



Making a submission on applications for reclassification of covered pipelines under the National Gas Law

(Version 1.0 – 22 April 2009)

1 Background

- 1.1 Under the National Gas Law (NGL) the National Competition Council (Council) is responsible for considering applications relating to access to natural gas transmission and distribution pipeline systems. This includes applications for pipeline reclassification, coverage, light regulation and greenfields pipeline incentives.
- 1.2 This note is specifically concerned with applications for the reclassification of pipelines. It sets out the process the Council will use¹ in deciding applications and how parties with an interest in an application can make submissions that the Council will take into account in reaching its decision.
- 1.3 The Council undertakes public consultation in relation to applications for reclassification under the NGL. Two opportunities for public submissions are provided—the Council will seek written submissions initially in response to the application, and again following the release of its draft decision.
- 1.4 The National Gas Rules (NGR) specify the consultative procedures the Council will follow in considering applications under the NGL. In considering an application for reclassification of a pipeline the Council must proceed in accordance with the expedited consultative procedure set out in the NGR.

2 Process for considering reclassification applications

- 2.1 Following the receipt of an application² under the NGL relating to reclassification the Council will publish a notice on its website (www.ncc.gov.au) and in *The Australian* newspaper describing the application and providing a website address at which the application may be inspected. The Council will also write to likely interested parties to advise them of the application.

¹ The Council reserves its rights to depart from the process set out where it considers this necessary and to amend this process from time to time. The current version of this note is available on the Council's website (www.ncc.gov.au).

² The Council has the power to summarily reject an application that is non-complaint or frivolous. Such action must be taken within 10 business days of receiving such an application. A decision to reject an application must be given to an applicant in writing and set out the Council's reasons.

-
- 2.2 The Council's notice will call for submissions on the application. The Council will give interested parties around 15 business days³ for these submissions, which is commensurate with the period of time provided in the NGR for submissions on the draft decision. **Generally the Council will not extend this submission period.**
- 2.3 Following the closing of submissions, the Council will publish the submissions on the application on its website (www.ncc.gov.au). At this stage the Council will also set out its timetable for the subsequent steps in its decision making process: issuing a draft decision, receiving submissions on the draft decision and making a final decision. An indication of the possible timing of various phases of the Council's decision process is set out in Appendix A. (See also section 3 below.)
- 2.4 Based on the information received in the application, and from submissions and its own research, the Council will prepare and publish a draft decision setting out the Council's preliminary analysis and conclusions. The draft decision will be published within 20 business days of the closing of submissions on the application. The Council will then seek further submissions on the basis of the draft decision. Under the NGR the Council can allow no more than 15 business days for submissions on a draft decision.
- 2.5 Following the closing of submissions on the draft decision, the Council will publish those submissions on its website. The Council then has 20 business days (from the closing of submissions on the draft decision) to make its decision. When a decision is made, the Council provides it to the applicant and publishes it on its website. Decisions will also be available for inspection at the Council's office. A reclassification decision takes effect on the date the decision is made.

3 Time limits

- 3.1 Under the NGL the Council must make a decision on a reclassification application within 4 months of receiving the application.⁴ Under the NGR the Council may extend this overall 4 month period where
- (a) an application involves questions of unusual complexity or difficulty
 - (b) an extension of time has become necessary because of circumstances beyond the decision maker's control.
- 3.2 Where the Council extends the overall 4 month time limit, it will give notice of the extension to the applicant and publish a notice of the extension on its website and in *The Australian* newspaper.

³ Business day means a day that is not a Saturday or Sunday or a public holiday observed on the same day in each of the participating State and Territory jurisdictions.

⁴ The NGL provides that a decision will not be invalid where the decision has not been made within the specified period of time.

3.3 The NGR also provide that where the NGL fixes a time limit, then for the purpose of calculating elapsed time, certain periods may be disregarded if the Council so decides. The Council may ‘stop the clock’ for:

- any period allowed to an applicant for the correction or revision of an application
- any period allowed for public submissions on an application or on a draft decision
- the period between the commencement and conclusion of any court proceedings to determine questions arising from an application or the Council’s handling of the application.⁵

3.4 Generally the Council is unwilling to undertake substantive consideration of an incomplete application. The Council is likely to stop the clock in such situations.

3.5 The Council is not likely to stop the clock for public submission periods unless extended submission periods are required due to an application raising unusually complex or difficult issues.

4 What should a submission contain?

4.1 The Council considers that submissions relating to a reclassification application under the NGL should:

- identify the organisation or person making the submission and their interest in the application (a submission cover sheet is attached at the end of this guide for this purpose)
- address some or all of the criteria and factors applicable to a reclassification, including the National Gas Objective and the pipeline classification criteria (s 13(2) of the NGL)
- support assertions and conclusions with relevant facts and analysis
- provide the source of statistics and similar factual information included in a submission
- spell out critical assumptions used in any estimating or modelling or other forecasts or projections
- ensure any quotations and references to other sources are accurate and complete
- ensure material provided by independent experts meets the requirements of the Federal Court’s *Guidelines for Expert Witnesses in Proceedings in the Federal Court of Australia*.⁶

⁵ Other grounds for ‘stopping the clock’ in calculating time periods are also specified in the NGL/NGR but these are not relevant to the Council’s areas of responsibility.

⁶ See www.fedcourt.gov.au/how/prac_direction.html.

-
- 4.2 Each paragraph of a submission should be numbered to assist in referencing submissions in the Council's decision. Pages should also be numbered. Appendices and other supporting materials should also be clearly identified and where possible these too should contain numbered paragraphs.
 - 4.3 **Submissions on an application** (see paragraph 2.2) should address the basis on which the applicant has sought a reclassification decision, the nature of the reclassification and any other issues that a party considers the Council should take into account given the criteria and other prescribed factors relevant to a reclassification decision.
 - 4.4 **Submissions on a draft decision** (see paragraph 2.4) should focus on the preliminary analysis and conclusions in the draft decision and seek to provide additional information and analysis to that already available to the Council. It is generally unnecessary to repeat submissions already made. In most cases the Council expects that all significant issues should have been highlighted in the application or in earlier submissions on an application so that they can be considered in the draft decision. If new issues are to be raised at this stage the relevant submission should address why the matter could not have been raised earlier.

5 Publication of submissions and requests for confidentiality

- 5.1 The Council will publish each submission on its website as soon as practicable after the applicable submission period closing date.
- 5.2 Where a submission is made by an individual on their own behalf, the Council will remove identifying details other than the individual's name and the state or territory of residence from the submission before it is published on the Council's website.
- 5.3 The Council encourages submitting parties to ensure their submissions are public documents. Anyone intending to request that part of a submission be treated in confidence should first discuss the matter with Council staff. Specific reasons for confidentiality will need to be provided. The Council considers that it would be unlikely for a situation to arise where a party could claim confidentiality over a submission in its entirety, but some specific commercially valuable information may be withheld.
- 5.4 If the Council refuses a request for confidentiality, it will advise the relevant party of its decision and will return the whole or relevant part of the submission to the interested party in accordance with relevant requirements of the NGL and NGR.
- 5.5 A submission containing confidential information should have the confidential sections clearly identified and marked 'confidential'. A second public copy of the submission, with all the confidential material removed, should also be provided to the Council. The Council will publish this non confidential 'public' copy of the submission. Parties making submissions are responsible for ensuring confidential material cannot be restored from public versions of submissions.
- 5.6 Notwithstanding that the Council may accept a submission containing confidential information, the Council may be required make available any information held by it,

including confidential information, in accordance with the provisions of the *Freedom of Information Act 1982* (Cth), orders of a court or tribunal or as otherwise authorised or required by law. The Council is also empowered to share confidential information with the Australian Energy Regulator, Australian Competition and Consumer Commission, Australian Energy Market Commission and Economic Regulation Authority (Western Australia).

- 5.7 The Council will take all reasonable measures to protect information given to it in confidence from unauthorised use or disclosure.

6 Lodging a submission

- 6.1 All submissions should be lodged with a completed submission cover sheet (see Appendix B at the end of this document or the Council's website). The completed cover sheet should provide all relevant contact details that allow verification of the authenticity of the submission—the name of the person providing the submission, organisation represented and position details (where relevant) and a phone contact, email and postal address.
- 6.2 The Council requires two copies of a submission—an electronic copy and a hard copy.
- 6.3 Electronic copies of submissions should be in a format that can be opened in Microsoft Word or in pdf format. Where possible the Council would prefer electronic copies (particularly the main text of submissions) to be formatted to allow content copying. It is the Council's usual practice to publish submissions and other documents on its website in pdf format.⁷
- 6.4 Electronic submissions in excess of 5Mb are not accepted by the Council's email system and are generally slow to download. Such large files should be avoided. Should this be an issue please contact the Council as far in advance of a submission closing date as possible.
- 6.5 Email submissions to: gas@ncc.gov.au
- 6.6 A hard copy should be posted to:
- Submissions
National Competition Council
GPO Box 250
Melbourne VIC 3001
- 6.7 Any queries can be directed to the Council Secretariat on (03) 9285 7474.

⁷ The Council will consider providing documents in other electronic formats on request.

Appendix A – Expedited consultation timetable

	Time allowed (business days)	Cumulative time (business days)
Application received		0
Notice published		3-5
Submissions on application close	15	20
Publication of draft decision	15-20	35-40
Submissions on draft decision close	15	50-55
Final decision	20	70-75
Maximum time allowed by expedited consultation procedure		80-90 (4 months)

A.1 This timetable is indicative only. The time may be extended or the clock stopped where necessary. The Council will advise its intended timetable for an application after considering submissions on an application, including any requests for extended submission periods.

Appendix B – Submission coversheet

Re: Application for reclassification under s 128 of the National Gas Law

Please complete and submit a signed copy of this form along with your submission.

1. By email to:

gas@ncc.gov.au

AND

2. In hard copy to:

National Competition Council
GPO Box 250
Melbourne VIC 3001

Individual/Organisation/Company: _____

Principal contact: _____

Position/title: _____

Email address: _____

Address: _____

Suburb/Town: _____

State: _____

Postcode: _____

Telephone: _____

Declaration

To the best of my knowledge and belief: the information provided in the submission is true, correct and complete; complete copies of supporting materials or evidence have been provided and/or clearly identified; all estimates are identified as such and are the best estimates of the underlying facts and; all the opinions expressed are sincere.

Signature of authorised person

Office held/title/position

(Print) Name of authorised person

Date

Note: If the submitting party is a corporation or organisation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the submitting party, this fact must be stated.

Please indicate if your submission:-

- contains NO confidential material

- contains SOME **confidential** material (in which case please provide two copies of the submission – one with all of the confidential information removed and this copy with the confidential information clearly identified and marked)