

# Authority Guidelines

## Gas Access Arrangement Revision Process

16 May 2008

Economic Regulation Authority



WESTERN AUSTRALIA

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## 1 Purpose

There are two primary purposes for these guidelines. The first purpose is to set out the process which the Economic Regulation Authority (Authority) intends to undertake in carrying out the access arrangement revisions for the three covered gas pipelines in Western Australia with access arrangements currently in place. These pipelines are as follows:

- Mid West and South West Gas Distribution Systems – submission of access arrangement revision proposal due 31 March 2009.
- Goldfields Gas Pipeline - submission of access arrangement revision proposal due 1 April 2009.
- Dampier to Bunbury Natural Gas Pipeline - submission of access arrangement revision proposal due 1 April 2010.

The second purpose is to outline matters which the Authority intends to discuss with service providers during the pre-lodgement consultation period in order to ensure that the revision process is able to proceed in a timely and efficient manner in accordance with the legislative requirements and consistent with good regulatory practice.

The guidelines are based on the Authority's current knowledge of the proposed new national gas legislation (National Gas Law (NGL) and National Gas Rules (NGR)) which are expected to become law in Western Australia by September 2008.

One of the changes in this proposed legislation, compared with the existing national gas law, is the tight timeframes imposed on future access arrangement revision processes. The effect of these new timeframe requirements will be to impose a strong discipline on the Authority to manage the elements of the revision process within clear time limits.

The co-operation of service providers and all other stakeholders in working with the Authority to ensure the provision of the required information at the appropriate times during the course of the revision process will be an important element in the Authority being able to meet the timeframe requirements set out under the new legislation.

## 2 Pre-Lodgement Consultation

The Authority intends to undertake a pre-lodgement consultation process for the access arrangement revisions. The proposed NGL and NGR provide for such a consultation process to take place.

It should be noted that under the proposed NGL and NGR, the service provider has the discretion to request a pre-lodgement conference with the Authority. Accordingly, the process outlined in these guidelines is not binding on service providers. Nor should it be accepted that the list of matters for discussion in these guidelines is an exhaustive list of matters. Service providers have indicated their preparedness to participate in a pre-lodgement consultation process on a non-binding basis and in order to assist the regulatory process set out in the proposed NGR.

While the Authority recognises the importance of a co-operative approach between the Authority and service providers in order to facilitate orderly and timely access arrangement revision processes and is fully supportive of such an approach, it also notes that the pre-lodgement consultation process is not binding on the Authority.

Subject to the above, this pre-lodgement consultation will commence nine months prior to the date on which the revision proposal is due to be submitted by the service provider to

the Authority. Based on the above revision submission dates, the dates for commencement of the pre-lodgement consultation will be as follows:

- Mid West and South Gas Distribution Systems – 1 July 2008.
- Goldfields Gas Pipeline - 1 July 2008.
- Dampier to Bunbury Natural Gas Pipeline - 1 July 2009.

The principal benefit of the pre-lodgement consultation will be to clarify key issues relevant to each service provider's access arrangement revision and to identify the form and nature of the information to be provided to the Authority in the revision proposal. This will facilitate an orderly and timely revision process consistent with the objectives of the proposed NGL and NGR.

Another important element of this consultation will be, in light of the change in the gas access legislation under the proposed NGL and NGR, to discuss with service providers the manner in which this legislation is likely to be applied for the purpose of undertaking the access arrangement revision process. This includes the specific steps required to be undertaken and the relevant timeframes, under this legislation, for each stage of the access arrangement revision process. Given the number of new and, in many cases, undefined terms in the proposed NGL and NGR the process of the Authority and service providers having such discussions as early as possible in the process may help to avoid later delays. Such discussions would not affect the Authority's duty to take account, as required by law, submissions by other parties and other relevant information in interpreting and applying the proposed NGL and NGR as the access arrangement revision process proceeds.

While each pipeline has specific issues, most issues are common to all three pipelines. An outline of the common pipeline matters proposed to be discussed with service providers during the pre-lodgement consultation period is provided in Schedule 1.

The process proposed to be followed in addressing the matters listed in Schedule 1 is as follows:

- Following the publication of these guidelines, the Authority and the service providers will commence discussion, by 1 July 2008 on the matters listed in Schedule 1.
- The Authority and the service providers may also identify other items not listed in Schedule 1 that require discussion and such items will be included in this process.
- Pipeline specific matters will be discussed separately with the appropriate service provider. An indicative list of these pipeline specific matters the ERA would like to deal with is included under Schedule 2.

It should be noted that these indicative lists in Schedules 1 and 2 may change depending on the outcome of the proposed NGL and NGR.

### 3 Access Arrangement Revision Process

Under part 8 Division 8 of the proposed NGR, strict procedures and time limits are set for the access arrangement revision process. These time limits include the following:

- The revision process is required to be completed within six months of lodgement of the revision proposal, excluding clock stopping time. This amounts to about 125 business days. The proposed NGR allows the Authority to extend this time period by up to a maximum of two months.

- A maximum period is permitted for the entire revision process, including clock stopping time, of 13 months.
- Failure to meet the above timeframes does not invalidate the decision process. However a report to Ministerial Council on Energy, outlining the reasons for the extended revision process, is required if these timeframes are not met.

The Authority anticipates issuing a final decision within nine months. The table on the following page (Table 1) provides an indicative nine month timetable for the revision process based on the requirements under the proposed NGL and NGR.

The time periods in Table 1 have been based on assumptions about the length of relevant time periods including clock stoppage time. These assumptions are made on the basis that the access arrangement revision process will not face any undue delays for reasons such as the service provider not providing all the necessary information to the Authority in its revision submission, the Authority having to issue formal notices seeking information and additional public consultation processes outside those listed.

Table 2 shows the same revision process as outlined in Table 1, with the relevant key dates shown for each of the access arrangement revisions rather than the time periods.

## Table 1- Anticipated Access Arrangement Revision Process – Time periods<sup>1</sup>

	Time (Business Days)	Clock Stopped (Business Days)	Total Time less Clock Stoppages (Business Days)	Week No.
<b>Stage 1</b>				
Pre-Lodgement Consultation Process	194			
<b>Stage 2</b>				
1) Lodgement of AA, AAI and other docs	1			0
2) Authority publishes initiating notice inviting public submissions, AA and AAI.	5			1
3) First Round of Public Submissions (clock stopped)	30	30		8
4) Optional clock stopping if further information is required	0	0		
5) Authority considers submissions and drafts Draft Decision	40			
6) Authority issues Draft Decision and notice inviting public submissions	1			16
<b>Stage 3</b>				
1) Second Round of Public Submissions (clock stopped)				
<ul style="list-style-type: none"> <li>• Service Provider may submit revised Access Arrangement to the Authority<sup>2</sup></li> <li>• Authority publishes the service provider's revised Access Arrangement (if submitted)</li> <li>• Public Hearing<sup>3</sup> by Authority on Draft Decision</li> <li>• Remainder of public submission period</li> </ul>	15	15		19
				19
				19
	20	20		23

<sup>1</sup> As noted on page 4, the timing in the table is based on estimates of the time periods required for each part of the revision process and does not take account of matters which could arise during the revision process resulting in these periods being longer, such as the issuing of regulatory information notices by the Authority.

<sup>2</sup> The proposed NGR provides for a period of at least 15 days business days to submit and that the specific time period allowed will be set by the Authority at the time the draft decision is released.

<sup>3</sup> The public hearing could also be held before the service provider submits its revised access arrangement. Parties have a period of 10 days from the release of the draft decision to request a public hearing. Whether a hearing is held is dependent on a valid request from parties or a decision by the Authority to hold such a hearing.

Anticipated Access Arrangement Revision Process – Time periods (continued)	Time (Business Days)	Clock Stopped (Business Days)	Total Time less Clock Stoppages (Business Days)	Week No.
2) Optional clock stopping if further information is required	0	0		
3) Authority considers submissions, and 4) Authority holds discussions with the service provider and submitting parties if required	40			23-31
5) Optional clock stopping if further information is required	0	0		
6) Service provider may submit a further revised Access Arrangement	5			31
7) Authority drafts and issues Final Decision	15			34
<b>TOTAL (Stages 2 and 3)</b>	<b>172</b>	<b>65</b>	<b>107</b>	

## Table 2 - Anticipated Access Arrangement Revision Process - Dates<sup>4</sup>

	GGP and GDS	DBNGP
<b>Stage 1</b>		
Pre-Lodgement Consultation Process	1 Jul 2008	1 Jul 2009
<b>Stage 2</b>		
1) Lodgement of AA, AAI and other documents	31 Mar 2009 (GDS) 1 Apr 2009 (GGP)	1 Apr 2010
2) Authority publishes initiating notice inviting public submissions, AA and AAI	8 Apr 2009	7 Apr 2010
3) First Round of Public Submissions (clock stopped)	25 May 2009	24 May 2010
4) Optional clock stopping if further information is required	-	-
5) Authority considers submissions and drafts Draft Decision		
6) Authority issues Draft Decision and notice inviting public submissions	22 July 2009	22 July 2010
<b>Stage 3</b>		
1) Second Round of Public Submissions (clock stopped)		
<ul style="list-style-type: none"> <li>• Service Provider submits revised Access Arrangement to the Authority<sup>5</sup></li> <li>• Authority publishes revised Access Arrangement</li> <li>• Public Hearing by Authority on Draft Decision (if requested to do so)</li> <li>• Remainder of public submission period</li> </ul>	12 Aug 2009	12 Aug 2010
	13 Aug 2009	13 Aug 2010
	14 Aug 2009	16 Aug 2010
	9 Sept 2009	10 Sept 2010
2) Optional clock stopping if further information is required		

<sup>4</sup> As noted on page 4, the timing in the table is based on estimates of the time periods required for each part of the revision process and does not take account of matters which could arise during the revision process resulting in these periods being longer, such as the issuing of regulatory information notices by the Authority.

<sup>5</sup> The proposed NGR provides for a period of at least 15 days business days to submit and for the specific time period allowed to be set by the Authority at the time the draft decision is released.

<b>Anticipated Access Arrangement Revision Process – Dates – continued.</b>	<b>GGP and GDS</b>	<b>DBNGP</b>
3) Authority considers submissions and 4) Authority holds discussions with the service provider and submitting parties if required.	10 Sept to 5 Nov 2009	10 Sept to 5 Nov 2010
5) Optional clock stopping if further information is required		
6) Service provider may submit a further revised Access Arrangement	12 Nov 2009	12 Nov 2010
7) Authority drafts and issues Final Decision	4 Dec 2009	6 Dec 2010

### **3.1 Access Arrangement Revision Lodgement**

The assessment process for the access arrangement revision commences when the service provider submits the following three documents at lodgement:

- Proposed access arrangement revision.
- Proposed access arrangement information.
- Supporting information for the Authority.

The Authority requires that at the time of lodgement, the material submitted is the service provider's most up to date information at that time.

The public documents will be published on the Authority's web site and a notice placed in a national newspaper. It should be noted that the Authority could defer publication of an initiating notice for up to 30 days if on preliminary examination of the proposal the Authority considers it deficient.

If, on a preliminary examination the Authority requires additional information/amendments to be provided by the service provider, the Authority will allow a reasonable period, in the circumstances (having regard to the nature of the additional information/amendments), for the required information/amendments to be provided. If after this time the required information/amendments have not been provided or the provided information/amendments are considered to be inadequate, the Authority may, if considered necessary, use its compulsory acquisition of information powers under the proposed NGL and NGR.

When the information/amendments are provided in accordance with the request, the Authority may issue a public notice advising that further information has been received and call for submissions. The Authority may extend the public consultation period to allow additional time for comment on such information (clock stoppage time).

Requirements for the public documents and other information will be settled during the pre-lodgement consultation process.

### **3.2 Supporting Information for the Authority**

To enable the Authority to analyse the data and methodologies behind the proposed access arrangement or proposed revisions, it is crucial that the service provider provide as much supporting information as is possible (in addition to the access arrangement information) at lodgement. Supporting information is intended for use by the Authority. Such information would be considered as public information except where confidentiality is claimed and the Authority agrees with such claims. Such information should include:

- electronic copies of models and methodologies
- justification for models and methodologies
- historical information on all tariff elements
- all data used in calculations
- details of key assumptions
- copies of audit reports on historical capex and opex
- qualitative information on non-tariff elements
- contact information.

Details of this information will be settled during the pre-lodgement consultation process.

Following the pre-lodgement consultation meetings with the Authority, the service provider will have a better understanding of the information that the Authority will require with respect to its particular proposal and would be expected to provide that information at lodgement.

Should it be necessary, the Authority has the ability to exercise its powers, under the proposed NGL and NGR, to require service providers to provide information through regulatory information notices and general regulatory information orders.

### **3.3 Submissions**

The proposed NGL and NGR provide interested parties with two opportunities to provide submissions on the assessment process. Firstly, following lodgement of the proposed access arrangement revision and associated documents and, secondly, after issue of the draft decision.

To make the regulatory decisions within the desired timeframe, it is necessary for all submissions to be received by the due date. The Authority will require compelling reasons to consider submissions received after the relevant dates. All submissions will be treated as public documents and will be placed on the Authority's web site except where confidentiality is claimed and the Authority agrees with such claims. To facilitate placement on the web site, it would be appreciated if submissions could be sent both in paper and electronic format.

Should submissions request more detailed information and/or amendments to the access arrangement information and the Authority considers such requests appropriate, the Authority will advise the service provider and issue a public notice stating that the decision process is delayed until the additional information is provided. The service provider will then have a reasonable time to provide the requested information/amendments. Should the service provider fail to provide the requested information/amendments within a reasonable time, the Authority may choose to use its information collection powers or make its own assumptions.

### **3.4 Draft Decision**

Upon release of the draft decision, the Authority will issue a public notice to call for submissions on the Draft Decision. As indicated in Table 1, the service provider will have at least three weeks to submit a revised proposal (as provided for under the proposed NGL and NGR) which will then be published by the Authority. On this basis, interested parties will have four weeks to respond to the revised proposal (seven weeks in total to make a submission).

The draft decision represents the Authority's considered position based on its assessment of all documents and submissions received to date. It encompasses the proposed NGL and NGR requirements, current access arrangement provisions, the service provider's proposal, the access arrangement information and submissions from interested parties.

The proposed NGR provides for the Authority to hold a public hearing following the release of its draft decision. The public hearing could be held before or after the service provider submits its revised access arrangement. Parties have a period of 10 days from the release of the draft decision to request a public hearing. Whether a hearing is held is dependant on a valid request from parties or a decision by the Authority to hold such a hearing.

### **3.5 Final Decision**

The Authority anticipates (this is not specified in the proposed NGL and NGR), that in order to be able to issue a final decision and the approval of an access arrangement in the same document, as is expected under the proposed NGL and NGR, it will be necessary for the Authority, the service provider and submitting parties to hold discussions following the Authority's consideration of submissions on its draft decision. The service provider would then have a further opportunity to submit a revised proposal which could then be approved in the subsequent final decision. This process has been assumed under the steps outlined in Table 1.

Approximately fifteen weeks after the final round of submissions close, the Authority will make a final decision which either:

- approves the proposed revisions to the access arrangement; or
- refuses to approve the proposed revisions to the access arrangement. The Authority must then propose and make revisions to the access arrangement.

## **4 Information to be placed on the Authority's Web Site**

In order to provide information to interested parties on the pre-lodgement consultation process between the Authority and service providers, the Authority has published these guidelines.

These guidelines provide information of relevance to interested parties at the start of the pre-lodgement consultation process on the nature of the revision process expected to be followed by the Authority and the matters which will be discussed between the Authority and the service providers during this process.

Should there be any material changes to the information provided in this paper resulting from the introduction of the new national gas legislation in Western Australia in the coming months, an updated version of this paper will be placed on the Authority's web site.

Under the proposed NGL and NGR, the Authority will continue to have the ability to publish from time to time issues and consultation papers which may facilitate the access arrangement revision processes.

## Schedule 1 – Common issues

### Indicative Matters to be Discussed between the Authority and Service Providers During the Pre-Lodgement Consultation Period<sup>6</sup>

Issue		Matters to be Discussed
1)	Service providers	Identify the service provider or providers who will lodge the Proposed Revised Access Arrangements (PRAAs)
2)	Tariff model	The form of the tariff model the service provider proposes to be used in the PRAAs
3)	Rate of Return	Identify WACC model/methodology for each pipeline
4)	Financial data	The nature of the financial data (such as whether nominal or real, pre or post tax WACC, etc) to be provided in the PRAAs
5)	Audits	The audit requirements for financial (opex and capex) and non-financial information (eg; volumes) to be provided in the PRAAs
6)	Actual Capex proposed to be rolled into the pipeline's capital base	The process for verification of the estimated capex figure submitted at the time of lodgement of the PRAAs for the remaining months of the current access arrangement period
7)	Future Capex forecasts to be included in the formulation of tariffs	The process for verification of the future capex forecasts
8)	Future Opex forecasts to be included in the formulation of tariffs	The justification to be provided to support the forecast Opex, eg; KPI's
9)	Future volume forecasts to be included in the formulation of tariffs	Justification/rationale for the methodology to be applied for estimating forecast volumes
10)	Speculative investment fund	The process for use of any such fund
11)	Tariff adjustments if access arrangement revision is not completed before the end of the current access arrangement period	The method/approach to be used in the calculation of tariffs in such an event
12)	Final Decision and PRAA approval in a single step as envisaged under the new legislation	The process to be followed

<sup>6</sup> This indicative list may change depending on the final versions of the proposed NGL and NGR.

Issue		Matters to be Discussed
13)	Submission periods and processes	Discuss implications of the tight timetable under the new legislation
14)	Fixed principles under current access arrangements	The treatment of existing fixed principles under the new legislation
15)	Incentive mechanisms under current access arrangements	The process of carrying forward gains and losses under the new legislation
16)	Gas quality specifications	The gas quality specifications to be proposed by the service provider
17)	Confidential information	The treatment of confidential information under the new legislation
18)	Extent of information to be provided in the PRAAs for interested parties	Discuss this matter based on the new legislation
19)	Pipeline Services	Identify the Services to be provided under the Access Arrangement. Identify which are to be Reference Services
20)	Asset Disposals	Valuation methodology for any disposals
21)	Capital Contributions	How past and anticipated capital contributions are to be taken into account in Capital Base and Total Revenue calculations
22)	Depreciation	Identify methodology and modelling
23)	Length of Access Arrangement	Identify proposed period of Access Arrangement
24)	Tariff Variation Mechanism	Identify any changes to the current mechanism and clarify any modelling/formula issues

## Schedule 2 – Pipeline Specific Issues

### Indicative Matters to be Discussed Between the Authority and Individual Service Providers During the Pre-Lodgement Consultation Period<sup>7</sup>

Pipeline	Issue	Matters to be Discussed
Kambalda	Lodgement of Access Arrangement due on 1 July 2008	The transitional arrangements in the NGL and the implications for the AA lodgement
Goldfields Gas Pipeline	Paraburdoo compressor station expansion, refer notice of 20 November 2006	The status of coverage with respect to this expansion
AGN	Roll into the capital base of the Vines LPG system that was converted to natural gas during the 2005-2010 AA period	Information required to justify the amount rolled in
AGN	Prudent Discounts, if any	The information required
AGN	Incentive Mechanism for User Initiated Capital expenditure (Clause 32 (4) Part B of approved AA)	Information and modelling requirements
AGN	Incentive Mechanism for Non Capital Costs (Clause 32 (5) Part B of approved AA)	Information, Audit and modelling requirements
DBNGP	Application of the Incentive mechanism in Clause 7.12	Information and modelling requirements
All	Tariff Variation Mechanism	Identify any changes to the current mechanism and clarify any modelling/formula issues
All	Rebatable Services	Identify any such services and information requirements

<sup>7</sup> This indicative list may change depending on the final versions of the NGL and NGR.

**Document History**

Version	Date	Description
1.0	16 May 2008	First issued