



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

(September 2011)

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 light regulation and also applications relating to coverage, pipeline classification and greenfields pipeline incentives.
- 1.2 The Council may be required to consider light regulation of a pipeline that is already covered and subject to an access arrangement or as part of the process for making a coverage recommendation. Where light regulation is considered in conjunction with a coverage application, the Council provides its decision on light regulation at the time it makes its recommendation on coverage to the relevant Minister.
- 1.3 This note is specifically concerned with the situation where an application is made for light regulation of a pipeline that is already covered. It sets out the process the Council uses 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. The Council reserves the right to depart from the process set out here where it considers this necessary and to amend this process from time to time.
- 1.4 The Council has developed a multi part Gas Guide to its areas of responsibility under the NGL. The Gas Guide is in four parts and each part is available to download from the Council's website (www.ncc.gov.au). Parties intending to make a submission on a light regulation application are advised to consult Part C of the Gas Guide.
- 1.5 The Council undertakes public consultation in relation to applications for light regulation under the NGL. Two opportunities for public submissions are provided – the Council invites written submissions initially in response to the application, and again following the release of its draft determination.
- 1.6 The National Gas Rules (NGR) specify the consultative procedures the Council follows in considering applications under the NGL. In considering an application for light regulation of a covered pipeline the Council must proceed in accordance with the standard consultative procedure set out in the NGR.

2 Process for considering light regulation applications

- 2.1 Following the receipt of an application¹ under the NGL relating to light regulation, the Council gives notice of the application in *The Australian* newspaper and publishes a public copy of the application on its website (www.ncc.gov.au). The Council also writes to likely interested parties to advise them of the application and consults with the Australian Energy Regulator (AER).
- 2.2 The Council's notice will call for submissions on the application. The NGR provides 15 business days² (from the date of the notice) for these submissions. **The Council generally will not extend this first submission period.**
- 2.3 After the close of submissions, the Council publishes the submissions on the application on its website. At this stage the Council also sets out its timetable for the subsequent steps in its decision making process: issuing a draft determination, inviting submissions on the draft determination, and making a final determination. 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 contained in the application, in the submissions, and from its own research, the Council prepares and publishes a draft determination setting out the Council's preliminary analysis and conclusions. The Council then seeks further submissions on the draft determination.³ Under the NGR the Council must provide at least 15 business days for submissions on a draft determination. Given the overall four month time limit for considering light regulation applications, the Council generally allows the prescribed 15 business days for these submissions. However, where an application raises particularly difficult or complex issues the Council may provide a longer period.
- 2.5 The Council may also consider extending a submission period in response to requests from interested parties. Interested parties that consider that an application raises

¹ The Council has a power to summarily reject an application that is non-complaint or frivolous. Such an 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 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—New Year's Day, Australia Day, Good Friday, Easter Monday, ANZAC Day and Christmas Day.

³ The standard consultation procedure also includes a process for notifying applicants where a draft determination identifies changes to an application that a decision maker considers should be made and providing an opportunity for an applicant to modify a proposal prior to the draft determination being released. The Council considers that this situation is unlikely to arise in relation to a light regulation application, where the Council can only decide that the pipeline should be subject to light regulation or not.

issues that require an extended submission period should make this view known to the Council as early as possible and should specify the reasons why an extended submission period is needed. Wherever possible, parties should indicate the likely need for additional time when making initial submissions on the application itself (see paragraph 2.2). Where a need for an extended submission period or the extension of an existing submission deadline is identified at a later stage, a request should be made immediately. The Council will assess such requests on a case by case basis.

- 2.6 Following the close of submissions on the draft determination, the Council publishes those submissions on its website.
- 2.7 Where an application for light regulation relates to a pipeline that is already covered, the Council has 20 business days (from the closing of submissions on the draft determination) to make its decision. When a determination is made, the Council provides it to the applicant and the AER, and publishes it on its website. Determinations are also made available for inspection at the Council's office. A light regulation determination takes effect on the date provided for in the determination or, if no date is provided, 10 business days after the light regulation determination is made.

3 Time limits

- 3.1 Under the NGL the Council must make a decision on a light regulation application within four months of receiving the application.⁴ Under the NGR the Council may extend this four month period by up to 2 months where
- an application involves questions of unusual complexity or difficulty, or
 - an extension of time has become necessary because of circumstances beyond the Council's control.
- 3.2 If the Council extends the four month time limit, it gives notice of the extension to the applicant and publishes a notice of the extension on its website and in *The Australian* newspaper.
- 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

⁴ The NGL provides that a decision is not to be taken to be an invalid decision only because the decision is not made within the specified period of time.

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- any period allowed for public submissions on an application or on a draft determination, and
 - 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 application, and in particular to seek submissions, where an application needs to be corrected or revised. 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.
- 3.6 The Council will consider stopping the clock in the event of court proceedings on a case by case basis.

4 What should a submission contain?

- 4.1 The Council considers that submissions relating to a light regulation 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 – see Appendix B)
 - address some or all of the criteria and factors applicable to a light regulation determination, including the National Gas Objective. An overview of the criteria and form of regulation factors is available in Part C of the Gas Guide
 - 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 for estimating or modelling demand, costs or other forecasts or projections
 - ensure any quotations and references to other sources made are accurate and complete
 - ensure material provided by independent experts meets the requirements of the Federal Court's Practice Note CM 7 - *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 do not appear to apply in relation to the Council's areas of responsibility.

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- 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 light regulation determination and any other issues that a party considers the Council should take into account given the criteria and other prescribed factors relevant to a light regulation determination.⁷ Where a party considers that an application raises issues that will require an extended submission period, this should be noted in its submission responding to the application.
- 4.4 **Submissions on a draft determination** (see paragraph 2.4) should focus on the preliminary analysis and conclusions in the draft determination 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, in earlier submissions on an application, or in discussions with Council staff, so that they can be considered in the draft determination. If new issues are to be raised at this stage (after the draft determination is published) the relevant submission should address why the matter could not have been raised earlier.
- 4.5 Parties submitting information to the Council are advised that the giving of false or misleading information is a serious offence. In particular, s 137.1 of the Commonwealth Criminal Code⁸ makes it a criminal offence for a person to supply information to a Commonwealth body knowing that the information is false or misleading in a material particular or omitting any matter or thing without which the information is misleading in a material particular.

5 Publication of submissions and requests for confidentiality

- 5.1 The Council publishes each submission on its website as soon as practicable after the submission closing date.
- 5.2 Where a submission is made by an individual on their own behalf, the Council identifies the submission on its website by publishing the individual's name, any

⁶ Available for download at www.fedcourt.gov.au.

⁷ Where an application for light regulation is being considered in conjunction with an application for coverage or revocation of coverage of a pipeline, submissions on the appropriate form of regulation will be sought together with submissions on the coverage issue.

⁸ *Criminal Code Act 1995* (Cth)

affiliation the individual advises to the Council and the individual's state or territory of residence.

- 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 that are provided in hard copy and Adobe PDF format.
- 5.6 Although 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 AER, Economic Regulation Authority (Western Australia), Australian Competition and Consumer Commission and Australian Energy Market Commission and state or territory regulatory bodies.
- 5.7 The Council takes 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 submission cover sheet attached (see Appendix B 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.

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- 6.3 Electronic copies of submissions should be in formats that can be opened in Microsoft Word and in Adobe Acrobat (PDF). Where possible the Council would prefer electronic copies (particularly the main text of submissions) to be formatted to allow content copying and searching. It is the Council's usual practice to publish submissions and other documents on its website in Adobe PDF format.⁹
- 6.4 An electronic copy of a submission should be emailed to the email address identified by the Council on its website for that project.
- 6.5 A hard copy should be posted to:
- Gas Submissions
National Competition Council
GPO Box 250
Melbourne VIC 3001
- 6.6 Any queries can be directed to the Council Secretariat on (03) 9981 1600.

⁹ The Council will consider providing documents in other electronic formats on request subject to confidentiality and other relevant concerns.

Appendix A – Standard 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 determination	15-20	35-40
Submissions on draft determination close	15-30	50-70
Final determination	20	70-90
Maximum time allowed by standard consultation procedure		80-90 (4 months)

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 light regulation under the NGL

Please complete and submit this form along with your submission.

1. By email to:

[project name]@ncc.gov.au

AND

2. In hard copy to:

National Competition Council
GPO Box 250
Melbourne VIC 3001

Individual/Organisation/Company: _____

Email address: _____

Address: _____

Suburb/town: _____

State: _____

Postcode: _____

Principal contact: _____

Position/title: _____

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)