



Notice

10 March 2014

Gas Access Arrangement Guideline

PUBLICATION OF GAS ACCESS ARRANGEMENT GUIDELINE

The Economic Regulation Authority (**Authority**) has published the [Gas Access Arrangement Guideline](#) (**Guideline**) to provide an overview of the rules, requirements and processes applying to the regulation of full access arrangements for regulated gas transmission and distribution pipelines in Western Australia.

The Authority has also published a [user friendly guide](#) that highlights the main content of the Guideline.

The purpose of the Guideline is to inform stakeholders of the access arrangement review processes stipulated in the *National Gas Access (WA) Act 2009* (**NGL(WA)**) and *National Gas Rules* (**NGR**). The Guideline also explains in detail how the Authority proposes to handle and assess confidential material. The Guideline should not be read as a substitute for the relevant statutory provisions in the NGL(WA) and NGR.

On 7 February 2014, the Authority published on its website a Draft Gas Access Arrangement Guideline. Interested parties were invited to provide their submissions by 21 February 2014. Both Goldfields Gas Transmission Pty Ltd and Dampier to Bunbury Natural Gas Pipeline (WA) Transmission Pty Ltd provided submissions to the Authority. These submissions are available on the ERA's website. The attached table summarises the issues raised in submissions and the revisions that have been incorporated into the Guideline.

The Guideline replaces the Authority's 'Guidelines on Gas Access Arrangement Revision Process' that was published on 16 May 2008, prior to the enactment of the NGL(WA).

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Table: Explanatory Statement

Draft Guideline Section	Submission Issue	Considerations of the Authority
Section 2.3 - Public consultation on proposal. (Paragraph 25)	DBP notes that the Standard Consultative Procedure (NGR 8) does not allow for a public hearing to be held at the receipt of a proposal.	<p>The Authority accepts that the NGR does not stipulate that a public hearing should be held at the receipt of a proposal. However, the Authority believes that paragraph 25 adequately explains that public meetings are not required under the NGR and this is a discretionary step in the process.</p> <p><u>Outcome</u></p> <p>The Authority has not made any changes to paragraph 25.</p>
Section 2.7 - Authority approved access arrangement. (Paragraph 47)	DBP suggests that it may be useful to outline some examples of when the Authority might consult on an access arrangement where the Authority's final decision is to refuse to approve an access arrangement.	<p>The Authority does not believe it would be helpful to give examples of how it may exercise its discretion, as each access arrangement has different issues and the Authority makes its decision to consult on a case by case basis.</p> <p><u>Outcome</u></p> <p>The Authority has not made any changes to paragraph 47.</p>
Section 3.3 – Regulatory Information Notice (RIN).	<p>DBP suggests that it would be useful for the Authority to outline the circumstances under which it would issue an urgent RIN.</p> <p>DBP also suggested that the Authority should not use urgent RINs for copious amounts of information.</p>	<p>The Authority does not believe it is appropriate to specify instances of when it may issue urgent RINs, as in practice the use of urgent RINs would be considered on a case by case basis.</p> <p>The Authority appreciates DBP's suggestion and will ensure that it issues urgent RINs in accordance with the NGL(WA).</p> <p><u>Outcome</u></p> <p>The Authority has not made any changes to section 3.3.</p>
Section 3.5.1 - Pre-submission conference. (Paragraph 76)	<p>DBP points out that there is no obligation on the service provider to have a pre-submission conference.</p> <p>GGT agrees that many of the issues around the confidentiality of information can be resolved in discussion with the regulator. GGT considers that this does</p>	<p>The Authority agrees with DBP that there is no obligation on the service provider to have a pre-submission conference.</p> <p>The Authority also agrees with GGT's proposal that issues around confidentiality of information can be resolved in discussion with the regulator, and does not require the formal process of a pre-submission conference.</p>

	not require the formal process of a pre-submission conference.	<p><u>Outcome</u></p> <p>The Authority has replaced the wording “pre-submission conference” with “pre-submission discussions” in paragraph 74 and the heading of section 3.5.1.</p>
Section 3.5.2 - Confidential information submission process	<p>DBP notes that the Guideline goes well beyond what is required by the NGL(WA) and NGR in terms of confidentiality.</p> <p>GGT has expressed a view that the process proposed by the Authority in section 3.5.2 is inefficient and unworkable and will not help the regulator.</p> <p>GGT believes that what should be kept confidential in the commercial interests of a pipeline service provider will not be easily dealt with through administrative processes.</p> <p>GGT believes that providing reasons on how and why the disclosure would cause detriment places an unnecessary burden on the service provider and that it is the role of the regulator to assess public benefit.</p> <p>GGT considers that providing descriptions of information is largely irrelevant to any role that stakeholders will play in the process, and is a beacon to competitors both within and outside the regulated sector.</p>	<p>The Authority recognises that the Guideline goes beyond what is required by the NGL(WA) and NGR in terms of confidentiality. The purpose of this is to explain in detail how the Authority proposes to handle and assess confidential material.</p> <p>The Authority recognises the need to balance protecting confidential information with disclosing information for an open and transparent regulatory decision making process.</p> <p>The Authority disagrees with GGT’s assertion that the confidential information submission process will not help the regulator.</p> <p>The Authority has used its powers to disclose information in the past and found the process to be resource and time intensive.</p> <p>The Authority believes the three stage process adopted from the AER will improve the process as it will enable the Authority to quickly identify the confidential information, understand why the information provider wants the information to be confidential and decide on what course of action is necessary.</p> <p>The Authority considers that while it will be required to undertake an assessment of whether the public benefit in disclosing the information outweighs any detriment to the information provider it is important to give the information provider the opportunity to present its case for why the information is confidential.</p> <p>The Authority does not agree with GGT’s assertion that adopting the three stage process will provide stakeholders with information that is irrelevant to any role they might play in the process.</p>

		<p><u>Outcome</u></p> <p>The Authority has not made any changes to section 3.5.2.</p>
<p>Section 3.5.3 - Information disclosure process. (Paragraph 87)</p>	<p>GGT believes that paragraph 87 goes beyond the scope of section 329 of the NGL(WA).</p> <p>DBP believes that the list in paragraph 87 should be removed. The list is not in the NGR or NGL(WA) and should have no bearing as section 329 of the NGL(WA) should be used.</p> <p>DBP believes that the Guideline could specify how the Authority intends to make a determination under section 329 of the NGL(WA).</p>	<p>The Authority agrees with DBP and GGT that it will use the power that section 329 of the NGL(WA) provides to decide whether disclosing the information would cause detriment to the information provider or whether the public benefit in disclosing the information outweighs any detriment.</p> <p><u>Outcome</u></p> <p>The Authority has removed paragraph 87 and replaced the reference, “(see section 3.6)” with “(see section 3.5.3.1)”.</p>
<p>Section 3.6 - Use of information instruments. (Paragraph 95 of the Draft Guideline, paragraph 94 of the Final Guideline)</p>	<p>DBP notes that paragraph 95 suggests that section 54 and 55 of the NGL(WA) allows the Authority to request information simply because it would like to follow up on the implementation of an access arrangement.</p> <p>DBP would like the Authority to outline how it determines that serving and making information instruments are reasonably necessary.</p>	<p>The Authority does not agree with DBP’s interpretation of paragraph 95. However, the Authority would like to clarify that section 48 of the NGL(WA) states that the Authority must have regard to the matters and likely costs when considering whether to serve a regulatory information instrument. Sections 53, 54 and 55 of the NGL(WA) describe the content and form of the regulatory information instrument.</p> <p><u>Outcome</u></p> <p>The Authority has replaced the text in paragraph 95 with the following text to avoid misinterpretation.</p> <p style="padding-left: 40px;">Section 48 of the NGL(WA) states that the Authority must have regard to the matters and likely costs when considering whether to serve a regulatory information instrument. Sections 53, 54 and 55 of the NGL(WA) describe the content and form of the regulatory information instrument.</p>
<p>Section 4.2.3 -Projected capital base. (Paragraph 173 of the Draft Guideline and</p>	<p>DBP suggests that it may be useful for the Authority to explain the type of information relevant to substantiating capital</p>	<p>The Authority believes that rule 79 of the NGR and clause 7(2) of schedule 1 to the NGR are sufficiently prescriptive as to what is considered to be conforming capital expenditure and how to justify capital expenditure.</p>

paragraph 172 of the Final Guideline)	expenditure as conforming capital expenditure.	<p><u>Outcome</u></p> <p>The Authority has not made any changes to paragraphs 173 and 174.</p>
<p>Section 4.2.4 – Forecast pipeline capacity and utilisation of capacity.</p> <p>(Paragraph 185 of the Draft Guideline and 184 of the Final Guideline)</p>	DBP suggests that the Authority should be clear that when it refers to demand it encompasses both the demand for contracted capacity and usage of that contracted capacity.	<p>The Authority notes DBP’s suggestion that it may be construed that demand is only referring to throughput.</p> <p><u>Outcome</u></p> <p>The Authority has added the following footnote:</p> <p>Demand refers to maximum capacity.</p>
<p>Section 4.2.11 – Approach to setting of tariffs.</p> <p>(Paragraph 209 of the Draft Guideline and paragraph 208 of the Final Guideline)</p>	DBP submits that a pipeline service is a rebateable service if it meets rule 93(4) of the NGR.	<p>The Authority agrees with DBP’s submission that a pipeline service is a rebateable service if it meets rule 93(4) of the NGR.</p> <p><u>Outcome</u></p> <p>The Authority has replaced paragraph 209 with the following paragraph to avoid misinterpretation:</p> <p>Rule 93(4) requires a pipeline service to be classified as a rebateable service if:</p> <ul style="list-style-type: none"> • the service is not a reference service; and • substantial uncertainty exists concerning the extent of demand for the service or of the revenue to be generated from the service; and • the market for the service is substantially different from the market for any reference service. <p>Under rule 93(3) the Authority may permit the allocation of costs of rebateable services, in whole or in part, to reference services if:</p> <ul style="list-style-type: none"> • the Authority is satisfied that the service provider will apply an appropriate portion of the revenue generated from the sale of rebateable services to provide price rebates (or refunds) to the users of reference services; and any other conditions determined by the Authority are satisfied.