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5 August 2011

Mr John Pierce
Chairman
Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

Dear Mr Pierce

National Gas Rule change proposal in relation to reference service and rebateable service definitions and criteria

The AER requests that the AEMC consider making a rule change under section 295 of the National Gas Law (Gas Law).

Changes to definition of Reference Service and Rebateable Service

The AER considers that an effective access regime for pipeline services requires more flexibility than the current Gas Rules provide in terms of the definition of reference services and rebateable services.

The proposed rule change seeks to amend the definition of a reference service under Part 10 of the National Gas Rules (Gas Rules). Currently, all pipeline services likely to be sought by a significant part of the market must be included in an access arrangement as reference services. The AER considers the Gas Rules should provide more flexibility for the regulatory treatment of other pipeline services (such as backhaul and interruptible services) as either reference or rebateable services or neither. This discretion previously existed under the *National Third Party Access Code for Natural Gas Pipeline Systems* (Gas Code)[1] but was removed in the transfer to the Gas Rules. The AER has reviewed policy material surrounding the Gas Rules and made further enquires but has not identified a policy rationale for this change. It is possible this was a drafting outcome rather than a policy intention to mandate all significantly sought services as reference services/tariffs.

[1] The Gas Code was pursuant to the Commonwealth and all State and Territory governments reaching agreement on the enactment of legislation —see the Gas Pipelines Access (South Australia) Act 1997

Under the Gas Code, the ACCC exercised its discretion to not treat other pipeline services as reference services when it considered there were difficulties in estimating an efficient tariff. Specifically, reference tariffs were not set for significant emerging pipeline services because of concerns that where there is significant uncertainty of uptake of these services, tariffs may be set inefficiently low or high, leading to an over or under utilisation of both that service and the main reference service. However, this discretion is now more limited given the definition of a reference service as a pipeline service that is likely to be sought by a significant part of the market. The AER considers the application of the current definition is likely to result in access arrangement decisions which, in some circumstances, do not satisfy the most efficient investment and use of pipeline services principles. This is contrary to both the National Gas Objective (NGO) and the revenue and pricing principles (RPP).

The proposed rule change also seeks to amend the definition of rebateable services under Part 9 of the Gas Rules. The AER considers there was a policy intention under the Gas Code that other pipeline services' revenue could be rebated from reference service revenue. This is important to regulate the recovery of multiple sources of revenue by pipeline owners for the costs of the same pipeline assets. However, this policy intent was not fully realised either in the previous Gas Code or in rule 93(4)(b) of the Gas Rules which requires that the market for a rebateable service be in a "substantially different market to the reference service". This requirement may prevent revenue from other pipeline services being rebated to users, even when it is efficient to do so. The AER considers the current definition is likely to result in access arrangement decisions which are contrary to the long term interests of consumers with respect to price under the NGO.

The proposed rule change addresses a specific issue that the AER anticipates will arise in APA GasNet's (APA GasNet) forthcoming 2013-17 revised Access Arrangement, due for lodgement with the AER by 31 March 2012 for the Victorian Transmission system. APA GasNet has already contracted for AMDQ Credit Certificates (AMDQ CC) with a significant part of the market for the 2013-17 period. AMDQ CC contracts provide for preferential rights to shippers/users related to access to a specified amount of pipeline capacity. Unless these AMDQ CC contracts can be treated as a rebateable service, APA GasNet will retain all the additional revenue from the sale of such rights—anticipated to be over and above the revenue it recovers from its forward haulage reference service. This would amount to the recovery of more than the efficient costs of providing the regulated service.

I should also note the AER considered alternatives to this particular rule change proposal. AER staff presented a paper to the Victorian Gas Wholesale Consultative Forum (GWCF) in February 2011[2], raising with APA, GasNet pipeline users and AEMO how to best deal with the over-recovery issue. The paper suggested the issue could be addressed by changing the Victorian Gas Wholesale Market rules under Part 19 of the NGR[3]. Specifically an amendment to Part 19 could be made provide AEMO with the responsibility to issue AMDQ CC and return any revenue from this service

[2] Refer to minutes of GWCF Meeting 162 for details (http://www.aemo.com.au/vicwholesalegas/gwcf_162.html)

[3] It should be noted in accordance with section 295 of the National Gas Law that changes to Part 19 of the NGR can only be proposed by AEMO, the Victorian Minister or the service provider for the Declared Transmission System (if it concerns a declared system function).

back to users. However, AEMO indicated it had reservations on the suitability of AEMO for this role and APA considered that preferably, any rule changes to address this issue should be made to the definition of rebateable service in the broader Gas Rules. Accordingly, and noting the broader issues set out in this rule change proposal, the AER has not pursued this option to amend Part 19. The preference is to change the broader access rule definitions.

Interlinked rule change proposals

The proposed rule change to the definition of reference service will allow the AER to exercise discretion as to whether to set a reference tariff in circumstances where there is a high level of uncertainty of revenue /demand for a pipeline service, such that determining an efficient tariff for some services may not be possible. Alternatively, there may be circumstances, based on commercial/technical arrangements in relation to the provision of a service, where a reference tariff for this service may not have any force. The rule change is complemented by the proposed rule change to the definition of rebateable service, ensuring that where pipeline services are not subject to a reference tariff, these services are still capable of being regulated as rebateable services.

In conclusion, the AER considers that these rule changes, taken together, are likely to contribute to the NGO by improving the efficiency of uptake and utilisation of pipeline services whilst at the same time enabling the AER to rebate an appropriate portion of service revenues from non-reference services, in the long term interest of consumers.

Please find attached a description and draft of the proposed Rules, a statement of the issues concerning the existing Gas Rules and a description of how the proposed Rule contributes to the achievement of the NGO.

For further details, please contact Blair Burkitt on 03 9290 1442.

Yours sincerely

Chris Pattas
General Manager
Network Operations and Development

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NATIONAL GAS LAW

REQUEST FOR MAKING OF A RULE RELATING TO REBATEABLE SERVICE AND REFERNCE SERVICE DEFINITIONS & CRITERIA

A. NAME AND ADDRESS OF PERSON MAKING THE REQUEST

Australian Energy Regulator
Level 35
360 Elizabeth Street
MELBOURNE VIC 3000

B. INTRODUCTION

The proposed rule change concerns key Gas Rules definitions—reference service and rebateable service—relevant to the setting of terms and conditions for Access Arrangements (AAs). This section provides an overview of the purpose of AAs by reference to key statements before the commencement of the *National Third Party Access Code for Natural Gas Pipeline Systems* (Gas Code). This is followed by an overview of current legislation governing access arrangements.

Purpose of Access Arrangements

An Access Arrangement (AA) is a statement of the policies and basic terms and conditions which apply to third party access for a Pipeline.[4] It was intended there be some flexibility regarding the contents of Access Arrangements. The Gas Code prescribed minimum requirements, and it was envisaged the Regulator could require additional matters to be included in an Access Arrangement.[5]

In respect of Reference Tariffs, the Gas Code considered there must be at least one Reference Tariff to provide Users with the ability to gain access to a standard service (a Reference Service, i.e. forward haulage of gas) at a price approved by the Regulator as reasonable. In addition, it was envisaged that when Users opted to negotiate for a specific Service, then the reference tariff would provide guidance for such negotiations and provide a clear benchmark for the Regulator in the case of a dispute.[6]

Relevant to this rule change proposal, notably the access framework under the Gas Code had the following minimum requirements:

- the inclusion in the AA of a policy as to the services to be offered by the pipeline

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4 Information paper to accompany the Exposure Draft of the National Third Party Access Code for Natural Gas Pipeline Systems, August 1996
5 At p. 31
6 At p.32

- the specification of <u>one</u> reference service with a reference tariff within the AA and

- access dispute resolution provisions (in the gas code).

Under this framework, it was possible that for a covered Pipeline:

- costs could be fully allocated to a forward haulage pipeline service and an associated reference tariff set by the Regulator

- backhaul services, which may be emerging but of unknown demand, could be included in the services policy but treated as a rebateable service with some of the revenue rebated from the reference service

- interruptible services, which may be an emerging service, could be included in the services policy but unregulated to provide a greater incentive for a service provider to promote the market for such services

- all services would be subject to access dispute resolution provisions in the gas code.

That is, users of pipeline would be able to obtain forward haulage at a price set by the regulator and as well could negotiate other backhaul/interruptible services using this price as a benchmark (with the ability to raise an access dispute using this benchmark information). At the same time, the pipeline owner could receive incentives to build the market for backhaul/interruptible services, depending on how much of the backhaul service revenue and interruptible service revenue is rebated (if any).

The AER considers this framework as envisaged for the Gas Code remains appropriate under the Gas Rules, but may be hindered in the current Gas Rules. In particular, the Gas Rules require all services sought by a significant part of the market to be included as reference services (with a reference tariff) and also prescribe that a rebateable service must be in a substantially different market from the reference service. These definitions will lead to a greater amount of pipeline services being captured as a reference service and directly regulated with a tariff applied. This will lead to the setting of inefficient tariffs when demand for emerging services is difficult to estimate. At the same time, the AER considers that more flexibility in the treatment of services as rebateable services will allow users to obtain a benefit (rebate) from the greater provision of other pipeline services, whilst better providing service providers with an incentive to market new services, should not all of the revenue be rebated.

Accordingly, an effective access regime for pipeline services requires more flexibility than the current Gas Rules provide.

Relevant legislation governing AA for the purpose of this rule change proposal

The *National Gas Law* (Gas Law) and the *National Gas Rules 2008* (Gas Rules) governs access to natural gas pipeline services.

Section 23 of the Gas Law sets out the National Gas Objective (NGO):

> The objective of this Law is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.

Section 28(1) of the Gas Law requires the AER to exercise an economic regulatory function in order to promote the achievement of the NGO.[7] Rule 100(a) of the Gas Rules requires provisions of an AA to be consistent with the NGO.

Section 24 of the Gas Law set out Revenue and Pricing Principles (RPPs) including

> (3) A service provider should be provided with effective incentives in order to promote economic efficiency with respect to reference services the service provider provides. The economic efficiency that should be promoted includes-
>
> (a) efficient investment in, or in connection with, a pipeline with which the service provider provides reference services; and
>
> (b) the efficient provision of pipeline services; and
>
> (c) the efficient use of the pipeline.
>
> ...
>
> (6) Regard should be had to the economic costs and risks of the potential for under and over investment by a service provider in a pipeline with which the service provider provides pipeline services.
>
> (7) Regard should be had to the economic costs and risks of the potential for under and over utilisation of a pipeline with which a service provider provides pipeline services.

Section 28(2) of the Gas Law requires the AER to take into account the RPPs when making decisions related to reference tariffs. It states the AER may otherwise take the RPPs into account when performing other economic regulatory functions if appropriate.[8] Section 28(3) clarifies that a reference to a "reference service" in the RPPs (for example in section 24(3)) must be read as a reference to a pipeline service when the AER exercises discretion to take account of the RPPs.

Specific to this rule change proposal, rules 101(2) specifies what is a reference service and a rebateable service.

> 101 (2) A **reference service** is a pipeline service that is likely to be sought by a significant part of the market.

For full access arrangements, rule 101(1) of the Gas Rules require reference services to be specified. Whilst rule 48(1)(d) of the Gas Rules requires the specification of a reference tariff.

Rule 93(4) specifies what is a rebateable service:

> 93((4) A pipeline service is a **rebateable service** if:
>
> (a) the service is not a reference service; and

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[7] Also, Rule 100(a) of the Gas Rules requires Access Arrangement provisions to be consistent with the NGO.

[8] The RPPs are also referred to in a number of sections of the Gas Rules.

(b) substantial uncertainty exists concerning the extent of the demand for the service or of the revenue to be generated from the service; and

(c) the market for the service is substantially different from the market for any reference service.

Rules 93(3) of the Gas Rules provide for a rebateable service category of pipeline services subject to the AER being satisfied that an appropriate portion of the service revenue will be rebated to users of the reference service.

C. STATEMENT OF ISSUES

1. Reference Services

i Summary

Under the Gas Code the Regulator had discretion as to which pipeline services to make a reference services. Under the Gas Rules this flexibility has been removed/reduced. The Gas Rules define a reference service as a pipeline service that is likely to be sought by a significant part of the market. The AER is unaware of any policy reasons for this change.

It is considered there are circumstances where it is inappropriate to include a reference service/tariff in a service provider's access arrangement even if a pipeline service is likely to be sought by a significant part of the market. By reference to past ACCC regulatory decisions, these circumstances fall into the following two categories:

- the setting of a reference tariff is inappropriate on the basis of technical/commercial arrangements. For example, where commercial/technical arrangements preclude an efficient tariff being set and/or would cause a over recovery of pipeline costs (refer to AMDQ CC example below)
- demand/revenue uncertainty limits the ability to set an efficient tariff for a pipeline service, For example, setting a reference tariff for backhaul services could distort the efficient usage of the primary and other pipeline service (refer to Roma to Brisbane Pipeline, South West Pipeline example below).

Accordingly, the requirement for the AER to set a reference tariff in all circumstances where a service is sought by a significant part of the market is likely to conflict with the objectives and principles set out in the NGO and also the RPP. That is, the promotion of efficient investment in and use of pipeline services and the long term interests of consumers with respect to price.

To address this issue the AER proposes that the Gas Rules should expressly require only one reference service be included in an access arrangement. Other services would be considered on a case by case basis.

ii National Third Party Access Code for Natural Gas Pipeline Systems (Gas Code)

Prior to the Gas Rules, the Gas Code set out pipeline access terms and conditions. Section 3.3 of the Gas Code specified when a Reference Tariff must be included in an access arrangement. A Reference Service was defined as a Service with a Reference Tariff:[9]

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.

Accordingly, prior to the Gas Rules, only one reference tariff had to be included in an access arrangement for one pipeline service likely to be sought by a significant part of the market. The regulator had discretion as to how to treat other pipeline services. The Gas Code followed an August 1996 exposure draft Gas Code.[10] The exposure draft was developed by a Gas Reform Task Force appointed by Heads of Government (COAG) and accompanied by an information paper.[11] The information paper set out principles considered by the Task Force as important for a gas access framework. Some of these principles are highlighted below, as they are relevant to the propositions in this paper which support this proposed rule change:

- the need for one service likely to be sought by a significant part of the market to be specified with a tariff so as to provide a benchmark tariff[12]—reflected in section 3.3(a) of the Gas Code

- for other services the need for the regulator to exercise discretion as to which services to include within an access arrangement with regard to the nature of the pipeline and services[13]—reflected in section 3.3(b) of the Gas Code

- that Reference Tariff principles were designed to provide a high degree of flexibility so that Reference Tariffs could meet the specific needs of each pipeline system—reflected in the preface to chapter 8 of the Gas Code[14] and

- a recognition that commercial/technical limitations may limit the ability to allocate revenue between Services to apportion costs—reflected in section 8.38 of the Gas Code.[15]

iii National Gas Rules

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[9] Reference Service was defined in the definitions at the end of the Gas Code as a Service with a Reference Tariff.

[10] Exposure Draft of the National Third Party Access Code for Natural Gas Pipeline Systems, August 1996.

[11] Information Paper to accompany the exposure draft of the National Third Party Access Code for Natural Gas Pipeline Systems, The Gas Reform Task Force, 8 August 1996 .

[12] At p.32

[13] At pp.32,33

[14] At p. 38

[15] At p. 66

In contrast, rule 101 of the Gas Rules provides:

> **101 Full access arrangement to contain statement of reference services**
>
> (1) A full access arrangement must specify **all** reference services.
>
> (2) A reference service is a pipeline service that is likely to be sought by a significant part of the market. [emphasis added]

Accordingly, under the Gas Rules, there is less discretion in relation to which pipeline services are/are not reference services. In particular, a reference service/tariff must be included in an Access Arrangement once it is considered a pipeline service and is likely to be sought by a significant part of the market.[16]

iv The issue

The AER considers that adherence to the RPP and consistency with the NGO may not be possible in every circumstance if the AER is required under the Gas Rules to declare a reference service for every service likely to be sought by a significant part of the market. This conclusion is supported by past regulatory decisions below.

APA GasNet Access Arrangement for the Victorian Declared Transmission System

In 2007, the ACCC identified that GasNet, part of the APA group (APA GasNet) would receive two streams of revenue in its 2008-2012 Access Arrangement period (AA) under the Gas Code covering the Victorian Declared Transmission System (DTS)[17]:

- revenue from a pay-as-you-go reference tariff which is charged on the basis of volumes of gas flowed (the reference service) to shippers to fully recover the costs of providing the DTS;
- revenue from issuing and administering AMDQ Credit Certificate (AMDQ CC) contracts to gas shippers based on the capacity of the relevant part of the DTS.[18]

Details of the amount of the AMDQ CC contracts and the nature and value of the AMDQ CC rights are set out in the Attachment, along with how revenue from the AMDQ CC services is related to reference service gas flows/revenue. AMDQ CC contracts provide for rights to shippers/users related to access to a specified amount of pipeline capacity should the DTS be constrained as well as other benefits in the Victorian wholesale gas market (e.g. bid priority). Essentially, in circumstances when users exceed their AMDQ CC (including users without AMDQ CC) when flowing gas on the DTS, APA GasNet earns additional revenue at the reference tariff. This provides a revenue stream from the AMDQ CC service which is above the revenue determined by the Regulator for the reference service based on the efficient costs of providing the forward haulage reference service. Consequently, APA GasNet received

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[16] See also rule 48 of the National Gas Rules.

[17] ACCC, Principal Transmission System., Draft Decision, p. v.

[18] APA GasNet issued these AMDQ CC contracts in accordance with rights under the MSOR, which continue to exist in part 19 of the Gas Rules.

revenue for the 2008-12 AA through both the forward haulage reference service and the AMDQ CC service, where these services are provided by the same regulated assets. This amounts to users paying more for the services than the efficient costs of their provision.

For the 2008-12 AA, the ACCC considered setting a reference tariff for AMDQ CC service but noted this would have been much lower than the value placed on those instruments by market participants, which amount to a form of capacity rights.[19] Specifically, the ACCC considered that a reference tariff based on the administrative cost of issuing AMDQ CC contracts would be minimal. The incremental costs of providing the AMDQ CC service once direct costs were allocated to the forward haulage tariff may have been only $50,000 per annum, which reflected the administrative cost of the issuance of certificates. The ACCC concluded that GasNet may not have an incentive to provide the AMDQ CC service where a reference tariff is based on the costs of issuance.

The ACCC considered the development of an auction process for AMDQ (which APA undertook to do at the time) was a more efficient method of valuing the capacity rights which are reflected in this instrument. Therefore the ACCC decided not to set a reference tariff. However, it also recognised that even if it did not treat this as a reference service, it may not be able to rebate any revenue (say from the receipts of an auction process) because of difficulties with the rebateable service definition discussed below. This definition issue under the Gas Code related to the requirement that AMDQ CC was in a substantially different market from the reference service. This requirement which the AER considers is unnecessary under the Rebateable Services definition as discussed below continues to exist in the Gas Rules.

Notwithstanding the issues identified above, if the definition of reference service in the Gas Rules had applied for this AA determination instead of the Gas Code, the ACCC would have been forced to determine a reference tariff for AMDQ CC given considerations that it was likely to be sought by a significant part of the market.

On 4 May 2011 APA GasNet notified the AER that it has, following a tender process, entered into new contracts for 353 TJ of AMDQ CC over the next access arrangement period (2013-17).[20] APA auctioned 353 TJ of AMDQ CC for the 2013-2017 Access Arrangement in May 2011 pursuant to terms and conditions set out in an expression of interest document. In accordance with these terms, the AER understand users have contracted and paid for a specified capacity of the DTS. As noted above, in accordance with these contracts, for usage in excess of the contracted AMDQ CC amount, users would pay for the excess at the reference tariff for the forward haulage service.[21] This leads to over-recovery of revenue as set out in the example attached to this paper.

APA has provided information to the AER and also to Victorian gas shippers, indicating that it is likely for its next AA period to again propose all pipeline costs be

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[19] ACCC, Principal Transmission System., Final Decision, April 2008, p.109

[20] The AER understands that combined AMDQ CC contracts total approximately 450 TJ but this figure might increase subject to a further proposed expansion of the SWP currently scheduled for 2013 of 83 TJ.

[21] ACCC, Principal Transmission System., Draft Decision, November 2007 p.xxi

fully allocated to one reference service and that it will not include AMDQ CC as a pipeline service.[22] Absent a rule change, the same over-recovery of revenue issues as encountered by the ACCC in 2008-12 will continue to exist for the 2013-17 AA period.

The AER considers that issuing AMDQ CC through an auction is efficient *and* consistent with the NGO and RPP of promoting efficient investment in pipeline services by providing an investment signal in terms of the cost of network capacity constraints. Alternatively, assigning a reference tariff (at a low cost) in these circumstances would lead to future AMDQ CC being over-subscribed and potentially prevent users who value the service most from acquiring it.

The AER considers that the setting of a reference tariff for this service is inappropriate due to technical/commercial arrangements associated with APA GasNet and the Victorian gas arrangements.[23] In summary, the AER considers that assigning a reference tariff for the AMDQ CC service would not be consistent with the NGO or the RPP on the basis that a reference tariff:

- would have no force in the access arrangement given that the price of AMDQ CC has already been set in contracts between APA GasNet and users
- may not provide an incentive for APA GasNet to provide the AMDQ CC service and
- may undermine an auction process and the effectiveness of AMDQ CC as an investment signal in terms of the costs of congestion on the DTS.

APPTL Access Arrangement for the Roma Brisbane Pipeline

In 2006, for the Roma to Brisbane Pipeline (RBP) Access Arrangement (AA) under the Gas Code, some users considered that services which were not proposed by APT Petroleum Pipelines Ltd (APPTL) as reference services—interruptible, backhaul, park and loan services—should be included as reference services.[24] APPTPL argued that these services were not sought by a significant part of the market. It considered that the only significant service that had been sought was the existing forward haulage of gas reference service and that other services could be negotiated on a case by case basis with the reference service acting as a point of reference.[25]

The ACCC contended that APPTL's submission was unreasonable noting that other Services had already been contracted for and the likelihood of additional demand.[26] That said the ACCC applied its discretion under the Gas Code to only treat the forward haulage service as a Reference Service reasoning that:

[22] APA, email to the AER, 16 June 2011
[23] These technical/commercial reasons also suggest if the revenue is to be regulated, it should be through a rebating mechanism (discussed below in Part 2).
[24] Roma Brisbane Pipeline, Draft Decision, August 2006, pp.108,109
[25] Roma Brisbane Pipeline, APA submission 18 May 2006, p.13
[26] Roma Brisbane Pipeline, Final Decision, August 2006, p.174

- establishing costs for these services was problematic, because at least some of these services could be provided without diminishing the availability of firm forward haulage service, creating difficulties in apportioning costs
- there was difficulty in accurately forecasting the level of demand which meant the expected revenues from the service were uncertain and future sales difficult to predict
- in such circumstances the Gas Code provided for the provision of rebateable services.[27]

Notwithstanding these considerations, if the definition of reference service in the Gas Rules had applied rather than in the Gas Code, the ACCC would have been required to define a reference tariff (subject to whether these services were likely to be sought by a significant part of the market). This is despite the concern by the ACCC that—with a limited ability to forecast demand for these services—setting a reference tariff for these services may have lead to under or over investment in certain services.[28]

Epic Access Arrangement for the SWQP

The ACCC considered whether to include extra reference services (particularly for backhaul) as part of its decision on the South West Queensland Pipeline (SWQP) AA in a 2006 draft decision having identified some demand for backhaul services. It commented:

> The ACCC accepts that, in the current climate, it is difficult to forecast demand for backhaul services...with any degree of accuracy. Without this data, the accuracy and efficiency of any backhaul reference tariff calculated using the cost of service methodology would be subject to considerable doubt. In these circumstances, the ACCC does not believe the submission and determination of a reference tariff is justified[29]

Despite these considerations, if the definition of reference service in the Gas Rules had applied rather than in the Gas Code, the ACCC would have been required to define a reference tariff (subject to whether these services were likely to be sought by a significant part of the market).

In summary, these decisions highlight the difficulties which may arise in apportioning pipeline costs between pipeline services such as forward haul and backhaul, and where attempting to do so may result in inefficient tariffs for both services. These decisions suggest that where the demand or revenue from a service is uncertain such that costs cannot be reasonably allocated between services, treating that service as a rebateable service or not regulating the service at all, may be preferable. In particular, rebating the revenue of one pipeline service against the reference service may prevent the distortortion of investment in/usage of one or more pipeline services. These decisions also highlight that for some services setting a reference tariff may not be appropriate or relevant based on technical/commercial considerations. In the case of the AMDQ CC service example, the setting of a reference tariff for this service may lead to inefficient pricing outcomes in the future uptake of the AMDQ CC service as

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[27] Roma Brisbane Pipeline, Draft Decision, p.109
[28] Ibid.
[29] South West Queensland Pipeline, Draft Decision, September 2006 , p.12

well as an 'over recovery' of pipeline costs by the service provider in the immediate future.

Notably, what may constitute a 'significant part of the market' as referred to in rule 101 is open to interpretation. Depending on how one interprets the expression significant, it is conceivable that under rule 101 a service may meet the definition of a reference service notwithstanding, on the particular facts, that service may be better characterised as a rebateable service and be difficult to tariff efficiently. In practice, the AER considers the current definition is likely to be problematic when exercising its regulatory discretion for a number of pipeline services.

v ***Proposed solution***

The AER considers the definition of a Reference Service under rule 101 of the Gas Rules should be amended to provide flexibility for the service provider to propose, stakeholders to make submissions and the AER to respond as to whether any more than one pipeline service should be a reference service.

The proposed rule change is set out in Appendix A and the AER considers it facilitates this greater flexibility. Regulatory decisions would still have to be exercised with respect to the RPPs and the NGO. This discretion could be exercised under the Gas Law and Gas Rules with regard to:

- cost/revenue allocation principles in rule 93 of the Gas Rules and in particular the availability of a rebateable service mechanism when it is considered that the allocation of costs between services is problematic;
- taking account of the RPP and the risk that allocating costs and setting a reference tariff may lead to inefficient investment in or usage of one or more pipeline services.
- taking account of the NGO and the objective of efficient investment in, and efficient operation and use of, natural gas services for the long term interests of customers.

vi ***How the proposed solution will contribute to the achievement of the National Gas objective***

The proposed rule change will contribute to the NGO, as it will mean that a reference tariff will not have to be included for a pipeline service (sought by a significant part of the market) when significant uncertainty exists as to the revenue and demand for that pipeline service. In such circumstances, a tariff may not reflect efficient costs and may lead to the over or under utilisation of one or more of the pipeline services. Preventing this outcome is consistent with the NGO of promoting efficient investment in and efficient operation and use of, natural gas services as well as the RPP.

If a reference tariff is not set for a pipeline service, the service would still be capable of being treated as a rebateable service (covered by an access arrangement). This would address concerns that a failure to identify a reference tariff will lead to higher prices for users (and ultimately customers).

The proposed rule change would also accommodate circumstances where technical/commercial arrangements make the inclusion of a reference tariff inappropriate for a pipeline service. In the case of APA discussed above, the setting of a reference tariff for the AMDQ CC service may distort investment signals and efficient investment in pipeline services and not allow AMDQ CC to be efficiently allocated to users.

As discussed below under the rebateable service rule change proposal, the proposed rule change is also required (in relation to the AMDQ CC service) to prevent APA over recovering its pipeline costs. That is, the rule change proposal also seeks to protect the long term interests of customers with respect to price in accordance with the NGO.

vii Benefits and costs and potential impact on those likely to be affected by Rule change

A potential cost and impact of the rule change is that in the absence of a pipeline service having a reference tariff applied to it, users may have to negotiate with the pipeline service provider on an access price. However, such users will still be protected by the access dispute provisions in the Gas Law and will still have a benchmark tariff (at least one reference service) as part of the access arrangement proposal to refer to in negotiations or dispute for terms related to other pipeline services.

Another potential cost may arise where services are not subject to a reference tariff, and these services are treated as rebateable service, users of the rebateable service may subsidise other users of pipeline services. However the AER notes any decision as to the form and amount of rebate are subject to the RPP and the requirements set out in rule 93(3) for the AER to be satisfied that an appropriate portion of the revenue generated from rebateable services is rebated.

For each access arrangement, consideration will need to be given as to the allocation of costs between reference services, rebateable services and negotiated (unregulated) services having regard to:

- What are the risks from setting a reference tariff for a service (i.e. inefficient tariffs)?
- What are the consequences of not setting a reference tariff for a pipeline service and rebating this service against the reference service (i.e. users of the rebateable may subsidise other users of the reference service)?
- What are the consequences of making a service a rebateable service and not a negotiated service (i.e. will rebating some of the revenue discourage the establishment of new pipeline services or is it appropriate to return some of the revenue to users)?

A benefit of the rule change is that the AER will be able to approve the treatment of emerging or developing pipeline services of uncertain demand and revenue as non-reference services. This may provide service providers with greater certainty of cost recovery if its revenue does not have to rely on reference tariffs for pipeline services of uncertain demand. Further, the risk of a tariff being set inefficiently, when there is uncertainty as to future revenue/demand is reduced and consequently the risk of under or over-utilisation of pipeline services is reduced in accordance with the RPP and NGO.

Specifically, the proposed rule change:

- allows the service provider a reasonable opportunity to recover at least the efficient costs it incurs in providing other pipeline services (other than the reference service), without impinging on its ability to comply with regulatory obligations or requirements

- provides stronger incentives to promote economic efficiency in the provision of other pipeline services (other than the reference service), where commercial and technical arrangements may lead to potentially over-recovery of costs

- provides the regulator with greater discretion to consider the economic costs and risks for potential under and over investment by a service provider in making its decision on whether to treat a service as a reference service

- provides the regulator with greater discretion to consider the economic costs and risks for potential under and over utilisation of a pipeline when making its decision on whether to treat a service as a reference service.

- has regard to the long term interests of consumers in addressing the issue of over recovery of pipeline costs.

2. Rebateable Services

i Summary

The AER considers that the definition of a rebateable service in rule 93(4) of the Gas Rules should be amended. In particular, the requirement that to qualify as a rebateable service, a service must be in a substantially different market (referred to as the market test). There are potentially a number of pipeline services which are of uncertain projected revenue/demand and which should be capable of being regulated as rebateable services alongside a reference service. However, these services could be considered to be in a similar market to the reference service.

The Gas Reform Task Force in 1996 in an information paper accompanying the exposure draft Gas Code indicated as examples (without limitation) that backhaul services, interruptible services might be treated as rebateable services where they were of uncertain demand/revenue.[30] However, for reasons that are not clear these examples subsequently did not appear in the Gas Code or Gas Rules. The AER considers a consequence is that their potential treatment has become arguable and that an outcome of this rule change should be to clarify the regulatory treatment of such services.

[30] Information Paper to accompany the exposure draft of the National Third Party Access Code for Natural Gas Pipeline Systems, The Gas Reform Task Force, 8 August 1996 p.65

The current definition of rebateable service which requires that a rebateable service be in a substantially different market from the reference service may lead to some services of a service provider (which are not otherwise a reference service and subject to a reference tariff) being unregulated. However, in these circumstances an inability to regulate/rebate some or all of the revenue from these services may not be in the long term interests of consumers in accordance with the NGO. Furthermore, if this revenue is not regulated (i.e. covered by an access arrangement) this may lead to over investment by a Service Provider in these non-regulated services as opposed to regulated services (reference services) potentially, in conflict with both the RPPs and the NGO.

The AER also considers that the type of pipeline services which may be rebated against the reference service should be expanded to include services other than those services that are of substantially uncertain demand/revenue. Specifically, there should be discretion to rebate revenue from a pipeline service against the reference service when it is not commercially and technically reasonable to set a reference tariff for a pipeline service.

ii Gas Code

Prior to the Gas Rules, the Gas Code provided a definition of rebateable services. An information paper released in 1996, along with an exposure draft of the Gas Code, explained the concept of rebateable services:[31]

> The general principle is that a Reference Tariff should be structured on the basis of only the costs that are properly allocated to that Reference Service. This principle may be difficult to apply in practice if the Service Provider expects to sell other Services that would share common assets, but where the volume and/or value of the other Services are difficult to forecast. These Services are termed Rebatable Services and may include interruptible and backhaul Services, where both the availability of the Service and the demand for such Services can be difficult to predict.
>
> The difficulty arises because the uncertainty over the future volume and/or value of sales of the Rebatable Services makes it difficult to determine the amount of costs that should be allocated to those Services. This in turn makes it hard to determine the residual of costs that should be allocated to the Reference Service.
>
> Section A(28)(b) provides an exception to the general cost allocation principle to handle Rebatable Services. It permits all of the costs that could theoretically be allocated to the Rebatable Service to be allocated to the Reference Service, provided that part or all of the revenue from sales of the Rebatable Services is rebated to the Users of the Reference Service. It would be expected that a portion of this revenue would be retained by the Service Provider to provide it with the incentive to offer these Services (which is an Incentive Mechanism).
>
> This exception to the general principle on cost allocation is restricted to this very specific case, in order to prevent it being used as a mechanism for permitting any short-fall in revenue from discount Users from being passed on to other Users.

Subsequently, the exposure draft of the National Gas Code included under the definition of a rebateable service[32]:

[31] At p.65

> A 'Rebatable Service' is a Service where:
>
> there is substantial uncertainty regarding expected future revenue from sales of that Service due to nature of the Service and/or the market for that Service; and
>
> 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
>
> *and may include (without limitation) an Interruptible Service and a Backhaul Service.*

However, the examples italicised at the bottom were not included in the initial Gas Code. However, the AER considers this was not evidence of a policy intent, rather it is likely to be a consequence of the definitions of interruptible and backhaul services (in the definition section), being removed between the exposure draft and final Gas Code.

iii National Gas Rules

The National Gas Rules define a rebateable service as:

> A pipeline service is a rebateable service if:
>
> (a) the service is not a reference service; and
>
> (b) substantial uncertainty exists concerning the extent of the demand for the service or of the revenue to be generated from the service; and
>
> (c) the market for the service is substantially different from the market for any reference service.

The Gas Rules definition of a rebateable service is materially the same as the Gas Code definition, with the addition of the requirement that a rebateable service not be a reference service.

iv The problem

The AER considers that adherence to the RPP's and consistency with the NGO may not be possible in all circumstances if the AER is precluded under the Gas Rules from including a service as a rebateable service if it must be in a substantially different market to any reference service. These problems are highlighted by reference to past regulatory decisions below.

GasNet Access Arrangement for the Victorian DTS

As noted above, in 2007, the ACCC identified that APA GasNet was receiving two streams of revenue from its DTS assets—one based on gas flow, one based on capacity.[33] The ACCC decided it was inefficient to set a reference tariff for the AMDQ CC service (capacity service) because of technical and commercial reasons associated with the service provider's proposal.

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[32] Exposure Draft of the National Third Party Access Code for Natural Gas Pipeline Systems, August 1996

[33] ACCC, Principal Transmission System, Draft Decision, p. v.

The ACCC considered regulating the revenues from AMDQ CC as a rebatable service under the Gas Code. However this was not pursued in the final decision, given uncertainties in satisfying the Gas Code definition of rebateable services, relating to whether these were in a separate market.[34] This was despite the recognition in the ACCC's draft decision that there will be a "double recovery" of pipeline costs:

> The ACCC expects GasNet to generate additional revenue which has not been quantified (and is difficult to quantify in advance) from AMDQ on two injection zones. In respect of additional revenue from AMDQ credit certificates relating to the SWP or the Corio loop, the incremental amount could be small if peak day usage is at or near to capacity and usage is only by users who hold AMDQ certificates. Alternatively, it could be considerable if non-AMDQ credit certificate holders cause a lot of gas to flow on peak days. This may mean GasNet will receive revenue from AMDQ holders (up to revenue associated with near capacity volumes) plus further revenue associated with non-AMDQ holder volume flows.[35]

As explained in more detail in the Attachment, the inability of the ACCC to rebate some of this AMDQ CC revenue led to APA GasNet retaining all additional revenue generated from AMDQ CC over the 2008-2012 AA period. In effect it has been able to 'double sell' the usage capacity of the DTS. This is contrary to the long term interests of consumers under the NGO.

The AER also considers that the definition of rebateable service in the Gas Rules is unlikely to allow the AER to rebate AMDQ CC revenue. Purchaser's of AMDQ CC flow gas on the DTS (the existing reference service) such that the market for AMDQ CC could be argued to not be in a substantially different the market to the forward haulage service. Allowing APA to retain all revenue is not in the long term interest of gas consumers.

APPTL Access Arrangement for the Roma Brisbane Pipeline

As noted above, for the Roma to Brisbane Pipeline (RBP), the ACCC applied discretion under the Gas Code to only treat a forward haulage service as a Reference Service reasoning that:

- establishing costs for these services (e.g. other services such as backhaul) was problematic, because at least some of these services could be provided without diminishing the availability of the firm forward haulage service, creating difficulties in apportioning costs

- difficulty in accurately forecasting the level of demand meant the expected revenues from the service were uncertain and future sales difficult to predict

- in such circumstances the Gas Code provided for the provision of rebateable services.[36]

Despite these conclusions, given the market test in the definition of rebateable services under the Gas Rules (which existed for the Gas Code), the ACCC may not

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[34] ACCC, Principal Transmission System, Final Decision, p.v.
[35] ACCC, Principal Transmission System, Draft Decision, p. 155
[36] Roma Brisbane Pipeline, Draft Decision, p.109

have been able to define these services as rebateable services. That is, if the ACCC considered the services were not in a substantially different the market to the forward haulage reference service.

In summary, what may constitute a 'substantially different market to any reference service' as referred to in rule 93(4) is open to interpretation. Depending on how this is expression is interpreted, it is conceivable that under rule 93(3), the AER may have no ability to rebate revenue from a number of services to users of the reference service. In practice, the AER considers this is an issue it is likely to encounter when exercising its regulatory discretion in relation to a number of services for future access arrangements.

v. Proposed solution

The AER considers that the rebateable service definition under rule 93(4) of the Gas Rules should remove the requirement for a rebateable service to be in a substantially different market from a reference service. This proposed rule change would allow greater discretion to treat pipeline services which are not reference services as rebateable services by removing the market test criterion in the definition of a rebateable service.

The AER notes that there does not appear to be a clear policy reason to include the market test criterion as a necessary pre-requisite for classification as a rebateable service. The policy rationale at the time of the Gas Code is unclear from the information paper/exposure draft Gas Code to the final Gas Code—and the AER has not identified any further examination of the market test for the Gas Rules.

Noting the examples above from past ACCC decisions, the AER considers that this amendment to the rebateable service definition is required to make rule 93(3) and 93(4) of the Gas Rules work as intended (as demonstrated by the discussion in the exposure draft to the Gas Code). Specifically, these amendments are required so as to allow revenue to be rebated if appropriate when considering services of significant uncertain demand/revenue such as backhaul and interruptible services.

Furthermore, noting the AMDQ CC example, the AER considers that the rebateable service definition should include a further criterion relating to technical/commercial considerations. AMDQ CC is an example of a service where it is not possible to set an efficient reference tariff for technical/commercial reasons. The rebateable service criterion should make explicit that, in such circumstances, services may be treated as a rebateable services. This would be an additional category alongside the substantial demand/revenue uncertainty criteria in 93(4). It is necessary because revenue from AMDQ CC may not be *substantially* uncertain. However, not rebating an appropriate portion of the revenue to users would also not be efficient and counter to the long term interests of consumers given that it may lead to an over-recovery of pipeline costs.

The proposed rule change is set out in Appendix B.

vi. How the proposed solution will contribute to the achievement of the National Gas Objective

In accordance with section 28(1) of the Gas Law, the AER must exercise economic regulatory functions in accordance with the NGO; section 28(2) of the Gas Law sets out the AER may take into account the RPPs when performing economic regulatory functions.

The proposed rule change will expand the range of pipeline services that can be treated as rebateable services. In particular, the rule change proposal would allow the AER to address matters where there are concerns that efficient tariffs can not be set because uptake of demand and revenue for those services is substantially uncertain. Under this framework the AER would need to make a decision whether to rebate some or all of the revenue from other services with regard to the need to encourage efficient investment and utilisation of pipeline services in accordance with the RPP and the NGO. In the absence of the proposed rule change, the AER will be left with two options:[37]

- attempt to approximate demand/revenue to set a reference tariff which may lead to an inefficient mix of tariffs if demand/revenue is substantially uncertain or

- not regulate the revenue.

Accordingly, a change to the definition of rebateable services is required to

- expand the range of pipeline services where is may be more economically efficient to rebate the revenue from this service against the reference service, but also

- not allow in some circumstances a service provider to retain all the revenue from a service where it may be already recovering these costs through a reference service.

This ability for the AER to consider the circumstances regarding the provision of pipeline services is more likely to contribute to the NGO.

In addition, where technical and commercial reasons dictate an efficient reference tariff cannot be set, the amended definition of a rebateable service will promote the efficient operation of pipeline services by enabling some or all of the revenue earned from multiple pipeline services to be rebated against a reference service(s). As a consequence, these services combined, will be provided at a lower cost to users consistent with the long term interests of consumers in the NGO.

The proposed rule change may also be consistent with the NGO by promoting efficient investment in pipeline services whereby pipeline users (i.e. shippers) will recognise if they invest in additional services, some of this additional investment will be returned to them in the form of rebates when they use the reference service. As a

[37] These options assume that either for the first dot point that the AER is required to set a reference tariff for this other service (i.e. this is a reference service as it is sought by a significant part of the market) or for the second dot point the AER's rule change proposal for the definition of a reference service is accepted such that the AER would not be required to set a reference tariff for all pipeline services but the market test criterion is not removed from the definition of rebateable services.

consequence, customers will have access to a greater range of services which may be consistent with the NGO in terms of quality and reliability of supply.

The AER notes that any exercise of its regulatory discretion must be in accordance with the NGO and the RPP's under sections 23 and 24 of the Gas Law to either allow the service to be unregulated (for example to provide a full incentive to encourage the development of a service) or to return some portion of the revenue to users of reference service(s).

vii Benefits and costs and potential impact on those likely to be affected by Rule change

A potential cost may arise that where pipeline services are not subject to a reference tariff, and treated as rebateable service is that users of the rebateable service may subsidise other users. However the extent to which these users may subsidise other is an issue which would need to be considered by the regulator on the circumstances in its exercise of discretion subject to the NGO and RPP's. In reviewing an access arrangement or revised access arrangement proposal, the AER would need to give consideration as to the allocation of the costs of all pipeline services between reference services, rebateable services and negotiated services having regard to:

- what are the risks from setting a reference tariff ? (i.e. inefficient tariffs)
- what are the consequences of not setting a reference tariff and providing for a rebateable service? (i.e. some users may subsidise other users)
- what are the consequences of making a service a rebateable service and not a negotiated service? (i.e. will rebating some of the revenue discourage the establishment of new pipeline services or is it appropriate to return some of the revenue back to users)

Ultimately, under rule 93(3) the AER would retain a broad discretion in relation to a rebateable service to impose conditions where the AER had concerns that rebating some or all of the revenue would lead to an inappropriate cross subsidy between pipeline service user(s).[38]

Moreover, under rule 93(3), the AER does not have to rebate all of the revenue from a rebateable service. That is, the rebate mechanism under rule 93(3) of the Gas Rules allows an incentive to be given to a service provider to offer these services by allowing some part of the revenue to be returned to the service provider.

The AER in conclusion considers that the most significant benefit of the rule change proposal is that it will allow more revenue from rebateable services to be shared between the service provider and users. Under rule 93(3) of the Gas Rules, service providers are provided with an incentive to develop new markets and under the rule change proposal users will benefit from lower reference tariffs in circumstances when revenue is rebated from the reference tariff.

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[38] Rule 93(3) of the Gas Rules

3. Need for both rule changes

In summary, the AER proposes that:

- only one pipeline service likely to be sought by a significant part of the market be required to be included as a reference service, with discretion to be applied for the treatment of other pipeline services and

- revenue from pipeline services may be rebated from the reference service without reference to the requirement that the service be in a substantially different market from the reference service. Also, an additional rebateable service criteria should allow the rebating of revenue based on technical or commercial considerations.

The two proposed changes to the NGR are complimentary. The proposed changes to the reference service definition will mean the AER will not have to set reference tariffs where efficient tariffs can not be derived and when investment could be distorted. Instead, the AER will be able to consider rebating an appropriate portion of the revenue from the service provider's sales of services such as AMDQ CC or backhaul / interruptible services. The service provider will set the price for those services, however, as appropriate, a rebate mechanism will be included in the AA which considers the benefits of incentivising the marketing of the service (a smaller rebate) against to the benefits from sales revenue being returned to users (a larger rebate).

In conclusion, the AER considers that these rule changes are likely to contribute to the NGO by improving the efficiency of uptake and utilisation of pipeline services whilst at the same time facilitating the rebating of an appropriate portion of revenue, in the long term interest of consumers and with regard to the efficient investment in pipeline services.

ATTACHMENT—AMDQ CC revenue

Overview

APA GasNet's role in allocating AMDQ Credit Certificate (AMDQ CC) for the Victorian Declared Wholesale Gas Market (DWGM) under Part 19 of the Gas Rules, may enable APA GasNet to recover more than the efficient costs of pipeline investment on the Victorian Declared Transmission System (DTS) in its 2013-17 revised access arrangement.

Background

The DWGM is based on physical injections and withdrawals of gas through DTS. Unlike other regulated transmission networks, network users on the DTS cannot reserve capacity on the DTS such that there is no firm access or capacity pipeline property rights. Instead Victoria's market carriage capacity management regime[39] has been built on limited property rights. That is, holders of Authorised MDQ (AMDQ) and AMDQ CC receive limited property rights, which are linked to the capacity of DTS pipelines. Specifically, holders of AMDQ or AMDQ CC have specified preferential physical access to the DTS and financial rights in the DWGM above those users who do not hold these instruments. In particular, holders receive:

- priority in terms of avoiding curtailment in the event of load shedding on the DTS
- congestion payment benefits in the event of congestion on the DTS; and
- priority in the event of a tied injection and withdrawal bid in the DWGM.
- such that AMDQ / AMDQ CC has particular value when the DTS is constrained.[40]

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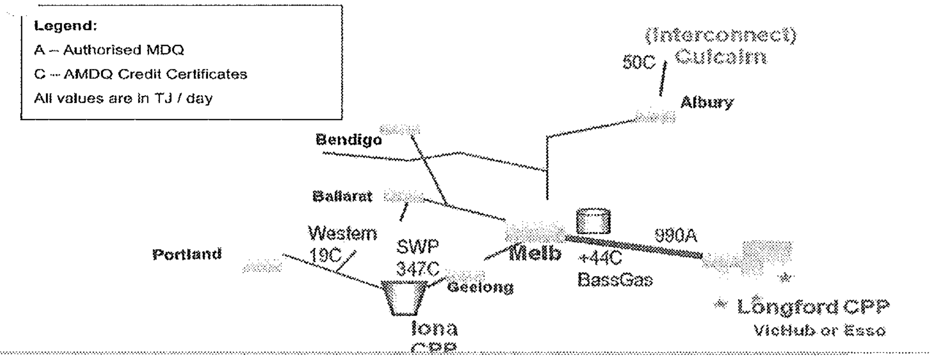
[39] Under the market carriage capacity management system users currently pay a haulage tariff based on the actual gas used on the DTS and pay tariffs to the independent system operator, AEMO.

[40] Holders must also have gas contracts and inject gas at injection points where the AMDQ/AMDQ CC is used.

The DTS pipelines and the AMDQ / AMDQ CC derived from these pipelines is shown below:

Map of DTS showing Authorised MDQ and AMDQ CC



*The 347 TJ of AMDQ CC on the SWP increased to 355 TJ recently.

Notably, APA GasNet has the right to sell AMDQ CC, whereas Authorised MDQ is controlled by AEMO.

Sale terms for AMDQ CC

APA GasNet sells or leases AMDQ CC on a periodic basis. Recently, it has better aligned the sale of AMDQ CC to its access arrangement period. The value of AMDQ CC may vary over time and will depend in part on the value placed by shippers in the bundle of rights attached to AMDQ CC at the time it is sold. The value gas shippers place on AMDQ CC provides an investment signal for expansion of the DTS. For the 2008-2012 Access Arrangement period, the AER understands APA GasNet sold AMDQ CC at a price linked to the reference price—see boxed example below.

For the 2013-17 AA period, the AER understands APA GasNet has already re-sold 353 TJ of SWP AMDQ CC.

Revenue issue

In the event that APA GasNet continues to earn revenue both from pay-as-you-go (PAYG) volumetric reference tariffs (forward haul service) and from AMDQ CC for the recovery of the same pipeline assets, APA will recover more than its efficient costs in its next access arrangement in 2013-17. Importantly, even if AMDQ CC is sold only at a reserve price of the reference tariff price for the pas-as-you-go volumes (forward haul reference service) this is likely to lead to some AMDQ CC revenue.[41] This is because:

- APA GasNet contracts AMDQ CC to users and if users flow equal to or less than that AMDQ CC amount, regardless they will pay the AMDQ CC contracted volume at the PAYG reference tariff in lieu of paying for volumes of gas flowed at the reference tariff price.

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41 In regard to the reserve price - in circumstances where a user matched its actual usage of the network with its contracted capacity, GasNet's reference tariff revenue would be deducted and fully offset against its contracted capacity payments. In this circumstance, there would be no over-recovery of revenue derived from its regulated assets. However, where a customer's usage of the network is less than its contracted capacity or an 'unauthorised' user 'crowds out' the contracted user, GasNet would receive additional revenue over and above its regulated tariff revenue.

- However, should a user not have AMDQ CC or exceed its AMDQ CC amount, it will pay for these volumes of gas flowed at the reference tariff price.
- Therefore, whenever users flow more than AMDQ CC held, this means APA GasNet will be recovering revenue for the sale of gas volumes which exceed the capacity of the pipeline. Given the tariff is set using a volume which does not exceed the capacity of the pipeline this leads to additional revenue to the PAYG reference tariff revenue through the sale of AMDQ CC.

The 'over recovery' of pipeline costs issue is explained further in the example in Box 1.1 below.

Box 1: Relationship between AMDQCC and forward haulage reference service

Tariff set for reference service (haulage of gas) in Access Arrangement
$600 000 costs over five years
Forecast volume of gas is 300,000 GJ (over 5 years)
Forecast volumes are set to equal the amount of AMDQ CC sold to A, B, C (100,000 GJ each)
Therefore a reference tariff is set to equal $2/GJ ($600,000/300,000 GJ)

Actual gas flowed over Access Period
In fact A, B, C and D (without AMDQ CC) flow gas over this period
A, B, C flow 200,000 GJ TJ, D flows 100,000 GJ.

Actual revenue to APA
From A, B, C—$600,000 in accordance with AMDQ CC sold (300,000GJ) at the reference tariff price (it does not matter that A,B,C actual gas flows (200,000) are less than AMDQ CC)
From D—100,000 GJ*$2 = $200,000

APPENDIX A

RULE CHANGE REQUEST – Reference Service definition provision

TEXT OF PROPOSED AMENDMENTS

New rule 101:

101 A full access arrangement must specify a reference service for:

(1) at least one pipeline service that is likely to be sought by a significant part of the market

(2) each pipeline service that is likely to be sought by a significant part of the market and for which the Relevant Regulator considers should be included as a reference service.

APPENDIX B

RULE CHANGE REQUEST – Rebateable Service definition

TEXT OF PROPOSED AMENDMENTS

New rule 93(4):

A pipeline service is a rebateable service if:

(a) the service is not a reference service and

(b) either:

- (i) substantial uncertainty exists concerning the extent of the demand for the service or of the revenue to be generated from the service; or
- (ii) it is not commercially and technically reasonable to set a reference tariff for the service.