as per schedule 2, part 3, section 11(4) of the NGL(WA).
103. Before the Authority serves a RIN to a service provider, the Authority must issue the service provider with a written notice that lays out its intention to serve a RIN and specifies the relevant timeframe. The Authority must also provide the service provider with a draft copy of the RIN in accordance with section 52 of the NGL(WA).
104. The service provider's response will inform the Authority's decision to serve a RIN. The RIN must include the information that the Authority requires the service provider to produce or provide, the form in which the Authority requires that the information be presented, the reasons for requesting the information, and the timeframe within which the information is required to be provided or produced.
105. Once the Authority serves a RIN to a service provider, the service provider must respond within the period set in the RIN which must be at least 20 business days from the date of the notice in accordance with section 52(5)(b) of the NGL(WA).
106. The Authority can serve an urgent RIN by giving reasons and identifying the RIN as urgent. The Authority will generally only issue urgent RINs in making decisions about access arrangement proposals. An urgent RIN is usually required as there is a fixed timeframe associated with the decision making process. The service provider will have to respond to an urgent RIN within a period set in the RIN to be between 5 and 10 business days from the RIN date, under section 52(5)(a) of the NGL(WA).

### **3.6.3 Regulatory Information Order (RIO)**

107. The Authority is able to make a RIO that addresses a class of service providers as defined in section 45 of the NGL(WA), in order to request a set of information. For this reason, a RIO is less likely to be used in the context of making a decision about an access arrangement proposal than a RIN.
108. The Authority must allow for public consultation prior to making a RIO. The Authority must publish the RIO on its website and in a national newspaper in line with section 51 of the NGL(WA).
109. The RIO must include the information that the Authority requires the service providers to produce or provide, the form in which the Authority requires the information to be presented, the reasons for requesting the information, and the timeframe within which the information is required to be provided. The Authority may exclude a specific service provider from a RIO as per section 58 of the NGL(WA).

### 3.6.4 Process Summary

Figure 1: Process Diagram for Information Requests



## 4 Access Arrangement Submission

110. An access arrangement submission must include an access arrangement proposal and access arrangement information. In addition, a service provider may provide access arrangement supporting information as part of its access arrangement submission.
111. The NGR and NGL(WA) set out the specific requirements of an access arrangement proposal and access arrangement information.
112. Rule 48 of the NGR sets out the requirements of a full access arrangement proposal. Rule 72 of the NGR outlines the access arrangement information requirements. **Appendix 3** provides a summary of the required components of an access arrangement submission.

### 4.1 Requirements for an Access Arrangement Proposal

113. As per rule 100 of the NGR, the access arrangement proposal must be consistent with the National Gas Objective.
114. As set out in the NGR, an access arrangement proposal must:
- Identify the pipeline to which the access arrangement relates and include a reference to a website at which a description of the pipeline can be inspected (rule 48)
  - Describe the pipeline services the service provider proposes to offer to provide by means of the pipeline (rule 48)
  - Specify the reference services (rule 48)
  - For each reference service specify (rule 48)
    - The reference tariff
    - Other terms and conditions on which the reference service will be provided
  - Set out queuing requirements if necessary<sup>8</sup> (rule 48)
  - Set out the capacity trading requirements (rule 48)
  - Set out the extension and expansion requirements (rule 48)
  - State the terms and conditions for changing receipt and delivery points (rule 48)
  - State the review submission date and the revision commencement date (rule 48)
  - Include provisions governing the calculation of depreciation for establishing the opening capital base for the next access arrangement period after the one to which the access arrangement currently relates (rule 90)

<sup>8</sup> Queuing requirements are necessary if the access arrangement is for a transmission pipeline but, if the pipeline is a distribution pipeline, queuing requirements are not necessary unless the Authority has given prior notification of the need to include queuing requirements

- Include a reference tariff variation mechanism for variation of a reference tariff over the course of the access arrangement period (rule 92)
115. In addition to the mandatory requirements listed in paragraph 114 above, an access arrangement proposal may also include the following:
- Speculative capital expenditure account (rule 84)
  - Mechanism for removal of redundant assets (rule 85)
  - Trigger events (rule 51)
  - Incentive mechanism (rule 98)
  - Fixed Principles (rule 99)
116. Each of the required and optional items are described further below.

#### **4.1.1 Pipeline identification and description**

117. As per rule 48(1)(a) of the NGR, an access arrangement proposal must identify the pipeline to which the access arrangement relates, and include a reference to a website at which a description of the pipeline can be inspected.

#### **4.1.2 Pipeline service description**

118. As per rule 48(1)(b) of the NGR, the access arrangement proposal is required to describe the pipeline services that the service provider proposes to offer.

#### **4.1.3 Reference services**

119. A reference service is a pipeline service that is likely to be sought by a significant part of the market.
120. The description of each reference service must conform to rule 109 of the NGR, which prohibits the bundling of services, unless it is reasonably necessary.

#### **4.1.4 Reference tariffs**

121. The reference tariff must be derived as per the requirements in the NGL(WA) and NGR. Revenue and pricing principles provide a framework for the construction of the reference tariff.
122. The building block approach is used to determine the total revenue which is then allocated to calculate the reference tariff. The requirements to determine total revenue and the allocation of total revenue to calculate the reference tariff is discussed in section 4.2 of this Guideline.

#### **4.1.5 Other terms and conditions for reference services**

123. Other terms and conditions may cover (but are not limited to) obligations on system use gas, line-pack requirements, overruns, gas quality and metering. The service provider is required to provide terms and conditions for the reference service that are reasonable.

#### 4.1.6 *Queuing requirements*

124. The queuing requirements must establish a process or mechanism (or both) that prioritises prospective users of spare or developable capacity (or both) in which all prospective users are treated on a fair and equal basis.
125. Prioritisation may be on a first-come-first-served basis, via public auction, or other means.
126. Prospective users must be able to understand the basis on which an order of priority is determined. If an order of priority has been determined, prospective users must be able to know their positions in the queue.

#### 4.1.7 *Capacity trading requirements*

127. Capacity trading requirements outline the basis for transfer of contracted capacity across pipeline service users.
128. For users that are registered participants in a gas market, a transfer of contracted capacity should be in line with the relevant gas market rules. For other users, such a transfer should be in line with the NGR.
129. As per rule 105 of the NGR, capacity trading requirements allow a user to transfer all or any of the user's contracted capacity to a third party. The consequences of undertaking this transfer differ depending on whether the user sought the service provider's consent.

#### 4.1.8 *Extension and expansion requirements*

130. The extension and expansion policy must comply with the NGR.
131. Without explicitly defining extensions and expansions, the NGL(WA) refers to "extension to the geographic range of a covered pipeline", and "expansion of the capacity of a covered pipeline".
132. As per the NGL(WA), extension and expansion requirements are the requirements contained in an access arrangement that, in accordance with the NGR, specify:
  - Circumstances when an extension to, or expansion of the capacity of, a covered pipeline is to be treated as forming part of the covered pipeline.
  - Whether the pipeline services provided or to be provided by means of, or in connection with, spare capacity arising out of an extension to, or expansion of the capacity of, a covered pipeline will be subject to the applicable access arrangement applying to the pipeline services to which that arrangement applies.
  - Whether an extension to, or expansion of the capacity of, a covered pipeline will affect a reference tariff, and if so, the effect on the reference tariff.
133. Rule 104 of the NGR allows an access arrangement to state whether it applies to an incremental service arising from the extension or expansion or allow for that to be determined at a later date. The extension and expansion requirements cannot require the service provider to provide funds for work involved with the extension or expansion.

#### **4.1.9 Terms and conditions for changing receipt and delivery points**

134. As per rule 106 of the NGR, the access arrangement proposal must allow a user to change its receipt or delivery point with the service provider's consent and the service provider must not withhold consent unless it has reasonable technical and commercial grounds. The access arrangement proposal may specify the conditions under which the service provider's consent will (or will not) be given as well as any conditions relevant for consent to be granted.

#### **4.1.10 Review submission date and revision commencement date**

135. Rule 50 of the NGR sets out the general rules for the review submission date and revisions commencement date in an access arrangement:

- A review submission date will fall four years after the start of the access arrangement period.
- A revisions commencement date will fall five years after the start of the access arrangement period.

136. The Authority must accept any proposals consistent with rule 50 of the NGR. However, a service provider may propose different dates than those set out in the general rule and the Authority may approve this proposal if the Authority is satisfied that the dates are consistent with the National Gas Objective and the revenue and pricing principles.

#### **4.1.11 Calculation of depreciation**

137. An access arrangement is required to have provisions governing how depreciation should be calculated for establishing the opening capital base for the next access arrangement period as per rule 90 of the NGR. Actual depreciation reflects the depreciation amount that is accumulated over the earlier access arrangement period, as per rule 77 of the NGR. Rule 90 of the NGR requires that any provisions for the calculation of depreciation for the opening capital base must resolve whether depreciation is based on forecast or actual capital expenditure.

#### **4.1.12 Reference tariff variation mechanism**

138. Rule 92 of the NGR requires an access arrangement proposal to include a mechanism for variation of a reference tariff over the course of an access arrangement period. Rule 97 of the NGR provides for a reference tariff variation mechanism, which may consist of a schedule of fixed tariffs; a specified formula; pass through of costs for defined events; or a combination of two or more of these.

139. Rule 97(3) of the NGR provides the criteria for determining whether a particular reference tariff variation mechanism is appropriate for a particular access arrangement.

140. Rule 97(4) of the NGR establishes that a reference tariff variation mechanism must give the Authority adequate oversight or powers of approval over variation of the reference tariff.



#### 4.1.13 *Speculative capital expenditure account*

141. An access arrangement may include an amount of non-conforming capital, which is not recovered by a surcharge<sup>9</sup>. Non-conforming capital may be provided for in a speculative capital expenditure account, which is a notional account. The account can increase at a rate determined by the Authority, such as the rate of return. If this capital expenditure subsequently meets the conforming capital criteria, it can be included in the capital base at the commencement of the next access arrangement period as per rule 84 of the NGR.

#### 4.1.14 *Mechanism for removal of redundant assets*

142. Rule 85(1) of the NGR provides that an access arrangement may include a mechanism to ensure that assets that cease to contribute in any way to the delivery of pipeline services are removed from the capital base. Rule 85(2) of the NGR provides that a reduction of the capital base in accordance with such a mechanism may only take effect from the commencement of the first access arrangement period to follow the inclusion of the mechanism in the access arrangement, or the commencement of a later access arrangement period.

143. Rule 85(4) of the NGR provides that before requiring or approving a capital redundancy mechanism, the Authority must take into account the uncertainty such a mechanism would cause and the effect the uncertainty would have on the service provider, users and prospective users.

#### 4.1.15 *Trigger events*

144. The access arrangement proposal may include trigger events, which provide a means to initiate a review of an access arrangement before the scheduled review submission date as per rule 51 of the NGR. The process undertaken to assess these revisions will be the same as if the service provider was submitting revisions on the review submission date.

145. A trigger event may be any significant circumstance or a combination of circumstances that have the ability to influence the competitive conditions in related markets. The NGR provides the following trigger event examples:

- Re-direction of the flow of natural gas through the pipeline
- Competing source of gas becoming available
- Significant extension, expansion or interconnection occurs

146. The Authority may insist on the inclusion of a trigger event clause in the access arrangement, and may specify trigger events.

#### 4.1.16 *Incentive mechanism*

147. Rule 98 of the NGR provides that an access arrangement may include (and the Authority may require it to include) one or more incentive mechanisms to encourage the service provider to provide services efficiently.

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<sup>9</sup> Non conforming capital expenditure can be partially recouped by means of a separate surcharge on users of incremental services to recover the cost of this expenditure. This capital expenditure cannot be included in the capital base. Rule 83 of the NGR outlines the relevant criteria and process for approving a surcharge.

148. Rule 72(1)(d) of the NGR provides for total revenue to include amounts (as an increment or decrement) resulting from the operation of the incentive mechanism.
149. An incentive mechanism may provide for the carryover of increments or decrements across access arrangement periods. Any mechanism must be consistent with the revenue and pricing principles as per rule 98 of the NGR.

#### 4.1.17 Fixed principles

150. Rule 99 of the NGR stipulates that an access arrangement may include a principle that is declared in the access arrangement to be fixed for a stated period. The period could extend over two or more access arrangement periods. The principle has to be in line with the NGR. The fixed principle is binding on both the Authority and the service provider over the stated period. However, the Authority may revoke a fixed principle upon consent of the service provider.

## 4.2 Requirements for access arrangement information

151. Access arrangement information includes information that is required to support the access arrangement proposal. Rule 72 of the NGR stipulates the specific requirements for the access arrangement information relevant to price and revenue regulation. The access arrangement information is not approved by the Authority.
152. Access arrangement information for an access arrangement variation proposal must include the following to the extent that it is relevant to the proposal:
  - If the access arrangement period commences at the end of an earlier access arrangement period then it must include
    - Capital expenditure (by asset class) over the earlier access arrangement period
    - Operating expenditure (by category) over the earlier access arrangement period
    - Usage of the pipeline over the earlier access arrangement period showing
      - For a distribution pipeline, minimum, maximum and average demand and, for a transmission pipeline, minimum, maximum and average demand for each receipt or delivery point
      - For a distribution pipeline, customer numbers in total and by tariff class and, for a transmission pipeline, user numbers for each receipt or delivery point
  - How the capital base is arrived at and, if the access arrangement period commences at the end of an earlier access arrangement period, a demonstration of how the capital base increased or diminished over the previous access arrangement period
  - The projected capital base over the access arrangement period, including:
    - A forecast of conforming capital expenditure for the period and the basis for the forecast; and

- A forecast of depreciation for the period including a demonstration of how the forecast is derived on the basis of the proposed depreciation method
- To the extent it is practicable to forecast pipeline capacity and utilisation of pipeline capacity over the access arrangement period, a forecast of pipeline capacity and utilisation of pipeline capacity over that period and the basis on which the forecast has been derived
- A forecast of operating expenditure over the access arrangement period and the basis on which the forecast has been derived
- The key performance indicators to be used by the service provider to support expenditure to be incurred over the access arrangement period
- The proposed return on equity, return on debt and allowed rate of return for each regulatory year of the access arrangement period, in accordance with rule 87 of the NGR, including any departure from the methodologies set out in the rate of return guidelines and the reasons for that departure
- The proposed formula (if any) that is to be applied in accordance with rule 87(12) of the NGR
- The estimated cost of corporate income tax calculated in accordance with rule 87A of the NGR, including the proposed value of imputation credits referred to in that rule
- If an incentive mechanism operated for the previous access arrangement period - the proposed carry-over of increments for efficiency gains or decrements for efficiency losses in the previous access arrangement period and a demonstration of how allowance is to be made for any such increments or decrements
- The proposed approach to the setting of tariffs including:
  - The suggested basis of reference tariffs, including the method used to allocate costs and a demonstration of the relationship between costs and tariffs
  - A description of any pricing principles employed but not otherwise disclosed under this rule
- The service provider's rationale for any proposed reference tariff variation mechanism
- The service provider's rationale for any proposed incentive mechanism
- The total revenue to be derived from pipeline services for each regulatory year of the access arrangement period

153. Each of these items is discussed in further detail below.

#### **4.2.1 *Information relating to an earlier access arrangement period***

154. If the access arrangement commences at the end of an earlier access arrangement period, the access arrangement information must include certain capital expenditure, operating expenditure and usage information of the pipeline over the earlier access arrangement period.

155. As per rule 72(1)(a)(i) of the NGR, the access arrangement information should include capital expenditure by asset class over the earlier access arrangement period.
156. The asset classes for capital expenditure relating to the earlier access arrangement period need to be consistent with the asset classes for the opening capital base. If these are not consistent the service provider will need to provide a reconciliation or explanation of any inconsistencies between asset classes for capital expenditure relating to the earlier access arrangement period and asset classes for the opening capital base.
157. Rule 82 of the NGR deals with the addition to the capital base of capital expenditure in respect of which a user has paid a capital contribution to the service provider.
158. Operating expenditure over the earlier access arrangement period should be presented in a form that is consistent with categories of expenditure used for the forecast operating expenditure as per rule 72(1)(a)(ii) of the NGR. Any changes in categories have to be explained to meet the requirements of rule 73(3) of the NGR.
159. As per rule 72(1)(a)(iii) of the NGR, provided pipeline usage information for a transmission pipeline should include:
  - minimum, maximum and average demand for each receipt or delivery point
  - user numbers for each receipt or delivery point
  - if not full haul distance, the contracted inlet and outlet point distances
160. As per rule 72(1)(a)(iii) of the NGR, provided pipeline usage information for a distribution pipeline should include:
  - minimum, maximum and average demand
  - user numbers in total and by tariff class

#### **4.2.2 Opening Capital Base**

161. The opening capital base is the capital base at the start of the access arrangement period.
162. As per rule 72(b) of the NGR, the access arrangement information should explain how the opening capital base is determined. If relevant, the access arrangement information should also demonstrate how the capital base has changed over a previous access arrangement.
163. Rule 77(2) of the NGR establishes the approach to determine the opening capital base for an access arrangement period that follows immediately on the conclusion of a preceding access arrangement period.
164. Under rule 77(2) of the NGR, the opening capital base for the later access arrangement period is calculated as:
  - the opening capital base as at the commencement of the earlier access arrangement period (adjusted for any differences between estimated and actual capital expenditure);plus:

- conforming capital expenditure made, or to be made, during the earlier access arrangement period;

plus:

- any amounts to be added to the capital base under rule 82 [capital contributions by users], rule 84 [speculative capital expenditure account] or rule 86 [re-use of redundant assets];

less:

- depreciation over the earlier access arrangement period (to be calculated in accordance with any relevant provisions of the access arrangement governing the calculation of depreciation for the purpose of establishing the opening capital base); and
- redundant assets identified during the course of the earlier access arrangement period; and
- the value of pipeline assets disposed of during the earlier access arrangement period.

165. Rule 82 of the NGR deals with the addition to the capital base of capital expenditure in respect of which a user has paid a capital contribution to the service provider. Rule 82(3) allows for the Authority to approve the rolling forward of capital expenditure, including a capital contribution made by a user or part of such a capital contribution, into the capital base on condition that the access arrangement contain a mechanism to prevent the service provider from benefiting, through increased revenue, from the user's contribution to the capital base.
166. Rule 77(2) of the NGR provides that the opening capital base for an access arrangement period may exclude redundant assets identified during the course of the earlier access arrangement period. This is subject to the access arrangement including a mechanism under rule 85 of the NGR to ensure that assets that cease to contribute in any way to the delivery of pipeline services (redundant assets) are removed from the capital base.
167. As per rule 86 of the NGR, the value of any redundant capital that has been removed from the capital base but is being used to deliver pipeline services will need to meet the criteria under rule 79 of the NGR before it is included in the capital base.
168. Rule 81 of the NGR allows a service provider to make non-conforming capital expenditure during an access arrangement period. This will not be included in the capital base unless it subsequently meets the criteria in rule 79 of the NGR.
169. When non-conforming capital expenditure is made by the service provider, the expenditure can be partially or fully recouped by means of a separate surcharge on users of incremental services to recover the cost of this expenditure. This capital expenditure cannot be included in the capital base. Rule 83 of the NGR outlines the relevant criteria and process for approving a surcharge.
170. As discussed above, if capital expenditure in this account subsequently meets the conforming capital criteria, it can be included in the capital base at the commencement of the next access arrangement period as per rule 84 of the NGR.

### 4.2.3 Projected Capital Base

171. Rule 78 of the NGR establishes the approach to determine the projected capital base for an access arrangement period:
- the opening capital base
- plus:
- forecast conforming capital expenditure for the period
- less:
- forecast depreciation for the period and
  - the forecast value of pipeline assets to be disposed of in the course of the period.
172. Rule 72(1)(c)(i) of the NGR requires a forecast of the conforming capital expenditure for the access arrangement period and the basis for the forecast.
173. Conforming capital expenditure is capital expenditure that conforms with criteria under rule 79 of the NGR:
- 1) Conforming capital expenditure is capital expenditure that conforms with the following criteria:
    - a) the capital expenditure must be such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of providing services;
    - b) the capital expenditure must be justifiable having regard to one of the following grounds stated in rule 79(2).
  - 2) Capital expenditure is justifiable if:
    - a) the overall economic value of the expenditure is positive; or
    - b) the present value of the expected incremental revenue to be generated as a result of the expenditure exceeds the present value of the capital expenditure; or
    - c) the capital expenditure is necessary:
      - (i) to maintain and improve the safety of services; or
      - (ii) to maintain the integrity of services; or
      - (iii) to comply with a regulatory obligation or requirement;
      - (iv) to maintain the service provider's capacity to meet levels of demand for services existing at the time the capital expenditure is incurred (as distinct from projected demand that is dependent on an expansion of pipeline capacity); or
    - d) the capital expenditure is an aggregate amount divisible into 2 parts, one referable to incremental services and the other referable to a purpose referred to in paragraph (c), and the former is justifiable under paragraph (b) and the latter under paragraph (c).
  - 3) In deciding whether the overall economic value of capital expenditure is positive, consideration is to be given only to economic value directly accruing to the service provider, gas producers, users and end users.
  - 4) In determining the present value of expected incremental revenue:
    - a) a tariff will be assumed for incremental services based on (or extrapolated from) prevailing reference tariffs or an estimate of the reference tariffs that would have been set for comparable services if those services had been reference services;

- b) incremental revenue will be taken to be the gross revenue to be derived from the incremental services less incremental operating expenditure for the incremental services; and
  - c) a discount rate is to be used equal to the rate of return implicit in the reference tariff.
  - 5) If capital expenditure made during an access arrangement period conforms, in part, with the criteria laid down in this rule, the capital expenditure is, to that extent, to be regarded as conforming capital expenditure.
  - 6) The [ERA's] discretion under this rule is limited.
174. Rule 79 is supplemented by clause 7(2) of schedule 1 to the NGR indicating:
- 7 Additional criteria related to capital expenditure for WA transmission pipelines
  - ...
  - (2) In making a relevant decision under rule 79(3) on whether the overall economic value of capital expenditure is positive, the [ERA] must consider not only the economic value directly accruing to the service provider, gas producers, users and end users (as required by rule 79(3)) but also material economic value that is likely to accrue directly to electricity market participants and end users of electricity from additional gas fired generation capacity.
175. Rule 71 of the NGR is relevant to the Authority's consideration of actual and forecast capital expenditure against the requirements of rule 79 of the NGR, and states that:
- (1) In determining whether capital or operating expenditure is efficient and complies with other criteria prescribed by these rules, the [ERA] may, without embarking on a detailed investigation, infer compliance from the operation of an incentive mechanism or on any other basis the [ERA] considers appropriate.
  - (2) The [ERA] must, however, consider and give appropriate weight to, submissions and comments received when the question whether a relevant access arrangement proposal should be approved is submitted for public consultation.
176. Rule 81 of the NGR allows a service provider to make non-conforming capital expenditure during an access arrangement period. This will not be included in the capital base unless it subsequently meets the requirements of rule 84 and rule 79 of the NGR.
177. As per rules 69, 72(1)(b), and 72(1)(c)(ii) of the NGR, the access arrangement information must include a depreciation schedule that supports the value of depreciation included in the total revenue estimate.
178. To calculate the projected capital base for an access arrangement period, forecast depreciation for the period is deducted from the capital base. Forecast depreciation is determined as per the depreciation schedule in rule 88 of the NGR as outlined below. The access arrangement information should include a demonstration of how the forecast is derived on the basis of the proposed depreciation method.
179. Rule 88(1) of the NGR provides that the depreciation schedule sets out the basis on which the pipeline assets constituting the capital base are to be depreciated for determining a reference tariff. The depreciation schedule may consist of a number of separate schedules, each relating to a particular asset or class of assets.
180. Rules 89 and 90 of the NGR specify particular depreciation criteria and requirements for the calculation of depreciation for establishing the opening capital

base for the subsequent access arrangement period. The depreciation schedule should be designed as per rule 89(1) of the NGR:

- so that reference tariffs vary over time in a way that promotes efficient growth in the market for reference services;
- so that each asset or group of assets is depreciated over the economic life of that asset or group of assets;
- to allow, as far as reasonably practicable, for adjustment reflecting changes in the expected economic life of an asset or group of assets;
- so that each asset is depreciated only once over its economic life (subject to redundancy and inflation adjustments); and
- to allow for the service provider's reasonable needs for cash flow to meet financing, non capital and other costs.

181. As per rule 89(2) of the NGR, a substantial portion of depreciation may be deferred if the present market for pipeline services is immature, reference tariffs have been calculated on the assumption of significant market growth, and the pipeline has been designed and constructed to accommodate future growth in demand.

#### **4.2.4 Forecast pipeline capacity and utilisation of capacity**

182. As per rule 72(1)(a)(iii) of the NGR, provided pipeline usage information for a transmission pipeline should include:

- minimum, maximum and average demand for each receipt or delivery point
- user numbers for each receipt or delivery point
- if not full haul distance, the contracted inlet and outlet point distances

183. As per rule 72(1)(a)(iii) of the NGR, provided pipeline usage information for a distribution pipeline should include:

- minimum, maximum and average demand
- user numbers in total and by tariff class

184. Given the importance of demand as an input parameter to derive tariffs, the Authority requires details of forecast demand for the access arrangement period.

185. Moreover, as per rule 79(2)(c)(iv) of the NGR, forecast demand is required as one of the criteria for justifying required capital expenditure to maintain the service provider's capacity to meet levels of demand for services existing at the time the capital expenditure is incurred (as distinct from projected demand that is dependent on an expansion of pipeline capacity).

186. To the extent practicable, as per rule 72(1)(d) of the NGR, a forecast of pipeline capacity and utilisation of pipeline capacity over the access arrangement period and the basis on which the forecast has been derived must be provided.

187. In case of a decline in the demand for pipeline services, additional supporting information should be provided, in order to justify cost sharing between the service provider and users.



#### 4.2.5 Forecast operating expenditure

188. Operating expenditure includes other expenditure of a non-capital nature that is incurred in providing pipeline services, including expenditure that is incurred in increasing long term demand for pipeline services and developing the market as per rule 69 of the NGR.
189. Operating expenditure must reflect the costs incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of delivering reference services as per rule 91 of the NGR.
190. The access arrangement information must include forecast operating expenditure over the access arrangement period, in addition to the basis on which the forecast has been derived as per rule 72(1)(e) of the NGR.
191. Forecast operating expenditure should be appropriately classified for the nature of the pipeline services.

#### 4.2.6 Key performance indicators

192. As per rule 72(1)(f) of the NGR, the access arrangement information should include financial, technical and user/customer key performance indicators (**KPIs**) for the pipeline. KPIs would support forecasted expenditure over the access arrangement period.

#### 4.2.7 Allowed rate of return

193. As per rule 72(1)(g) of the NGR, the access arrangement information covers information requirements for the calculation of the proposed rate of return, in addition to assumptions that are used to calculate and demonstrate the rate of return.
194. The Authority is required to determine the rate of return to be applied to the projected capital base for each year of the regulatory period in accordance with rule 87 of the NGR.
195. As required by rule 87(13) of the NGR, the Authority has published rate of return guidelines, which set out proposed methodologies to estimate the rate of return; and the estimation methods, financial models, market data and other evidence to estimate the return on equity, return on debt and the value of imputation credits.
196. The Authority's Rate of Return Guidelines is available on the ERA's website.

#### 4.2.8 Annual adjustments for return on debt

197. As per rule 72(1)(ga) of the NGR, the access arrangement information must contain the proposed formula (if any) that is to be applied through automatic application to total revenue where the return on debt is to be estimated differently for different regulatory years.
198. The Authority's Rate of Return Guidelines has provided an automatic formula for the annual adjustment for the return on debt consistent with the NGR.

### 4.2.9 Taxation

199. As per rules 72(1)(h) and 73 of the NGR, the access arrangement information covers the proposed method for dealing with taxation. In addition, access arrangement information details the tax allowance calculation.
200. Under rule 76 of the NGR, an estimate of the income tax payable will be calculated as a separate expense to be recovered as a building block component of revenue when setting tariffs. Rule 87A(1) of the NGR stipulates the formula to be used to estimate the income tax payable.

### 4.2.10 Incentive mechanism

201. If an incentive mechanism operated for the previous access arrangement period, rule 72(1)(i) of the NGR requires that proposed carryover of the increment and decrement amounts to be included in the access arrangement information.

### 4.2.11 Approach to setting of tariffs

202. As per rule 72(1)(j) of NGR, access arrangement information must include the proposed approach to the setting of tariffs, including:
  - Suggested basis of reference tariffs, including the method used to allocate costs and a demonstration of the relationship between costs and tariffs; and
  - Description of any pricing principles employed but not otherwise disclosed.
203. Rule 94 of the NGR specifies how reference tariffs for a distribution pipeline must be determined and rule 95 of the NGR specifies how reference tariffs for a transmission pipeline must be determined.
204. Rule 96 of the NGR allows the Authority to approve a discount for a particular user or prospective user, or a particular class of users or prospective users.
205. Revenue and pricing principles provide a framework for the construction of the reference tariff, which provides for the efficient investment in gas pipelines.
206. Revenue and pricing principles must be consistent with section 24 of the NGL(WA), which state that:
  - A service provider should be provided with a reasonable opportunity to recover at least the efficient costs incurred in providing the reference services and complying with regulatory obligations or requirements.
  - A service provider should be provided with effective incentives to promote economic efficiency in relation to the reference services. This includes efficiency in investment, the provision of pipeline services and use of the pipeline.
  - Regard should be had to any previously established capital base valuation.
  - A reference tariff should allow for a return commensurate with the risks associated with providing the reference service.
  - Regard should be had to the economic costs and risks associated with a service provider's potential under and over investment and under and over utilisation of the pipeline.

207. Once total revenue (total costs) of the pipeline has been determined, the reference tariffs can be determined.
208. Rule 93 of the NGR requires that total revenue is allocated between reference services and other services on the basis of an allocation of costs. Costs are to be allocated between reference and other services as follows:
- costs directly attributable to reference services are to be allocated to those services as per rule 93(2)(a) of NGR;
  - costs directly attributable to pipeline services that are not reference services are to be allocated to those services as per rule 93(2)(b) of NGR; and
  - other costs are to be allocated between reference and other services on a basis (which must be consistent with the revenue and principles) determined or approved by the Authority as per rule 93(2)(c).
209. Rule 93 of the NGR provides for services other than reference services to be classed as rebateable services. Part of the revenue from the sale of rebateable services are rebated or refunded to users of reference services.
210. Once costs are allocated among the different pipeline services, reference tariffs can be calculated with the relevant demand information, which is included in the access arrangement information.

#### **4.2.12 Tariff variation mechanism**

211. Rule 72(1)(k) of the NGR establishes that the access arrangement information must include the service provider's rationale for any proposed reference tariff variation mechanism.

#### **4.2.13 Incentive mechanism**

212. Rule 72(1)(l) of the NGR requires that the access arrangement information must include the service provider's rationale for any proposed incentive mechanism.

#### **4.2.14 Total revenue**

213. Rule 72(1)(m) of the NGR stipulates that the access arrangement information must include the total revenue to be derived from pipeline services for each regulatory year of the access arrangement period.
214. Rule 76 of the NGR provides that total revenue is to be determined for each regulatory year of the access arrangement period using a building block approach in which the building blocks are:
- a return on the projected capital base for the year
  - depreciation on the projected capital base for the year
  - the estimated cost of corporate income tax for the year
  - increments or decrements for the year resulting from the operation of an incentive mechanism to encourage gains in efficiency
  - a forecast of operating expenditure for the year
215. Each of these is described in further detail below.

### *Return on projected capital base*

216. Subject to rule 82(3) of the NGR, the return on projected capital base is calculated with reference to the pipeline's capital base and the required rate of return on that capital base.

Return on projected capital base = project capital base x rate of return

### *Depreciation on projected capital base*

217. Requirements for forecasting depreciation on the projected capital base are set out in paragraphs 178 to 181.

### *Taxation*

218. Requirements for estimating taxation costs are set out in paragraphs 199 and 200.

### *Increments or decrements in relation to incentive mechanism*

219. Requirements for determining increments or decrements in relation to an incentive mechanism are set out in paragraph 201.

### *Forecast operating expenditure*

220. Requirements for forecasting operating expenditure are set out in paragraphs 188 to 191.

## **4.3 Access arrangement supporting information**

221. Access arrangement supporting information includes information that the service provider chooses to add to the access arrangement submission.
222. For example, access arrangement supporting information may cover:
- Market context for a pipeline, including information about the demand and support conditions along the supply chain for the pipeline.
  - Overview of the operations of the pipeline and service provider, including relevant corporate structure information.
  - Expert or consultant reports that support a service provider's access arrangement proposal.
  - Further explanation of any of the access arrangement proposal requirements.
  - Additional information that further illustrates the compliance of any of the access arrangement proposal requirements with the NGL(WA) and NGR.

## **4.4 General requirements for financial information**

223. Financial information must be provided by the service provider on a nominal or real or some other recognised basis for dealing with the effects of inflation.

224. As required by rule 73(2) of the NGR, the basis on which financial information is provided must be stated in the access arrangement. All financial information must be provided, and all calculations made consistently on the same basis.
225. All forecasts or estimates provided by the service provider must be supported by a statement of the basis of the forecast or estimate as required by rule 74(1) of the NGR. Rule 74(2) of the NGR requires that a forecast or estimate must be arrived at on a reasonable basis and must represent the best forecast or estimate possible in the circumstances.
226. Where information is of the nature of an extrapolation or inference, it must be supported by the primary information on which the extrapolation or inference is based as per rule 75 of the NGR.

## 5 Decision Review Process

### 5.1 Introduction

227. The NGL(WA) and NGR allow parties that are affected by the Authority's decisions to apply for a review of the merits of reviewable regulatory decisions.
228. The Authority's reviewable regulatory decisions are subject to a limited merits review by the Australian Competition Tribunal (**Tribunal**).
229. The Authority's reviewable regulatory decisions can also be subject to a judicial review by the Federal Court of Australia (**Federal Court**).
230. These arrangements have been in place in Western Australia since 1 January 2010.

### 5.2 Merits review

#### 5.2.1 Reviewable regulatory decisions

231. Section 244 of the NGL(WA) lists the regulatory decisions that are reviewable.
232. Other than a decision refusing to approve a full access arrangement<sup>10</sup> or a decision in relation to confidential material under chapter 10 part 2 of the NGL(WA), most decisions made by the Authority in relation to a full access arrangement are reviewable regulatory decisions.

#### 5.2.2 Applications for leave to review

233. Under section 244 of the NGL(WA), a service provider, user, prospective user or consumer association that is affected by a reviewable regulatory decision made by the Authority may apply to the Tribunal for leave to review.
234. Under section 245 of the NGL(WA), the application must establish the grounds for review, and follow the form and manner determined by the Tribunal.
235. Section 246 of the NGL(WA) lists the following grounds for review:
- the Authority has made one error of fact in its findings, which was material to the making of the reviewable regulatory decision.
  - the Authority has made several errors of fact in its findings, which were collectively material to the making of the reviewable regulatory decision.
  - the Authority exercised its discretion incorrectly, having regard to all the circumstances.
  - the Authority's decision was unreasonable, having regard to all the circumstances.

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<sup>10</sup> In this case, the Authority's subsequent drafted approved access arrangement is a reviewable decision.

236. Under section 247 of the NGL(WA), persons must make an application in respect of a reviewable regulatory decision within 15 business days of the publication of the decision.
237. Under sections 248, 249, 250 and 251 of the NGL(WA), the Tribunal will not grant a person leave to review a reviewable regulatory decision in the following cases:
- The issue does not appear to be serious.
  - There are no grounds for review.
  - The application is about an error relating to revenue amounts that are below the specified threshold.
  - The applicant has not commented or made a submission when invited to do so upon the issuance of the draft decision.
  - The applicant has commented or made a submission when invited to do so upon the issuance of the draft decision, but the comment/submission was late or was not integrated in the final decision.
  - The applicant has inexcusably failed to comply with a request or a direction from the Authority, which was made for the purpose of making the decision.
  - The applicant has inexcusably conducted itself in a manner that resulted in the delay of the decision.
  - The applicant misled, or attempted to mislead, the Authority on a matter relevant to the decision.

### 5.2.3 *Interventions in a review without leave*

238. Under section 253, an affected service provider or a Minister of a participating jurisdiction can intervene in a review without leave of the Tribunal.
239. Under section 254 of the NGL(WA), the Tribunal must grant leave to a person or body to intervene in a review if the person/body has made a submission or comment to the Authority in relation to the reviewable regulatory decision.
240. Under section 255 of the NGL(WA), a user or consumer may apply to the Tribunal for leave to intervene in a regulatory decision review. The Tribunal will grant the user or consumer leave if it is satisfied of one of the following:
- The user or consumer's application for leave raises a matter that would not otherwise be raised.
  - Information, material or submissions from the user or consumer is likely to be better presented by the user or consumer rather than another party to the review.
  - The regulatory decision that is under review relates to the object or purpose of the user or consumer.
241. Under section 256 of the NGL(WA), an intervener may raise any of the grounds specified in section 246 of the NGL(WA) even if the applicant has not raised them.
242. Under section 258(1) of the NGL(WA), the Authority may also raise matters relevant to a ground for review that the applicant or intervener has not mentioned.

### 5.2.4 Tribunal determination

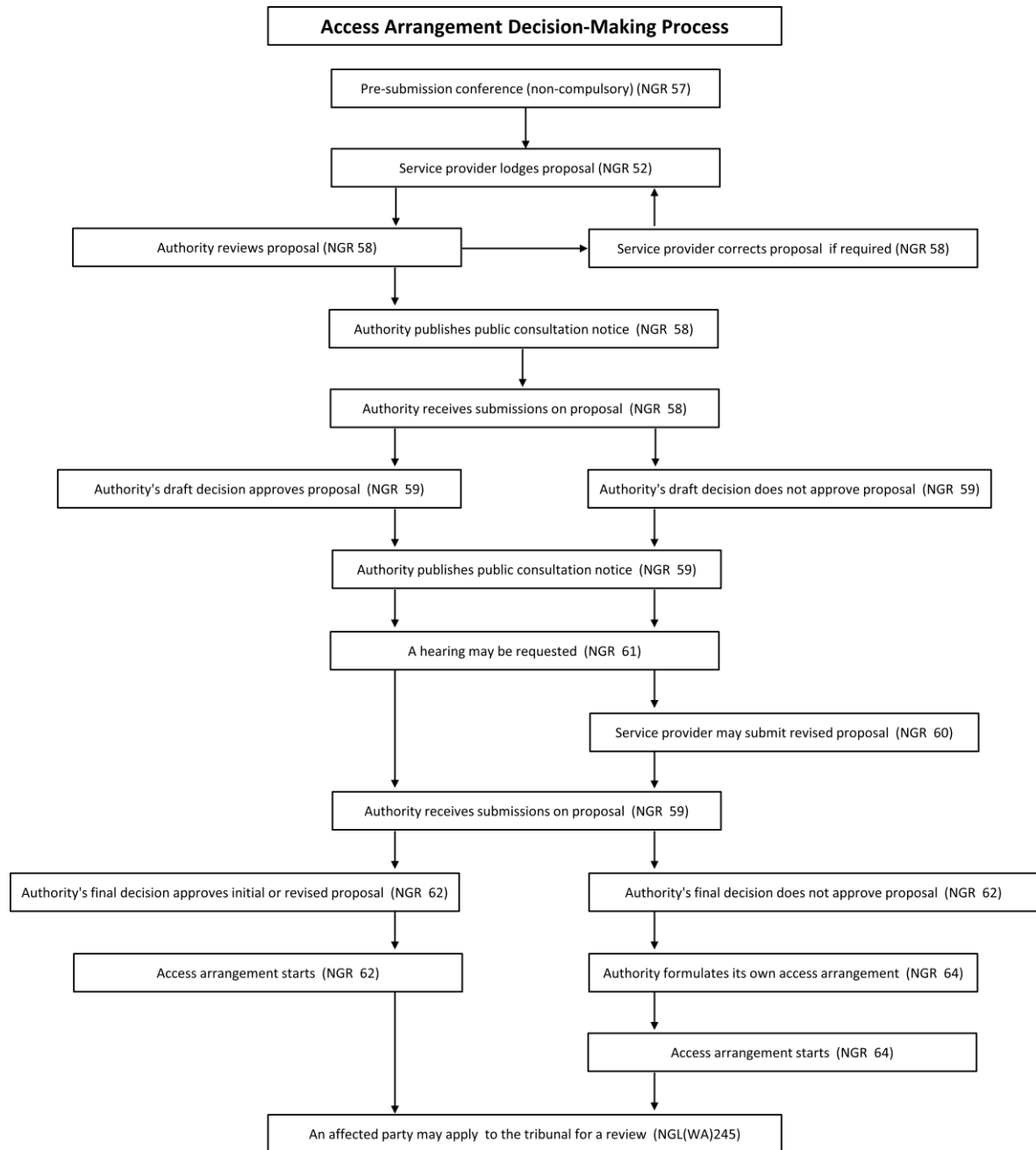
243. Under section 259 of the NGL(WA), if the Tribunal grants leave for review of a reviewable regulatory decision, then the Tribunal must make a determination in relation to the decision. For the purposes of making a determination, the Tribunal may perform all the functions and exercise all the powers of the Authority under the NGL(WA) and NGR.
244. The determination may affirm, set aside, or vary the Authority's decision. In this case, the Tribunal's decision is to be taken as the Authority's under section 259(5) of the NGL(WA). The determination may also remit the matter back to the Authority with directions or recommendations.
245. The Tribunal must make a determination in respect of the application for review within a standard period of three months of granting leave, in accordance with section 245 of the NGL(WA). Under section 260 of the NGL(WA), if necessary, the Tribunal may extend this period more than once. This would entail submission of a written notice of the expected determination issue date to the applicant and all parties, and publication of the notice in a national newspaper.
246. Section 261 of the NGL(WA) sets out the documents the Tribunal must have regard for when reviewing a reviewable regulatory decision. The Tribunal will review all relevant documents. In addition, the Tribunal may allow new information or material to be submitted if the information has not been unreasonably withheld from the Authority.
247. Under section 268 of the NGL(WA), the Tribunal may order a party to a review to pay all or part of the costs of another party to the review.

### 5.3 Judicial review

248. A person that is adversely impacted by an access arrangement decision that the Authority has made may seek a judicial review of that decision by the Federal Court under the *Administrative Decisions (Judicial Review) Act 1977*.
249. Section 5 of the *Administrative Decisions (Judicial Review) Act 1977* provides the grounds for judicial review of Authority decisions.



## Appendix 1: Decision-Making Process



## Appendix 2: Confidentiality Template

<b>1</b>	Insert the title of document containing the confidential information.	
<b>2</b>	Insert the page number of document containing the confidential information.	
<b>3</b>	Insert the paragraph numbers of the page.	
<b>4</b>	Identify the topic that the confidential information relates to. For example, capital expenditure or the rate of return.	
<b>5</b>	Describe the confidential information.	
<b>6</b>	Identify the confidentiality category. For example, market intelligence, personal information or market sensitive cost inputs.	
<b>7</b>	Briefly explain why the confidential information falls into the selected category <i>If information falls within 'other' please provide further details on why the information should be treated as confidential.</i>	
<b>8</b>	Provide reasons supporting how and why detriment would be caused from disclosing the confidential information.	
<b>9</b>	Provide reasons supporting why the identified detriment is not outweighed by the public benefit and long term consumer interests.	

## Appendix 3: Summary of Access Arrangement Submission Requirements

Access Arrangement Proposal	
Non-Tariff Requirement	Reference
Service provider details	<i>NGL (WA), Sections 131 and 132</i>
Pipeline identification and description	<i>NGR 48 (1) (a)</i>
Pipeline service description	<i>NGR 48 (1) (b), (c) and 109</i>
Terms and conditions	<i>NGR 48 (1) (d)</i>
Key dates	<i>NGR 48 (1) (i), (j), 49, and 50</i>
Trigger events	<i>NGR 51</i>
Queuing requirements	<i>NGR 48 (1) (e) and 103</i>
Expansion and Extension Policy	<i>NGR 48 (1) (g) and 104</i>
Capacity trading requirements	<i>NGR 48 (1) (f) and 105</i>
Change of receipt and delivery points	<i>NGR 48 (1) (h) and 106</i>
<b>Tariff Requirement</b>	
Tariff requirements	<i>NGR 48 (1) (d) (i), 94, 95 and 96</i>
Revenue and pricing principles	<i>NGL (WA) 24 and NGR 99</i>
<b>Revenue and price components</b>	
Speculative capital expenditure account	<i>NGR 84</i>
Capital contributions	<i>NGR 82</i>
Capital redundancy	<i>NGR 85</i>
Depreciation for next access arrangement	<i>NGR 89 and 90</i>
Incentive mechanism	<i>NGR 98</i>
<b>Revenue and cost allocation</b>	
Reference tariff variation mechanism	<i>NGR 92 and 97</i>
Access Arrangement Information	
Tariff Requirement	Reference
<b>Revenue and price components</b>	
Revenue and price components	<i>NGR 72 (1) (m) and 76</i>
Projected capital base	<i>NGR 72 and 78</i>
Opening capital base	<i>NGR 72(1)(a)(i), (b), 77 (2) and 82 (3)</i>
Conforming capital expenditure	<i>NGR 71, 79, clause 7(2) of Schedule 1 and 72 (1) (c) (i)</i>
Nonconforming capital expenditure	<i>NGR 81</i>
Surcharges	<i>NGR 83</i>
Re-use of redundant assets	<i>NGR 79 and 86</i>
Rate of return	<i>NGR 87</i>
Depreciation of the projected capital base	<i>NGR 72(1) (c) (ii) and 88</i>
Depreciation schedule	<i>NGR 69, 72 (1) (b) and 88 (1)</i>
Corporate income tax	<i>NGR 72 (1) (h), 73 and 87A</i>
Incentive mechanism	<i>NGR 72 (1) (i) and (l)</i>
Forecast operating expenditure	<i>NGR 69, 72 (1) (a) (ii), (e), (f) and 91</i>
<b>Revenue and cost allocation</b>	
Revenue and cost allocation	<i>NGR 72(1)(a)(iii), (d), 79(2)(c)(iv) and 93</i>
Tariffs and reference tariff variation mechanism	<i>NGR 72 (1) (j), (k) and 94</i>