



25 August 2023

Submission: Pipeline Information Disclosure Guidelines

The Australian Pipelines and Gas Association (APGA) represents the owners, operators, designers, constructors and service providers of Australia's pipeline infrastructure, connecting natural and renewable gas production to demand centres in cities and other locations across Australia. Offering a wide range of services to gas users, retailers and producers, APGA members ensure the safe and reliable delivery of 28 per cent of the end-use energy consumed in Australia and are at the forefront of Australia's renewable gas industry, helping achieve net-zero as quickly and affordably as possible.

APGA welcomes the opportunity to contribute to the Australian Energy Regulator's consultation on the draft Pipeline Information Disclosure Guidelines. APGA appreciates the numerous opportunities for collaboration the AER has provided regarding these reforms. This submission complements feedback previously provided to the AER in industry forums.

We appreciate that the AER has taken on board stakeholders' previous feedback on future expansion forecasting, decommissioning costs, net tax liability estimates, and historical construction cost estimates. Aspects to the draft Guidelines remain which we consider are extending beyond the intent of the Part 10 disclosures and in some cases will result in misleading information. APGA's feedback below covers:

- The asset valuation framework, including issues arising from the complex regulatory histories of pipelines, the high level of prescription in the calculation of rate of return, and issues with providing data on original construction costs and allocation of service costs;
- Implications of the requirement to specify non-price contract terms for actual prices payable information, use of Gas Bulletin Board data and reporting of nameplate capacity utilisation, and feedback on a potential Part 10 actual prices payable template;
- General comments on the proposed timing of implementation and issues around quality assurance for these documents.

To discuss any of the above feedback further, please contact me on [REDACTED]

Yours sincerely,

A handwritten signature in dark ink, appearing to read "JM", is written over a light grey rectangular background.

JORDAN MCCOLLUM
National Policy Manager
Australian Pipelines and Gas Association

Financial reporting templates

Rate of Return

The AER has proposed an approach to the calculation of rate of return within the recovered capital method (RCM) reporting framework which is highly prescriptive. There is a significant risk that rates of return calculated using the proposed approach would be below the level required to attract capital investment in gas pipeline assets. This would result in information disclosures which are misleading or not meaningful to access seekers.

The rate of return value used in each year of the RCM calculation is already required to be disclosed in the information template. This more accurate figure can be referenced by market participants if the rate of return value is of interest in their negotiations. Therefore, we see no need for applying such a prescriptive approach to this calculation.

Asset valuation

Frameworks need to account for complex regulatory histories

The form of regulation applied to pipelines (i.e. full or light regulation; scheme or non-scheme) can change throughout their lifespans. There are different accounting frameworks that apply to different levels of regulation, which can make financial reporting complex. For example, the Guidelines note the requirement for economic regulatory asset values for scheme pipelines and accounting standard values for non-scheme pipelines.

At present, it is not clear that this complexity can be accurately reflected in the reporting required by the Guidelines. The current draft template does not contemplate changes in a pipeline's form of regulation, and therefore does not permit variations in reporting required under the Guidelines. APGA recommends that at a minimum, a separate tab be added to the template to permit accurate recording— with appropriate descriptions for users.

Differences in regulatory and accounting reporting approaches may also impact the opening balances for reporting under the RCM. For instance, where a pipeline's regulatory status has changed from a scheme pipeline to a non-scheme pipeline, the date the pipeline became a non-scheme pipeline should effectively be the new 'commissioning date'. The 'opening balance' used for RCM should be the 'closing balance' of the regulatory asset base of the pipeline when it ceased to be a scheme pipeline (rather than the enforcement date of 2 March 2023).

APGA recommends that for facilities which have undergone changes in their regulatory status, the asset valuation approach should reflect these histories wherever possible. This could be done through separate tabs in the template, such as one for accounting standard and one for RAB value for scheme pipelines.

Allocating service costs

The Guidelines require operators to allocate costs across pipeline service categories, following the relevant principles for allocating costs specified in Rule 103(4). Specifically, as in the Guidelines, *service providers must, as far as is reasonably practicable, allocate revenues and costs to each pipeline service.*

Industry observes that in some cases this is not possible, and operators may effectively have to assign cost allocations to service categories in a way that is arbitrary. This will obviously impact the usefulness of this data both to the AER and to users.

Certification

We note that the way the draft Guidelines specify the assurance requirements for information is at a level which is open to interpretation – for example, it is not clear which table within the financial templates constitutes the ‘statement of revenues and expenses’. To avoid confusion, we recommend that the AER align the assurance requirements to specific worksheets and/or tables in the financial templates.

Actual prices payable information

Disclosure of non-standard terms

Paragraph 3 of Section 4 of the draft Guidelines states:

If a pipeline service procured under an access contract is provided on non-price terms that are not the same or substantially the same as the standing terms, the service provider must specify those non-price terms.

APGA anticipates that the above section of the Guidelines refers to National Gas Rule 101E(1)(h), which requires operators to disclose:

Whether the pipeline service is provided on the same or substantially the same non-price terms as those set out in the standing terms published for the pipeline under rule 101C(1)(a).

APGA considers that Rule 101E(1)(h) is intended to require a ‘yes/no’ response.

There are two challenges with Paragraph 3 of Section 4 of the draft Guidelines:

- Compliance with Guidelines may result in unprotected breach of confidentiality; and
- Risks of Guidelines misleading market participants through required disclosures.

Compliance with Guidelines may result in unprotected breach of confidentiality

A legal interpretation of the AER’s proposed requirement in the Guidelines indicates it likely oversteps what is provided for in Rule 101E(1)(h). Consequently, complying with the Guidelines may put pipeline service providers in breach of confidentiality obligations they have to their customers under their contracts, in a way that is not protected by Rule 100B(2).

Pipeline service providers interpret Rule 101E(1)(h) as requiring a ‘yes/no’ answer. Unlike other Rules such as 101C and 101D, there is no provision for the Guidelines to further specify reporting requirements in the remaining sections of this Rule. Therefore as drafted, the Guidelines appear to incorrectly expand the scope of Rule 101E(1)(h) in requiring operators to specify these terms.

Further, Rule 103(2) sets out the matters the Guidelines must deal with and the Guidelines *may provide for such other matters as the AER considers appropriate*. APGA does not consider that this extends to substantially modifying the scope of the provisions of Part 10.

Risks of Guidelines misleading market participants through required disclosures

As presently drafted, the Guidelines appear to require providers of pipeline services to specify any non-price contract term that is substantially different to the standing terms. APGA appreciates that the intent of the actual prices payable information is to provide future customers with information to support them in negotiating with pipeline service providers. As it stands, it is unclear what the AER intends to achieve through the publishing of this granular additional information, which will, by definition, largely reflect bespoke terms which previous customers have chosen to negotiate and tailor to reflect their individual requirements. The relevance of these terms to other customers may be very limited.

APGA observes that the Rules already require the publishing of a number of key contract terms that do drive price differences between individual services. This includes the maximum daily quantity, and the service term or length of contract.

As there is no guidance provided as to the expected level of detail intended to be provided in this disclosure, operators may consider it necessary to specify these terms and conditions in full, or to disclose most if not the majority of their service contracts. This will take considerable effort and cost to achieve by the reporting date of 22 December 2023 and it is not clear to what the market benefit will be for users. This is particularly true where this information reflects operators seeking to meet the bespoke service needs of individual customers.

Pipeline service providers have obligations to their customers to preserve commercial-in-confidence information. Terms not immediately related to price are often commercially sensitive (for example, liabilities and indemnities) and tailored to the commercial needs of the particular customer.

On this basis APGA strongly recommends that the AER reconsider this aspect of actual prices payable disclosure in the Guidelines.

Actual prices payable template for Part 10 service providers

The AER seeks feedback on whether an actual prices payable template should be provided for Part 10 service providers, similar to that which is provided for Part 18A service providers. Industry considers that there is sufficient guidance in the Rules to enable preparation of reporting on a basis which will be accessible and meaningful to users. Further prescription through a *mandatory* template (like for Part 18A) would be very complex to use for this purpose and difficult to automate across the industry. This would add to the cost of compliance particularly if required to be implemented prior to 22 December 2023.

Historical demand data

Use of Gas Bulletin Board data

To be fully compliant when using historical demand data from the Gas Bulletin Board data, operators must also provide detailed instructions on extracting the data. Each operator will need to do this, which is an unnecessary duplication of effort.

These instructions would be more appropriately developed by AEMO, and industry is happy to work with the AER and AEMO to ensure this data can be more accessible to users.

Reporting of nameplate capacity

Table 5.3, Column F of the draft Part 10 reporting template assumes a static figure for pipeline nameplate capacity throughout the year. This does not reflect the fact that there are times of the year where this is not static. Pipelines may have different nameplate ratings for summer and winter to reflect differences in equipment performance ratings due to ambient temperatures. An expansion commissioned halfway through a year would also result in a different nameplate capacity being available on different days throughout a reporting year. Nameplate capacity should therefore be able to be reported on a daily basis in this table.

Issues with quality assurance and timing of implementation

Quality assurance

Drafting issues and errors have made it challenging for industry to properly assess the usefulness of the templates in producing meaningful data. It has also been difficult to fully understand the effect of certain Guidelines relative to their stated intent. Industry has identified the following issues at a minimum:

- The Guidelines and the draft Part 10 financial reporting template – particularly the pricing template in tab 6 – contain numerous drafting errors. In the templates, this includes errors in formulas, errors in unit conversion, incorrect comparability assumptions, and categorisation issues (i.e. backhaul services have been removed).
- The Guidelines include definitions which are inconsistent with the Rules, incorrect references to the Rules, and inconsistent requirements (i.e. certification of cost allocation methods; inconsistent usage of the term ‘user’ in Guidelines versus the Rules).
- The draft Part 18 pricing template leaves out areas prescribed in the Rules.

The AER has acknowledged these issues and intends to address them prior to the next round of consultation. We thank the AER for their engagement on this issue.

In lieu of ensuring a full quality assurance process is undertaken on documents prior to public consultation, APGA suggests involving industry much earlier in the process. Continued engagement with industry stakeholders would ensure industry can provide advice on designing workable reporting frameworks and templates given the data available.

Timing of implementation

As noted elsewhere, truncated timelines for commencement of the Guidelines will make industry compliance challenging. This will take time and is not a cost-free exercise, and there is no provision in the Guidelines for cost-recovery by service providers.

The extent of new required reporting has prompted industry to consider how it can comply without foregoing existing legal and contractual obligations, and how to comply in the timeline specified. For example, should the AER decide it is necessary to implement a mandatory template for Part 10 users similar to that used for Part 18A reporting, it may not be possible for industry to complete this prior to the 22 December 2023 reporting date.

Given the AER has already outlined some transitional arrangements, APGA suggests the AER consider the implications of the proposed reporting requirements to ensure that industry can comply.