

# New obligations on gas pipeline, compression and storage service providers

Compliance bulletin

May 2023

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## Contents

<b>Glossary</b> .....	<b>iv</b>
<b>1 Introduction</b> .....	<b>1</b>
<b>2 Relevant rules</b> .....	<b>2</b>
<b>3 New obligations</b> .....	<b>4</b>
3.1 Greenfield and form of regulation decisions .....	4
3.2 Common prohibitions and safeguards.....	5
3.3 Information disclosure.....	6
3.4 Access negotiation framework .....	12
<b>4 Compliance approach – monitoring and surveillance</b> .....	<b>14</b>
4.1 Self-reporting of non-compliance .....	14
4.2 Compliance and enforcement .....	15
4.3 AER compliance and procedures guidelines.....	15
<b>Appendix A – Prescribed transparency information for pipelines</b> .....	<b>16</b>
<b>Appendix B – Prescribed transparency information for compression and storage facilities</b> .....	<b>19</b>

## Glossary

Term	Definition
AER	Australian Energy Regulator
AEMC	Australian Energy Market Commission
Application date	The date on which the pipeline is commissioned
Commencement Day	2 March 2023
NCC	National Competition Council
NGL	National Gas Law
NGO	National Gas Objective
NGR	National Gas Rules
Reforms	<i>Statutes Amendment (National Energy Laws) (Gas Pipelines) Act 2022 (SA), National Gas (South Australia) (Gas Pipelines) Amendment Regulations 2023 and National Gas Rules (Gas Pipelines) Amendment Rules 2023.</i>
Regulations	National Gas Regulations
Service provider	A person who owns, controls, or operates (or intends to own, control, or operate) a pipeline or any part of a pipeline.
Users	Gas pipeline users

# 1 Introduction

Recent reforms to the gas pipeline regulatory framework have resulted in changes to service providers' obligations. This compliance bulletin outlines:

- new obligations on gas pipeline, compressor and storage service providers
- when the obligations take effect
- our expectations in relation to compliance with those obligations.

To improve and simplify the gas pipeline regulatory framework, several significant changes were made to the National Gas Law (NGL)<sup>1</sup> and National Gas Rules (NGR)<sup>2</sup> in March 2023 (Reforms).

Under the Reforms:

- Three forms of regulation (full or light regulation for scheme pipelines, and non-scheme pipelines) are replaced by two forms of regulation. Under the new regulatory framework, gas pipelines are classified as either scheme or non-scheme pipelines, and expansions of the capacity of a pipeline are treated as part of the same pipeline.
- The AER is now responsible for determining form of regulation by applying a form of regulation test.
- Service providers may apply to the AER for a greenfield incentive determination and a greenfield price protection determination prior to commissioning new pipelines.
- All pipelines must publish prescribed transparency information under a unified information disclosure framework. Additionally, stand-alone compression and storage facilities are required to publish standing terms and price information.
- All pipelines are subject to the same access negotiation frameworks and ring-fencing requirements.
- Transitional arrangements were introduced to facilitate the transition.

Throughout 2023, we will develop several new guidelines and templates to operationalise the Reforms. We will seek stakeholder views in developing these materials. However, in the interim, we encourage stakeholders to refer to this compliance bulletin for initial guidance.

This compliance bulletin should be read in conjunction with the NGL and NGR. It does not replace any provisions in the NGL and NGR. While the infancy of new obligations may pose regulatory challenges, service providers remain liable for contraventions of any obligations under the NGL and NGR, some of which attract civil penalties. We encourage service providers to contact the AER to discuss compliance matters, however, note that it is the service provider's responsibility to seek legal advice or other professional advice in relation to the application of NGL and NGR obligations to their specific circumstances.

If you have any questions or require further information on the obligations under the Reforms, please email: [AERGasReform@aer.gov.au](mailto:AERGasReform@aer.gov.au).

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<sup>1</sup> *Statutes Amendment (National Energy Laws) (Gas Pipelines) Bill 2022.*

<sup>2</sup> *National Gas Rules (Gas Pipelines) Amendment Rules 2023.*

## 2 Relevant rules

The Reforms are set out in the *National Gas Rules (Gas Pipelines) Amendment Rules 2023*, which commenced on 16 March 2023.<sup>3</sup> The key elements of the Reforms relevant to this compliance bulletin are:

- Part 4—Regulatory determinations and elections
  - replaces the old Part 4 (Coverage), Part 13 (Greenfields incentives) and Part 14 (Reclassification of pipelines) of the NGR
  - sets out that service providers must now apply to the AER on a range of pipeline determinations
- Part 5—Ring fencing
  - continues from old Part 6 (Ring fencing) of the NGR with insertion of rule 34 and 35, which set out exemptions from the ring fencing and associate contract provisions
- Part 6—Pipeline interconnection principles
  - replaces old Part 17 Division 3 Interconnection principles for declared distribution systems
  - specifies compliance with pipeline interconnection principles and introduces rule 37 that allows a person to have a right to connect a pipeline or other facility to a pipeline in certain circumstances.
- Part 7—Prohibition against increasing charges to subsidise particular development
  - sets out that service providers may apply to the AER for exemptions to NGL section 136A(2)
  - note that the old Part 7 (Light regulation determinations and information requirements) is repealed
- Part 10—Prescribed transparency information
  - replaces old Part 7 (Light regulation determinations and information requirements) and 23 (Access to non-scheme pipelines) of the NGR
  - introduces new exemption categories to streamline information disclosure process and reduce reporting burden in contrast to exemption categories under old Part 23.
- Part 11—Access negotiation framework
  - replaces Part 23 Division 3 and sets out all pipelines must comply with the access negotiation framework
- Part 18A—Compression and storage terms and prices

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<sup>3</sup> See: AEMC, [National Gas Rules - Amendment Rules](#), 10 March 2023.

- sets out new information transparency arrangements for compression and storage facilities
- Schedule 6—Transitional arrangements related to pipeline regulation amendments
  - sets out a range of rules regarding arrangements for service providers' transition to new obligations under the Reforms.

### 3 New obligations

This section summarises the key new obligations on service providers applying to all pipelines under the Reforms.

#### 3.1 Greenfield and form of regulation decisions

Service providers should be aware of the new provisions set out under Part 4 of the NGR.

The AER, instead of the National Competition Council and the jurisdictional minister, will make determinations on the form of regulation, pipeline classification and greenfield incentive tests.

- Forms of regulation – pipelines are classified as either:
  - Scheme pipelines:<sup>4</sup> service providers are subject to a stronger form of regulation and a regulatory-oriented access dispute resolution process and are required to submit an access arrangement to the AER for approval.
    - A pipeline is a scheme pipeline if it was a covered pipeline (other than a light regulation pipeline) immediately before 2 March 2023.
    - A non-scheme pipeline may also become a scheme pipeline if the AER makes a scheme pipeline determination, or the service provider submits a scheme pipeline election to the AER.
  - Non-scheme pipelines:<sup>5</sup> service providers are subject to a lighter form of regulation and a commercially-oriented access dispute resolution process and are not required to submit an access arrangement.
    - All new pipelines will be non-scheme pipelines when they are commissioned.
    - A scheme pipeline can also become a non-scheme pipeline if the AER makes a scheme pipeline revocation determination.
- Scheme pipeline determinations<sup>6</sup> and elections<sup>7</sup> – before the Reforms, scheme pipelines consisted of covered pipelines and international pipelines. Under the reforms, a scheme pipeline includes those determined through a scheme pipeline determination or election, and designated pipelines.
- Scheme pipeline revocations<sup>8</sup> – the AER may make a scheme pipeline revocation determination on the application of a person or on its own initiative (except for designated pipelines).

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<sup>4</sup> Scheme pipeline means: (a) a pipeline to which a scheme pipeline determination applies; or (b) a designated pipeline; or (c) a pipeline in respect of which a scheme pipeline election takes effect. Note: However, see section 99 of the NGL in relation to when a pipeline the subject of a scheme pipeline revocation determination ceases to be a scheme pipeline.

<sup>5</sup> Non-scheme pipeline means a pipeline other than a scheme pipeline.

<sup>6</sup> NGR, Pt. 4, Div.1.

<sup>7</sup> NGR, Pt. 4, Div.2.

<sup>8</sup> NGR, Pt. 4, Div.3.



- Pipeline classification and reclassification<sup>9</sup> – the AER will implement a simplified approach to pipeline classifications and reclassifications under the new gas regulatory framework. For instance, a pipeline is regarded as a distribution pipeline if it is classified as a distribution pipeline under the NGL before 2 March 2023 or jurisdictional gas legislation. Otherwise, a service provider for a new pipeline must apply to the AER for a classification decision.<sup>10</sup>
- Greenfield pipeline<sup>11</sup> – prior to the commissioning of new pipelines, a service provider may apply to the AER for greenfield incentive determinations and price protection determinations (which can be submitted to the AER as part of greenfield incentive determinations or separately later).

## 3.2 Common prohibitions and safeguards

### 3.2.1 Ring-fencing

Under the Reforms, all pipelines are subject to the same ring-fencing requirements.

- The minimum ring-fencing requirements are that a service provider must:<sup>12</sup>
  - not carry on a related business
  - ensure none of its marketing staff are engaged by an associate<sup>13</sup> that takes part in a related business
  - ensure none of its staff are marketing staff of an associate that takes part in a related business
  - prepare, maintain and keep separate accounts in relation to their pipeline services plus a consolidated set of accounts in respect of the whole of the business.

A service provider must, within 5 business days after entering into, or varying, an associate contract<sup>14</sup> (whether approved or not), give the AER written notice of the contract or variation together with a copy of the contract (or the contract as varied).<sup>15</sup> The requirement is classified as a conduct provision and tier 2 civil penalty provision under the *National Gas (South Australia) Regulations*.

Part 5 of the NGR provide for a service provider to apply for an exemption for a pipeline from the ring-fencing requirements.<sup>16</sup> It also provides that a pipeline for which an exemption has

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<sup>9</sup> NGR, Pt. 4, Div.5.

<sup>10</sup> NGL, s. 117.

<sup>11</sup> NGR, Pt. 4, Div.4.

<sup>12</sup> NGL, ss. 139–141.

<sup>13</sup> Associate in relation to a person has the same meaning it would have under Division 2 of Part 1.2 of the Corporations Act 2001 of the Commonwealth.

<sup>14</sup> Associate contract means — (a) a contract, arrangement or understanding between a service provider and an associate of the service provider in connection with the provision of an associate pipeline service; or (b) a contract, arrangement or understanding between a service provider and any person in connection with the provision of an associate pipeline service — (i) that provides a direct or indirect benefit to an associate; and (ii) that is not at arm's length.

<sup>15</sup> NGR, r. 33.

<sup>16</sup> NGR, r. 34.

been granted under Category 1 in Part 10 is exempt from certain ring-fencing requirements of the NGL.<sup>17</sup>

### 3.2.2 Pipeline interconnection principles

Service providers must comply with the pipeline interconnection principles set out under Part 6 of the NGR. A service provider must develop and maintain an interconnection policy as outlined under rule 39 of the NGR. However, a service provider for a pipeline that was in operation on or before 2 March 2023 is not required to have an interconnection policy until 2 months after the AER publishes the *pipeline information disclosure guidelines*.<sup>18</sup>

Key changes to the pipeline interconnection principles include:

- A person has a right to connect a pipeline or other facility to a pipeline where it is technically feasible and consistent with the safe and reliable operation of the pipeline, and the person agrees to fund the costs associated with making the interconnection.<sup>19</sup>
- The party seeking to establish the interconnection (the interconnecting party), subject to the above rule, has the option to:
  - construct, operate and maintain the interconnection at its own cost
  - have the existing service provider do so
  - proceed with a combination of the above two options.<sup>20</sup>

### 3.2.3 Prohibition against increasing charges to subsidise particular development

Service providers must comply with the prohibition on increasing charges for existing users to subsidise the development of extension or expansion of a pipeline.<sup>21</sup> Part 7 of the NGR provides for a service provider to be exempt from complying with the above requirement if it can demonstrate one or both exemption criteria under rule 39A(3) of the NGR.

## 3.3 Information disclosure

### 3.3.1 Prescribed transparency information for pipelines

The new Part 10 prescribed transparency information requirements apply to all **scheme and non-scheme service** providers.

Prior to the Reforms, service providers of light regulation pipelines and non-scheme pipelines were required to prepare prescribed transparency information under Parts 7 and 23 of the NGR, respectively. These Parts are now repealed and have been replaced by Part 10.

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<sup>17</sup> NGR, r. 35.

<sup>18</sup> NGR, r. 6 of Schedule 6.

<sup>19</sup> NGR, r. 37.

<sup>20</sup> NGR, r. 38.

<sup>21</sup> NGL, s. 136A.

Exemptions from certain requirements are available for service providers that meet the exemption criteria.<sup>22</sup>

The requirements to prepare, publish and maintain the information set out in rules 101B to 101E, inclusive, in accordance with Part 10 of the NGR, and the *pipeline information disclosure guidelines* are classified as tier 1 civil penalty provision under the *National Gas (South Australia) Regulations*.

### Access information standard

Service providers must prepare, publish and maintain the transparency information in accordance with the *access information standard*, which is the requirement that information:<sup>23</sup>

- is not false or misleading
- technical information is prepared, published and maintained in accordance with a process reasonably expected from an appropriately experienced and competent person acting with all due skill, diligence, prudence and foresight.
- in relation to a forecast or estimate – is supported by a statement of the basis of the forecast or estimate, is arrived at on a reasonable basis, and represents the best forecast or estimate in the circumstances.

The requirements to prepare, publish and maintain information in accordance with the access information standard and to update non-compliant or inaccurate information as soon as practicable are classified as tier 1 civil penalty provisions under the *National Gas (South Australia) Regulations*.

### Persons cannot rely on duty of confidence to avoid compliance with prescribed transparency information obligations

A person must not refuse to comply with its obligations under Part 10 on the ground of any duty of confidence. Furthermore, a person incurs no liability for breach of contract, breach of confidence, or any other civil wrong by complying with its obligations under Part 10.<sup>24</sup>

### 3.3.2 When does the prescribed transparency information need to be published?

Table 1 outlines the information required to be published under Part 10 and when the information must be published. However, for information required to be made publicly available in accordance with the *Pipeline information disclosure guidelines*,<sup>25</sup> it is the AER's intention not to enforce compliance to publish information under rule 101A until it has published the *Pipeline information disclosure guidelines*.

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<sup>22</sup> NGR, r. 102.

<sup>23</sup> NGR, r. 101.

<sup>24</sup> NGR, r. 100B.

<sup>25</sup> In accordance with NGR, 101A(3)(a).

**Table 1 – Summary of prescribed transparency information<sup>26</sup>**

Type of information	Description	Publishing requirements
Service and access information [rule 101B]	Pipeline information under rule 101B(2)	Within 20 business days after the application date for the pipeline; OR within 20 business days after there is a change.
	Pipeline service information under rule 101B(3)	Within 20 business days after the application date for the pipeline; OR within 20 business days after a pipeline service is added or withdrawn.
	Service usage information under rule 101B(4)	Each month after the application date for the pipeline, by the last business day of the month for the prior month.
	Service availability information under rule 101B(5)	Each month after the application date for the pipeline, by the last business day of the month for the next 36 or 12 months as applicable. <sup>27</sup>
Standing terms <sup>28</sup> [rule 101C]	<p>Scheme pipelines – the applicable access arrangement for reference services, and the required under rule 101C for non-reference and rebateable services.</p> <p>Non-scheme pipelines with a greenfield price protection determination – the price and non-price terms and conditions under that determination, and information required under rule 101C for other pipeline services.</p> <p>Non-scheme pipelines – information required under rule 101C.</p>	Within 20 business days after the application date for the pipeline.
Financial information, historical demand information and cost allocation methodology [rule 101D]	For each pipeline.	Annually no later than 5 months after the end of the financial year of the service provider for the pipeline.
Actual prices payable information [rule 101E]	The information is published for each pipeline service that a user has procured under an access contract with the service provider.	Within 20 business days after the access contract is entered into or varied.

Note: application date means the date on which the pipeline is commissioned.

**Appendix A** provides a detailed summary of all information disclosure obligations under Part 10 of the NGR. Service providers are encouraged to use this table to identify the obligations that are applicable to their circumstances.

<sup>26</sup> NGR, r. 101A(2).

<sup>27</sup> For an outlook of the firm capacity of the pipeline that the service provider has available for sale or that it will have available for sale – 36 months. For information about matters expected to affect the capacity of the pipeline (including any planned expansions of the capacity) – 12 months.

<sup>28</sup> See NGR, r. 100A for the definition and interpretation of standing terms.

### **3.3.3 Transitional timing to publish prescribed transparency information under Part 10**

#### **Transitional timing to publish financial information, historical demand information and cost allocation methodology**

A service provider is not required to publish the information under rule 101D of the NGR, in respect of the designated financial year, until 6 months after the end of the designated financial year.<sup>29</sup>

#### **Transitional timing to publish actual prices payable information**

A service provider is not required to publish the information under rule 101E of the NGR, in relation to a pipeline in existence immediately before 2 March 2023, until no later than 2 September 2023.<sup>30</sup>

#### **Provision of information by light regulation pipelines**

Service providers that were previously required to publish prescribed transparency information under Part 7 of the NGR must continue to prepare, publish and maintain information in accordance with the former Part 7 rules 36A, 36B(1)(c), 36B(2) to (5) and 36D of the NGR. These service providers must continue to prepare, publish and maintain this information each financial year that occurs before the designated financial year of the service provider. The financial reporting guideline for light regulation pipeline services will continue to apply until the service provider publishes financial information, historical demand information and a cost allocation methodology under rule 101D of the NGR.<sup>31</sup>

#### **Provision of information by non-scheme pipelines**

Service providers that were previously required to publish financial information under rule 555 in Part 7 of the NGR must continue to prepare, publish and maintain information in accordance with the former Part 23 rules 551, 552(1)(c), 552(2) to (6) and 555 of the NGR. These service providers must continue to prepare, publish and maintain this information each financial year that occurs before the designated financial year of the service provider. The financial reporting guideline for non-scheme pipelines will continue to apply until the service provider publishes financial information, historical demand information and a cost allocation methodology under rule 101D of the NGR.<sup>32</sup>

#### **Part 23 exemption holders and scheme pipelines granted extension to publish service and access information and standing terms**

The NGR allow previous holders of Part 23 exemptions and scheme pipelines to publish service and access information and standing terms no later than 2 September 2023, as follows:<sup>33</sup>

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<sup>29</sup> NGR, r. 10 of Schedule 6. Designated financial year means the financial year of the service provider immediately following the year in which the AER publishes the pipeline information disclosure guidelines.

<sup>30</sup> NGR, r. 11 of Schedule 6.

<sup>31</sup> NGR, r. 7 of Schedule 6.

<sup>32</sup> NGR, r. 22 of Schedule 6.

<sup>33</sup> NGR, r. 9 of Schedule 6.

- Part 23 Category 2 exemption holder and a single user pipeline – service and access information and standing terms
- Part 23 Category 3 exemption holder and a single user pipeline – service usage information under rule 101B(4); service availability information under rule 101B(5); and standing terms
- A service provider for a full regulation distribution pipeline<sup>34</sup> – standing terms
- A service provider for a transmission pipeline that is a scheme pipeline – service and access information and standing terms

As we will publish the *pipeline information disclosure guidelines* by end October 2023, we expect that these service providers will have published service and access information, standing terms and actual prices payable information (as the case may be) by the end of December 2023.<sup>35</sup>

### 3.3.4 Exemptions from publishing information under Part 10

Exemptions from certain requirements are available for all service providers of pipelines that meet the exemption criteria:<sup>36</sup>

- Category 1 – exemption from publishing the Part 10 prescribed transparency information.
  - criterion: the pipeline is not a third-party access pipeline.
- Category 2 – exemption from publishing financial information, historical demand information and a cost allocation methodology.
  - criteria: the pipeline is a single user pipeline; OR  
the pipeline is a transmission pipeline and has a nameplate rating of less than 10 terajoules per day; OR  
the pipeline is a distribution pipeline and has a maximum daily capacity of less than 10 terajoules per day.

Unlike under the old Part 23, there are no exemptions under Part 10 from access requests and negotiations and arbitration of access disputes obligations.

A service provider with an exemption in place must notify the AER as soon as practicable in the event of change in circumstances such that the service provider no longer qualifies for the exemption.<sup>37</sup> This requirement is classified as a tier 1 civil penalty provision under the *National Gas (South Australia) Regulations*.

### Transition of Part 23 exemptions to Part 10 exemptions

The NGR allow for the transition of exemptions previously held under Part 23 to Part 10 exemptions.<sup>37</sup> Table 2 outlines how the transitions operate.

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<sup>34</sup> As defined by rule 112A of the NGR immediately before 2 March 2023.

<sup>35</sup> AER, *Pipeline information disclosure guidelines – issues paper*, April 2023, p. 8.

<sup>36</sup> NGR, r. 102.

<sup>37</sup> NGR, r. 12 of Schedule 6.

**Table 2 – Operation of transition of Part 23 exemptions to Part 10 exemptions**

Part 23 exemption	Part 10 exemption	Operation
Category 1	none	
Category 2	For a pipeline that is not a third-party pipeline – Category 1  For a pipeline that is a single user pipeline – Category 2	Automatically granted.
Category 3	Category 2, subject to satisfying the criteria	In the case of a transmission pipeline – the AER must be satisfied that the nameplate rating of the pipeline is less than 10 TJ/day.  In the case of a distribution pipeline – the AER must be satisfied that the maximum daily capacity of the pipeline under normal operating conditions is less than 10 TJ/day.

Following this transition, the exemption is valid until the expiry date of the original Part 23 exemption. Prior to the expiry date, service providers must reapply for a Part 10 exemption using the exemption application form on the AER’s website.<sup>38</sup>

### 3.3.5 Compression and storage terms and prices under Part 18A

Part 18A facilities<sup>39</sup> must publish standing terms and actual prices payable information for stand-alone compression and storage facilities in line with the Part 18A information standard.<sup>40</sup>

The transitional rules stipulate that the requirement to publish information only applies in relation to a contract that was in force immediately before the application date for the Part 18A facility that is in force immediately before the commencement day; or that is entered into on or after the commencement day.<sup>41</sup>

The requirements to prepare, publish and maintain information in accordance with the Part 18A information standard and to update non-compliant or inaccurate information as soon as practicable are classified as tier 1 civil penalty provisions under the *National Gas (South Australia) Regulations*.

<sup>38</sup> See <https://www.aer.gov.au/networks-pipelines/prescribed-transparency-information-for-gas-service-providers/part-10-prescribed-transparency-information-exemptions>.

<sup>39</sup> A Part 18A facility means a designated compression service facility; or a stand-alone compression service facility; or a gas storage facility.

<sup>40</sup> NGR, r. 198G.

<sup>41</sup> NGR, r. 21 of Schedule 6.

A person must not refuse to comply with its obligations under Part 18A on the ground of any duty of confidence. Furthermore, a person incurs no liability for breach of contract, breach of confidence, or any other civil wrong by complying with its obligations under Part 18A.<sup>42</sup>

**Table 3 – Summary of Part 18A information<sup>43</sup>**

Type of information	Description	Published by
Standing terms [rule 198F]		Within 20 business days after the application date for the Part 18A facility; OR within 20 business days after a facility service is added, changed or withdrawn.
Actual prices payable information [rule 198G]	The information is published for each service that a user has procured under a contract with the service provider.	Within 20 business days after the contract is entered into or varied.

**Appendix B** provides an overview of all information disclosure obligations under Part 18A of the NGR. Service providers are encouraged to use this table to identify the obligations that are applicable to their circumstances.

### 3.3.6 Exemptions from publishing information under Part 18A

A service provider for a Part 18A facility may apply to the AER for an exemption from publishing the Part 18A information if the pipeline is not a third-party access facility.<sup>44</sup>

A Part 18A facility with an exemption in place must notify the AER without delay in the event of change in circumstances such that the facility no longer qualifies for the exemption.<sup>45</sup> This requirement is classified as a tier 1 civil penalty provision under the *National Gas (South Australia) Regulations*.

## 3.4 Access negotiation framework

The access negotiation framework is intended to facilitate negotiation between service providers and users or prospective users seeking access. On the commencement of the Reforms, all service providers are required to comply with a single access negotiation framework set out in Part 11 of the NGR.

All information a service provider provides or publishes under Part 11 must comply with the *access information standard*.<sup>46</sup> If a service provider becomes aware that the published information is inconsistent with the *access information standard* or is inaccurate, the service provider must publish the compliant and accurate information as soon as practicable.<sup>Error!</sup>  
Bookmark not defined.

The requirements to prepare, publish and maintain information in accordance with the access information standard and to update non-compliant or inaccurate information as soon

<sup>42</sup> NGR, r. 198B.

<sup>43</sup> NGR, r. 198E(2)

<sup>44</sup> NGR, r. 198I(3).

<sup>45</sup> NGR, r. 198I(7).

<sup>46</sup> This is classified as a conduct provision under the *National Gas (South Australia) Regulations*. See clause 7 and Schedule 4 of the *National Gas (South Australia) Regulations*.



as practicable are classified as tier 1 civil penalty provisions under the *National Gas (South Australia) Regulations*.

### User access guide

All service providers are now required to publish a user access guide in accordance with the *pipeline information disclosure guidelines*. A service provider for a pipeline with a Part 10 Category 1 exemption is required to prepare and maintain a user access guide.<sup>47</sup>

The transitional rules:<sup>48</sup>

- allow for service providers for a pipeline commissioned before 2 March 2023 to publish a user access guide under rule 105C of the NGR no later than 2 months after the AER publishes the *pipeline information disclosure guidelines*.
- stipulate that, for non-scheme pipelines, the former rule 558 will continue to apply until the service provider has developed and published a user access guide under rule 105C.

### Access requests

- A service provider must respond to any user or prospective user's preliminary enquiry<sup>49</sup> about access to the requested service within 10 business days of receiving the enquiry and state whether it needs to carry out further investigation or provide the access and indicate when it will provide an offer.
- If an offer is made in response to a preliminary enquiry, the parties may proceed directly to the negotiation phase.
- The service provider must acknowledge receipt of an access request<sup>50</sup> within 5 business days after the access request is received.
- If the access request is incomplete, the service provider must specify what additional information is required or otherwise the service provider must notify the user or prospective user if further investigations are required by a notice within 10 business days after receipt of the access request or after receipt of the additional information requested if applicable.

### Access offer<sup>51</sup>

- A service provider for a pipeline in receipt of an access request must prepare and make an access offer that complies with rule 105E(3) of the NGR within the period determined under rule 105E(2).<sup>46</sup>
- The service provider makes an access offer within a timeframe agreed by a user or prospective user and the service provider or otherwise within 20 business days or within 60 business days if further investigations are required after receipt of the access request or after receipt of the additional information requested if applicable.<sup>52</sup>

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<sup>47</sup> NGR, r. 105C(1).

<sup>48</sup> NGR, r. 18 of Schedule 6.

<sup>49</sup> NGR, r. 119Q.

<sup>50</sup> Access request means a request referred to in NGR, r. 105D.

<sup>51</sup> Access offer means an offer to provide access to a pipeline service that complies with NGR, r. 105E.

<sup>52</sup> A service provider is not required to make an access offer if a condition is met under NGR, r. 105E(4).

## 4 Compliance approach – monitoring and surveillance

We are required to regularly and systematically monitor behaviour of service providers' compliance with their obligations under the NGL and NGR, including:

- the prices charged by service providers for pipeline services
- the non-price terms and conditions for pipeline services
- the financial information reported by service providers
- the outcomes of access negotiations
- service providers' dealings with associates
- service providers' compliance with ring fencing requirements
- the compliance of service providers with other requirements of the NGL and NGR.

There is a new requirement for AER to report on its monitoring of items under section 63A to Ministers (and publish a version of it on their website afterwards) and that this may change the way we monitor compliance compared to approach under previous rules.

We will assist service providers to understand new obligations under the Reforms. For example, we will release a range of guidelines and templates to assist service providers conform with the NGL and NGR. We will invite service providers to raise concerns and issues in stakeholder engagement processes and incorporate feedback to improve the existing system and process where appropriated.

We will monitor and review compliance under the Reforms and may exercise regulatory power independently. For instance, we will be able to make our own assessment of the form of regulation and determine if a pipeline is a scheme pipeline. A range of options are available to us to carry out compliance monitoring, including but not limited to:

- issuing regulatory information notices
- making general regulatory information orders
- making price information orders
- requiring service providers to conduct a compliance audit.

### 4.1 Self-reporting of non-compliance

We expect service providers to prepare, publish and maintain information in accordance with the NGR and NRL. Service providers should review the information on a regular basis to identify any instance of non-compliance and take corrective action. When a service provider identifies non-compliance or inaccuracy, they should advise the AER of the non-compliance, the nature and extent of the non-compliance and a corrective action plan to preclude a recurrence and publish the compliant and accurate information as soon as practical. We will consider each matter on its merits, including all relevant factors surrounding the non-compliance.

## 4.2 Compliance and enforcement

The AER is responsible for monitoring, investigating and enforcing compliance with the NGL and NGR. Our approach to these functions is outlined in the AER's Compliance and Enforcement Policy.<sup>53</sup>

We will proactively assist service providers fulfil their obligations by publishing guidelines and compliance bulletins which explain the Reforms and clarify the AER's expectations of compliance.

We have a range of options available to us to encourage compliance and address specific instances of non-compliance, including but not limited to:

- facilitating compliance through engagement and cooperation on an individual basis
- using data driven regulation to identify systemic and emerging compliance issues suitable for audit activities
- publishing education and guidance materials for service providers
- conducting targeted campaigns of raising awareness with service providers of specific obligations
- administrative resolutions (such as accepting voluntary commitments from service providers to adopt recommended improvements to their compliance practices)
- issuing infringement notices to service providers for breaches of civil penalty provisions
- accepting court enforceable undertakings from service providers
- instituting civil proceedings against service providers for alleged breaches of the NGL or NGR (which may result in an order for payment of civil penalties).

## 4.3 AER compliance and procedures guidelines

We are required to make AER compliance procedures and guidelines<sup>54</sup> which, among other matters, may provide guidance for service providers about:

- compliance with the NGL, Regulations and NGR
- carrying out of compliance.

The AER is currently developing these procedures and guidelines and reviewing our existing annual compliance guideline (including annual compliance orders) as part of this process.

We will provide further information about this at a future date and outline the proposed timing for release of a draft for consultation.

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<sup>53</sup> <https://www.aer.gov.au/publications/corporate-documents/aer-compliance-enforcement-policy>.

<sup>54</sup> NGL, s. 64F.

## Appendix A – Prescribed transparency information for pipelines

Type of information	Requirements
<p>The pipeline information in respect of a pipeline should comprise [rule 101B(2)]</p>	<ul style="list-style-type: none"> <li>a) the classification of the pipeline as a transmission pipeline or a distribution pipeline; and</li> <li>b) for a transmission pipeline:                             <ul style="list-style-type: none"> <li>i. the pipeline's nameplate rating; and</li> <li>ii. the details of all receipt or delivery points on the pipeline and key facilities to which those receipt or delivery points connect; and</li> <li>iii. a schematic map of the pipeline that shows the location on the pipeline of each receipt or delivery point and other key facilities; and</li> </ul> </li> <li>c) for a distribution pipeline:                             <ul style="list-style-type: none"> <li>i. subject to subrule (6), the quantity of natural gas that can be transported through each gate station on the distribution pipeline in any 24-hour period; and</li> <li>ii. the details of all points on the pipeline where the service provider takes delivery of natural gas; and</li> <li>iii. a schematic map of the pipeline that shows the location on the pipeline of the points referred to in subparagraph (ii) and the geographic limits of the areas served by the pipeline; and</li> </ul> </li> <li>d) any technical or physical characteristics of the pipeline that may affect access to or use of the pipeline or the price for pipeline services provided by means of the pipeline; and</li> <li>e) policies of the service provider that may affect access to or use of the pipeline or the price for pipeline services provided by means of the pipeline which may include:                             <ul style="list-style-type: none"> <li>i. queuing requirements; and</li> <li>ii. a receipt or delivery point change policy; and</li> <li>iii. a metering and measurement policy; and</li> <li>iv. for a distribution pipeline – a balancing policy.</li> </ul> </li> </ul>
<p>The pipeline service information for a pipeline comprises a list of the pipeline services available on the pipeline and for each pipeline service [rule 101B(3)]</p>	<ul style="list-style-type: none"> <li>a) a description of the service and any locational limitations on availability; and</li> <li>b) the priority ranking of the service in relation to the other pipeline services including when scheduling and in the event of curtailment.</li> </ul>
<p>The service usage information for a pipeline for a month comprises [rule 101B(4)]</p>	<ul style="list-style-type: none"> <li>a) for a transmission pipeline:                             <ul style="list-style-type: none"> <li>i. the total quantity of natural gas metered as having been injected into the pipeline during the month; and</li> <li>ii. the total quantity of natural gas metered as having been withdrawn from the pipeline during the month; and</li> <li>iii. the total quantity of natural gas scheduled for injection into the pipeline during the month (after taking into account rescheduling); and</li> <li>iv. the total quantity of natural gas scheduled for withdrawal from the pipeline during the month (after taking into account rescheduling); and</li> <li>v. of the scheduled quantities referred to in subparagraphs (iii) and (iv), the quantities attributable to each pipeline service on the pipeline as identified in the pipeline service information; and</li> </ul> </li> </ul>

Type of information	Requirements
<p>The service availability information for a pipeline for a month comprises [rule 101B(5)]</p>	<p>b) subject to subrule (6), for each entry and exit point on a large distribution pipeline that is owned, operated or controlled by the service provider or for which the service provider holds the information:</p> <ul style="list-style-type: none"> <li>i. daily flow data; and</li> <li>ii. where a meter is installed at the relevant entry or exit point, the hourly flow data; and</li> <li>iii. minimum inlet and minimum outlet pressures over each hour; and</li> <li>iv. a static table or chart showing the maximum flow rate of the entry or exit point against pressure.</li> </ul> <p>a) an outlook of the firm capacity of the pipeline that the service provider has available for sale or that it will have available for sale for each month in the following 36-month period; and</p> <p>b) information about matters expected to affect the capacity of the pipeline (including any planned expansions of the capacity) for each month in the following 12-month period, including:</p> <ul style="list-style-type: none"> <li>i. the expected start and end dates of the matters expected to affect the capacity of the pipeline; and</li> <li>ii. a description of the matters expected to affect the capacity of the pipeline; and</li> <li>iii. the expected capacity of the pipeline during the period it is affected by the matters referred to in subparagraphs (i) and (ii); and</li> </ul> <p>c) information on any other limitations on the availability of the pipeline services identified in the pipeline service information.</p>
<p>Standing terms [rule 101C]</p>	<p>1) The service provider for a pipeline must publish:</p> <ul style="list-style-type: none"> <li>a) standing terms for each pipeline service on the pipeline in accordance with subrule (2); and</li> <li>b) the methodology used to calculate the standing price referred to in subrule (2)(b), the inputs used in the calculation of the standing price and any other information specified in the pipeline information disclosure guidelines.</li> </ul> <p>2) The standing terms must in each case include:</p> <ul style="list-style-type: none"> <li>a) the standard terms and conditions applicable to each pipeline service; and</li> <li>b) the standing price, being the price applicable to each pipeline service under the terms and conditions referred to in paragraph (a); and</li> <li>c) other information about prices and charges applicable to each pipeline service including the charging structure for the pipeline service, any minimum charge and any additional charges such as imbalance or overrun charges.</li> </ul>
<p>Financial information, historical demand information and cost allocation methodology [rule 101D]</p>	<p>1) A service provider for a pipeline must prepare and publish on its website:</p> <ul style="list-style-type: none"> <li>a) financial information and historical demand information for each of its pipelines, which must: <ul style="list-style-type: none"> <li>i. be in the form and contain the information specified in the pipeline information disclosure guidelines; and</li> <li>ii. be certified in the manner provided for in the pipeline information disclosure guidelines; and</li> </ul> </li> <li>b) the cost allocation methodology used for each of its pipelines, which must comply with the cost allocation principles set out in the pipeline information disclosure guidelines.</li> </ul> <p>2) To avoid doubt, the relevant adjudicator, in making an access determination, is not bound by financial information, historical demand information or the cost</p>

Type of information	Requirements
	allocation methodology published under this rule or by any methods, principles or inputs that have been used to calculate information published under this rule.
Actual prices payable information [rule 101E]	<p>1) A service provider must publish the following information for each pipeline service that a user has procured under an access contract with the service provider:</p> <ul style="list-style-type: none"> <li>a) the pipeline by means of which the pipeline service is provided; and</li> <li>b) the date the access contract was entered into or varied (as the case requires); and</li> <li>c) the service term (start and end dates); and</li> <li>d) the pipeline service type (for example, forward haul, backhaul, interconnection, park and loan); and</li> <li>e) the priority given to the pipeline service (such as firm, as available or interruptible); and</li> <li>f) the contracted quantity for the pipeline service expressed, where relevant, as: <ul style="list-style-type: none"> <li>i. the maximum daily quantity (in GJ/day); and</li> <li>ii. the maximum hourly quantity (in GJ/hour); and</li> </ul> </li> <li>g) or a transmission pipeline: <ul style="list-style-type: none"> <li>i. in the case of a forward haul or backhaul service, the direction of the service; and</li> <li>ii. for services other than interconnection services: <ul style="list-style-type: none"> <li>A. the receipt and delivery points between which the pipeline service is provided; and</li> <li>B. the imbalance allowance applicable to the pipeline service; and</li> <li>C. the overrun allowance applicable to the pipeline service; and</li> </ul> </li> </ul> </li> <li>h) 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); and</li> <li>i) the price structure applicable to the pipeline service (for example whether it is a fixed price or a variable price or a combination of the two); and</li> <li>j) the prices payable for the service as set out in the contract (excluding any amount on account of GST); and</li> <li>k) for services other than interconnection services, if a price provided under paragraph (j) is not expressed as \$/GJ/day or, if relevant, \$/GJ, that price converted into \$/GJ/day or \$/GJ, together with an explanation about how the conversion has been made; and</li> <li>l) a description of any price escalation mechanism applicable to the prices payable for the service.</li> </ul> <p>2) A service provider must update the information published under subrule (1) if the information is no longer accurate due to a variation to the terms of the access contract between the service provider and the user.</p> <p>3) A scheme pipeline service provider is not required to comply with subrule (1) in relation to users of reference services specified in an approved access arrangement if the service provider:</p> <ul style="list-style-type: none"> <li>a) publishes on its website information about the number of users using each reference service; and</li> <li>b) updates that information whenever there is a variation to that number.</li> </ul> <p>4) A service provider is not required to comply with subrule (1) where a user's total pipeline capacity right under one or more access contracts with the service provider by means of the same pipeline is less than 10 TJ of natural gas per annum.</p>

## Appendix B – Prescribed transparency information for compression and storage facilities

Type of information	Requirements
Standing terms [rule 198F]	<ul style="list-style-type: none"> <li>a) the service provider's standard terms and conditions applicable to the facility service;</li> <li>b) the standing price, being the price applicable to the facility service under the terms and conditions referred to in paragraph (a); and</li> <li>c) other information about prices and charges applicable to the facility service including the charging structure for the facility service, any minimum charge and any additional charges that may be payable.</li> </ul>
Actual prices payable information [rule 198G]	<ul style="list-style-type: none"> <li>a) the Part 18A facility by means of which the service is provided; and</li> <li>b) the date the contract was entered into or varied (as the case requires); and</li> <li>c) the service term (start and end dates); and</li> <li>d) the type of service provided (for example, a storage service or compression service); and</li> <li>e) the priority given to the service (such as firm, as available or interruptible); and</li> <li>f) the contracted quantity, which for: <ul style="list-style-type: none"> <li>i. a compression service facility should be the maximum daily quantity (in GJ/day); and</li> <li>ii. a storage facility should be: <ul style="list-style-type: none"> <li>A. the storage capacity the subject of the transaction (in GJ); and</li> <li>B. where relevant, the injection and withdrawal capacity, expressed as a maximum daily quantity or MDQ (in GJ/day);</li> </ul> </li> </ul> </li> <li>g) whether the service is provided on the same or substantially the same nonprice terms as those set out in the standing terms published by the service provider under rule 198F(1)(a); and</li> <li>h) the price paid for the service as set out in the contract (excluding any amount on account of GST); and</li> <li>i) if the price provided under paragraph (h) is not expressed as \$/GJ/day or, if relevant, \$/GJ, the price under that paragraph converted into \$/GJ/day or \$/GJ, together with an explanation about how the conversion was made; and</li> <li>j) the price structure applicable to the service (for example whether it is a fixed price or a variable price or a combination of the two); and</li> <li>k) any price escalation mechanism applicable to the price paid for the service.</li> </ul>