

行政院及所屬各機關出國報告
(出國類別：實習)

澳洲電業及煤氣事業解除管制實務經驗與競爭規範

服務機關：公平交易委員會

出國人職稱：專員

姓名：謝秀玲

出國地區：澳洲

出國期間：民國 91 年 6 月 21 日
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澳洲電業及煤氣事業解除管制實務經驗與競爭規範

主辦機關:

行政院公平交易委員會

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謝秀玲 行政院公平交易委員會 第二處 專員

出國類別: 實習

出國地區: 澳大利亞

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關鍵詞: 電力、天然氣、ACCC

內容摘要: 推動電業自由化已蔚為全球發展趨勢，各國電力市場之架構與競爭模式，雖依各國國情有所不同，然值我國刻正積極規劃電業自由化之際，其制度及經驗均值得我國學習與借鏡。另一方面，鑑於電業改革過程中，電業管制主管機關與競爭政策主管機關之協調與分工扮演極重要之角色，尤以競爭主管機關更應於電力市場訂定相關政策與措施之前，肩負起引進電力市場競爭機制，提出市場結構最適替代方案之責，俾能防範於未來，降低電力市場因結構設計不當，造成業者違反競爭法之可能性與誘因，因此我國在面臨此一電業法修法之關鍵時刻，公平交易委員會除積極參與行政院有關「電業法修正草案」及電業管制改革政策之研擬與修正工作外；另一方面亦希以汲取國外解除市場管制之實務經驗，作為因應未來電力市場自由化後之執法參考，觀諸當前各國推動電業自由化成效者中，澳洲之電力管制革新可說相當成功，為各界推介值得學習之對象，而其競爭法主管機關競爭暨消費者委員會（Australian Competition and Consumer Commission）更扮演該國電力市場交易監督者之角色，實值本會派員前往瞭解其引進市場競爭機制之所在。另因各國亦已逐步針對天然氣市場進行改革，如開放瓦斯用戶可自由選擇導管瓦斯事業供應瓦斯，及開放天然氣管線代輸等，反觀我國天然氣市場上游，長久以來皆由中油公司獨家進口或生產供應，欠缺市場競爭機能，而下游之城鎮瓦斯市場雖已開放二十五家民營城鎮瓦斯事業區域獨占經營，惟其規模過小，導致缺乏規模經濟，使用戶往往需負擔相對較高之使用成本，讓消費者寧可選擇具有危險性之桶裝瓦斯，而放棄具安全性天然氣之使用，適值我國刻正進行「天然氣事業法」草案之修法，故藉此次出國計畫以瞭解澳洲之天然氣市場發展情形，汲取其天然氣市場解除管制之經驗與競爭規範。

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摘要

推動電業自由化已蔚為全球發展趨勢，各國電力市場之架構與競爭模式，雖依各國國情有所不同，然值我國刻正積極規劃電業自由化之際，其制度及經驗均值得我國學習與借鏡。另一方面，鑑於電業改革過程中，電業管制主管機關與競爭政策主管機關之協調與分工扮演極重要之角色，尤以競爭主管機關更應於電力市場訂定相關政策與措施之前，肩負起引進電力市場競爭機制，提出市場結構最適替代方案之責，俾能防範於未來，降低電力市場因結構設計不當，造成業者違反競爭法之可能性與誘因，因此我國在面臨此一電業法修法之關鍵時刻，公平交易委員會除積極參與行政院有關「電業法修正草案」及電業管制改革政策之研擬與修正工作外；另一方面亦希以汲取國外解除市場管制之實務經驗，作為因應未來電力市場自由化後之執法參考，觀諸當前各國推動電業自由化成效者中，澳洲之電力管制革新可說相當成功，為各界推介值得學習之對象，而其競爭法主管機關競爭暨消費者委員會（Australian Competition and Consumer Commission）更扮演該國電力市場交易監督者之角色，實值本會派員前往瞭解其引進市場競爭機制之所在。

另因各國亦已逐步針對天然氣市場進行改革，如開放瓦斯用戶可自由選擇導管瓦斯事業供應瓦斯，及開放天然氣管線代輸等，反觀我國天然氣市場上游，長久以來皆由中油公司獨家進口或生產供應，欠缺市場競爭機能，而下游之城鎮瓦斯市場雖已開放二十五家民營城鎮瓦斯事業區域獨占經營，惟其規模過小，導致缺乏規模經濟，使用戶往往需負擔相對較高之使用成本，讓消費者寧可選擇具有危險性之桶裝瓦斯，而放棄具安全性天然氣之使用，適值我國刻正進行「天然氣事業法」草案之修法，故藉此次出國計畫以瞭解澳洲之天然氣市場發展情形，汲取其天然氣市場解除管制之經驗與競爭規範。

澳洲電業及煤氣事業解除管制實務經驗與競爭規範

壹、研究目的

電力產業係為國家之重要能源工業，是造就國家經濟發展與成長之原動力，亦為國計民生所仰賴不可或缺之重要能源。以往獨占電力市場之形成背景係由於電力傳輸系統具有規模經濟，且因電能無法有效為其他能源替代之屬性，復因各國政府基於電力對經濟發展與國計民生重要性之考量，使得電力產業除自然獨占特質外，往往再加上一層政府之法律保護，在政府所訂定人為市場障礙之管制規範下，致使世界各國之電力產業無法跳脫公營或獨占之市場狀態，亦難以達成經濟效率之目標。然而隨國內外社會政治經濟情勢變遷、科技進步及人民生活水準提升，加以電力市場之民營化與自由化乃當前全球性趨勢，電業自由化遂為我國重要政策。

近年來世界各國紛紛進行電力市場自由化與解除管制，我國在因應產業自由化潮流下，電業自由化亦列為現階段電力產業發展政策之重心，其中電力市場競爭機制之運作模式，依各國國情雖有不同，然值我國推動電業自由化之際，其制度及經驗均值得我國學習與借鏡。

當前各國推動電業自由化較有成效者，除英國及美國外，當推澳洲。澳洲之競爭法主管機關競爭暨消費者委員會更肩負電力市場交易監督之責，實值我國身為競爭法主管機關公平交易委員會所推介值得學習之對象。

另由於我國天然氣市場上游，長久以來皆由中油公司獨家進口或生產供應，欠缺市場競爭機能，而下游之城鎮瓦斯市場雖已開放二十五家民營城鎮瓦斯事業區域獨占經營，惟其規模過小，導致缺乏規模經濟，使用戶往往需負擔相對較高之使用成本，讓消費者寧

可選擇具有危險性之桶裝瓦斯，而放棄具安全性天然氣之使用，而各國紛紛進行天然氣市場之改革，亦讓我國對推展天然氣市場自由化有極大的省思及檢討，為建立天然氣市場之公平競爭環境，故此出國計畫亦期能藉參訪澳洲，以汲取天然氣市場解除管制之執法經驗。

貳、參訪行程及拜訪人員名單

「澳洲電業及煤氣事業解除管制實務經驗與競爭規範」

九十一年六月二十一日至七月四日參訪行程

日期	地點	參訪機構	拜訪人員	參訪項目
6/21 (Fri.)	雪梨			台北啟程搭機至雪梨
6/22 (Sta.)	雪梨	澳大利亞競爭與消費委員會 Australian Competition and Consumer Commission (ACCC)	Project Manager Mr.Fitts Jason	1.抵達雪梨 2.確認參訪單位、參拜時間、地點及交通方式
6/23 (Sun.)	假日			
6/24 (Mon.)	雪梨 Level 7, Angel Place 123 Pitt Street	澳大利亞競爭與消費委員會 Australian Competition and Consumer Commission (ACCC)	Senior Analyst Regulatory Affairs-Gas Ms Nicole Moffatt	1.澳洲天然氣產業之管制環境及現況 2.澳洲天然氣產業自由化之經驗
6/25 (Tue.)	雪梨 Level 7, Angel Place 123 Pitt Street	澳大利亞競爭與消費委員會 Australian Competition and Consumer Commission (ACCC)	Regulatory Affairs Division-Gas Ms.Meredith Hooper	澳大利亞競爭與消費委員會天然氣管制部門之組織與架構及角色扮演
6/26 (Wen.)	雪梨 Level 7, Angel Place 123 Pitt Street	澳大利亞競爭與消費委員會 Australian Competition and Consumer Commission (ACCC)	Senior Analyst Ms Nicole Moffatt Project Manager Mr.Alex Ralston	澳洲天然瓦斯管線系統第三者接續使用法規介紹
6/27 (Thu.)	雪梨 Level 7, Angel Place 123 Pitt Street	澳大利亞競爭與消費委員會 Australian Competition and Consumer Commission (ACCC)	Regulatory Affairs Division-Gas Ms.Suzie Copley Mr.Giles Stevens	英國天然氣市場之解除管制經驗
6/28 (Fri.)	雪梨 Level	新南威爾斯州獨立價格與管制法庭	Secretary Judy Greenwell	因拜訪對象 Mr Jim Cox 臨時至墨爾本開會，故與其秘

日期	地點	參訪機構	拜訪人員	參訪項目
	2,44Market Street	Independent Pricing and Regulatory Tribunal		書再次確認拜會時間
6/29 (Sat.)	假日			
6/30 (Sun.)	雪梨至坎培拉			
7/1 (Mon.)	Level 7 470 Northbourne Avenue Dickson ACT 2602	澳大利亞競爭與消費委員會 Australian Competition and Consumer Commission (ACCC)	Assistant Director Regulatory Affairs – Electricity Ms Donella Greer	澳洲電業自由化之經驗及成效
7/2 (Tue.)	Level 7 470 Northbourne Avenue Dickson ACT 2602	澳大利亞競爭與消費委員會 Australian Competition and Consumer Commission (ACCC)	Assistant Director Regulatory Affairs Division- Electricity Ms Donella Greer	澳洲競爭與消費委員會電力管制部門之組織與架構及執法經驗交流
7/3 (Wen.)	坎培拉至雪梨 雪梨 Level 2,44Market Street	新南威爾斯州獨立價格與管制法庭 Independent Pricing and Regulatory Tribunal	Full Time Member Mr Jim Cox	新南威爾斯州之電業與天然氣事業費率之管制及審議
7/4 (Thu.)	澳洲雪梨搭機返回台北			

參、澳洲電力市場自由化發展概況

一、電業自由化之緣起

1970 年代起，各國紛紛將市場競爭機能，引進電力事業領域進行改革，長久以來，電力事業應具有自然獨占特性，因此發電、輸電、配電、售電之垂直整合經營方式由來已久，一則由於自由經濟思潮之轉變，市場開放自由競爭，將創造更多潛在競爭者，且提高獨占公用事業之經營效率，電力產業之經營受此思潮影響，日漸趨向自由化；二則由於科技之進步，使得傳統電力產業結構受到重大衝擊，如高效率、低投資成本之燃氣複循環發電機組之開發、智慧型電錶之使用、電力調度之電腦化、配電端與用戶間界面可有效分離、配電自動化及電力負載控制技術之進步等，不僅提供電力市場潛在競爭者進入市場之利基，使發電部門可達成完全競爭之局面，更將批發代輸推廣至零售代輸，並降低整體供電成本，形成電業由管制逐步走向解制之路線；三則由於石油危機之衝擊，能源價格大幅提高，發電成本亦急遽上升，石油進口國家不得朝向鼓勵汽電共生、開發新能源、節約能源之方向發展，而獨立發電廠亦因應而生，與原有垂直整合之獨占電業相互競爭，形成電力產業競爭環境，也因此對電力產業之經營產生重大之變革。

電力產業改革之過程中，首先解除管制部分，係為發電市場之開放，基於發電市場本身較無明顯「規模經濟」，且發電成本約占電力產業總成本之七成，透過自由市場競爭，極易達成降低成本與提高效率之目的，相對具有規模經濟而不具競爭性之樞紐設施輸、配電部門，則仍以維持管制為宜，另為利發電部門進行競爭，代輸制度之實施，獨立電力調度機構之建立，繼而電力自由競價市場或電力池之成立，皆因應電力市場之改革情勢配合實施，最後則開放售

電端之競爭，售電之相關行業競相成立後，允許用戶自由選擇供電來源，電力市場可謂真正邁向自由化與解除管制。

二、澳洲實施電業市場自由化之回顧

由於澳洲電力產業長期皆由州政府各自垂直獨占經營，存在極高進入障礙，電力價格由各州政府管制，由於各州發展不同電力系統，且因過度資本化，導致發電容量及輸配電系統大量閒置，中央與地方政府皆面臨財務短缺之困境，故 1990 年起，澳洲各州政府先後開始進行電業自由化之前置工作，將垂直獨占之電業依據發電、輸電、配電、售電等功能進行產業結構重組，並實施民營化與企業化之改革。澳洲聯邦政府為免電業結構轉變過遽對社會產生不良衝擊，故於 1990 年成立產業委員會（Industry Commision）進行行政檢討，舉行公聽會與聽證，1990 年 11 月澳洲產業委員會乃對澳洲電力市場進行改革提出建議，包括將各州垂直整合之公營電業分割為發電、輸電、配電、售電等四個部門，其中發電部門引進市場競爭機制，整併各州所擁有之輸電網為單一國家輸電系統，規範輸配電公司為公共輸電者（common carrier）。因此聯邦政府接受產業委員會之建議案，於 1991 年 7 月成立國家輸電網管理委員會（National Grid Management Council），統籌全澳洲輸電網路之運作，並作為各州政府之諮詢機關，協調州政府與聯邦政府之爭議，並研擬國家電力法規（National Electricity Code，NEC）。

1995 年各州同意在東澳與南澳間共同建立單一國家電力市場，1996 年在國家電網管理委員會之策劃與推動下，通過澳洲國家電業法規，該法規引進電力市場競爭機制，為澳洲創造一全國電力批發市場，並設定電力現貨價格，市場範圍包括維多利亞州、新南威爾斯州、南澳、昆士蘭及首都特區。由於電業結構重組工程十分浩大，

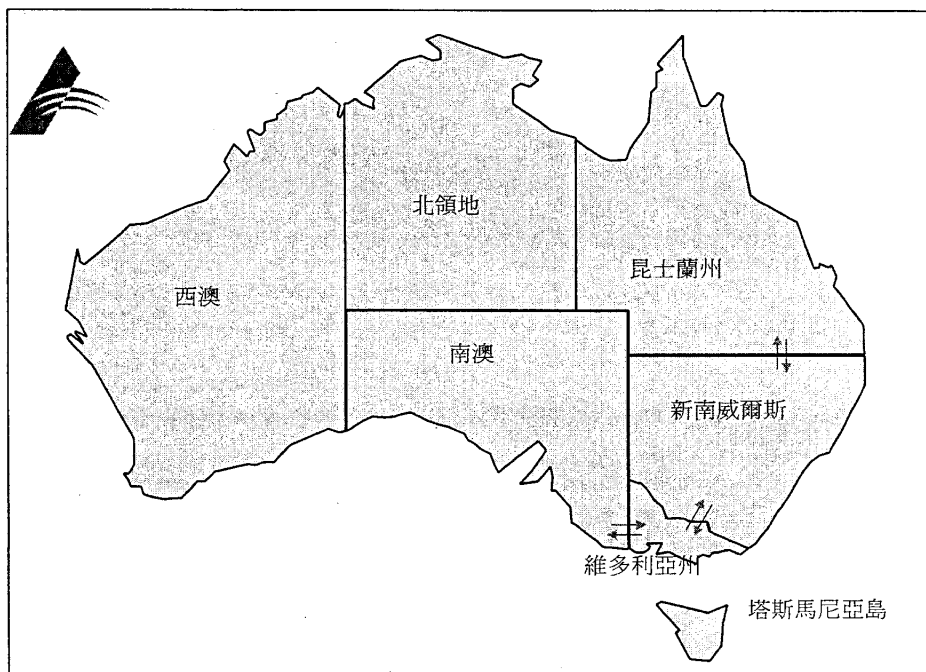
澳洲國家電力市場 (National Electricity Market) 之建立係分三階段進行，由於第一階段進展快速，故直接進入第三階段，其中第一階段、第三階段之改革重點如下：

- (一) 第一階段：1997 年 5 月，由維多利亞州、新南威爾斯州與首都特區先進行國家電力市場第一階段運作，成立聯合各州之躉售電力市場及連結與整合州際間之電網，在此階段，州之間電力交易有容量之限制，且國家電力市場之運作與輸配電網之連結仍須遵守各州法令，區域電力系統之穩定性與安全性仍由各州自行負責。1997 年 10 月昆士蘭州納入國家電力市場營運範圍，惟其輸電網路並未與其他地區進行連結。
- (二) 第三階段：1998 年中首都特區加入國家電力市場運作，在此階段完成之前，由於維多利亞州之電力自由化進展最快速，因此有關電力交易業務主要由維多利亞電力交易所統籌管理，1998 年 12 月國家電力市場管理公司 (NEMMCO) 正式運作，維多利亞電力交易所之業務亦移轉至 NEMMCO，而依據澳洲國家電力法規之規定，NEMMCO 之職責尚包括負責強制性國家電力市場之運作與管理，促進電力交易效率；管理及時電力市場 (包括價格之計算、市場參與者之供電量與用電量之計算、及時市場之結清)；管理全國輸電系統，維持供電均衡，且負責輸電網路之擴建與規劃；負責有意進入躉售電力市場業者之登記；確保輔助服務之提供等。

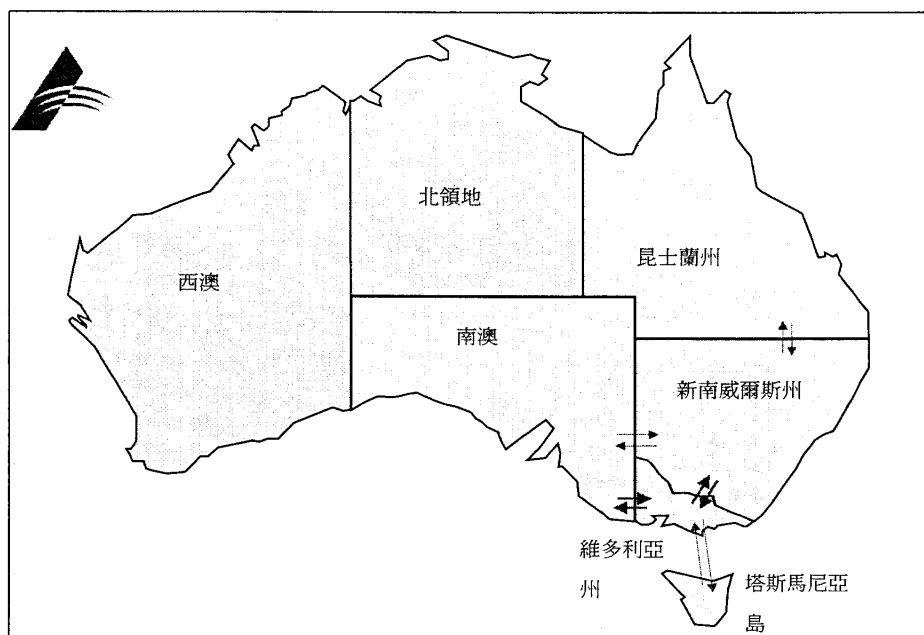
綜上所述，澳洲政府對於澳洲國家電力市場之改革目標，在於落實用戶消費選擇權，提供無歧視之輸配電網路服務，發電部門、

售電部門及州際間電力交易之無進入障礙，而各州售電部門完全開放競爭之時程，新南威爾州、維多利亞州已於 2002 年 1 月實施，南澳則將於 2003 年 1 月施行，首都特區則尚在審理法規中。有關現行澳洲國家電力市場情況，目前雖僅昆士蘭州、新南威爾斯州、維多利亞州及南澳及首都特區之電網相互連結如圖一，未來澳洲國家電力市場則規劃興建海底電纜，使塔斯馬尼亞島之電網亦能加入市場連結如圖二。

圖一現行澳洲電力市場



圖二未來澳洲國家電力市場



三、澳洲競爭與消費委員會（ACCC）於澳洲電力市場所扮演之角色及定位

ACCC 係依據澳洲交易行為法（Trade Practice Act，TPA）授權成立，其職責在於監督國家電力市場交易，以改善電力市場之競爭與效率，防止電力市場違反競爭行為之發生，並促進電力市場之公平交易行為與價格競爭。ACCC 對於市場行為之管制精神主要在強調在極小化行政成本、客觀化、透明化及輕度管制之情形下，消除獨占訂價，提供資產所有者合理之報酬，並創造市場獲利之誘因。

ACCC 在採取誘因管制方法下，並非直接去控制受管制產業（電力產業）所賺取之實際報酬，而係鼓勵服務提供者提高交易量並降低成本，同時能將長期獲利與消費者分享。

由於澳洲政府體認到發展一自由化之國家電力市場，須有一

套健全性、無歧視性、且具有鼓勵競爭之輸電服務配合，方可克竟全功。在澳洲國家電力市場中，輸電部門扮演連結及輸送發電端電能至用戶端，雖然輸電部門具有自然獨占之特質，但澳洲政府要求其必須提供開放性且無歧視之輸電服務，並將輸電責任與定價之管理責任交付予 ACCC，因此當輸電網路服務提供者向 NAMMCO 註冊時，其必須向 ACCC 保證依據國家電力法規提供無歧視之網路出入權。至於配電責任與定價之管理責任及零售市場之管理則仍各州政府負責，而各州政府多會另設立管制者對轄區內之配電價格進行管制，以新南威爾斯州為例，該州之管制者即為獨立價格與管制法庭（Independent Pricing and Regulatory Tribunal, IPART），該法庭之組織結構上設有一位主委、一位全職委員、二位兼職委員，並設有能源部門、水及交通部門、政策發展分析部門及一般管理支援部門，IPART 除管制電力市場之配電價格，並參與網路服務之提供者與擁有者之隔離原則之訂定外，其尚對小企業與家庭用戶之零售天然氣價格隨時進行檢視與管制。

IPART 對新南威爾斯州之配電價格進行管制後，自 1996 年起至 2001 年止，家庭用戶之電價平均每年約上漲 8.1%，但其上漲主要因素來自澳洲消費稅之課徵，倘未將消費稅增加之因素納入考量，其實際電價每年約下降 1.7%。另自 2002 年元月起該州之電力零售市場開放競爭，惟為保障家庭用戶權益，IPART 對州政府提出一套零售價格之管制建議，雖家庭用戶可另行選擇電力供給者，適用新的供電契約下，適用不同供電費率，惟電力供給者所定供電費率每年上漲幅度不得超過消費者物價指數或澳幣 25 元，上述建議並已納入 2000 年電力供給法規（The Electricity Supply

Act) 修正案中。

(一) ACCC 管制輸電收益之原則

1999 年 7 月起輸電網路擁有者與服務提供者所建立之輸電總收益管制原則由 ACCC 負責管制，該原則如下：

- 1 ACCC 期望輸電服務之提供上引進競爭，惟當輸電服務競爭不可行時，則以收益上限加以管制。
- 2 ACCC 之管制制度必須使網路擁有者與服務提供者有誘因與合理之機會去提升效率，並可合理分配風險至輸電網路擁有者、服務提供者與使用者，且提供輸電網路擁有者與服務提供者合理之報酬率。

(二) ACCC 設定輸電收益上限之方式

針對每個輸電網路擁有者或服務提供者，在不少於 5 年之管制年限內，ACCC 設定收入上限，其須考量因素如下，另倘 ACCC 須重新設定上限時，亦必須讓所有受影響之團體由時間參與及反映此調整過程：

- 1 輸電網路服務需求量之成長與網路服務品質。
- 2 輸電擁有者與服務提供者之潛在合理利得。
- 3 依據相似產業面對之資本風險計算網路擁有者與網路服務提供者之加權平均成本。
- 4 輸電網路擁有者與服務提供者必須繳交之各項租稅，如州稅、地區稅等。

ACCC 所訂定收益上限 (Maximun Allowable Revenue) 之計算公式如下：

最高總收益上限

$$\begin{aligned} &= \text{資本報酬} + \text{資本折舊費} + \text{營運維護支出} + \text{淨稅負} \\ &= \text{資本加權平均成本} \times \text{原始資本資產基礎} + \text{可容許之折舊費用} \\ &\quad + \text{營運維護支出} + \text{淨稅負} \end{aligned}$$

(三) ACCC 管制輸電收益及制訂法規之決策過程

輸電網路擁有者與服務提供者必須定時送交財務與操作績效說明書予 ACCC，俾利 ACCC 隨時去檢視是否在未來修改收益上限或其他管制措施，但除非該項資料在電力法規中被要求公開或經輸電網路擁有者與服務提供者同意，否則 ACCC 對於輸電網路擁有者與服務提供者所提供之資料負有保密之義務。而依據電力法規 ACCC 必須公開資料，包括收益上限之估算方法與計算公式、與公式中採用變數之數值及其理由。

另外 ACCC 為避免輸電網路服務提供者能清楚劃分輸電部門與其他部門之會計與營運功能，避免有交叉補貼情形，經公開徵詢大眾意見（包括管制者、法規參與者、其他利益團體），並經委員會同意，研擬草案，復經公聽會聽證後，最後訂定網路服務提供者與擁有者之隔離原則（ring fencing principle），該原則涵蓋有輸電網路服務與其他業務之法定個體之劃分、建立輸電服務與其他無關業務之獨立會計帳與成本分離、網路服務提供者與他人間資訊流通之限制、容許 ACCC 增加或免除輸電網路服務提供者之義務、避免輸電網路服務與其他服務間資訊流通所可能造成不利競爭情形等。

肆、澳洲天然氣市場自由化發展之概況

一、基本背景

澳洲於 1990 年代之前，各州政府對於天然氣市場之管理係各自為政，且各州之天然氣市場係呈現獨占之局面，由於澳洲天然氣產

區與消費地距離甚遠，往往須經由管線連結供氣，而輸氣管線冗長更跨越各州，澳洲聯邦政府為避免各州政府對天然氣管線之管制產生爭議，且創造天然氣市場之利潤，促進天然氣產業投資與就業機會，故於 1995 年起，澳洲聯邦政府乃欲整合各州之輸氣管線，至 1997 年立法通過後，聯邦政府、州政府及地方政府同意讓第三者接續使用輸氣管線，使瓦斯能於州際間進行自由與公平之交易，進一步讓消費者可享受到瓦斯價格之降低與增加瓦斯供應服務之選擇機會之利益，惟僅東澳之輸氣管線受整合後同意將管制權交由澳洲競爭與消費委員會（Australian Competition and Consumer Commission，以下簡稱 ACCC）負責，西澳之輸氣管線¹則未受整合仍由各州政府自行管制，但仍遵守前述聯邦政府所通過之天然氣管線接續之相關法規。

由於澳洲之州政府權力與聯邦政府之權力相當，重大法案之通過往往須所有州（九個行政單位，包含六個州、二個特區及一個領土）同意，較小法案亦須五個行政單位同意方可通過實行，因此即便 1997 年後東澳之天然氣管線雖交由 ACCC 管制，惟其實際執行時，仍因州政府與聯邦政府之意見不一，難以整合，所幸澳洲為促進天然氣市場之健全發展，尚有設立一國家天然氣管線諮詢委員會（National Gas Pipeline Adversory Committee，以下簡稱 NGPAC）組織，該組織之成員包括 ACCC、州政府、管線公司、天然氣生產商、天然氣使用者、西澳天然氣管制局（僅參加二年歷史），其可針對天然氣相關法規對聯邦政府或州政府提出建言，並就實務面說服聯邦政府與州政府接受其改革之建議，達成整合聯邦政府與州政府意見之目的，該組織係每三個月召開一次會議。

¹ 據 ACCC 同仁曾提及達爾文城市原先發電燃料為石油，但因石油甚為昂貴，州政府為降低成本，乃由中澳之天然氣田規劃天然氣輸氣管線，交由私人興建，最終該輸氣管線由政府、私人及原住民所共有。

而因分布於澳洲各州之輸氣管線多僅有一至二條（新南威爾斯州僅一條，維多利亞州僅二條），難以充分發揮市場競爭機制，故現今聯邦政府已要求各州政府重新檢視天然氣法規，納入更多市場競爭之精神。至澳洲天然氣配氣與零售市場（Gas Distribution and retail）之管理皆由州政府設立管制者負責管制（如新南威爾州之獨立價格與管制法庭），另由於澳洲天然氣零售市場相當競爭，州政府為維護用戶權益，係採取價格上限（price cap）管制，並頒佈行政指導原則，倘有新的天然氣零售商進入市場即會調整價格上限標準。

二、澳洲競爭與消費委員會（ACCC）於澳洲天然氣市場所扮演之角色及執法經驗

ACCC 設立於 1995 年 11 月 6 日，其組織結構上設有一位主委、一位副主委、五位全職委員、十四位兼職委員。其分為中央辦公室及地方事務所，前者主要位於坎培拉、雪梨與墨爾本，其中並設有管制事務部門，負責電力、天然氣、交通價格、電信之管制事宜；後者則包括有維多利亞事務所、昆士蘭事務所、南澳大利亞事務所、塔斯馬尼亞事務所、新南威爾斯事務所、西澳大利亞事務所、北屬地事務所等七個事務所。

由於澳洲政府體認天然氣管線對於天然氣製造與管線輸配送市場競爭具有相當大重要性，倘天然氣管線之使用者或擁有者，為了阻礙上、下游市場競爭或獲取獨占利益，拒絕或限制他人接續使用天然氣輸氣管線，將嚴重影響天然氣市場競爭之運作，另一方面，由於澳洲天然氣管線係屬私人部門產業，無法採取將此關鍵樞紐設施交由政府管制之做法，因此僅得透過開放天然氣管線接續方式，以發揮天然氣市場之競爭機制，故澳洲國會在 1995 年通過「競爭政策改革法案」（Competition Reform Act）後，即將「國家接續制度」

(National Access Regime) 增列於澳洲「商業行為法」(Trade Practices Act) 中。

鑑於商業活動之複雜性與時效性，澳洲「國家接續制度」並非採經由法院爭訟程序來處理接續問題，而係採行政管制方式處理，一為透過「強制宣告程序」(Compulsory Declaration Process)，一為透過「接續計畫程序」(Access Undertaking Process)。前者係由任何關鍵設施之特定服務有接續需求者所發動，經向「國家競爭會議」(National Competition Council) 提出宣告申請，經國家競爭會議評估下列各項因素後，再向該設施所在地之州政府，提出宣告該項服務之建議：

- (一) 該項服務提供接續有助於促進該產業市場競爭。
- (二) 為提供該項服務而發展其他設施是非經濟的。
- (三) 該項設施因其規模、其對國家對外貿易或商業活動及國家經濟具有重大影響，而對國家有顯著重要性。
- (四) 該項服務提供接續並未有不當之安全風險。
- (五) 該項服務並未被其他接續制度所規範。
- (六) 該項服務提供接續未違背公共利益。

倘該項被申請宣告服務未能符合上述六點條件，州政府依法不能宣告該項服務，而倘特定服務被強制宣告後，並不表示該項服務之接續需求者已取得可接續該項服務之權利，而是表示接續服務之需求者取得與該設施擁有者或使用者協商接續有關條件之權利，如果雙方無法就接續條件取得協議，則可透過私人仲裁程序或向 ACCC 申請強制仲裁，而倘私人仲裁仍無法解決爭議，也可通知 ACCC，請 ACCC 針對接續條件做出裁決。

相對被動之「強制宣告程序」，「接收計畫程序」則提供事業主動提供接續服務之另一種管道，特定設施之擁有者可提出有關開放接續條件之計畫草案，向 ACCC 申請審查，委員會收到申請人提出接續計畫草案後，會公開接續計畫草案內容，並對外徵詢意見，在徵詢意見期間截止後，ACCC 必須針對是否接受該接續計畫提出決定，ACCC 必須同時考量服務提供者、接續者及公眾利益，如果 ACCC 經審查後認為可接受申請人提出之接續計畫，則該項服務將不適用「強制宣告程序」規定，但日後倘申請人拒絕該份接續計畫所列條件，與其他接續需求者協商，ACCC 將以違約為理由對申請人採取行動。

澳洲政府為使天然氣輸氣管線之國家接續制度更臻完善，訂定針對國家天然氣輸氣管線制度之第三者接續法規(National Third Party Access Code For Natural Gas Pipeline System)，該項法規目的主要在確保天然氣市場之健全發展、避免市場力量之濫用、促進天然氣市場競爭，落實消費者自由選擇權、使輸氣管線得以公平合理提供接續權予服務提供者與使用者利用、有效解決爭議。在此法規下，所被規範之天然氣管線之擁有者或經營者，被要求遵守管線接續之安排，管線接續安排在商業行為法(Trade Practice Act)第 III A 授權下，亦被設計允許管線擁有者或經營者在法規規範與接續可行下，可自行決定接續條件及接續費率。倘管線擁有者或經營者與接續需求者對接續條件或費率有所爭議，一般 ACCC 係鼓勵自行協調解決爭端，但當爭議無法解決時，首先 ACCC 會指定仲裁者，在仲裁之前，仲裁者要求雙方提出報告，並經徵詢公眾意見及考量雙方及公共利益，於各方提出意見之三個月內決定仲裁結果，ACCC 於國家天然氣法規對於管線接續之申請評估程序詳如圖三。

另外天然氣輸氣管線制度之國家第三者接續法規中，亦明定輸氣管線之參考接續費率原則，提供較大彈性以供所有輸氣管線適用，而參考費率之決定主要在於相關服務提供之效率成本，該原則之設計在使服務之提供者有能力賺取更多利潤，且在市場基礎之誘因下，促進天然氣市場之效率（降低成本）及發展，並確保管線營運之安全與可靠，且不干擾天然氣管線產業之投資決策。而參考費率決定前，須確立或預測未來提供管線接續服務期間所產生總收益及最初之管線資產價值，前者可以服務成本法（Cost of service）、內部報酬率法(IRR)及淨現值法(NPV)三種方式得出，其中服務成本法主要在回收成本，包含管線資產報酬、折舊費用、管線經營及維護費用及提供管線接續服務所產生非資本之費用；內部報酬率法則在合理之內部報酬率基礎下預測成本與收入；淨現值法則以管線資產最後價值為零情況下估算收入。後者對既有管線之資產價值係採以折舊後最適重置成本方法評估（depreciated optimised replacement cost），至新的管線之資產價值則以實際成本評估。舉例而言，假設既有管線之建造成本以現今技術建造須耗費 800 萬元，其耐用年限為 80 年，惟其已使用 30 年，則依最適重置成本法估算現今既有管線資產價值應為

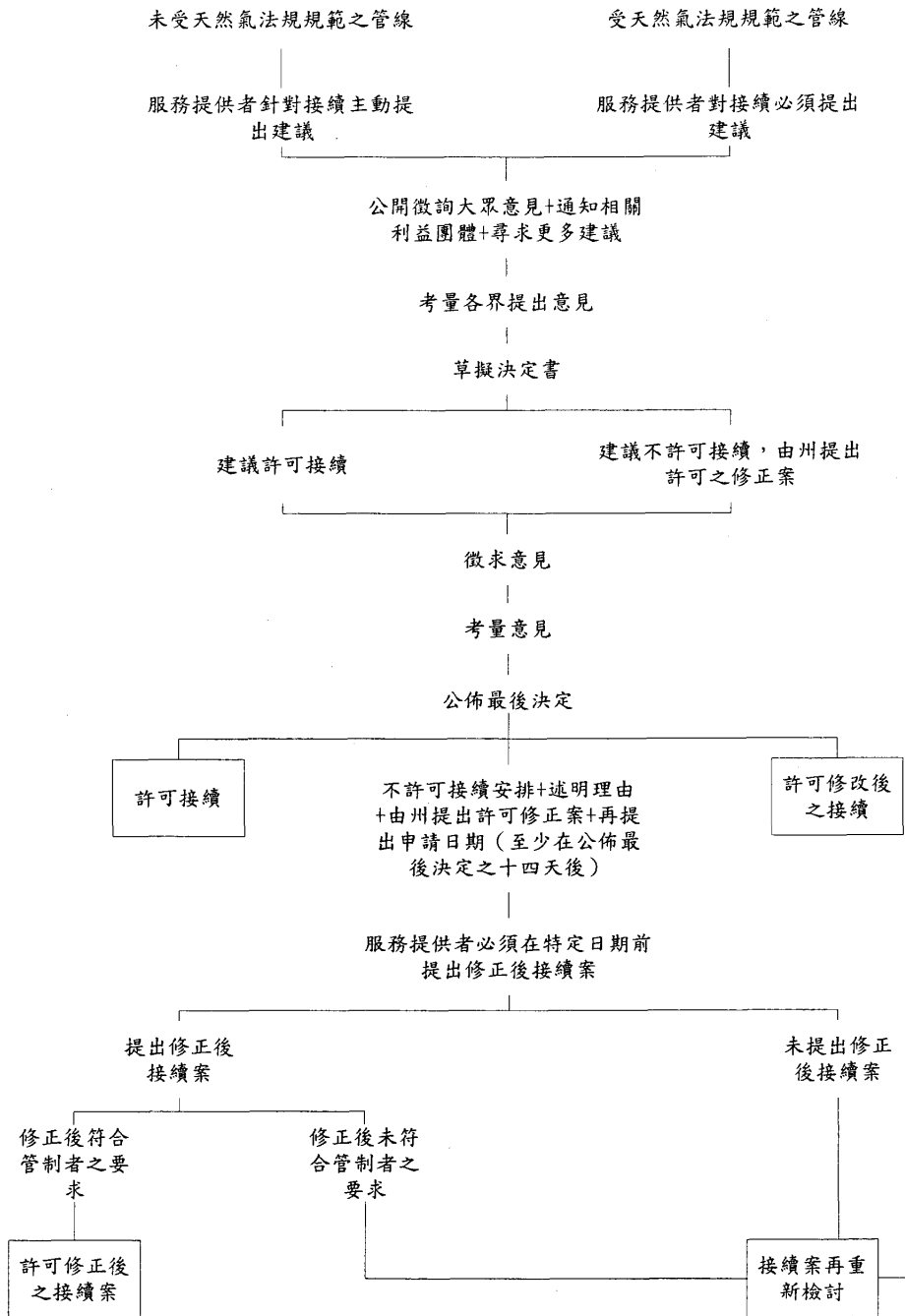
$$800 \times (80-30) \div 80 = 500$$

另關於參考接續費率標準之訂定方面，茲以服務成本法估算總收入為例，假設管線資產價值為 100 萬元，投資報酬率為 10%，且耐用年限為 5 年，以直線折舊法估算折舊費用，每年營運維修費用為 5 萬元之前提下，計算參考接續費率：

表一 參考接續費率

使用年度	1	2	3	4	5
管線帳面價值 (資產最初成本－累計折舊)	100	80	60	40	20
折舊費用	20	20	20	20	20
累計折舊	0	20	40	60	80
投資報酬(管線帳面價值×10%)	10	8	6	4	2
營運維修費用	5	5	5	5	5
總收入(折舊費用＋投資報酬＋營運維修費用)	35	33	31	29	27
參考接續費率 (總收入÷最初管線帳面價值)	35%	33%	31%	29%	27%

圖一 ACCC 對天然氣管線接續申請案之評估流程



然而 ACCC 在致力多年提升澳洲天然氣市場效率之經驗下，其仍認為最終促使澳洲天然氣零售市場走向開放競爭，讓消費者可自由選擇供氣來源，這條路尚很漫長，其最大原因在於改革動力停滯不前，部分州及天然氣公司甚至走回頭路，只追求私人利益，而罔顧國家利益，使得整個社會對無法達成天然氣輸送效率與享受到低廉之天然氣價格都付出昂貴的代價。

1990 年代初期澳洲政府委員會 (The Council of Australian Government, 下稱 COAG) 即基於國家利益考量，致力於規劃建立國家瓦斯市場，其政策重心在於屬競爭的部門應開放競爭，而無法開放競爭的部門則交由管制，此不僅有助於增加消費者選擇機會，更可促進天然氣出口之競爭力。雖然 COAG 之計畫十分完善，且跨州之天然氣管線興建也逐漸增加，但十年來仍呈現地區性之天然氣市場情形，而消費者選擇權更進展緩慢，而地方當權者一旦掌握州區域之天然氣配氣管線 (gas distribution)，在長期合約下自獨占之天然氣生產商取得天然氣供應權，往往保留甚小空間給第三者加入競爭，以確保自己利益。

因此對天然氣產業而言，ACCC 認為採取管制措施確實是使天然氣市場產生競爭之最重要手段，因為興建第二條天然氣管線是相當耗費國家資源，且對天然氣價格影響很大，第三者也必須在合理價格之誘因下方願意打破獨占設施局面，進入投資。而管制將可在平衡管線資產擁有者與消費者間利益下，降低獨占所帶給社會之成本。倘管線接續費用設定過高，將直接將消費者財富移轉給管線資產擁有者，倘管線接續費用設定過低，管線將無法受到維護，且管線投資計畫亦將會因此受阻，由於管線投資十分重要，因此 ACCC 認為管制者所作決策必須有利於管線投資。雖然管制為部分天然氣管線營

運者所厭惡，其常主張 ACCC 給予投資報酬基準過低，將阻礙管線投資，且完全是以消費者為導向，但經由許多事實證明上述言論並不正確，因為尚有許多管線公司公開表示由於他們被管制，使得他們得以提供穩定、安全及確定收益之天然氣給消費者使用。而且澳洲國家經濟研究協會（National Economic Research Associates）之研究報告中也提到澳洲之管線投資之稅後報酬率（the rate of post-tax returns）遠高於美國與英國，而自 COAG 實施天然氣改革以來，管線之營運者約每年投資十億來興建數千里長之輸氣或配氣管線。

另外 ACCC 亦認為天然氣管線之管制者於進行管制時，必須給予天然氣產業足夠彈性使其可以面對特殊或不同層度之風險需求，如 ACCC 在做對允許西澳管線提供接續之決定時，歷時十年之審查期，且該決定中亦允許一旦輸氣管線需求成長時，初期資本損失是可以回收的。ACCC 體認到無限制之私營或公營之獨占行為最終將導致無效率、高價格及產出減少之結果，所以對於日漸影響電力市場之天然氣產業之改革，認為惟有透過顯著之管制手法，方能真正擴大天然氣之使用。

伍、英國天然氣市場發展之概況

一、基本背景與發展情形

英國為推動天然氣市場自由化，引進市場競爭，於 1986 年決定將垂直整合之英國天然氣公司（British Gas Co.）民營化，同時頒佈天然氣事業法（Natural Gas Act），規範英國天然氣公司之經營，且依據該法成立天然氣管制局（the Office of Gas Supply，OFGAS）以監督管理獨占之民營英國天然氣公司。按英國天然氣公司控制整個

英國所有高壓、中壓及低壓之輸氣網路，雖然依據英國 1982 年通過之油氣法 (Oil and Gas Act)，天然氣公司必須允許任何競爭者使用輸氣網路傳輸天然氣，但由於英國天然氣公司具有市場獨占地位，並無新進之競爭者足以與之抗衡。

1990 年代初期英國獨占與合併委員會要求英國天然氣公司公開天然氣市場費率及相關資訊，且須將輸氣部門與供氣部門明確分隔，以確保輸氣價格之公平與合理，而天然氣管制局亦對英國天然氣公司提出價格上限 (Price Cap) 之規定，惟為真正落實調整天然氣產業獨占結構，1993 年英國政府首將天然氣管線獨立成為輸氣公司 (Transco)，專營天然氣輸送業務，且不得經營上下游天然氣銷售及購買業務。以往 OFGAS 等監督單位僅能不斷付諸許多限制於英國天然氣公司，迫使天然氣市場開放競爭，惟在區隔輸氣、售氣等業務後，除打破天然氣市場壟斷局面外，更順利引進競爭機制，而輸氣公司更樂於配合政府推動天然氣競爭政策。

1995 年英國政府修正天然氣事業法，OFGAS 為推動開放天然氣家庭用戶選擇權，乃先透過執照核發方式以規範業者之權責，英國政府所核發之天然氣執照計有三種，持有執照者每年約繳交年費，作為 OFGAS 之預算：

- (一) 陸地代輸執照 (Transportation License)：其業務範圍為海岸接氣管連接到用戶端用氣量表之所有輸氣管線之經營。雖目前英國除輸氣公司 (Transco) 外，尚有其他小型輸氣業者負責供氣予大樓或工廠等特定用戶，但因規模較小，故輸氣部門形同由 Transco 獨占經營。OFGAS 與 Transco 共同規劃輸氣網路使用規則 (Transco Network Code)，所有輸氣網路使用者皆須與 Transco 簽約遵守輸氣網路使用規則，另外 OFGAS

亦規定輸氣公司不得同時兼營海運供氣批發 (Shipping) 及銷售 (Supply) 業務，並對 Transco 之費率採價格上限法管制。

(二) 海運供氣批發執照 (Shipping License)：其核發執照對象為自北海油田購氣，並與 Transco 簽約之供氣公司。目前除英國天然氣公司外，尚有約六十家之區域性電力公司及石油公司亦取得該項執照。

(三) 售氣執照 (Supply License)：核發執照對象係指售氣給用戶之天然氣公司，由於售氣業者於供氣體系中係直接面對用戶，故售氣執照中亦針對售氣公司不得於冬天對老人或傷殘用戶停止供氣等社會義務之規定，同時用戶倘未能付款，亦不得隨意斷氣。

二、開放用戶供氣選擇權之情形

至英國，1986 年「天然氣事業法」已要求開放每年燃燒天然氣超過 25000 撤姆 (therms) 之用戶具有選擇供氣廠商之權利，1992 年則將開放門檻降低為燃燒天然氣超過 2500 撤姆 (therms) 之用戶。至家庭用戶部分，1996 年 4 月 OFGAS 於英格蘭、威爾斯及蘇格蘭地區，分階段開放家庭用戶選擇權，在此階段中，計有 12 家新供氣公司參與市場競爭後，其供氣價格較開放前英國天然氣公司所提供之價格為低，致使瓦斯價格下跌 20%。

1997 年 2、3 月間英國實施第二階段家庭用戶供氣選擇權之開放，在此階段享有供氣選擇權用戶達 200 萬戶；1998 年 5 月間英國所有天然氣用戶皆可享有供氣選擇權，約有 25 家供氣公司參與市場競爭。英國自 1986 年開放天然氣市場競爭以來，天然氣價格約下降 37%。

另 OFGAS 與英國電力管制機構 OFFER 已於 2000 年合併為一

能源機構 OFGEM，成為英國電力與瓦斯業之主管機關。

陸、心得與建議

一、電力市場

按我國「電業法修正草案」業於 91 年 5 月再函請立法院審議中，依據經濟部研擬之我國電業自由化方案，我國電業自由化之目標與方向係在達成電力供應充裕，輸配電容量無虞，電力網路調度之公平與合理及法規制度之健全之前提下，全面開放發電部門自由競爭，輸配電部門維持公用事業，開放輸配電網路之代輸，逐步開放用戶選擇權，以及訂定公平競爭原則，設置電力調度中心，以安全、公平、公開及經濟調度之原則執行調度。

此次出國參訪實習，由於規劃參訪時間有限，且因行程規劃十分急迫下，致與國家電力市場管理公司間未能及時聯繫，參訪機會因而失之交臂，甚為遺憾，所幸參訪 ACCC 時收獲良多，有關心得與建議如下，希望可汲取其執法經驗，並吸收澳洲電力市場制度之優點，有助於身為競爭法主管機關之公平交易委員會於推動我國電業自由化之角色扮演上更為稱職。

(一) 實施電業自由化，首應確保電源穩定供應及充足之輸配電系統容量

按充裕之電源與可靠的輸電網路為實施電業自由化化最基本之條件，由於澳洲之自產能源豐富，且因早期過度資本化因素，其不僅供應充裕之電力（其中發電燃料來源 63%來自黑煤，28%來自灰煤，5%來自天然氣，3%為水力發電，1%為其他發電來源），甚至出現備用電力過多，而各州輸電網

路容量，亦有閒置情形，造成澳洲將發電、輸電、配電業自垂直整合電業分割出來，歷時四年即已完成國家電力市場之建置。

現今我國除積極開放民營電廠設立（第一階段至第三階段），以期確保電力系統備用容量率達 20% 之外，並積極投資興建第六輸變電計畫（投資金額高達 4543 億元），強化我國輸電系統，提高供電可靠度，應屬我國推動電業自由化之首要工作重心。

（二）應設立電力調度機構，以公平公開執行調度電力

澳洲係成立 NEMMCO 負責電力調度、輔助服務與交易業務，以確保輸電網路之開放後可無歧視供電業所使用，而我國電業法修正草案因其允許綜合電業之設立，因此更亟需成立公平、客觀、獨立運作之電力調度中心，以避免不公平競爭情事發生，及確保輸配電網路無差別待遇之開放使用。

有鑑於電力調度中心的成立，為電力市場自由化所必須，因此電力調度中心相關組織章程、運作規範、軟硬體設施及監督、管理機制等，均應及早及審慎進行規劃。

至於我國應比照澳洲於單一機構 NEMMCO 賦予電力交易與電力調度之功能，即結合電力交易所，以負責電力交易乙節，按先進國家推動電業自由化，多將輸電部門功能分為調度組織（S O）、交易組織（P X）及資產組織（T O）三部分，如美國加州係採取三者獨立，而澳洲則採將 I S O 與 P X 合併，T O 獨立成立者，抑或三者合併（如英國早期），鑒因我國電力系統係為獨立系統，以往並無相關交易機制，而電力市場自由化宜採循序漸進，如英國（英格蘭與威爾斯）

現行電力交易制度於 1990 年開始實施，經過七年的運作後，英國管制當局檢討發現在現行制度下，電力池競價制度無法反映發電業者的成本，電力池價格的變動與發電成本降低並不相關，因此於 1997 年 7 月開始規劃新電力交易制度(The New Electricity Trading Arrangements, NETA)，新制度原計畫於 2000 年 11 月 21 日開始實施，但由於測試不及，實施日期已延後至 2001 年 3 月 27 日，因此我國現階段宜採雙邊合約交易方式之設計機制，惟考量該項交易方式價格資訊欠缺透明化，調度中心無法執行經濟調度，是以長期而言我國仍應視市場發展需要，適時讓電力調度中心可兼辦電力交易功能，另為使制度單純化、減少交易成本、責任歸屬明確及提升市場效率，建議第一階段應先將輸電部門自台電公司獨立劃分出來，賦予電力調度與電力交易功能，再視制度運作成熟後，將電力調度與電力交易功能分割獨立運作。

(三) 政府應降低或消除業者進入電力市場的門檻

為利推動電力市場自由化，政府部門應制訂健全法規制度，應減少業者進入障礙，並減化行政作業流程，以提高電業整體生產力，進而促進經濟發展，增進消費者福祉。

(四) 政府對於輸、配電等管制部門應採取誘因管制方式，以確切落實真正的電業自由化精神

自澳洲電力市場自由化之經驗，輸電網路容量是否充裕為電業自由化成功之關鍵，無論電源如何充足，發電端競爭機制規劃十分完善，倘輸電網路無法將電能送至用戶端，電業自由化皆屬空談，而政府對輸配電線路之費率管制，應考量是否足以使輸配電設備擁有者或輸配電服務之提供者回收

其輸配電系統之投資，且足以吸引投資人興建輸配電設備，且應力求管制公式資訊之透明化，並讓相關團體得以充分表達意見。

由於我國電業法修正草案規定，綜合電業之電價及輸配電線路之費率將受到管制，故未來政府相關單位在訂定電價、輸配電收費率及其計算公式時，應建立適當反映營運成本（含購電成本或燃料成本）的調整機制，且應讓業者適時表達意見，否則自由化後倘綜合電業與輸、配電業無法合理經營，綜合電業與配電業亦無法善盡供電義務，輸電瓶頸現象亦將會重演。

（五）零售部門自由化相當重要

售電業之開放，將使小型用戶可透過售電業者進行群體結合，而在具一定規模下進入電力市場直購，而有較大能力與空間與發電業或配電業議價之機會，真正確切落實用戶購電選擇權，讓消費者得以享受到更低廉之電價，因此鑑於澳洲各州政府皆已逐步開放售電部門競爭，我國基於市場競爭之機制建立，未來電力市場亦應全面開放售電市場競爭。

綜上所述，我國電業法修正草案之設計應謹慎規劃，其各項機制（如電力交易市場型態、電力調度與競爭機制、輸電計價等）必須實際可行，並採循序漸進的方式推動，尤其在競價機制與輸電計價上，一定要具有提供新電源與輸電等容量之投資誘因，且傳遞正確價格資訊，充分反映區域壅塞成本，以導引電力資源最適配置，確保電力穩定供應及提高供電可靠度與安全。

二、天然氣市場

目前我國刻正積極規劃天然氣市場自由化政策，天然氣市場主

管機關經濟部為推動天然氣產業自由化，業已研擬就天然氣管線開放代輸進行改革，藉由此次出國參訪實習機會，有關心得與建議如下，期以吸收英、澳國家天然氣自由化之經驗與優點，順利推動我國天然氣市場自由化。

(一) 實施天然氣市場自由化，開放天然氣管線代輸為促進市場競爭機制之必要條件

按天然氣管線代輸方式主要為躉售代輸 (Wholesale Transportation) 與零售代輸 (Retail Transportation) 二種方式，前者係指天然氣透過輸配氣公司代輸至另一家天然氣公司，以利該公司再銷售天然氣至用戶端。後者則指開放用戶選擇泉下，用戶端指定供應商，透過輸配氣公司直接代輸天然氣供用戶使用。

由於天然氣管線興建不易，且為達成有效利用之目標，參考英國、澳洲之經驗，皆採開放天然氣管線代輸方式，甚至對代輸費率進行管制，使天然氣管線得以公平合理使用，以確切落實天然氣市場之競爭，而觀之現行我國天然氣輸氣管線系統 (永安接收站至岡山隔離站、岡山隔離站至大林捕配氣站、岡山隔離站至新竹配氣站)，皆由中油公司所掌控，雖政府已開放興建北部天然氣接收站，期以南北天然氣接收站互相支援，以穩定供應天然氣，在此前提下，天然氣管線開放代輸更是當務之急。

惟查主管機關經濟部於研擬「天然氣事業法(草案)」時，雖同意開放管線代輸，但亦規定：「天然氣生產事業或天然氣進口事業，其輸儲設備容量尚有餘裕時，對其他天然氣生產事業或天然氣進口事業之代輸需求，非有正當理由不得拒

絕。」反觀英國、澳州政府強制業者實施天然氣管線代輸時，並未以輸儲設備容量尚有餘裕為前提，故此部分應為我國政府擬訂天然氣政策所應納入考量修正，無論如何，使業者得以公平無歧視原則下使用輸氣管線，已為現行建立國內天然氣產業競爭環境所需。

（二）開放用戶供氣選擇權，以維護消費者權益

按英國、澳洲之天然氣市場自由化，政府多以循序漸進方式，透過法規修訂，逐步推動天然氣市場自由化，雖澳洲面臨州政府與供氣業者以私人利益為導向經營之改革阻礙，惟其天然氣市場自由化仍以開放用戶供氣選擇權為最終目標，而英國在徹底實施用戶供氣選擇後，消費者不僅享受更低廉之天然氣價格；另一方面，售氣者—天然氣公司參與市場競爭，消費者因此更可獲得更佳之供氣品質與服務。

雖現行我國輸配氣管線設備尚未臻完善，且天然氣尚須仰賴進口供應，開放用戶供氣選擇權確有困難所在，惟未來倘我國輸配氣管線設備趨於健全，逐步開放用戶供氣選擇權，應是未來努力之方向。

（三）應重視天然氣管制機構職權之獨立性

英國 OFGAS 其秉持政府部門與產業團體保持適當距離（arm-length）及職權之獨立性，負責監督獨占經營之英國天然氣公司，並透過價格管制與鼓勵新進業者參與市場競爭方式，成功改革英國天然氣市場，縱使 OFGAS 隸屬於貿工部，其局長亦由貿工部部長指派，但貿工部部長仍不得干預其天然氣市場之裁決，或在未有明顯不當疏失下將局長免職。

相對澳洲 ACCC 雖在聯邦政府賦予職權下，監督澳洲天

然氣市場之運做，並進行天然氣市場改革，但因受限澳洲係由州與聯邦政府所組成之政治體制，各州政府對天然氣市場經營方式、管制型態、改革方向均握有相當大的實權，往往各州政府為順應民意及配合地方產業政策下，在某些措施與聯邦政策有相互扞格不合之處，致使 ACCC 推動天然氣市場改革政策遭遇極大阻力，此亦成為澳洲未來推動天然氣市場改革之重要課題。

**NATIONAL THIRD PARTY ACCESS CODE
FOR
NATURAL GAS PIPELINE SYSTEMS**

November 1997

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INTRODUCTION

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

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

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

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

Important features of the Code are:

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

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

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

1. COVERAGE

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

In relation to the first issue, the scope of the Code is limited to Pipelines used for the haulage of Natural Gas. The definition of Pipeline includes gas transmission pipelines and distribution networks and related facilities, but excludes upstream facilities.

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

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

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

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

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

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

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

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

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

Pipelines in Schedule A are Covered

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- 1.1 Each Pipeline listed in Schedule A is a Covered Pipeline from the date of commencement of the Code.
- NCC to Recommend on an Application for Coverage*
- 1.2 Pipelines other than those listed in Schedule A may become Covered after the commencement of the Code where a person applies to the NCC for the Pipeline to be Covered and, after receiving a recommendation from the NCC, the Relevant Minister decides that the Pipeline should be Covered.
- 1.3 Any person, including the Relevant Regulator, may make an application to the NCC requesting that a particular Pipeline be Covered. A single application may be made under this section 1.3 for the Coverage of the whole or any part of a Pipeline, provided that all of that Pipeline, or all of that part of a Pipeline, is owned or operated by the same Service Provider or group of Service Providers. The NCC may publish guidelines concerning the form and content of Coverage applications and specifying the amount of any fee to be paid on the making of an application. If it does so, applications must be made in accordance with those guidelines.
- 1.4 When the NCC receives an application under section 1.3 the NCC must:
- (a) if it considers that the application has been made on trivial or vexatious grounds, reject the application without further consideration; and
 - (b) in all other cases within 14 days after receipt of the application:
 - (i) inform the Service Provider and each other person known to the NCC who the NCC believes has a sufficient interest in the matter that it has received the application; and
 - (ii) publish a notice in a national daily newspaper which at least:
 - (A) describes the Pipeline to which the application relates;
 - (B) states how copies of the application may be obtained; and
 - (C) requests submissions within 21 days after the date of the notice.
- 1.5 The NCC must provide a copy of the application to any person within 7 days after the person requests a copy and pays any reasonable fee required by the NCC.
- 1.6 Within 35 days (but not earlier than 21 days) after the day on which a notice is published under section 1.4(b), the NCC must prepare a draft recommendation on the application and provide a copy of the draft recommendation to the applicant, the Service Provider, each person who made a submission and any other person who requests a copy. In preparing the draft recommendation the NCC must consider any submissions received within the time specified in the notice published under section 1.4(b) and it may (but is not obliged to) consider any submissions received after that time.
- 1.7 Within 28 days (but not earlier than 14 days) after the day on which its draft recommendation became publicly available, the NCC must submit a recommendation to the Relevant Minister:
- (a) that the Pipeline be Covered; or
 - (b) that the Pipeline not be Covered.
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If the NCC recommends that the Pipeline be Covered, the NCC may do so to a greater or lesser extent than requested by the applicant if, having regard to the part of the Pipeline that is necessary to provide Services that Prospective Users may seek, the NCC considers it appropriate. The NCC may not recommend Coverage of a greater part of a Pipeline than is owned or operated by the same Service Provider or group of Service Providers.

- 1.8 In forming its recommendation the NCC must consider any submissions received from the Service Provider, the applicant or any other person within 14 days after the date on which its draft recommendation became publicly available and it may (but is not obliged to) consider submissions received after that time.
- 1.9 Subject to sections 1.4(a) and 1.10, the NCC must recommend that the Pipeline be Covered (either to the extent described, or to a greater or lesser extent than that described, in the application) if the NCC is satisfied of all of the following matters, and cannot recommend that the Pipeline be Covered, to any extent, if the NCC is not satisfied of one or more of the following matters:
- (a) that access (or increased access) to Services provided by means of the Pipeline would promote competition in at least one market (whether or not in Australia), other than the market for the Services provided by means of the Pipeline;
 - (b) that it would be uneconomic for anyone to develop another Pipeline to provide the Services provided by means of the Pipeline;
 - (c) that access (or increased access) to the Services provided by means of the Pipeline can be provided without undue risk to human health or safety; and
 - (d) that access (or increased access) to the Services provided by means of the Pipeline would not be contrary to the public interest.
- 1.10 At any time prior to the NCC making a recommendation the relevant Service Provider may notify the NCC that it agrees to Coverage of the Pipeline to the same extent as specified in the application. The NCC may then recommend that the Pipeline be Covered to the same extent as specified in the application without considering the matters set out in paragraphs (a) to (d) of section 1.9. The NCC must forward the Service Provider's notice to the Relevant Minister with its recommendation.
- 1.11 The NCC must provide a copy of its recommendation and the reasons for the recommendation to the Service Provider, the applicant, each person who made a submission and any other person who requests a copy.
- 1.12 The applicant may withdraw the application by notice to the NCC at any time before the Relevant Minister makes a decision concerning Coverage of the Pipeline.

Relevant Minister to Decide on a Coverage Recommendation

- 1.13 Within 21 days after a Coverage recommendation is received by the Relevant Minister, the Relevant Minister must make a decision:
- (a) that the Pipeline is Covered; or
 - (b) that the Pipeline is not Covered.

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

- 1.14 The Relevant Minister may require the NCC to provide such information, reports and other assistance as the Relevant Minister considers appropriate for the purpose of considering the application.
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- 1.15 Subject to section 1.16, the Relevant Minister must decide that the Pipeline is Covered (either to the extent described, or to a greater or lesser extent than that described, in the application) if the Relevant Minister is satisfied of all of the matters set out in paragraphs (a) to (d) of section 1.9, but the Relevant Minister cannot decide that the Pipeline is Covered, to any extent, if not satisfied of one or more of those matters.
- 1.16 If the NCC receives a notice under section 1.10, the Relevant Minister may decide that the Pipeline is a Covered Pipeline without considering the matters set out in paragraphs (a) to (d) of section 1.9.
- 1.17 Promptly after making a decision the Relevant Minister must provide a copy of the decision and reasons for the decision to the NCC, the Relevant Regulator, the Service Provider, the applicant, each person who made a submission to the NCC and any other person who requests a copy.
- 1.18 The decision on Coverage and the notice and reasons referred to in section 1.17 must contain a detailed description of the Pipeline the subject of the decision.
- 1.19 The decision on Coverage is subject to review by the Relevant Appeals Body under the Gas Pipelines Access Law. Subject to the Gas Pipelines Access Law, a decision on Coverage has effect on the date specified by the Relevant Minister, which date must not be earlier than 14 days after the day the decision was made.

Pipelines subject to Access Arrangements submitted under section 2.3 are Covered

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

New Pipelines the subject of an approved competitive tender are Covered

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

Prospective Service Provider may seek Opinion of NCC

- 1.22 A Prospective Service Provider may request an opinion from the NCC as to whether a proposed Pipeline would meet the criteria for Coverage in section 1.9.
- 1.23 The NCC may provide an opinion in response to a request under section 1.22 but the opinion does not bind the NCC in relation to any subsequent application for Coverage of the Pipeline.

Revocation of Coverage

- 1.24 Pipelines listed in Schedule A and Pipelines that have become Covered after the commencement of the Code may cease to be Covered where a person applies to the NCC for Coverage of the Covered Pipeline to be revoked and, after receiving a recommendation from the NCC, the Relevant Minister determines that Coverage of the Covered Pipeline should be revoked.
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- 1.25 Any person, including the Relevant Regulator, may make an application to the NCC requesting that Coverage of a particular Covered Pipeline be revoked. The NCC may publish guidelines concerning the form and content of revocation applications and specifying the amount of any fee to be paid on the making of an application. If it does so, applications must be made in accordance with those guidelines.
- 1.26 When the NCC receives an application it must:
- (a) (except where the application has been made by the Relevant Regulator) if it considers that the application has been made on trivial or vexatious grounds, reject the application without further consideration;
 - (b) in all other cases within 14 days after the receipt of the application:
 - (i) inform the Service Provider and each other person known to the NCC who the NCC believes has a sufficient interest in the matter that it has received the application; and
 - (ii) publish a notice in a national daily newspaper which at least:
 - (A) describes the Covered Pipeline to which the application relates;
 - (B) states how copies of the application may be obtained; and
 - (C) requests submissions within 21 days after the date of the notice.
- 1.27 The NCC must provide a copy of the application to any person within 7 days after the person requests a copy and pays any reasonable fee required by the NCC.
- 1.28 Within 35 days (but not earlier than 21 days) after the day on which a notice is published under section 1.26(b), the NCC must prepare a draft recommendation on the application and provide a copy of the draft recommendation to the Service Provider, the applicant, each person who made a submission and any other person who requests a copy. In preparing the draft recommendation the NCC must consider any submissions received within the time specified in the notice published under section 1.26(b) and it may (but is not obliged to) consider any submissions received after that time.
- 1.29 Within 28 days (but not earlier than 14 days) after the day on which its draft recommendation became publicly available, the NCC must submit a recommendation to the Relevant Minister:
- (a) that Coverage of the Covered Pipeline be revoked; or
 - (b) that Coverage of the Covered Pipeline not be revoked.
- If the NCC recommends that Coverage of the Covered Pipeline be revoked, it may do so to a greater or lesser extent than requested by the applicant if, having regard to the part of the Covered Pipeline that is necessary to provide services that Prospective Users may seek, the NCC considers it appropriate.
- 1.30 In forming its recommendation the NCC must consider any submissions received from the Service Provider, the applicant or any other person within 14 days after the date on which its draft recommendation became publicly available and it may (but is not obliged to) consider any submissions received after that time.
- 1.31 Subject to section 1.26(a), the NCC cannot recommend that Coverage of the Covered Pipeline be Revoked, to any extent, if the NCC is satisfied of all of the matters set out in paragraphs (a) to (d) of section 1.9, but the NCC must recommend that Coverage of the Covered Pipeline be revoked (either to the extent described, or to a greater or lesser extent than that described, in the application) if the NCC is not satisfied of one or more of those matters.
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- 1.32 The NCC must provide a copy of its recommendation and the reasons for the recommendation to the Service Provider, the applicant, each person who made a submission and any other person who requests a copy.
- 1.33 The applicant may withdraw the application by notice to the NCC at any time before the Relevant Minister makes a decision concerning revocation of Coverage of the Covered Pipeline.

Relevant Minister to Decide on a Revocation Recommendation

- 1.34 Within 21 days after a revocation recommendation is received by the Relevant Minister, the Relevant Minister must make a decision:
- (a) that Coverage of the Covered Pipeline is revoked; or
- (b) that Coverage of the Covered Pipeline is not revoked.

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

- 1.35 The Relevant Minister may require the NCC to provide such information, reports and other assistance as the Relevant Minister considers appropriate for the purpose of considering the application.
- 1.36 The Relevant Minister must decide not to revoke Coverage of the Covered Pipeline, to any extent, if the Relevant Minister is satisfied of all of the matters set out in paragraphs (a) to (d) of section 1.9, but the Relevant Minister must decide to revoke Coverage of the Covered Pipeline (either to the extent described, or to a greater or lesser extent than that described, in the application) if not satisfied of one or more of those matters.
- 1.37 Promptly after making a decision the Relevant Minister must provide a copy of the decision and reasons for the decision to the NCC, the Relevant Regulator, the Service Provider, the applicant, each person who made a submission to the NCC and any other person who requests a copy.
- 1.38 The decision on revocation and the notice and reasons referred to in section 1.37 must, if the decision is to revoke Coverage for part or all of the Covered Pipeline, contain a detailed description of the Covered Pipeline the subject of the decision.
- 1.39 A decision on revocation is subject to review by the Relevant Appeals Body under the Gas Pipelines Access Law. Subject to the Gas Pipelines Access Law, the decision on revocation has effect on the date specified by the Relevant Minister, which date must not be earlier than 14 days after the day the decision was made.

Extensions/Expansions of a Covered Pipeline

- 1.40 An extension to, or expansion of the Capacity of, a Covered Pipeline shall be treated as part of the Covered Pipeline for all purposes under the Code if the Extensions/Expansions Policy contained in the Access Arrangement for that Covered Pipeline provides for that extension or expansion to be treated as part of the Covered Pipeline.
- 1.41 The Service Provider must notify the Code Registrar of any extension to, or expansion of the Capacity of, a Covered Pipeline which is to be treated as part of the Covered Pipeline pursuant to section 1.40 when the extension or expansion would require an amendment to the description of the Covered Pipeline on the Public Register in order for that description to remain an accurate description of the Covered Pipeline.
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2. ACCESS ARRANGEMENTS

Where a Pipeline is Covered, this section of the Code requires a Service Provider to establish an Access Arrangement to the satisfaction of the Relevant Regulator for that Covered Pipeline. An Access Arrangement is a statement of the policies and the basic terms and conditions which apply to third party access to a Covered Pipeline. The Service Provider and a User or Prospective User are free to agree to terms and conditions that differ from the Access Arrangement (with the exception of the Queuing Policy). If an access dispute arises, however, and is referred to the Relevant Regulator, the Relevant Regulator (or any other Arbitrator it appoints) must apply the provisions of the Access Arrangement in resolving the dispute. If a Pipeline is not Covered a Service Provider may voluntarily propose an Access Arrangement to the Relevant Regulator for approval. Upon approval the Pipeline becomes a Covered Pipeline.

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

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

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

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

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

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

Submission of Access Arrangements

- 2.1 The Relevant Regulator may at any time prepare and release for public comment, discussion or issues papers and hold public consultations concerning any matter relevant to its functions under the Code.
- 2.2 If a Pipeline is Covered, the Service Provider must submit a proposed Access Arrangement together with the applicable Access Arrangement Information for the Covered Pipeline to the Relevant Regulator:
 - (a) within 90 days after the Pipeline becomes Covered under section 1.19 or 1.21 if the Covered Pipeline is not described in Schedule A; or
 - (b) within 90 days after the commencement of the Code if the Covered Pipeline is described in Schedule A.
- 2.3 If a Pipeline is not Covered, a Service Provider may (or, in respect of a proposed Pipeline, a Prospective Service Provider may) apply to the Relevant Regulator for approval of an Access Arrangement by submitting the proposed Access Arrangement to the Relevant Regulator together with the applicable Access Arrangement Information. In sections 2.4 to 2.27 (inclusive) the term "Service Provider" includes a Prospective Service Provider. In section 2.24 the term "Covered Pipeline" includes the Pipeline the subject of an Access Arrangement submitted under this section 2.3.
- 2.4 If the Relevant Regulator so requires by a notice in writing (which may be given either before or after the Service Provider submits an Access Arrangement), the Service Provider must submit separate Access Arrangements (together with Access Arrangement Information) for different parts of the Covered Pipeline as specified by the Relevant Regulator, so that the separate Access Arrangements in total apply to the whole of the Covered Pipeline. The Service Provider may (if the Relevant Regulator agrees) voluntarily submit separate Access Arrangements (together with Access Arrangement Information) for different parts of the Covered Pipeline, so that the separate Access Arrangements in total apply to the whole of the Covered Pipeline. If separate Access Arrangements are submitted in accordance with this clause each part of a Pipeline that is the subject of an Access Arrangement will be treated as a separate Covered Pipeline for all purposes under the Code.
- 2.5 An Access Arrangement may include any relevant matter but must include at least the elements described in sections 3.1 to 3.20.

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- 2.6 Access Arrangement Information must contain such information as in the opinion of the Relevant Regulator would enable Users and Prospective Users to understand the derivation of the elements in the proposed Access Arrangement and to form an opinion as to the compliance of the Access Arrangement with the provisions of the Code.
- 2.7 The Access Arrangement Information may include any relevant information but must include at least the categories of information described in Attachment A.
- 2.8 Information included in Access Arrangement Information, including information of a type described in Attachment A, may be categorised or aggregated to the extent necessary to ensure the disclosure of the information is, in the opinion of the Relevant Regulator, not unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User. However, nothing in this section 2.8 limits the Relevant Regulator's power under the Gas Pipelines Access Law to obtain information, including information in an uncategorised or unaggregated form.

Public Consultation and Approval

- 2.9 At any time after the receipt of the applicable Access Arrangement Information under section 2.2 or 2.3 and before a decision is made to approve an Access Arrangement, the Relevant Regulator:
- (a) may, of its own volition, require the Service Provider to make changes to the Access Arrangement Information if the Relevant Regulator is not satisfied that the Access Arrangement Information meets the requirements of sections 2.6 and 2.7; and
 - (b) must, if requested to do so by any person, consider whether the Access Arrangement Information meets the requirements of sections 2.6 and 2.7 and decide whether or not to require the Service Provider to make changes to the Access Arrangement Information accordingly.

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

- 2.10 After receiving a proposed Access Arrangement the Relevant Regulator must:
- (a) inform each person known to the Relevant Regulator who the Relevant Regulator believes has a sufficient interest in the matter that it has received the proposed Access Arrangement and Access Arrangement Information; and
 - (b) publish a notice in a national daily newspaper which at least:
 - (i) describes the Covered Pipeline to which the proposed Access Arrangement relates;
 - (ii) states how copies of the proposed Access Arrangement and the Access Arrangement Information may be obtained; and
 - (iii) requests submissions by a date specified in the notice.
- 2.11 The Relevant Regulator must provide a copy of the proposed Access Arrangement and the Access Arrangement Information to any person within 7 days after the person requests a copy and pays any reasonable fee required by the Relevant Regulator.
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- 2.12 The Relevant Regulator must consider any submissions received by the date specified in the notice published under section 2.10(b) and it may (but is not obliged) to consider any submissions received after that date.
- 2.13 After considering submissions received by the date specified in the notice published under section 2.10(b) the Relevant Regulator must issue a draft decision which either:
- (a) proposes to approve the Access Arrangement; or
 - (b) proposes not to approve the Access Arrangement and states the amendments (or nature of the amendments) which would have to be made to the Access Arrangement in order for the Relevant Regulator to approve it.
- 2.14 The Relevant Regulator must:
- (a) provide a copy of its draft decision to the Service Provider, any person who made a submission on the matter and any other person who requests a copy; and
 - (b) request submissions from persons to whom it provides the draft decision by a date specified by the Relevant Regulator.
- 2.15 The Relevant Regulator must consider any submissions received by the date specified by the Relevant Regulator under section 2.14 and it may (but is not obliged) to consider any submissions received after that date.
- 2.15A The Service Provider may, after the date of the draft decision, resubmit the Access Arrangement, revised so as to incorporate or substantially incorporate the amendments specified by the relevant Regulator in its draft decision or otherwise address the matters the Relevant Regulator identified in its draft decision as being the reasons for requiring the amendments specified in its draft decision.
- 2.16 After considering any submissions received by the date specified by the Relevant Regulator under section 2.14, the Relevant Regulator must issue a final decision that:
- (a) if the Service Provider has not submitted a revised Access Arrangement under section 2.15A:
 - (i) approves the Access Arrangement originally proposed by the Service Provider; or
 - (ii) does not approve the Access Arrangement originally proposed by the Service Provider and states the amendments (or nature of the amendments) which would have to be made to the Access Arrangement in order for the Relevant Regulator to approve it and the date by which a revised Access Arrangement must be resubmitted by the Service Provider; or
 - (b) if the Service Provider has submitted a revised Access Arrangement under section 2.15A:
 - (i) subject to section 2.16A, approves the revised Access Arrangement; or
 - (ii) does not approve the revised Access Arrangement and states the amendments (or nature of the amendments) which would have to be made to the revised Access Arrangement in order for the Relevant Regulator to approve it and the date by which a revised Access Arrangement must be resubmitted by the Service Provider.
- 2.16A The Relevant Regulator may (in the Relevant Regulator's discretion) approve a revised Access Arrangement under section 2.16(b)(i) only if the Relevant Regulator is satisfied that the revised Access Arrangement:
- (a) incorporates or substantially incorporates the amendments specified by the Relevant Regulator in its draft decision; or
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- (b) otherwise addresses to the Relevant Regulator's satisfaction the matters the Relevant Regulator identified in its draft decision as being the reasons for requiring the amendments specified in its draft decision.
- 2.17 The Relevant Regulator must provide a copy of its final decision to the Service Provider, any person who made a submission on the matter and any other person who requests a copy.
- 2.18 If the Relevant Regulator decides not to approve the Access Arrangement under section 2.16(a)(ii) or (b)(ii), the Service Provider must by the date specified by the Relevant Regulator under section 2.16(a)(ii) or (b)(ii) submit a revised Access Arrangement to the Relevant Regulator.
- 2.19 If the Service Provider submits a revised Access Arrangement by the date specified by the Relevant Regulator under section 2.16(a)(ii) or (b)(ii) then the Relevant Regulator must issue a further final decision that:
- (a) if the Relevant Regulator is satisfied that the revised Access Arrangement incorporates the amendments specified by the Relevant Regulator in its final decision under Section 2.16(a)(ii) or (b)(ii), approves the revised Access Arrangement; or
 - (b) if the Relevant Regulator is satisfied that the revised Access Arrangement either substantially incorporates the amendments specified by the Relevant Regulator or otherwise addresses to the Relevant Regulator's satisfaction the matters the Relevant Regulator identified in its final decision as being the reasons for requiring the amendments specified in its final decision under section 2.16(a)(ii) or (b)(ii), either approves or does not approve the revised Access Arrangement (in the Relevant Regulator's discretion); or
 - (c) in any other case, does not approve the revised Access Arrangement.
- 2.20 If the Service Provider does not submit a revised Access Arrangement by the date specified by the Relevant Regulator under section 2.16(a)(ii) or (b)(ii) or the Relevant Regulator does not approve the revised Access Arrangement under section 2.19, the Relevant Regulator must:
- (a) in the case of an Access Arrangement submitted under section 2.2, draft and approve its own Access Arrangement, instead of the Access Arrangement proposed by the Service Provider; or
 - (b) in the case of an Access Arrangement submitted voluntarily under section 2.3, not approve the Access Arrangement.
- 2.21 The Relevant Regulator must issue a final decision under section 2.16 (and sections 2.19 and 2.20, if applicable) within six months of receiving a proposed Access Arrangement. The Relevant Regulator must also ensure that:
- (a) there is a period of at least 28 days between the publication of a notice under section 2.10(b) and the last day for submissions specified in that notice; and
 - (b) there is a period of at least 14 days between the publication of a draft decision under section 2.14 and the last day for submissions on the draft decision specified by the Relevant Regulator; and
 - (c) there is a period of at least 14 days between the publication of a final decision under section 2.16(a)(ii) or (b)(ii) and the date specified by the Relevant Regulator as the last day for the Service Provider to submit a revised Access Arrangement.

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

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- 2.22 The Relevant Regulator may increase the period of six months specified in section 2.21 by periods of up to two months on one or more occasions provided it publishes in a national newspaper notice of the decision to increase the period.
- 2.23 If a Service Provider fails to submit a proposed Access Arrangement within the time required under section 2.2, the Relevant Regulator may draft and approve its own Access Arrangement. Before approving its own Access Arrangement under this section 2.23 the Relevant Regulator must:
- (a) prepare an information package which, to the extent practicable, meets the requirements of sections 2.6 and 2.7; and
 - (b) follow the process set out in sections 2.10 to 2.15 (inclusive) to the extent practicable as though the Access Arrangement drafted by the Relevant Regulator had been proposed by the Service Provider and the information package prepared by the Relevant Regulator had been Access Arrangement Information proposed by the Service Provider.
- 2.24 The Relevant Regulator may approve a proposed Access Arrangement only if it is satisfied the proposed Access Arrangement contains the elements and satisfies the principles set out in sections 3.1 to 3.20. The Relevant Regulator must not refuse to approve a proposed Access Arrangement solely for the reason that the proposed Access Arrangement does not address a matter that sections 3.1 to 3.20 do not require an Access Arrangement to address. In assessing a proposed Access Arrangement, the Relevant Regulator must take the following into account:
- (a) the Service Provider's legitimate business interests and investment in the Covered Pipeline;
 - (b) firm and binding contractual obligations of the Service Provider or other persons (or both) already using the Covered Pipeline;
 - (c) the operational and technical requirements necessary for the safe and reliable operation of the Covered Pipeline;
 - (d) the economically efficient operation of the Covered Pipeline;
 - (e) the public interest, including the public interest in having competition in markets (whether or not in Australia);
 - (f) the interests of Users and Prospective Users;
 - (g) any other matters that the Relevant Regulator considers are relevant.
- 2.25 The Relevant Regulator must not approve an Access Arrangement (or draft and approve its own Access Arrangement) any provision of which would, if applied, deprive any person of a contractual right in existence prior to the date the proposed Access Arrangement was submitted (or required to be submitted), other than an Exclusivity Right which arose on or after 30 March 1995.
- 2.26 A decision by the Relevant Regulator under section 2.20(a) or 2.23 is subject to review by the Relevant Appeals Body under the Gas Pipelines Access Law. Subject to the Gas Pipelines Access Law, the Relevant Regulator's decision to approve the proposed Access Arrangement has effect on the date specified by the Relevant Regulator, which date must be not less than 14 days after the day the decision was made.
- 2.27 A Service Provider may withdraw a proposed Access Arrangement submitted under section 2.3 at any time before it is approved by the Relevant Regulator. In those circumstances the Service Provider is not required to comply with a related decision made under section 2.9.

Review of an Access Arrangement

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- 2.28 By the date provided for in the Access Arrangement as the Revisions Submission Date (or as otherwise required by an Access Arrangement), the Service Provider must, and at any other time the Service Provider may, submit to the Relevant Regulator proposed revisions to the Access Arrangement together with the applicable Access Arrangement Information.
- 2.29 The Access Arrangement as revised by the proposed revisions may include any relevant matter but must include at least the elements described in sections 3.1 to 3.20.
- 2.30 At any time after receipt of the applicable Access Arrangement Information under section 2.28 and before a decision is made to approve revisions to an Access Arrangement the Relevant Regulator:
- (a) may, of its own volition, require the Service Provider to make changes to the Access Arrangement Information if the Relevant Regulator is not satisfied that the Access Arrangement Information meets the requirements of sections 2.6 and 2.7; and
 - (b) must, if requested to do so by any person, consider whether the Access Arrangement Information meets the requirements of sections 2.6 and 2.7 and decide whether or not to require the Service Provider to make changes to the Access Arrangement Information accordingly.

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

- 2.31 After receiving a proposed revision to an Access Arrangement the Relevant Regulator must:
- (a) inform each person known to the Relevant Regulator who the Relevant Regulator believes has a sufficient interest in the matter that it has received the proposed revision to the Access Arrangement and Access Arrangement Information; and
 - (b) publish a notice in a national daily newspaper which at least:
 - (i) describes the Covered Pipeline to which the proposed revisions to the Access Arrangement relates;
 - (ii) states how copies of the revisions to the Access Arrangement and the Access Arrangement Information may be obtained; and
 - (iii) requests submissions by a date specified in the notice.
- 2.32 The Relevant Regulator must provide a copy of the proposed revisions to the Access Arrangement and the Access Arrangement Information to any person within 7 days after the person requests a copy and pays any reasonable fee required by the Relevant Regulator.
- 2.33 The Relevant Regulator may dispense with the requirement to produce Access Arrangement Information in respect of proposed revisions and may approve or not approve the proposed revisions without consultation with, or receiving submissions from, persons other than the Service Provider if:
- (a) the revisions have been proposed by the Service Provider other than as required by the Access Arrangement; and
 - (b) the Relevant Regulator considers that the revisions proposed are not material and will not result in changes to Reference Tariffs or to the Services that are Reference Services.
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- 2.34 The Relevant Regulator must consider any submissions received by the date specified in the notice published under section 2.31(b) and it may (but is not obliged) to consider any submissions received after that date.
- 2.35 After considering submissions received by the date specified in the notice published under section 2.31(b) the Relevant Regulator must issue a draft decision which either:
- (a) proposes to approve the revisions to the Access Arrangement; or
 - (b) proposes not to approve the revisions to the Access Arrangement and provides reasons why the Relevant Regulator proposes not to approve the revisions to the Access Arrangement (and, if the revisions have been proposed by the Service Provider as required by the Access Arrangement, states the amendments (or nature of the amendments) which would have to be made to the revisions in order for the Relevant Regulator to approve them).
- 2.36 The Relevant Regulator must:
- (a) provide a copy of its draft decision to the Service Provider, any person who made a submission on the matter and any other person who requests a copy; and
 - (b) request submissions on the draft decision from persons to whom it provides the draft decision by a date specified by the Relevant Regulator.
- 2.37 The Relevant Regulator must consider any submissions received by the date specified by the Relevant Regulator under section 2.36 and it may (but is not obliged) to consider submissions received after that date.
- 2.37A The Service Provider may, after the date of the draft decision, resubmit the revisions to the Access Arrangement, amended so as to incorporate or substantially incorporate the amendments specified by the Relevant Regulator in its draft decision or otherwise address the matters the Relevant Regulator identified in its draft decision as being the reasons for requiring the amendments specified in its draft decision.
- 2.38 After considering any submissions received by the date specified by the Relevant Regulator under section 2.36, the Relevant Regulator must issue a final decision that:
- (a) if the Service Provider has not submitted amended revisions to the Access Arrangement under section 2.37A:
 - (i) approves the revisions to the Access Arrangement originally proposed by the Service Provider; or
 - (ii) does not approve the revisions to the Access Arrangement originally proposed by the Service Provider and, if the revisions have been proposed by the Service Provider as required by the Access Arrangement, states the amendments (or nature of the amendments) which would have to be made to the revisions in order for the Relevant Regulator to approve them and the date by which the amended revisions must be resubmitted by the Service Provider; or
 - (b) if the Service Provider has submitted amended revisions to the Access Arrangement under section 2.37A:
 - (i) subject to section 2.38A, approves the amended revisions to the Access Arrangement; or
 - (ii) does not approve the amended revisions to the Access Arrangement and, if the revisions have been proposed by the Service Provider as required by the Access Arrangement, states the amendments (or nature of the amendments) which would have to be made to the revisions in order for
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the Relevant Regulator to approve them and the date by which the amended revisions must be resubmitted by the Service Provider.

- 2.38A The Relevant Regulator may (in the Relevant Regulator's discretion) approve amended revisions to an Access Arrangement under section 2.38(b)(i) only if the Relevant Regulator is satisfied that the amended revisions:
- (a) incorporate or substantially incorporate the amendments specified by the Relevant Regulator in its draft decision; or
 - (b) otherwise address to the Relevant Regulator's satisfaction the matters the Relevant Regulator identified in its draft decision as being the reasons for requiring the amendments specified in its draft decision.
- 2.39 The Relevant Regulator must provide a copy of its final decision to the Service Provider, any person who made a submission on the matter and other any person who requests a copy.
- 2.40 If the Relevant Regulator decides not to approve the revisions to the Access Arrangement under section 2.38(a)(ii) or (b)(ii) the Service Provider must, if the revisions it proposed were proposed as required by the Access Arrangement, submit amended revisions to the Relevant Regulator by the date specified by the Relevant Regulator under section 2.38(a)(ii) or (b)(ii).
- 2.41 If the Service Provider submits amended revisions to the Access Arrangement by the date specified by the Relevant Regulator under section 2.38(a)(ii) or (b)(ii) then the Relevant Regulator must issue a further final decision that:
- (a) if the Relevant Regulator is satisfied that the amended revisions to the Access Arrangement incorporate the amendments specified by the Relevant Regulator in its final decision under section 2.38(a)(ii) or (b)(ii), approves the amended revisions to the Access Arrangement; or
 - (b) if the Relevant Regulator is satisfied that the amended revisions to the Access Arrangement either substantially incorporate the amendments specified by the Relevant Regulator or otherwise address to the Relevant Regulator's satisfaction the matters the Relevant Regulator identified in its final decision as being the reasons for requiring the amendments specified in its final decision under section 2.38(a)(ii) or (b)(ii), either approves or does not approve the amended revisions to the Access Arrangement (in the Relevant Regulator's discretion); or
 - (c) in any other case, does not approve the amended revisions to the Access Arrangement.
- 2.42 If the Service Provider does not submit amended revisions to the Access Arrangement by the date specified by the Relevant Regulator under section 2.38(a)(ii) or (b)(ii) or the Relevant Regulator does not approve the amended revisions to the Access Arrangement under section 2.41, the Relevant Regulator must draft and approve its own amended revisions to the Access Arrangement, instead of the revisions proposed by the Service Provider.
- 2.43 The Relevant Regulator must issue a final decision under section 2.38 (and sections 2.41 or 2.42 if applicable) within six months of receiving proposed revisions to an Access Arrangement. The Relevant Regulator must also ensure that:
- (a) there is a period of at least 28 days between the publication of a notice under section 2.31(b) and the last day for submissions specified in that notice;
 - (b) there is a period of at least 14 days between the publication of a draft decision under section 2.36(b) and the last day for submissions on the draft decision specified by the Relevant Regulator; and
 - (c) there is a period of at least 14 days between the publication of a final decision under section 2.38(a)(ii) or (b)(ii) and the date specified by the Relevant Regulator as the last day for the Service Provider to submit amended revisions to the Access Arrangement.
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In all other respects the timing for the taking of each of the steps set out in sections 2.30, 2.31 and 2.33 to 2.42 (inclusive) is a matter for the Relevant Regulator to determine.

- 2.44 The Relevant Regulator may increase the period of six months specified in section 2.43 by periods of up to two months on one or more occasions provided it publishes in a national newspaper notice of the decision to increase the period.
- 2.45 If the Service Provider fails to submit revisions to an Access Arrangement as required by the Access Arrangement, the Relevant Regulator may draft and approve its own revisions to the Access Arrangement. Before approving its own revisions to an Access Arrangement under this section 2.45 the Relevant Regulator must:
- (a) prepare an information package which, to the extent practicable, meets the requirements of sections 2.6 and 2.7; and
 - (b) follow the process set out in sections 2.31 to 2.37 to the extent practicable as though the revisions to the Access Arrangement drafted by the Relevant Regulator had been proposed by the Service Provider and the information package drafted by the Relevant Regulator had been Access Arrangement Information proposed by the Service Provider.
- 2.46 The Relevant Regulator may approve proposed revisions to an Access Arrangement only if it is satisfied the Access Arrangement as revised would contain the elements and satisfy the principles set out in sections 3.1 to 3.20. The Relevant Regulator must not refuse to approve proposed revisions to the Access Arrangement solely for the reason that the Access Arrangement as revised would not address a matter that sections 3.1 to 3.20 do not require an Access Arrangement to address. In assessing proposed revisions to the Access Arrangement, the Relevant Regulator:
- (a) must take into account the factors described in section 2.24; and
 - (b) must take into account the provisions of the Access Arrangement.
- 2.47 The Relevant Regulator must not approve revisions to an Access Arrangement (or draft and approve its own revisions to an Access Arrangement) if a provision of the Access Arrangement as revised would, if applied, deprive any person of a contractual right in existence prior to the date the revisions to the Access Arrangement were submitted (or were required to be submitted), other than an Exclusivity Right which arose on or after 30 March 1995.
- 2.48 A decision by the Relevant Regulator under section 2.42 or 2.45 is subject to review by the Relevant Appeals Body under the Gas Pipelines Access Law. Subject to the Gas Pipelines Access Law, revisions to an Access Arrangement come into effect on the date specified by the Relevant Regulator in its decision to approve the revisions (which date must not be earlier than either a date 14 days after the day the decision was made or, except where the Service Provider submitted the revisions voluntarily or because a mechanism of a type referred to in section 3.18(a) included in the Access Arrangement was triggered, the Revisions Commencement Date).

Changes to an Approved Access Arrangement between Reviews

- 2.49 An Access Arrangement which has become effective may only be changed pursuant to this section 2.

Access Arrangement not to limit Access

- 2.50 For the avoidance of doubt, nothing (except for the Queuing Policy) contained in an Access Arrangement (including the description of Services in a Services Policy) limits:
- (a) the Services a Service Provider can agree to provide to a User or Prospective User;
 - (b) the Services which can be the subject of a dispute under section 6;
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- (c) the terms and conditions a Service Provider can agree with a User or Prospective User; or
- (d) the terms and conditions which can be the subject of a dispute under section 6.

Previous Access Arrangements

- 2.51 If an Access Arrangement or Access Arrangement Information or both with respect to a Covered Pipeline have been accepted by the Relevant Regulator under the Gas Supply Act 1996 (NSW) prior to the commencement of the Gas Pipeline Access Law in New South Wales a Service Provider need not submit a proposed Access Arrangement in accordance with section 2.2 with respect to the Covered Pipeline concerned. In such circumstances the Access Arrangement or Access Arrangement Information or both accepted under the Gas Supply Act 1996 (NSW) shall be deemed to have been accepted under this Code and to be the Access Arrangement or Access Arrangement Information with respect to the relevant Covered Pipeline for all purposes under this Code.
- 2.52 A Service Provider need not submit a proposed Access Arrangement or Access Arrangement Information in accordance with section 2.2 with respect to a Covered Pipeline where:
- (a) before the date on which this Code takes effect, the Service Provider (or, where the Service Provider does not at the relevant time yet exist, a person able to represent and bind the future Service Provider) has submitted a proposed Access Arrangement with respect to the Covered Pipeline together with the applicable Access Arrangement Information (if relevant) to the person who is under this Code the Relevant Regulator for that Covered Pipeline; and
 - (b) that Relevant Regulator, having:
 - (i) in substance done the things it would have been required to do in relation to the proposed Access Arrangement and the applicable Access Arrangement Information submitted in accordance with section 2.2; and
 - (ii) certified in writing that those things have been done,
 has approved the proposed Access Arrangement and Access Arrangement Information.

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

3. CONTENT OF AN ACCESS ARRANGEMENT

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

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

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

Reference Tariff - An Access Arrangement must contain one or more Reference Tariffs (the Relevant Regulator may require more than one Reference Tariff when appropriate). A Reference Tariff operates as a benchmark tariff for a specific Service, in effect giving the User

a right of access to the specific Service at the Reference Tariff, and giving the Service Provider the right to levy the Reference Tariff for that Service. Ordinarily a Reference Tariff must be set in accordance with the principles set out in section 8.

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

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

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

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

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

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

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

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

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

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

Services to be Offered

- 3.1 An Access Arrangement must include a policy on the Service or Services to be offered (a **Services Policy**).
 - 3.2 The Services Policy must comply with the following principles:
 - (a) The Access Arrangement must include a description of one or more Services that the Service Provider will make available to Users or Prospective Users, including:
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- (i) one or more Services that are likely to be sought by a significant part of the market; and
 - (ii) any Service or Services which in the Relevant Regulator's opinion should be included in the Services Policy.
- (b) To the extent practicable and reasonable, a User or Prospective User must be able to obtain a Service which includes only those elements that the User or Prospective User wishes to be included in the Service.
- (c) To the extent practicable and reasonable, a Service Provider must provide a separate Tariff for an element of a Service if this is requested by a User or Prospective User.

Reference Tariffs and Reference Tariff Policy

- 3.3 An Access Arrangement must include a Reference Tariff for:
- (a) at least one Service that is likely to be sought by a significant part of the market; and
 - (b) each Service that is likely to be sought by a significant part of the market and for which the Relevant Regulator considers a Reference Tariff should be included.
- 3.4 Unless a Reference Tariff has been determined through a competitive tender process as outlined in sections 3.21 to 3.36, an Access Arrangement and any Reference Tariff included in an Access Arrangement must, in the Relevant Regulator's opinion, comply with the Reference Tariff Principles described in section 8.
- 3.5 An Access Arrangement must also include a policy describing the principles that are to be used to determine a Reference Tariff (a ***Reference Tariff Policy***). A Reference Tariff Policy must, in the Relevant Regulator's opinion, comply with the Reference Tariff Principles described in section 8.

Terms and Conditions

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

Capacity Management Policy

- 3.7 An Access Arrangement must include a statement (a ***Capacity Management Policy***) that the Covered Pipeline is either:
- (a) a Contract Carriage Pipeline; or
 - (b) a Market Carriage Pipeline.
- 3.8 The Relevant Regulator must not accept an Access Arrangement which states that the Covered Pipeline is a Market Carriage Pipeline unless the Relevant Minister of each Scheme Participant in whose Jurisdictional Area the Pipeline is wholly or partly located has given a notice to the Relevant Regulator permitting the Covered Pipeline to be a Market Carriage Pipeline.

Trading Policy

- 3.9 The Access Arrangement for a Covered Pipeline which is described in the Access Arrangement as a Contract Carriage Pipeline must include a policy that explains the rights of a User to trade its right to obtain a Service to another person (a ***Trading Policy***).
- 3.10 The Trading Policy must comply with the following principles:
- (a) A User must be permitted to transfer or assign all or part of its Contracted Capacity without the consent of the Service Provider concerned if:
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- (i) the User's obligations under the contract with the Service Provider remain in full force and effect after the transfer or assignment; and
- (ii) the terms of the contract with the Service Provider are not altered as a result of the transfer or assignment (a *Bare Transfer*).

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

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

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

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

- 3.12 An Access Arrangement must include a policy for determining the priority that a Prospective User has, as against any other Prospective User, to obtain access to Spare Capacity and Developable Capacity (and to seek dispute resolution under section 6) where the provision of the Service sought by that Prospective User may impede the ability of the Service Provider to provide a Service that is sought or which may be sought by another Prospective User (a ***Queuing Policy***).
- 3.13 The Queuing Policy must:
- (a) set out sufficient detail to enable Users and Prospective Users to understand in advance how the Queuing Policy will operate;
 - (b) accommodate, to the extent reasonably possible, the legitimate business interests of the Service Provider and of Users and Prospective Users; and
 - (c) generate, to the extent reasonably possible, economically efficient outcomes.
- 3.14 The Relevant Regulator may require the Queuing Policy to deal with any other matter the Relevant Regulator thinks fit taking into account the matters listed in section 2.24.
- 3.15 Notwithstanding anything else contained in this Code, the Service Provider must comply with the Queuing Policy specified in the Service Provider's Access Arrangement.

Extensions/Expansions Policy

- 3.16 An Access Arrangement must include a policy (an ***Extensions/Expansions Policy***) which sets out:
- (a) the method to be applied to determine whether any extension to, or expansion of the Capacity of, the Covered Pipeline:
 - (i) should be treated as part of the Covered Pipeline for all purposes under the Code; or
 - (ii) should not be treated as part of the Covered Pipeline for any purpose under the Code;

(for example, the Extensions/Expansions Policy could provide that the Service Provider may, with the Relevant Regulator's consent, elect at some point in time whether or not an extension or expansion will be part of the Covered Pipeline or will not be part of the Covered Pipeline);
 - (b) specify how any extension or expansion which is to be treated as part of the Covered Pipeline will affect Reference Tariffs (for example, the Extensions/Expansions Policy could provide:
 - (i) Reference Tariffs will remain unchanged but a Surcharge may be levied on Incremental Users where permitted by sections 8.25 and 8.26; or
 - (ii) specify that a review will be triggered and that the Service Provider must submit revisions to the Access Arrangement pursuant to section 2.28);
 - (c) if the Service Provider agrees to fund New Facilities if certain conditions are met, a description of those New Facilities and the conditions on which the Service Provider will fund the New Facilities.

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

Review and Expiry of the Access Arrangement

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

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

- (i) require an earlier or later Revisions Submission Date and Revisions Commencement Date than proposed by the Service Provider in its proposed Access Arrangement;
 - (ii) require that specific major events be defined that trigger an obligation on the Service Provider to submit revisions prior to the Revisions Submission Date.
- 3.18 An Access Arrangement Period accepted by the Relevant Regulator may be of any length; however, if the Access Arrangement Period is more than five years, the Relevant Regulator must not approve the Access Arrangement without considering whether mechanisms should be included to address the risk of forecasts on which the terms of the Access Arrangement were based and approved proving incorrect. These mechanisms may include:
- (a) requiring the Service Provider to submit revisions to the Access Arrangement prior to the Revisions Submission Date if certain events occur, for example:
 - (i) if a Service Provider's profits derived from a Covered Pipeline are outside a specified range or if the value of Services reserved in contracts with Users are outside a specified range;
 - (ii) if the type or mix of Services provided by means of a Covered Pipeline changes in a certain way; or
 - (b) a Service Provider returning some or all revenue or profits in excess of a certain amount to Users, whether in the form of lower charges or some other form.

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

- 3.19 Nothing in section 3.18 shall be taken to imply that the Relevant Regulator may not approve an Access Arrangement Period longer than 5 years if the Relevant Regulator considers this appropriate, having regard to the objectives of section 8.1.
- 3.20 An Access Arrangement submitted under section 2.3 may include a date at which time the Access Arrangement will expire. If an Access Arrangement submitted under section 2.3 expires, the Covered Pipeline the subject of the Access Arrangement ceases to be Covered on the expiry date. The Service Provider must notify the Code Registrar if a Pipeline ceases to be Covered under this section and the Code Registrar must update the Public Register accordingly.

Determining Reference Tariffs through a Competitive Tender Process

- 3.21 Any person who wishes to conduct a tender in relation to a Pipeline that has not been built may make an application to the Relevant Regulator (a *Tender Approval Request*) requesting the Relevant Regulator to approve the use of a tender process to determine:
- (a) Reference Tariffs for certain Reference Services to be provided by means of the proposed Pipeline;
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- (b) other specified items which are required to be included in an Access Arrangement and which are directly relevant to the determination of the Reference Tariffs concerned (including, without limitation, the Revisions Submission Date and Revisions Commencement Date).

3.22 A Tender Approval Request must:

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

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

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

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

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

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

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

In making a decision under this section 3.25 the Relevant Regulator must consider any submissions received within the time specified in the notice published under section 3.23(b) and may (but is not obliged to) consider any submissions received after the time.

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

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- 3.27 The Relevant Regulator may at any time decide not to approve a Tender Approval Request if it is of the opinion that the person who submitted the Tender Approval Request may have, or may appear to have, a conflict of interest if it conducted the tender process. The Relevant Regulator may decide not to approve a Tender Approval Request under this section 3.27 without conducting the public consultation required under section 3.23. If the Relevant Regulator decides not to approve a Tender Approval Request under this section 3.27 on conflict of interest grounds, another person may submit a new Tender Approval Request under section 3.21 in relation to the same proposed Pipeline.
- 3.28 The Relevant Regulator must decide to approve a Tender Approval Request if satisfied of all of the following and must decide not to approve a Tender Approval Request if not satisfied of all of the following:
- (a) (*new pipeline*): that the proposed Pipeline will be a new Pipeline;
 - (b) (*public interest and Reference Tariff objectives*): that using the tender process as outlined in the Tender Approval Request to determine Reference Tariffs is in the public interest and is an appropriate mechanism in the circumstances for ensuring that Reference Tariffs achieve the objectives in section 8.1;
 - (c) (*tender process will be competitive*): that the number and character of tenders likely to be received would be such as to ensure a competitive outcome; and
 - (d) (*exclusion of certain tenders*): that the proposed procedures and rules to be followed in conducting the proposed tender will result in a tender being excluded from consideration if it:
 - (i) does not include a statement of the Reference Tariffs the tenderer proposes and the Reference Services to which those Reference Tariffs would apply;
 - (ii) does not include a policy on whether the additional revenue which would result if the volume of gas actually transported by the proposed Pipeline exceeds a certain volume will either be retained by the Service Provider or returned in whole or in part to Users in the form of lower charges or some other form (an *Additional Revenue Policy*);
 - (iii) does not provide that the residual value of the proposed Pipeline after the expiration of the initial Reference Tariff will be based on depreciation over the Pipeline's economic life;
 - (iv) limits or purports to limit the Services to which access might be sought under this Code; or
 - (v) otherwise includes elements inconsistent with this Code except as contemplated by section 3.34;
 - (e) (*consideration of all conforming tenders*): that the proposed procedures and rules to be followed in conducting the proposed tender will result in no tender being excluded from consideration except in the circumstances outlined in paragraph (d) or if the tender does not conform to other reasonable requirements in the request for tenders or does not meet reasonable prudential and technical requirements;
 - (f) (*selection criteria*): that the selection criteria to be applied in conducting the proposed tender:
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- (i) will result in the successful tender being selected principally on the basis that the tender will deliver the lowest sustainable tariffs (including but not limited to Reference Tariffs) to Users generally over the economic life of the proposed Pipeline; and
 - (ii) are likely to result in Reference Tariffs that meet the criteria specified in section 3.33(c);
- (g) (*determination of items with the Reference Tariffs*): that the tender documents specify which items required to be included in an Access Arrangement other than Reference Tariffs will be determined by the tender and that those items are directly relevant to the determination of Reference Tariffs;
- (h) (*configuration of Pipeline not limited*): that the tender documents published by the person conducting the tender will not specify the configuration of the proposed Pipeline, including the areas the proposed Pipeline will service, pipeline dimensions, level of compression or other technical specifications, unless the Relevant Regulator is satisfied it would be appropriate to do so;
- (i) (*other documents*): that any document supporting or relating to the tender process is consistent with this Code and does not purport to limit:
- (i) the Services which the Service Provider may provide or to which access may be sought under this Code;
 - (ii) the configuration of the proposed Pipeline including the areas the Proposed Pipeline will service, pipeline dimensions, level of compression and other technical specifications unless the Relevant Regulator is satisfied it would be appropriate to do so; or
 - (iii) the construction or operation of other Pipelines which could deliver gas to the same gas market as the proposed Pipeline.
- 3.29 If the Relevant Regulator has made a decision under section 3.25 approving a Tender Approval Request and a tender process has been conducted, the person who conducted the tender process may apply in writing to the Relevant Regulator for final approval under section 3.32 (a *Final Approval Request*). A Final Approval Request must include a statement of which tender was selected and the reasons for that selection based on the selection criteria.
- 3.30 After the successful tenderer has been selected, the Relevant Regulator may permit the person who conducted the tender process and the successful tenderer to agree to changes to the terms of the tender which result in minor changes to the Reference Tariffs proposed in the tender, provided the Relevant Regulator is satisfied the changes are consistent with the requirements in section 3.28(a) to (i). The amended Reference Tariffs shall be considered to be the Reference Tariffs determined in accordance with the tender process for the purposes of the Relevant Regulator making a decision to approve or not approve a Final Approval Request.
- 3.31 The Relevant Regulator may before it makes a decision under section 3.32 require the person who submitted the Final Approval Request to provide the Relevant Regulator with any information or assistance the Relevant Regulator reasonably requires.
- 3.32 If the Relevant Regulator receives a Final Approval Request, the Relevant Regulator must within 28 days of receiving all information it requires under section 3.31 make a decision that:
- (a) approves the Final Approval Request; or
 - (b) does not approve the Final Approval Request.
- 3.33 The Relevant Regulator must decide to approve the Final Approval Request if satisfied of all of the following and must decide not to approve the Final Approval Request if not satisfied of all of the following:
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- (a) that the successful tender was selected in accordance with the selection criteria specified in the Tender Approval Request approved by the Relevant Regulator under section 3.25;
 - (b) that the tender process was conducted in accordance with the procedures and rules specified in the Tender Approval Request approved by the Relevant Regulator under section 3.25;
 - (c) that the Reference Tariffs determined in accordance with the tender process:
 - (i) achieve the objectives in section 8.1; and
 - (ii) contain or reflect an allocation of costs between Services and an allocation of costs between Users which is fair and reasonable;
 - (d) that the Revisions Commencement Date in the Access Arrangement for the proposed Pipeline is not later than 15 years after the Access Arrangement for the proposed Pipeline is approved or such later date as the Relevant Regulator considers appropriate for the proposed Pipeline on the basis of the proposed tariffs (including but not limited to Reference Tariffs); and
 - (e) that the successful tenderer's Access Arrangement for the proposed Pipeline will contain an Additional Revenue Policy that is appropriate for the proposed Pipeline on the basis of the proposed tariffs (including but not limited to Reference Tariffs).

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

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

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

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

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

4. RING FENCING ARRANGEMENTS

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

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

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

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

Ring Fencing Minimum Obligations

- 4.1 A person who is a Service Provider in respect of a Covered Pipeline (regardless of whether they are also a Service Provider in respect of a Pipeline that is not Covered) must comply with the following (but in the case of paragraphs (a), (b), (h) and (i), as from the date that is 6 months after the relevant Pipeline became Covered):
- (a) be a legal entity registered under the Corporations Law, a foreign company within the meaning of the Corporations Law that has appointed a local agent in accordance with sections 601CF and 601CG of the Corporations Law, a statutory corporation, a government or an entity established by royal charter.
 - (b) not carry on a Related Business;
 - (c) establish and maintain a separate set of accounts in respect of the Services provided by each Covered Pipeline in respect of which the person is a Service Provider;
 - (d) establish and maintain a separate consolidated set of accounts in respect of the entire business of the Service Provider;
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- (e) allocate any costs that are shared between an activity that is covered by a set of accounts described in section 4.1(c) and any other activity according to a methodology for allocating costs that is consistent with the principles in section 8.1 and is otherwise fair and reasonable;
 - (f) ensure that all Confidential Information provided by a User or Prospective User is used only for the purpose for which that information was provided and that such information is not disclosed to any other person without the approval of the User or Prospective User who provided it, except:
 - (i) if the Confidential Information comes into the public domain otherwise than by disclosure by the Service Provider; or
 - (ii) to comply with any law, any legally binding order of a court, government, government or semi-government authority or administrative body or the listing rules of any relevant recognised Stock Exchange;
 - (g) ensure that all Confidential Information obtained by the Service Provider or by its servants, consultants, independent contractors or agents in the course of conducting its business and which might reasonably be expected to affect materially the commercial interests of a User or Prospective User is not disclosed to any other person without the approval of the User or Prospective User to whom that information pertains, except:
 - (i) if the Confidential Information comes into the public domain otherwise than by disclosure by the Service Provider; or
 - (ii) to comply with any law, any legally binding order of a court, government, government or semi-government authority or administrative body or the listing rules of any relevant recognised Stock Exchange;
 - (h) ensure that its Marketing Staff are not also servants, consultants, independent contractors or agents of an Associate that takes part in a Related Business and, in the event that they become or are found to be involved in a Related Business contrary to this section, must procure their immediate removal from its Marketing Staff; and
 - (i) ensure that none of its servants, consultants, independent contractors or agents are Marketing Staff of an Associate that takes part in a Related Business and, in the event that any servants, consultants, independent contractors or agents are found to be the Marketing Staff of such an Associate contrary to this section, must procure their immediate removal from their position with the Service Provider.
- 4.1A If requested to do so in writing by an End User, a Service Provider may disclose End User Information about that End User to the End User or to any other person or persons nominated by the End User who carry on, or propose to carry on, a business of supplying Natural Gas, notwithstanding and without contravening either section 4.1(f) or 4.1(g).
- 4.2 In complying with sections 4.1(c), (d) and (e) a Service Provider must:
- (a) if the Relevant Regulator has published general accounting guidelines for Service Providers which apply to the accounts being prepared, comply with those guidelines; or
 - (b) if the Relevant Regulator has not published such guidelines, comply with guidelines prepared by the Service Provider and approved by the Relevant Regulator or, if there are no such guidelines, comply with such guidelines (if any) as the Relevant Regulator advises the Service Provider apply to that Service Provider from time to time.

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

Additional Ring Fencing Obligations

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

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

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

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

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

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

Procedures for Adding Ring Fencing Obligations

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

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

4.6 The Relevant Regulator must consider any submissions received by the date specified in the notice published under section 4.5(b) and may (but is not obliged) to consider any submissions received after that date.

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

4.8 The Relevant Regulator must:

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

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

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

4.11 Subject to the Gas Pipelines Access Law, a notice under section 4.3 has effect 14 days after the notice is given to the Service Provider or such later date as the Relevant Regulator specifies in the notice. A Service Provider may under the Gas Pipelines Access Law have a decision to issue a notice under section 4.3 reviewed by the Relevant Appeals Body.

Compliance Procedures and Compliance Reporting

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

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

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

Waiver of Ring Fencing Obligations

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

- (a) section 4.1(b) where the Relevant Regulator is satisfied that:
 - (i) either the Covered Pipeline is not a significant part of the Pipeline system in any State or Territory in which it is located or there is more than one Service Provider in relation to the Covered Pipeline and the Service Provider concerned does not have a significant interest in the Covered Pipeline and does not actively participate in the management or operation of the Covered Pipeline; and

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- (ii) the costs to the Service Provider and its Associates that would be incurred solely as a result of complying with that obligation (other than costs associated with losses arising from increased competition in upstream or downstream markets) outweigh any public benefits that would arise from the Service Provider complying with the obligation, taking into account arrangements put in place by the Service Provider (if any) to ensure that Confidential Information the subject of sections 4.1(f) and (g) is not disclosed to the Service Provider or is not disclosed to the servants, consultants, independent contractors or agents of the Service Provider who take part in a Related Business; and
 - (iii) an arrangement has been established between the Service Provider and the Relevant Regulator which the Relevant Regulator is satisfied replicates the manner in which section 7.1 would operate if the Service Provider complied with section 4.1(b); and
- (b) sections 4.1(h) and (i) where the Relevant Regulator is satisfied that the costs to the Service Provider and its Associates that would be incurred solely as a result of complying with that obligation (other than costs associated with losses arising from increased competition in upstream or downstream markets) outweigh any public benefits that would arise from the Service Provider complying with the obligation.
- 4.15A In making a decision under section 4.15 of the Code, the Relevant Regulator may treat a tax liability arising from an Exempt Matter as a cost for the purposes of sections 4.15(a)(ii) and 4.15(b).

Procedures for Waiving Ring Fencing Obligations

- 4.16 A Service Provider may apply to the Relevant Regulator requesting the Relevant Regulator to issue a notice under section 4.15.
- 4.17 When the Relevant Regulator receives an application under section 4.16 the Relevant Regulator must:
- (a) if it considers that the application has been made on trivial or vexatious grounds, reject the application without further consideration; or
 - (b) in all other cases within 14 days after receipt of the application:
 - (i) inform each person known to the Relevant Regulator who the Relevant Regulator believes has a sufficient interest in the matter that it has received the application; and
 - (ii) publish a notice in a national daily newspaper which at least:
 - (A) states who the Service Provider concerned is and the obligations that the application seeks to have waived;
 - (B) states how copies of the application can be obtained;
 - (C) requests submissions by a date specified in the notice (not being a date earlier than 14 days after the date of the notice).
- 4.18 The Relevant Regulator must provide a copy of the application to any person within 7 days after the person requests a copy and pays any reasonable fee required by the Relevant Regulator.
- 4.19 The Relevant Regulator must consider any submissions received by the date specified in the notice published under section 4.17(b) and it may (but is not obliged) to consider any submissions received after that date.
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- 4.20 Within 14 days after the last day for submissions specified in the notice published under section 4.17(b) the Relevant Regulator must issue a draft decision stating whether or not it intends to issue a notice under section 4.15.
- 4.21 The Relevant Regulator must:
- (a) provide a copy of its draft decision to the Service Provider, any person who made a submission on the matter and any other person who requests a copy; and
 - (b) request submissions from persons to whom it provides the draft decision by a specified date (not being a date earlier than 14 days after the date the draft decision was issued).
- 4.22 The Relevant Regulator must consider any submissions it receives by the date specified by the Relevant Regulator under section 4.21 and it may (but is not obliged) to consider any submissions received after that date.
- 4.23 Within 21 days after the last day for submissions on the draft decision specified by the Relevant Regulator, the Relevant Regulator must issue a final decision stating whether or not it will issue a notice under section 4.15.
- 4.24 Subject to the Gas Pipelines Access Law, a notice under section 4.15 has effect 14 days after the notice is given to the Service Provider or such later date as the Relevant Regulator specifies in the notice. A Service Provider or other person adversely affected may under the Gas Pipelines Access Law have a decision by the Relevant Regulator to issue or not issue a notice under section 4.15 reviewed by the Relevant Appeals Body.

5. INFORMATION AND TIMELINES FOR NEGOTIATION

This section of the Code places obligations on Service Providers and Users to disclose to the market information relevant to obtaining access to Services provided by means of a Covered Pipeline.

Service Providers are required to:

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

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

General Requests from Prospective Users

- 5.1 A Service Provider must establish and maintain an Information Package in relation to each Covered Pipeline that contains at least the following information:
- (a) the Access Arrangement and Access Arrangement Information for the relevant Covered Pipeline;
 - (b) a summary of the contents of the public register referred to in section 5.9, updated at reasonable intervals;
 - (c) information relating to all major trunk and mains pipes comprised in the relevant Covered Pipeline (for example, a map showing the location and size of those pipes);
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- (d) a description of the Service Provider's procedures relating to specific access requests, including a detailed description of the information the Service Provider requires in order to consider an access request; and
 - (e) any other information the Relevant Regulator reasonably requires to be included under section 5.2.
- 5.2 The Relevant Regulator may require the Service Provider to amend or include additional information in the Information Package if the Relevant Regulator considers the amendment or additional information will assist Prospective Users to decide whether or not to seek Services from the Service Provider or to determine how to go about seeking Services from the Service Provider. The Relevant Regulator must not require information to be included in the Information Package if its disclosure could in the Relevant Regulator's opinion be unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User.
- 5.3 The Service Provider must provide a copy of the Information Package to any bona fide Prospective User within 14 days after the Prospective User requests a copy and pays any applicable fee. The Service Provider may require the payment of a reasonable fee (determined in a manner approved by the Relevant Regulator) for copying the Access Arrangement Information, but must not charge a fee for any other item included in the Information Package.

Specific Requests from Prospective Users

- 5.4 If a Service Provider receives a specific request for access to a Service provided by means of a Covered Pipeline it must, within 30 days after it has received the information required to consider the request (as set out in the Information Package), respond to the Prospective User:
- (a) confirming that Spare Capacity exists to satisfy the request and specifying the charges and terms and conditions upon which it will make the Service available; or
 - (b) advising that Spare Capacity does not exist to satisfy the request; or
 - (c) advising that investigations are required to be undertaken prior to responding to the request.
- 5.5 If the Service Provider advises that investigations are required to be undertaken prior to responding to the request, it must also advise the Prospective User of:
- (a) the nature of the investigations;
 - (b) a plan, including a time schedule, for completing the investigations; and
 - (c) any reasonable costs which the Prospective User may be required to meet in respect of the investigations.
- Upon obtaining the Prospective User's consent to the plan and the proposed allocation of costs, the Service Provider must proceed forthwith with the agreed plan.
- 5.6 If the Service Provider advises that Capacity does not exist to satisfy the request, it must provide an explanation outlining those aspects of the request which cannot be satisfied and indicating, based on current commitments, when the requirement might be able to be satisfied.
- 5.7 If a Prospective User or a Service Provider provides the other with information pursuant to section 5.4, 5.5 or 5.6 which it notifies the other is confidential, the recipient must not disclose that information to any other person except:
- (a) if the information comes into the public domain otherwise than by disclosure by the recipient; or
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- (b) to comply with any law, any legally binding order of a court, government, government or semi-government authority or administrative body or the listing rules of any relevant recognised Stock Exchange.

Information Provided by Users to the Market

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

- (a) must promptly provide to any person who requests it information about the quantity, type and timing of the unutilised Contracted Capacity and may make publicly available the proposed terms and conditions (which may include price) for the sale of the unutilised Contracted Capacity; and
- (b) may notify the Service Provider of the unutilised Contracted Capacity, including the quantity, type and timing of the unutilised Contracted Capacity and the proposed terms and conditions (which may include price) for the sale of the unutilised Contracted Capacity.

Public Register of Capacity

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

- (a) an indication of the Spare Capacity that it reasonably believes exists for delivery to defined points along the Covered Pipeline (being defined points that are likely to be relevant commercially for a significant number of Prospective Users and the number of which is reasonable on commercial and technical grounds);
- (b) to the extent that it is commercially and technically reasonable to include it, information on planned or committed Developable Capacity and reasonably expected additions to Spare Capacity at the defined points along the Covered Pipeline referred to in paragraph (a), except where such disclosure may be unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User; and
- (c) information provided to the Service Provider by a User under section 5.8(b).

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

6. DISPUTE RESOLUTION

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

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

The dispute resolution mechanism applies only to a dispute about Service provided by means of a Covered Pipeline (for example, a dispute about access to Spare or Developable Capacity or a dispute about interconnection). Spare Capacity is defined as meaning, in the case of a Contract Carriage Pipeline, essentially, capacity that has not already been reserved in a contract plus contractually reserved capacity that is not being used. Although the Arbitrator can determine that access should be provided to contractually reserved capacity that is not being used, it must not make a decision that deprives a person of a contractual right. Consequently, access to contracted but unused capacity can be ordered on an interruptible basis but the original contract holder retains a priority right to that capacity.

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

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

The Arbitrator may before arbitrating a dispute:

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

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

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

- apply the provisions of the Access Arrangement; and*
- take into account the factors listed in section 6.15.*

The Arbitrator must not make a decision that:

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

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

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

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

Notification of a Dispute

- 6.1 If a Prospective User and a Service Provider are unable to agree on one or more aspects of access to a Service the Prospective User or Service Provider may notify the Relevant Regulator in writing that a dispute exists. A Prospective User or Service Provider may not give a notice to the Relevant Regulator under this section unless an Access Arrangement has been accepted by the Relevant Regulator (or the Relevant Regulator has drafted and approved its own Access Arrangement) with respect to the Covered Pipeline concerned.
- 6.2 On receiving the notification, the Relevant Regulator must give notice in writing of the access dispute to:
- (a) the Service Provider, if another person notified the access dispute;
 - (b) the other person, if the Service Provider notified the access dispute.

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

- 6.3 Before arbitrating a dispute, the Arbitrator may:
- (a) require the parties to continue negotiations or engage in an alternative dispute resolution process; and
 - (b) require reports from each party setting out the nature of the latest offers, the basis upon which those offers were made and the nature of any conflicts of interest that the Service Provider may have that may affect its willingness to resolve the dispute with the Prospective User.
- 6.4 Unless the Arbitrator makes a decision under section 6.3, the Arbitrator must require the parties to make submissions to the Arbitrator regarding the dispute by a specified date.

Withdrawal and Termination of a Dispute

- 6.5 The person who notified the dispute under section 6.1 or the Prospective User may withdraw notification of a dispute at any time by notice to the Arbitrator. If the notification is withdrawn, it is taken for the purposes of this section 6 never to have been given.
- 6.6 The Relevant Regulator may at any time terminate an arbitration (without making a decision) if the Relevant Regulator considers that:
- (a) the notification of the dispute was vexatious; or
 - (b) the subject-matter of the dispute is trivial, misconceived or lacking in substance; or
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- (c) the party who notified the dispute has not engaged in negotiations in good faith.

The Arbitration

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

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

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

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

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

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

6.10 The Arbitrator may, but need not, by whatever means it considers appropriate seek written submissions from persons who are not parties to the dispute and take those submissions into account in making its decision under section 6.7.

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

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

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

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

6.13 Subject to sections 6.19 and 6.20, if:

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

the Arbitrator must make a decision requiring the Service Provider to provide the Prospective User with the Reference Service that the Prospective User seeks at the Reference Tariff and on the terms and conditions specified under section 3.6.

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

Guidance for the Arbitrator

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

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

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

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

Restrictions on Decisions

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

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

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

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

Prior Capital Contributions

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

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

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

Safe Operation of a Covered Pipeline

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

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

Obligation to Develop Capacity

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- 6.22 In making a decision under section 6.7 or section 6.13 the Arbitrator may require the Service Provider to expand the Capacity of a Covered Pipeline to meet the requirements of a Prospective User, provided that:
- (a) the Service Provider is not required to extend the geographical range of a Covered Pipeline;
 - (b) the expansion is technically and economically feasible and consistent with the safe and reliable provision of the Service;
 - (c) the Service Provider's legitimate business interests are protected;
 - (d) the Prospective User does not become the owner of a Covered Pipeline or part of a Covered Pipeline without the agreement of the Service Provider; and
 - (e) the Service Provider is not required to fund part or all of the expansion (except where the Extensions/Expansions Policy in the Access Arrangement for the Covered Pipeline states that the Service Provider will fund the New Facility and the conditions specified in the Extensions/Expansions Policy have been met).

- 6.23 If the Arbitrator requires the Service Provider to install a New Facility under section 6.22 and the Prospective User bears the cost of the expenditure on the New Facility, then:
- (a) all expenditure on the New Facility constitutes New Facilities Investment by the Service Provider for the purposes of determining the Reference Tariffs;
 - (b) the Service Provider must levy a Surcharge on Incremental Users (apart from the Prospective User) consistent with the principles for Surcharges contained in section 8 (with the Prospective User treated as if it were paying a Surcharge for the purposes of calculating a fair and reasonable Surcharge for other Incremental Users); and
 - (c) the terms of access for the Prospective User shall reflect the value to the Service Provider of the contribution made by the Prospective User.

Prospective User May Decide Not to Take a Service

- 6.24 Where a decision made under section 6.7 or section 6.13 requires the Service Provider to provide, and the Prospective User to accept, a Service on terms and conditions specified in the decision, then:
- (a) subject to paragraph (b), the Prospective User becomes bound by the decision on the 14th day after the day on which the decision was made, or, if earlier, on the day the Prospective User notifies the Service Provider that it intends to be bound by the decision; and
 - (b) the Prospective User is not bound by the decision if it notifies the Arbitrator that it does not intend to be bound by the decision within 14 days after the day on which the decision was made (unless it has previously notified the Service Provider under paragraph (a), in which case paragraph (a) applies).

Reservation of Capacity During an Access Dispute

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

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

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

7. GENERAL REGULATORY AND MISCELLANEOUS PROVISIONS

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

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

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

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

Approval of Relevant Regulator Required for Associate Contracts

- 7.1 A Service Provider must not enter into an Associate Contract without first obtaining the approval of the Relevant Regulator. The Relevant Regulator must not refuse to approve a proposed Associate Contract unless it considers that the contract would have the effect, or would be likely to have the effect, of substantially lessening, preventing or hindering competition in a market.
- 7.2 If an Associate Contract provides for the supply of Services at the Reference Tariff the Relevant Regulator may make a decision under section 7.1 without conducting public consultation.
- 7.3 In all other cases the Relevant Regulator must, prior to making a decision under section 7.1, conduct such public consultations as it considers appropriate. In conducting such public consultations the Relevant Regulator may, but need not, make public the content of part or all of the Associate Contract. The Relevant Regulator must not make public any part of the Associate Contract which the Service Provider claims is confidential or commercially sensitive except where the Relevant Regulator is of the opinion the disclosure of the part of the Associate Contract concerned would not be unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User.
- 7.4 The Relevant Regulator is deemed to have approved an Associate Contract if it does not notify the Service Provider that it does not approve the Contract within:
- (a) 21 days after the day on which the Service Provider's application to enter into the Associate Contract was received by the Relevant Regulator; or
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- (b) if, within that 21 day period, the Relevant Regulator notifies the Service Provider that it requires additional information from the Service Provider to consider the application - the period of 21 days after the day on which the Service Provider's application to enter into the Associate Contract was received by the Relevant Regulator plus the number of days in the period commencing on the day on which the Relevant Regulator gave notice to the Service Provider and ending on the day on which the Relevant Regulator receives the additional information from the Service Provider.

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

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

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

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

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

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

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

- (a) in relation to Access Arrangements a copy of:
 - (i) each proposed Access Arrangement or proposed revisions of an Access Arrangement;
 - (ii) each proposed Access Arrangement Information or proposed revisions of Access Arrangement Information;
 - (iii) each submission received by the Relevant Regulator in relation to the Access Arrangement or revisions to the Access Arrangement;
 - (iv) each submission received by the Relevant Regulator in relation to the Access Arrangement Information or revisions to the Access Arrangement Information;
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- (v) each draft decision and final decision made by the Relevant Regulator (and the Relevant Appeals Body under the Gas Pipelines Access Law if applicable) in relation to a proposed Access Arrangement, proposed revisions to an Access Arrangement, proposed Access Arrangement Information or proposed revisions to Access Arrangement Information and the reasons given for each such draft or final decision;
 - (vi) if an Access Arrangement submitted under section 2.3 is accepted, a description of the Pipeline which thereby became Covered;
 - (b) in relation to competitive tender processes a copy of:
 - (i) each Tender Approval Request and Final Approval Request the Relevant Regulator receives;
 - (ii) each submission and other document the Relevant Regulator receives relating to a Tender Approval Request and Final Approval Request;
 - (iii) each decision by the Relevant Regulator relating to a Tender Approval Request or Final Approval Request and the reasons given for each such decision;
 - (iv) a description of any proposed Pipeline that becomes a Covered Pipeline pursuant to section 3.34;
 - (c) in relation to arbitrations, if the Regulator considers it appropriate, a copy of each draft or final decision of the Relevant Regulator (or an Arbitrator appointed by it) under section 6 of the Code and the reasons given for each such draft or final decision;
 - (d) in relation to ring fencing a copy of:
 - (i) each application received by the Relevant Regulator under section 4;
 - (ii) each submission received by the Relevant Regulator in relation to adding to or waiving ring fencing obligations;
 - (iii) any draft or final decision by the Relevant Regulator (and the Relevant Appeals Body under the Gas Pipelines Access Law if applicable) to add to or waive ring fencing obligations and the reasons given for any such draft or final decision;
 - (e) in relation to Associate Contracts a copy of:
 - (i) each decision made by the Relevant Regulator under section 7.1 and the reasons given for any such decision;
 - (ii) if the Relevant Regulator considers it appropriate, the proposed Associate Contract.

Public Register

- 7.10 Subject to section 7.12 the Code Registrar shall keep a Public Register and place on that register:
- (a) a description of each Covered Pipeline;
 - (b) each document provided to it by the NCC under section 7.8 of the Code and section 10 or 11 of the Gas Pipelines Access Law;
 - (c) each document provided to it by a Relevant Regulator under section 7.9; and
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- (d) each document provided to it by a Service Provider under either section 1.41 or section 3.20.

Treatment of Confidential Information

- 7.11 Where a person furnishes information or a document to the NCC, Relevant Minister or Relevant Regulator (other than in compliance with a notice given by the Relevant Regulator under section 41 of the Gas Pipelines Access Law) the person may, at the time when the document is furnished, state that the information or document or part of the information or document is of a confidential or commercially sensitive nature.
- 7.12 The NCC, Relevant Minister and Relevant Regulator must not disclose the contents of any such information or document or any such part of the information or document to any person or provide it to the Code Registrar to place on the Public Register except where the NCC, Relevant Minister or Relevant Regulator is of the opinion that the disclosure of the information or document or part of the information or document would not be unduly harmful to the legitimate business interests of the Service Provider or a User or Prospective User.
- 7.13 Notwithstanding section 7.12 the information provided to the Code Registrar by the Relevant Regulator under section 7.9 must include at least the information stated below for the decision identified:
- (a) A decision in relation to an Access Arrangement or revisions to an Access Arrangement:
- (i) the valuations derived from employing each asset valuation methodology to which regard was had pursuant to section 8.10(a) and (b) and the assumptions on which those valuations were based;
- (ii) the Initial Capital Base for a Covered Pipeline that is in existence at the Commencement of the Code;
- (iii) a summary of the assumptions and reasoning that resulted in the figure adopted as the Initial Capital Base for a Covered Pipeline that is in existence at the commencement of the Code, including if the Initial Capital Base for a Covered Pipeline that is in existence at the commencement of the Code is outside the range of values determined according to sections 8.10(a) and (b), detailed reasons as to why a figure outside that range was selected.
- (b) A decision in relation to an Access Arrangement or revisions to an Access Arrangement where the decision was to approve a proposed Access Arrangement or proposed revisions: details of where the assumptions adopted by the Regulator in approving the (or drafting and approving its own) Access Arrangement differ from the assumptions described in the Access Arrangement Information and reasons for that difference.
- 7.14 The Relevant Regulator may provide a person who makes a request for further information with such further information relevant to the decision as it sees fit, other than information which could not be provided to the Code Registrar under section 7.12.

Operational Guidelines

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

- 7.16 If any section of this Code requires the NCC or the Relevant Minister to do something within a certain period, the NCC or the Relevant Minister, as the case may be, may, in a particular case, increase the period it has to do the thing in question by the period originally specified in the section of the Code concerned.
- 7.17 The NCC or the Relevant Minister may only increase the period it has to do a thing under section 7.16 if, before the day on which the Code would have required the thing to be done, it publishes in a national newspaper notice of the decision to increase the period.
- 7.18 The NCC and the Relevant Minister may increase the period it has to do a thing any number of times provided on each occasion it does so it complies with section 7.17.
- 7.19 The Relevant Regulator may on one or more occasions, at its discretion, grant extensions to any time period in this Code that applies to a person other than the Relevant Regulator, the NCC or the Relevant Minister, provided that an application for that extension has been received by it before the expiration of the time period in question. Time periods applying to the Relevant Regulator, NCC or Relevant Minister may be extended as otherwise provided in this Code.

Disclosure of End User Information

- 7.20 Subject to section 7.22, if requested to do so in writing by an End User, a Service Provider must disclose any End User Information about that End User of a type described in the End User's written request that is in the Service Provider's possession or under its control, to the End User or to any other person nominated by the End User who carries on, or proposes to carry on, a business of supplying Natural Gas.
- 7.21 A Service Provider must not disclose the fact that an End User has made a request under section 7.20 to any person (other than a person nominated by the End User under section 7.20).
- 7.22 A Service Provider may, prior to disclosing any End User Information under paragraph 7.20, require the End User or other recipient of the End User Information to pay the Service Provider a fee to compensate the Service Provider for its reasonable costs of providing the End User Information, provided that fee has been approved in writing by the Relevant Regulator.

8. REFERENCE TARIFF PRINCIPLES

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

General Principles

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

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

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

Principles for determining the Total Revenue

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

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

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

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

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

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

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

- *establishing the Initial Capital Base (including principles for valuing pipelines in existence at the commencement of the Code and those that come into existence after the commencement of the Code);*
- *valuing investment in new facilities (including principles for determining whether New Facilities Investment may be included in the Capital Base, and for addressing differences between forecast and actual capital expenditure) and*
- *reducing the Capital Base where assets cease to contribute, or make a reduced contribution, to the delivery of Services.*

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

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

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

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

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

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

Allocation of the Total Revenue

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

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

Other Principles

This section also establishes:

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

General Principles

- 8.1 A Reference Tariff and Reference Tariff Policy should be designed with a view to achieving the following objectives:
- (a) providing the Service Provider with the opportunity to earn a stream of revenue that recovers the efficient costs of delivering the Reference Service over the expected life of the assets used in delivering that Service;
 - (b) replicating the outcome of a competitive market;
 - (c) ensuring the safe and reliable operation of the Pipeline;
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- (d) not distorting investment decisions in Pipeline transportation systems or in upstream and downstream industries;
 - (e) efficiency in the level and structure of the Reference Tariff; and
 - (f) providing an incentive to the Service Provider to reduce costs and to develop the market for Reference and other Services.

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

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

- (a) the revenue to be generated from the sales (or forecast sales) of all Services over the Access Arrangement Period (the *Total Revenue*) should be established consistently with the principles and according to one of the methodologies contained in this section 8;
- (b) to the extent that the Covered Pipeline is used to provide a number of Services, that portion of Total Revenue that a Reference Tariff is designed to recover (which may be based upon forecasts) is calculated consistently with the principles contained in this section 8;
- (c) a Reference Tariff (which may be based upon forecasts) is designed so that the portion of Total Revenue to be recovered from a Reference Service (referred to in paragraph (b)) is recovered from the Users of that Reference Service consistently with the principles contained in this section 8;
- (d) Incentive Mechanisms are incorporated into the Reference Tariff Policy wherever the Relevant Regulator considers appropriate and such Incentive Mechanisms are consistent with the principles contained in this section 8; and
- (e) any forecasts required in setting the Reference Tariff represent best estimates arrived at on a reasonable basis.

Form of Regulation

8.3 Subject to these requirements and to the Relevant Regulator being satisfied that it is consistent with the objectives contained in section 8.1, the manner in which a Reference Tariff may vary within an Access Arrangement Period through implementation of the Reference Tariff Policy is within the discretion of the Service Provider. For example, a Reference Tariff may be designed on the basis of:

- (a) a "price path" approach, whereby a series of Reference Tariffs are determined in advance for the Access Arrangement Period to follow a path that is forecast to deliver a revenue stream calculated consistently with the principles in this section 8, but is not adjusted to account for subsequent events until the commencement of the next Access Arrangement Period;
 - (b) a "cost of service" approach, whereby the Tariff is set on the basis of the anticipated costs of providing the Reference Service and is adjusted continuously in light of actual outcomes (such as sales volumes and actual costs) to ensure that the Tariff recovers the actual costs of providing the Service; or
 - (c) variations or combinations of these approaches.
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Total Revenue

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

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

- (a) a return (*Rate of Return*) on the value of the capital assets that form the Covered Pipeline (*Capital Base*);
- (b) depreciation of the Capital Base (*Depreciation*); and
- (c) the operating, maintenance and other non-capital costs incurred in providing all Services provided by the Covered Pipeline (*Non-Capital Costs*).

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

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

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

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

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

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

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

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

- (a) on a nominal basis (under which the Capital Base and Depreciation are expressed in historical cost terms and all other costs and revenues are expressed in current prices and a nominal Rate of Return is allowed); or
 - (b) on a real basis (under which the Capital Base, Depreciation and all costs and revenues are expressed in constant prices and a real Rate of Return is allowed); or
 - (c) on any other basis in dealing with the effects of inflation,
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provided that the basis used is specified in the Access Arrangement, is approved by the Relevant Regulator and is applied consistently in determining the Total Revenue and Reference Tariffs.

- 8.6 In view of the manner in which the Rate of Return, Capital Base, Depreciation Schedule and Non Capital Costs may be determined (in each case involving various discretions), it is possible that a range of values may be attributed to the Total Revenue described in section 8.4. In order to determine an appropriate value within this range the Relevant Regulator may have regard to any financial and operational performance indicators it considers relevant in order to determine the level of costs within the range of feasible outcomes under section 8.4 that is most consistent with the objectives contained in section 8.1.
- 8.7 If the Relevant Regulator has considered financial and operational performance indicators for the purposes of section 8.6, it must identify the indicators and provide an explanation of how they have been taken into account.

Principles for Establishing the Capital Base

- 8.8 Principles for establishing the Capital Base for the Covered Pipeline when a Reference Tariff is first proposed for a Reference Service (ie, for the first Access Arrangement Period) are set out in sections 8.10 to 8.14.
- 8.9 Sections 8.15 to 8.29 then describe the principles to be applied in adjusting the value of the Capital Base over time as a result of additions to the Covered Pipeline and as a result of parts of the Covered Pipeline ceasing to be used for the delivery of Services. Consistently with those principles, the Capital Base at the commencement of each Access Arrangement Period after the first, for the Cost of Service methodology, is determined as:
- (a) the Capital Base at the start of the immediately preceding Access Arrangement Period; plus
 - (b) the New Facilities Investment or Recoverable Portion (whichever is relevant) in the immediately preceding Access Arrangement Period (adjusted as relevant as a consequence of section 8.22 to allow for the differences between actual and forecast New Facilities Investment); less
 - (c) Depreciation for the immediately preceding Access Arrangement Period; less
 - (d) Redundant Capital identified prior to the commencement of that Access Arrangement Period,

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

- (e) the Residual Value assumed in the previous Access Arrangement Period (adjusted as relevant as a consequence of section 8.22 to allow for the differences between actual and forecast New Facilities Investment); less
- (f) Redundant Capital identified prior to the commencement of that Access Arrangement Period,

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

Initial Capital Base - Existing Pipelines

- 8.10 When a Reference Tariff is first proposed for a Reference Service provided by a Covered Pipeline that was in existence at the commencement of the Code, the following factors should be considered in establishing the initial Capital Base for that Pipeline:
- (a) the value that would result from taking the actual capital cost of the Covered Pipeline and subtracting the accumulated depreciation for those assets charged to Users (or thought to have been charged to Users) prior to the commencement of the Code;
 - (b) the value that would result from applying the "depreciated optimised replacement cost" methodology in valuing the Covered Pipeline;

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- (c) the value that would result from applying other well recognised asset valuation methodologies in valuing the Covered Pipeline;
 - (d) the advantages and disadvantages of each valuation methodology applied under paragraphs (a), (b) and (c);
 - (e) international best practice of Pipelines in comparable situations and the impact on the international competitiveness of energy consuming industries;
 - (f) the basis on which Tariffs have been (or appear to have been) set in the past, the economic depreciation of the Covered Pipeline, and the historical returns to the Service Provider from the Covered Pipeline;
 - (g) the reasonable expectations of persons under the regulatory regime that applied to the Pipeline prior to the commencement of the Code;
 - (h) the impact on the economically efficient utilisation of gas resources;
 - (i) the comparability with the cost structure of new Pipelines that may compete with the Pipeline in question (for example, a Pipeline that may by-pass some or all of the Pipeline in question);
 - (j) the price paid for any asset recently purchased by the Service Provider and the circumstances of that purchase; and
 - (k) any other factors the Relevant Regulator considers relevant.
- 8.11 The initial Capital Base for Covered Pipelines that were in existence at the commencement of the Code normally should not fall outside the range of values determined under paragraphs (a) and (b) of section 8.10.
- Initial Capital Base - New Pipelines***
- 8.12 When a Reference Tariff is first proposed for a Reference Service provided by a Covered Pipeline that has come into existence after the commencement of the Code, the initial Capital Base for the Covered Pipeline is, subject to section 8.13, the actual capital cost of those assets at the time they first enter service. A new Pipeline does not need to pass the tests described in section 8.16.
- 8.13 If the period between the time the Covered Pipeline first enters service and the time the Reference Tariff is proposed is such as reasonably to warrant adjustment to the actual capital cost in establishing the initial Capital Base, then that cost should be adjusted to account for New Facilities Investment or the Recoverable Portion (whichever is relevant), Depreciation and Redundant Capital incurred or identified during that period (as described in section 8.9).
- Initial Capital Base - After the Expiry of an Access Arrangement***
- 8.14 Where an Access Arrangement has expired, the initial Capital Base at the time a new Access Arrangement is approved is the Capital Base applying at the expiry of the previous Access Arrangement adjusted to account for the New Facilities Investment or the Recoverable Portion (whichever is relevant), Depreciation and Redundant Capital (as described in section 8.9) as if the previous Access Arrangement had remained in force.
- New Facilities Investment***
- 8.15 The Capital Base for a Covered Pipeline may be increased from the commencement of a new Access Arrangement Period to recognise additional capital costs incurred in constructing New Facilities for the purpose of providing Services.
- 8.16 The amount by which the Capital Base may be increased is the amount of the actual capital cost incurred (***New Facilities Investment***) provided that:
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- (a) that amount does not exceed the amount that would be invested by a prudent Service Provider acting efficiently, in accordance with accepted good industry practice, and to achieve the lowest sustainable cost of delivering Services; and
- (b) one of the following conditions is satisfied:
- (i) the Anticipated Incremental Revenue generated by the New Facility exceeds the New Facilities Investment; or
 - (ii) the Service Provider and/or Users satisfy the Relevant Regulator that the New Facility has system-wide benefits that, in the Relevant Regulator's opinion, justify the approval of a higher Reference Tariff for all Users; or
 - (iii) the New Facility is necessary to maintain the safety, integrity or Contracted Capacity of Services.
- 8.17 For the purposes of administering section 8.16(a), the Relevant Regulator must consider:
- (a) whether the New Facility exhibits economies of scale or scope and the increments in which Capacity can be added; and
 - (b) whether the lowest sustainable cost of delivering Services over a reasonable time frame may require the installation of a New Facility with Capacity sufficient to meet forecast sales of Services over that time frame.
- 8.18 A Reference Tariff Policy may, at the discretion of the Service Provider, state that the Service Provider will undertake New Facilities Investment that does not satisfy the requirements of section 8.16. If the Service Provider incurs such New Facilities Investment, the Capital Base may be increased by that part of the New Facilities Investment which does satisfy section 8.16 (the *Recoverable Portion*).
- 8.19 The Reference Tariff Policy may also provide that an amount in respect of the balance of the New Facilities Investment may subsequently be added to the Capital Base if at any time the type and volume of services provided using the increase in Capacity attributable to the New Facility change such that any part of the Speculative Investment Fund (as defined below) would then satisfy the requirements of section 8.16. The amount of the *Speculative Investment Fund* at any time is equal to:
- (a) the difference between the New Facilities Investment and the Recoverable Portion, less any amount the Service Provider notifies the Relevant Regulator (at the time the expenditure is incurred) that it has elected to recover through a Surcharge under section 8.25 (*Speculative Investment*); plus
 - (b) an annual increase in that amount calculated on a compounded basis at a rate of return approved by the Relevant Regulator which rate of return may, but need not, be different from the rate of return implied in the Reference Tariff; less
 - (c) any part of the Speculative Investment Fund previously added to the Capital Base under this section 8.19.
- Forecast Capital Expenditure***
- 8.20 Consistent with the methodologies described in section 8.4, Reference Tariffs may be determined on the basis of New Facilities Investment that is forecast to occur within the Access Arrangement Period provided that the New Facilities Investment is reasonably expected to pass the requirements in section 8.16 when the New Facilities Investment is forecast to occur.
- 8.21 If the Relevant Regulator agrees to Reference Tariffs being determined on the basis of forecast New Facilities Investment, this need not (at the discretion of the Relevant Regulator) imply that such New Facilities Investment will meet the requirements of Section 8.16 when the Relevant Regulator considers revisions to an Access Arrangement submitted by a Service
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Provider. However, the Relevant Regulator may, at its discretion, agree (on written application by the Service Provider) at the time at which the New Facilities Investment takes place that it meets the requirements of section 8.16, the effect of which is to bind the Relevant Regulator's decision when the Relevant Regulator considers revisions to an Access Arrangement submitted by the Service Provider. For the purposes of public consultation, any such application must be treated as if it were a proposed revision to the Access Arrangement submitted under section 2.28.

- 8.22 For the purposes of calculating the Capital Base at the commencement of the subsequent Access Arrangement Period, either the Reference Tariff Policy should describe or the Relevant Regulator shall determine when the Relevant Regulator considers revisions to an Access Arrangement submitted by a Service Provider, how the New Facilities Investment is to be determined for the purposes of section 8.9. This includes whether (and how) the Capital Base at the commencement of the next Access Arrangement Period should be adjusted if the actual New Facilities Investment is different from the forecast New Facilities Investment (with this decision to be designed to best meet the objectives in section 8.1).

Capital Contributions

- 8.23 New Facilities Investment may also be added to the Capital Base when a User makes a Capital Contribution (as defined below) in respect of a New Facility. Nothing in this Code prevents a User agreeing to pay the Service Provider a Charge which exceeds the Charge that would apply under a Reference Tariff for a Reference Service (or, in relation to another Service, under the Equivalent Tariff) in any circumstance including, without limitation, if the excess is paid in respect of the funding of a New Facility (in which case the extra payment is a ***Capital Contribution***).
- 8.24 Any expenditure on a New Facility in respect of which a User makes a Capital Contribution constitutes New Facilities Investment incurred by the Service Provider for the purposes of this section 8. The User's obligations to the Service Provider and the Service Provider's obligations to the User with respect to the Capital Contribution shall be as agreed between the Service Provider and User.

Surcharges

- 8.25 As contemplated in section 8.19(a), unless precluded by the Service Provider's Extensions/Expansions Policy, a Service Provider may elect by written notice to the Relevant Regulator to recover all or part of an amount that it would not recover at the Prevailing Tariffs through a Surcharge (after commencement of the next Access Arrangement Period, this amount is that amount that would otherwise constitute Speculative Investment). A ***Surcharge*** is a Charge in addition to the Charge that would apply under a Reference Tariff for a Reference Service (or, in relation to another Service, under the Tariff that would be determined by the Arbitrator in arbitrating an access dispute under section 6) that is levied on Users of Incremental Capacity in order for the Service Provider to recover some or all of the cost of New Facilities Investment that can not be recovered at the Prevailing Tariffs (and so cannot be included in the Capital Base in subsequent Access Arrangement Periods). If the Relevant Regulator receives such a written notice, it may approve the Surcharge, with an approval having the effect of binding the Arbitrator in an access dispute under section 6. For the purposes of public consultation, the notice shall be treated as if it were a proposed revision to the Access Arrangement submitted under section 2.28.
- 8.26 A Service Provider may levy a Surcharge on Users of Incremental Capacity provided the following principles apply:
- (a) the Surcharges are designed to recover only that part of the New Facilities Investment that satisfies the requirement in section 8.16(a);
 - (b) the costs that the Surcharges are designed to recover do not include any costs that are included in the Speculative Investment Fund; and
 - (c) the structure of the Surcharges reflect a fair and reasonable sharing of the total recoverable cost between Incremental Users (and for this purpose any User who is paying a Capital Contribution should be assumed to be paying a Surcharge).
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Capital Redundancy

- 8.27 A Reference Tariff Policy may include (and the Relevant Regulator may require that it include) a mechanism that will, with effect from the commencement of the next Access Arrangement Period, remove an amount from the Capital Base (*Redundant Capital*) for a Covered Pipeline so as to:
- (a) ensure that assets which cease to contribute in anyway to the delivery of Services are not reflected in the Capital Base; and
 - (b) share costs associated with a decline in the volume of sales of Services provided by means of the Covered Pipeline between the Service Provider and Users.

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

- 8.28 If assets that are the subject of Redundant Capital subsequently contribute, or make an enhanced contribution, to the delivery of Services, the assets may be treated as a New Facility having New Facilities Investment (for the purpose of sections 8.16, 8.17, 8.18 and 8.19) equal to the Redundant Capital Value increased annually on a compounded basis by the Rate of Return from the time the Redundant Capital Value was removed from the Capital Base.
- 8.29 A Reference Tariff Policy may include (and the Relevant Regulator may require it to include) other mechanisms that have the same effect on Reference Tariffs as the above but which do not result in the removal of any amount from the Capital Base.

Rate of Return

- 8.30 The Rate of Return used in determining a Reference Tariff should provide a return which is commensurate with prevailing conditions in the market for funds and the risk involved in delivering the Reference Service (as reflected in the terms and conditions on which the Reference Service is offered and any other risk associated with delivering the Reference Service).
- 8.31 By way of example, the Rate of Return may be set on the basis of a weighted average of the return applicable to each source of funds (equity, debt and any other relevant source of funds). Such returns may be determined on the basis of a well accepted financial model, such as the Capital Asset Pricing Model. In general, the weighted average of the return on funds should be calculated by reference to a financing structure that reflects standard industry structures for a going concern and best practice. However, other approaches may be adopted where the Relevant Regulator is satisfied that to do so would be consistent with the objectives contained in section 8.1.
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Depreciation Schedule - Cost of Service

- 8.32 The Depreciation Schedule is the set of depreciation schedules (one of which may correspond to each asset or group of assets that form part of the Covered Pipeline) that is the basis upon which the assets that form part of the Capital Base are to be depreciated for the purposes of determining a Reference Tariff (the ***Depreciation Schedule***).
- 8.33 The Depreciation Schedule should be designed:
- (a) so as to result in the Reference Tariff changing over time in a manner that is consistent with the efficient growth of the market for the Services provided by the Pipeline (and which may involve a substantial portion of the depreciation taking place in future periods, particularly where the calculation of the Reference Tariffs has assumed significant market growth and the Pipeline has been sized accordingly);
 - (b) so that each asset or group of assets that form part of the Covered Pipeline is depreciated over the economic life of that asset or group of assets;
 - (c) so that, to the maximum extent that is reasonable, the depreciation schedule for each asset or group of assets that form part of the Covered Pipeline is adjusted over the life of that asset or group of assets to reflect changes in the expected economic life of that asset or group of assets; and
 - (d) subject to section 8.27, so that an asset is depreciated only once (that is, so that the sum of the Depreciation that is attributable to any asset or group of assets over the life of those assets is equivalent to the value of that asset or group of assets at the time at which the value of that asset or group of assets was first included in the Capital Base, subject to such adjustment for inflation (if any) as is appropriate given the approach to inflation adopted pursuant to section 8.5A).

Application of Depreciation Principles to the IRR/NPV Methodology

- 8.34 If the IRR or NPV methodology is used, then the notional depreciation over the Access Arrangement Period for each asset or group of assets that form part of the Covered Pipeline is:
- (a) for an asset that was in existence at the commencement of the Access Arrangement Period, the difference between the value of that asset in the Capital Base at the commencement of the Access Arrangement Period and the value of that asset that is reflected in the Residual Value; and
 - (b) for a New Facility installed during the Access Arrangement Period, the difference between the actual cost or forecast cost of the Facility (whichever is relevant) and the value of that asset that is reflected in the Residual Value,
- and, to comply with section 8.33:
- (c) the Residual Value of the Covered Pipeline should reflect notional depreciation that meets the principles of section 8.33; and
 - (d) the Reference Tariff should change over the Access Arrangement Period in a manner that is consistent with the efficient growth of the market for the Services provided by the Pipeline (and which may involve a substantial portion of the depreciation taking place towards the end of the Access Arrangement Period, particularly where the calculation of the Reference Tariffs has assumed significant market growth and the Pipeline has been sized accordingly).
- 8.35 In implementing the principles in section 8.33 or 8.34, regard must be had to the reasonable cash flow needs for Non Capital Costs, financing cost requirements and similar needs of the Service Provider.

Non Capital Costs

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- 8.36 Non Capital Costs are the operating, maintenance and other costs incurred in the delivery of the Reference Service.
- 8.37 A Reference Tariff may provide for the recovery of all Non Capital Costs (or forecast Non Capital Costs, as relevant) except for any such costs that would not be incurred by a prudent Service Provider, acting efficiently, in accordance with accepted and good industry practice, and to achieve the lowest sustainable cost of delivering the Reference Service.

Allocation of Revenue (Costs) between Services

- 8.38 Subject to sections 8.40 and 8.43, to the maximum extent that is commercially and technically reasonable, the portion of the Total Revenue (referred to in section 8.4) that a Reference Tariff should be designed to recover (which may be based on forecasts) should include:
- (a) all of the Total Revenue that reflects costs incurred (including capital costs) that are directly attributable to the Reference Service; and
 - (b) a share of the Total Revenue that reflects costs incurred (including capital costs) that are attributable to providing the Reference Service jointly with other Services, with this share to be determined in accordance with a methodology that meets the objectives in section 8.1 and is otherwise fair and reasonable.
- 8.39 If the Relevant Regulator requires that a different methodology be used to determine the portion of Total Revenue to be recovered from particular Reference Services pursuant to section 8.38 than that proposed by the Service Provider and described in the Access Arrangement Information, the Relevant Regulator shall in its decision on the Access Arrangement or revisions to an Access Arrangement concerned provide a detailed explanation of the methodology that it requires be used to allocate costs pursuant to section 8.38.
- 8.40 Notwithstanding section 8.38, if the revenue assumed in the Total Revenue calculation under section 8.4 reflects costs (including capital costs) that are attributable to providing the Reference Service jointly with a Rebatable Service, then all or part of the Total Revenue that would have been recovered from the Rebatable Service under section 8.38 (if that Service was a Reference Service) may be recovered from the Reference Service provided that an appropriate portion of any revenue realised from sales of any such Rebatable Service is rebated to Users of the Reference Service (either through a reduction in the Reference Tariff or through a direct rebate to the relevant User or Users). The structure of such a rebate mechanism should be determined having regard to the following objectives:
- (a) providing the Service Provider with an incentive to promote the efficient use of Capacity, including through the sale of Rebatable Services; and
 - (b) Users of the Reference Service sharing in the gains from additional sales of Services, including from sales of Rebatable Services.
- 8.41 Alternative approaches to allocating the costs described in section 8.4 may be used provided they have substantially the same effect as the approach outlined in sections 8.38 and 8.40.

Allocation of Revenue (Costs) between Users

- 8.42 Subject to section 8.43, a Reference Tariff should, to the maximum extent that is technically and commercially reasonable, be designed so that a particular User's share of the portion of Total Revenue to be recovered from sales of a Reference Service (which may be on the basis of forecasts) is consistent with the principles described in section 8.38.
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Prudent Discounts

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

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

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

Use of Incentive Mechanisms

- 8.44 The Reference Tariff Policy should, wherever the Relevant Regulator considers appropriate, contain a mechanism (an *Incentive Mechanism*) that permits the Service Provider to retain all, or any share of, any returns to the Service Provider from the sale of the Reference Service:
- (a) during an Access Arrangement Period, that exceed the level of returns expected for that Access Arrangement Period; or
 - (b) during a period (commencing at the start of an Access Arrangement and including two or more Access Arrangement Periods) approved by the Relevant Regulator, that exceed the level of returns expected for that period,

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

- 8.45 An Incentive Mechanism may include (but is not limited to) the following:
- (a) specifying the Reference Tariff that will apply during each year of the Access Arrangement Period based on forecasts of all relevant variables (and which may assume that the Service Provider can achieve defined efficiency gains) regardless of the realised values for those variables;
 - (b) specifying a target for revenue from the sale of all Services provided by means of the Covered Pipeline, and specifying that a certain proportion of any revenue received in excess of that target shall be retained by the Service Provider and that the remainder must be used to reduce the Tariffs for all Services provided by means

of the Covered Pipeline (or to provide a rebate to Users of the Covered Pipeline); and

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

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

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

Certain Reference Tariff Principles Not Subject to Periodic Review

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

8.48 A Fixed Principle may include any Structural Element, but in assessing whether any Structural Element may be a Fixed Principle regard must be had to the interests of the Service Provider and the interests of Users and Prospective Users. A Market Variable Element can not be a Fixed Principle. The Fixed Period may be for all or part of the duration of an Access Arrangement, but in determining a Fixed Period regard must be had to the interests of the Service Provider and the interests of Users and Prospective Users.

Assessment of Compliance with Section 8

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

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

9. CODE CHANGE

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

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

9.2 A report by the NGPAC for the purposes of section 9.1(a) must state whether the NGPAC considers the amendment it recommends to be significant or not significant. If the amendment is considered to be significant, the report must confirm that the recommendation is made following a public consultation process under which the NGPAC has:

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

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

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

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

10. INTERPRETATION

How this Code applies to Multiple Service Providers

10.1 (a) This section 10.1 applies if there is more than one Service Provider in connection with a Covered Pipeline, including if:

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- (i) the Covered Pipeline is owned or operated by two or more persons as a joint venture or partnership; or
 - (ii) the Covered Pipeline is owned and operated by different persons; or
 - (iii) a Covered Pipeline is legally owned by a person or persons on trust for others.

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

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

10.2 Where:

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

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

How this Code applies to successor Service Providers

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

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

Overviews

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

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

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

Notices

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

Regulatory and Conduct Provisions

- 10.7 For the purposes of the Gas Pipelines Access Law:

- (a) The following sections shall be Regulatory Provisions:
- 2.2 and 2.28 (Service Provider must submit a proposed Access Arrangement or proposed revisions to the Access Arrangement, together with Access Arrangement Information);
 - 2.4 (Relevant Regulator may require more than one Access Arrangement);
 - 2.9 and 2.30 (Relevant Regulator may require changes to Access Arrangement Information);
 - 4.1(a), (b), (c), (d), (e), (h) and (i) and 4.2 (basic ring fencing obligations other than in relation to confidential information);
 - 4.3 (additional ring fencing obligations);
 - 4.12 (establishing compliance procedures);
 - 4.13 (report to the Relevant Regulator);
 - 4.14 (reporting own non-compliance);
 - 5.1 and 5.2 (establishing information package);
 - 5.3 (provide information package);
 - 5.4 to 5.6 (inclusive) (response to access request);
 - 5.8 (information to be provided to the market about unutilised contract capacity);
 - 5.9 (public register of capacity);
- (b) the following sections shall be Conduct Provisions:
- 3.15 (enforcement of queuing policy);
 - 4.1(f) and (g) (basic ring fencing obligations in relation to confidential information);
 - 5.7 (keeping additional information confidential);
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- 6.16, 6.24(a) and 6.26 (requiring compliance with outcome of arbitration);
 - 7.1 (Associate contracts).
 - 7.20 and 7.21 (Disclosure of End User Information).

Definitions

10.8 The following definitions apply unless the context otherwise requires:

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

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

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

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

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

'Anticipated Incremental Revenue' means the present value (calculated at the Rate of Return) of the reasonably anticipated future revenue from the sale of Services at the Prevailing Tariffs which would not have been generated without the Incremental Capacity, minus the present value (calculated at the Rate of Return) of the best reasonable forecast of the increase in Non Capital Costs directly attributable to the sale of those Services.

'Arbitrator' has the meaning given the Gas Pipelines Access Law.

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

'Associate Contract' means;

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

'Bare Transfer' has the meaning given in section 3.10.

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

'Capacity Management Policy' has the meaning given in section 3.7.

'Capital Base' has the meaning given in section 8.4.

'Capital Contribution' has the meaning given in section 8.23.

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

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

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

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

- (a) any information relating to the financial position of a User or Prospective User and, in particular, includes information relating to the assets or liabilities of the User or Prospective User and any other matter that affects or may affect the financial position or reputation of the User or Prospective User;
- (b) information relating to the internal management and structure of the User or Prospective User or the personnel, policies and strategies of a User or Prospective User;
- (b) information of a User or Prospective User to which the Service Provider has access, other than information referred to in paragraphs (a) and (b), that has any actual or potential commercial value to the User or Prospective User or the person or corporation which supplied that information; and
- (d) any information in the Service Provider's possession relating to the User's or Prospective User's customers or suppliers and like information.

'Contracted Capacity' means that part of the Capacity which has been reserved by a User or Users pursuant to a contract entered into with the Service Provider.

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

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

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

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

'Covered Pipeline' means, subject to sections 2.3 and 2.4, the whole or a particular part of a Pipeline which is Covered and any extension to, or expansion of the Capacity of, that Covered Pipeline which is to be treated as part of the Covered Pipeline in accordance with the Extensions/Expansions Policy contained in the Access Arrangement for that Covered Pipeline and any expansion of that Covered Pipeline required to be installed under section 6.22.

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

'Depreciation' means, in any year and on any asset or group of assets, the amount calculated according to the Depreciation Schedule for that year and for that asset or group of assets.

'Depreciation Schedule' has the meaning given in section 8.32.

'Developable Capacity' means the difference between the Capacity and the Capacity which would be available if additions of plant and/or pipeline were made, but does not include any extension of the geographic range of a Covered Pipeline.

'End User' means:

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

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

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

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

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

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

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

'Final Approval Request' has the meaning given in section 3.29.

'Fixed Period' has the meaning given in section 8.47.

'Fixed Principle' has the meaning given in section 8.47.

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

- (a) in the case of South Australia:
 - (i) the provisions referred to in paragraph (a) of the definition of "Gas Pipelines Access Law" in section 3(1) of the Gas Pipelines Access (South Australia) Act 1997 of South Australia, as applying as a law of South Australia; and
 - (ii) Regulations in force under Part 3 of that Act; and
 - (b) in the case of Western Australia:
 - (i) the provisions of an Act of Western Australia corresponding to the provisions of the South Australian Act that are referred to in paragraph (a)(i); and
 - (ii) Regulations in force under the Western Australian Act that make provisions corresponding to the provisions of Regulation under Part 3 of the South Australian Act; and
 - (c) in the case of any other Scheme Participant:
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- (i) the provisions referred to in paragraph (a) of the definition of "Gas Pipelines Access Law" in section 3(1) of the South Australian Act, as applying as a law of that Scheme Participant; and
 - (ii) Regulations in force under Part 3 of the South Australian Act, as applying as a law of that Scheme Participant.

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

'Incentive Mechanism' has the meaning given in section 8.44.

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

'Incremental Revenue' means revenue generated by sales of Incremental Capacity.

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

'Information Package' means the Information Package described in section 5.1.

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

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

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

'Market Variable Element' means a factor that has a value assumed in the calculation of a Reference Tariff, where the value of that factor will vary with changing market conditions during the Access Arrangement Period or in future Access Arrangement Periods, and includes the sales or forecast sales of Services, any index used to estimate the general price level, real interest rates, Non Capital Cost and any costs in the nature of capital costs.

'Marketable Parcel' means all or part of a User's Contracted Capacity which the User reasonably expects:

- (a) that the User will not utilise and does not require for technical or safety reasons;
 - (b) to be of a size and type capable of being sold to another User or to a Prospective User; and
 - (c) to be able to sell without incurring transaction costs which exceed the price which that User would receive from another User or Prospective User.
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'Marketing Staff' means servants, consultants, independent contractors or agents directly involved in sales, sale provision or advertising (whether or not they are also involved in other functions) but does not include servants, consultants, independent contractors or agents involved only in:

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

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

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

'New Facilities Investment' has the meaning given in section 8.16.

'New Facility' means:

- (a) any extension to, or expansion of the Capacity of, a Covered Pipeline which is to be treated as part of the Covered Pipeline in accordance with the Extensions/Expansions Policy contained in the Access Arrangement for that Covered Pipeline; and
- (b) any expansion of the Capacity of a Covered Pipeline required to be installed under 6.22.

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

'Non Capital Costs' has the meaning given in section 8.4.

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

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

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

'Prospective Service Provider' means a person who seeks or may seek to become a Service Provider.

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

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

'Queuing Policy' has the meaning given in section 3.12.

'Rate of Return' has the meaning given in section 8.4.

'Rebatable Service' is a Service where:

- (a) there is substantial uncertainty regarding expected future revenue from sales of that Service due to the nature of the Service and/or the market for that Service; and
 - (b) the nature of the Service and the market for that Service is substantially different to any Reference Service and the market for that Reference Service.
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'Receipt Point' means the point or points within the Covered Pipeline at which the custody of Natural Gas is transferred from a User to a Service Provider.

'Recoverable Portion' has the meaning given in section 8.18.

'Redundant Capital' has the meaning given in section 8.27.

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

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

'Reference Tariff Policy' has the meaning given in section 3.5.

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

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

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

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

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

'Residual Value' has the meaning given in section 8.4.

'Revisions Commencement Date' has the meaning given in section 3.17.

'Revisions Submission Date' has the meaning given in section 3.17.

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

'Service' means a service provided by means of a Covered Pipeline (or when used in section 1 a service provided by means of a Pipeline) including (without limitation):

- (a) haulage services (such as firm haulage, interruptible haulage, spot haulage and backhaul);
- (b) the right to interconnect with the Covered Pipeline; and
- (c) services ancillary to the provisions of such services,

but does not include the production, sale or purchasing of Natural Gas.

'Services Policy' has the meaning given in section 3.1.

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

'Spare Capacity' means:

- (a) in relation to a Covered Pipeline described in the Access Arrangement as a Contract Carriage Pipeline:
 - (i) the difference between the Capacity and the Contracted Capacity; plus
 - (ii) the difference between the Contracted Capacity and the Contracted Capacity which is being used; and

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

'Speculative Investment' has the meaning given in section 8.19.

'Speculative Investment Fund' has the meaning given in section 8.19.

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

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

'Tariff', for a Service, means the criteria that, when applied to a User's characteristics and requirements, determine the Charge that is payable by that User to the Service Provider (this shall not provide any limitation on the Tariff that may apply to a Service).

'Tender Approval Request' has the meaning given in section 3.21.

'Total Revenue' has the meaning given in section 8.2.

'Trading Policy' has the meaning given in section 3.9.

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

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

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

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

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

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

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

Category 1: Information Regarding Access & Pricing Principles

Tariff determination methodology
Cost allocation approach
Incentive structures

Category 2: Information Regarding Capital Costs

Asset values for each pricing zone, service or category of asset
Information as to asset valuation methodologies - historical cost or asset valuation
Assumptions on economic life of asset for depreciation
Depreciation
Accumulated depreciation
Committed capital works and capital investment
Description of nature and justification for planned capital investment
Rates of return - on equity and on debt
Capital structure - debt/equity split assumed
Equity returns assumed - variables used in derivation
Debt costs assumed - variables used in derivation

Category 3: Information Regarding Operations & Maintenance

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

Category 4: Information Regarding Overheads & Marketing Costs

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

Category 5: Information Regarding System Capacity & Volume Assumptions

Description of system capabilities
Map of piping system - pipe sizes, distances and maximum delivery capability
Average daily and peak demand at "city gates" defined by volume and pressure
Total annual volume delivered - existing term and expected future volumes
Annual volume across each pricing zone, service or category of asset
System load profile by month in each pricing zone, service or category of asset
Total number of customers in each pricing zone, service or category of asset

Category 6: Information Regarding Key Performance Indicators

Industry KPIs used by the Service Provider to justify "reasonably incurred" costs
Service provider's KPIs for each pricing zone, service or category of asset
