

Applications under the National Gas Law – prescribed fees

The prescribed fees

Schedule 5 of the *National Gas (South Australia) Regulations* prescribes fees for certain applications made to the Council under the National Gas Law (NGL).

Application	Fee \$ ¹
For a coverage determination under s 92 of the NGL	7,500
For a coverage revocation determination under s 102 of the NGL	7,500
For a reclassification under s 128 of the NGL	2,000
For a 15 year no coverage determination under s 151 of the NGL	7,500
For a price regulation exemption under s 160 of the NGL	7,500

What do the fees relate to?

An application under the NGL may relate to a single pipeline and therefore a single fee is payable. However some applications may relate to more than one pipeline. Under the NGL fees attach to an application, rather than to the pipeline or pipelines that are subject of the application. In some situations a single application may relate to more than one pipeline— with one fee being payable.

This note sets out how the fees are calculated and payable on applications made to the National Competition Council under the above identified sections of the NGL.

Pipeline

All relevant applications under the NGL concern a “pipeline”. However s 2 of the NGL defines a “pipeline” as:

- (a) a pipe or system of pipes for the haulage of natural gas and any tanks, reservoirs, machinery or equipment directly attached to that pipeline or system of pipes; or ... (emphasis added)

¹ No GST is payable or levied in respect of these fees. Fees under the NGL are prescribed by *A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2008 (No.2)* to not be consideration for a supply pursuant to *A New Tax System (Goods and Services Tax) Act 1999*. Refer subsection 81-5(2) of *A New Tax System (Goods and Services Tax) Act 1999*.

The term “system” is not defined in the NGL, but the Concise Oxford Dictionary defines “system” as:

a complex whole, or set of connected things or parts; ...

Thus a “pipeline” as defined may comprise a single pipeline in some cases and more than one pipeline in other cases.

Applications under the National Gas Law concerning *more than one* pipeline

In some cases a party may be considering making an application under the NGL that may concern more than one pipeline which operate as a system. For example, the proposed application may concern pipelines identified by different licence numbers or which are described as unique pipelines in the Scheme Register² but which are generally considered as one system.

In the Council’s view, if the pipelines concerned are:

- owned, controlled or operated by the same entity (or related parties within a corporate group)
- have the same classification
- are interlinked, and
- exist and operate together in a network or system,

then where an application is made in respect of such pipelines it is appropriate for a single application to be made.

In this situation the Council believes that the pipelines are appropriately characterised as a “system of pipes” and it will generally be appropriate for only one application to be made to the Council under the relevant section of the NGL. The Council will consider and assess that application as it relates to the pipeline system. In these circumstances the Council will look to issue a single decision covering the full scope of an application. In most circumstances this will see a single result for an application.

² Maintained by the AEMC and available at www.aemc.gov.au

Example

Jemena Gas Networks (NSW) Limited applied to the Council under s 128 of the NGL seeking reclassification (from transmission to distribution) of the pipelines within the Jemena network supplying gas in New South Wales. The network comprises five individually licensed pipelines and in the scheme register the network is further named as consisting of the Wilton to Newcastle and Wilton to Wollongong pipelines. Only one application was made to the Council for reclassification as the Wilton to Newcastle and Wilton to Wollongong parts are inseparable components of the Jemena network.

The Council requires applicants to carefully consider the nature and content of their application. If there is not a high level of information symmetry across the pipelines concerned and different issues need to be addressed requiring the provision of different information for each pipeline then it is expected that separate applications will be necessary and will be made for each pipeline. Not to do so may lead to an application being unsuccessful whereas a narrower application may have succeeded or if separate applications had been made some may have succeeded while others may not.

Coverage, revocation of coverage and no-coverage determinations

The Council notes that NGL contemplates that the Council may make a recommendation on an application made to it under ss 92, 102 or 151 for the whole of the pipeline as described in the application or a part thereof. The NGL expressly contemplates that in relation to these matters even though a pipeline may be described as one system, different conditions may prevail which make it appropriate to regulate parts of the system differently.

Example

The Moomba to Sydney Pipeline is regarded as one integrated system or network and therefore is commonly described as a pipeline even though it is comprised of 12 licensed pipelines that traverse four jurisdictions. Furthermore, following applications made under the former Gas Code and more recently the NGL, parts of the system are regulated differently. Coverage of the Moomba to Marsden segment was revoked in 2003 and the Marsden to Wilton segment is the subject of a 2008 determination by the Council to apply light regulation.

Contact the Council

The Council invites all applicants to discuss their potential application with it. In such preliminary discussion the Council may provide a view on how the application should be made and what fee or fees will be payable.