

# South Australian Derogation on Price Reporting from the Gas Pipeline Regulation National Package

Consultation Paper

September 2021

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## ACRONYMS

DRIS	Regulation Impact Statement for Decision
NGL	National Gas Law
NGR	National Gas Rules
AER	Australian Energy Regulator

## Introduction and background

### Key Points:

- In May 2021, the Energy National Cabinet Reform Committee released the Options to Improve Gas Pipeline Regulation, Regulation Impact Statement for Decision. The preferred option requires pipeline service providers providing third party access to publish a suite of basic information as well as historical financial and demand information. The preferred option also requires service providers to publish information on the individual prices paid by shippers as well as key terms and conditions.
- During national consultation, South Australian stakeholders raised concerns with the requirement to disclose individual prices paid by shippers, including key terms and conditions. Stakeholders suggested that doing so will reduce the flexibility and ability of service providers to offer bespoke services. South Australian stakeholders value these bespoke services highly.
- Given this, South Australia noted its intention to derogate away from the requirement to disclose individual prices paid by shippers and key terms and conditions.
- This derogation is only proposed to apply to pipelines wholly or partially in South Australia thereby not impacting individual price reporting in other jurisdictions.

On 3 May 2021, the Energy National Cabinet Reform Committee released the Options to Improve Gas Pipeline Regulation, Regulation Impact Statement for Decision (DRIS). The DRIS outlines the preferred option to improve the gas pipeline regulatory framework following the release of a Consultation RIS (in November 2019) and extensive stakeholder feedback on several problems identified with the current regulatory framework.

One of these identified problems of the current regulatory framework, is the information disclosure requirements.

Currently, the information disclosure requirements are set out in Chapter 4 of the National Gas Law (NGL) and Part 23 of the National Gas Rules (NGR), which includes the information disclosure and arbitration framework. The publication of this information can be found in several places - on service providers' websites, on the Bulletin Board and access arrangements (for fully regulated pipelines).

These information disclosure requirements in the current regulatory framework are in place to provide shippers with the ability to successfully navigate negotiation with service providers and to make an informed decision about seeking access to a service provider's services.

The DRIS considers the problems identified with the information disclosure requirements of the regulatory framework are that:

- there is limited information available to shippers negotiating access to non-reference services on full regulation pipelines; and
- there are a number of deficiencies in the information reported by Part 23 and light regulation pipelines (including as a result of the availability of exemptions) that are

affecting the adequacy, quality and reliability, accessibility and usability of the reported information.

The DRIS suggests that these problems can hinder the ability of shippers to negotiate access to services, impose additional search and transaction costs on shippers and result in inefficient decision making. In addition, they could also make shippers more susceptible to exercises of market power.

In arriving at the DRIS preferred option, stakeholders were consulted on a range of options to improve the information provision of service providers. The majority of stakeholders agreed that fully regulated pipelines should be required to publish the same information as Part 23 and light regulation pipelines. Further, the adequacy, quality and reliability, accessibility and usability of information currently reported by Part 23 and light regulation pipelines should be improved.

To mitigate these problems, the preferred option of the DRIS (Option 3B) requires service providers of pipelines that are providing third party access to publish a suite of basic information – see Box 8.1 of the DRIS, as well as historical financial and demand information.

In addition, service providers will be required to publish information on the individual prices paid by other shippers, which includes key terms and conditions.

The DRIS suggests these disclosure requirements will address the identified information deficiencies and improve the quality and reliability, accessibility and usability of the information.

During national consultation, South Australian stakeholders raised concerns with the proposal to disclose individual prices paid by shippers, including key terms and conditions. Stakeholders suggested the requirement on service providers to publish individual prices paid by shippers will reduce the flexibility and ability of service providers to offer bespoke services that provide the ability of South Australian businesses to successfully negotiate necessary gas contracts to undertake their business operations in South Australia.

In approving the DRIS, South Australia therefore noted its intention to derogate away from this particular aspect of the national reform package for the services provided to shippers that relate to gas delivered for end use in South Australia. The derogation is also only proposed to apply to pipelines wholly or partially in South Australia so it will not impact individual price reporting in other jurisdictions.

A package of regulatory amendments to implement the nationally agreed reforms arising from the DRIS is progressing with consultation being undertaken in parallel with the proposed South Australian derogation proposal.

## The South Australian Government's proposal

### Key Points:

- The South Australian Government is seeking your feedback on alternative disclosure proposals that would apply in South Australia. There are two options for stakeholders' consideration:
  - Option 1: Anonymised minimum and maximum prices, along with weighted average prices.
  - Option 2: Option 1 with the addition of the South Australian Minister varying future reporting requirements via proclamation if circumstances change following a review of governance arrangements.

A new section in Chapter 4 (Part 1) of the NGL is proposed for the nationally agreed information disclosure obligations which require service providers to publish the information prescribed in the NGR unless an exemption is obtained under the NGR.

The proposed implementation of the South Australian proposal will require the derogation from the new section 136 (of Chapter 4) which requires service providers to publish prescribed transparency information in accordance with the NGR. This will only be with respect to information on prices actually paid by shippers (including the terms and conditions on which the service provider has provided for that service).

The purpose of this consultation is to explore alternate ways to apply the proposal in South Australia. Accordingly, South Australia is seeking stakeholder feedback on the following options:

- Option 1: Anonymised minimum and maximum prices, along with weighted average prices.
- Option 2: Option 1 with the addition of the South Australian Minister varying future reporting requirements via proclamation.

The intention is that any option strengthens disclosure to address the identified information asymmetry issue whilst not impacting the availability of bespoke products from service providers, thereby importantly retaining the ability to negotiate these products for South Australian businesses.

### **Option 1: Anonymised minimum and maximum prices, along with weighted average prices**

This option will ensure that any service provided to a shipper under an access contract with a service provider using pipelines wholly or partially in South Australia, will not require the service provider to report individual prices (including key terms and conditions) paid by the shipper if the shipper is contractually delivering the gas to an end-use South Australian customer. Only anonymised minimum and maximum prices, along with weighted average prices are to be reported by the service provider.

Weighted average prices are to be determined using the methodology set out currently in the Australian Energy Regulator's (AER) Financial Reporting Guideline for Non-scheme Pipelines (guideline)<sup>1</sup>, using the following service categories in order to calculate separate weighted average price information for each service:

- transportation services
  - firm forward haul transportation services (includes bi-directional services, if a pipeline operates in a bi-directional manner), interruptible or as available transportation services
  - backhaul services
- stand-alone firm compression services, and
- firm storage (i.e. park and/or park and loan services).

The publication of anonymised minimum and maximum prices on the above services is to be a new regulatory requirement.

There is no intention to impact upon the reporting of individual prices in other jurisdictions. Any contract with a service provider using pipelines wholly or partially in South Australia, where the contract relates to delivering gas for an end-use outside of South Australia, will be required to meet the national price disclosure reporting requirements as set out the National Gas Rules.

#### **Option 2: Option 1 as varied by the South Australian Minister by proclamation**

Option 2 will require service providers to publish the anonymised minimum and maximum prices as well as the weighted average price. This is the same as Option 1.

The key difference between Options 1 and 2 is the South Australian Minister for Energy and Mining would be able to vary reporting requirements via proclamation in the South Australian Government Gazette if circumstances change following a derogation review.

The process for varying reporting requirements would be:

- A review of information disclosure arrangements applying in South Australia would be held after a reasonable period of the derogation operating and subsequently as necessary. A review would consider whether the information disclosure arrangements in the South Australian market (anonymised minimum and maximum prices and the weighted average price) have benefited relevant parties when negotiating new contracts and what, if any impact, has been seen with bespoke services contracts. Stakeholder feedback would be sought from relevant market participants.
- A review would include publication of draft and final reports, made available on the Department for Energy and Mining's website (for accountability and transparency purposes). Stakeholder feedback would be sought on the draft report and its recommendations.
- Based on the outcomes of the review, the Minister for Energy and Mining would have the ability to amend the reporting requirements if necessary by proclamation. The proclamation would be published in the South Australian Government Gazette. An information notice

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<sup>1</sup> to be replaced with the new proposed AER's 'pipeline information disclosure guideline'

would also be published on the Department for Energy and Mining's website shortly thereafter.



## Consultation questions

### Question 1

Noting the stakeholder comments provided as part of the Consultation RIS, do stakeholders consider Option 1 will better address the South Australian specific requirements in ensuring sufficient flexibility and the continued use of bespoke products?

### Question 2

What are stakeholders' views on Option 2? Is there anything else that the review should cover?

### Question 3

If Option 2 was implemented, the Department for Energy and Mining considers it appropriate for the review period to be of a sufficient period so at least some new contracts have been executed between shippers and service providers to assist in informing the review. How long should the new information disclosure arrangements be in place before a review is undertaken?

### Question 4

Do stakeholders have a preference between Options 1 and 2? Please provide reasons to support your answer.

### Question 5

Is there another option that better addresses the need for improved price reporting information requirements as outlined in the DRIS that allows service providers the continued ability to offer bespoke products without identifying the shipper? Please provide details to support your answer.

## Submissions

Written submissions should be provided by **5 October 2021**.

Submissions via email are preferred. You can email your submission to [demenergymarketreform@sa.gov.au](mailto:demenergymarketreform@sa.gov.au) with the subject line “Submission on the South Australian Derogation on Price Reporting from the Gas Pipeline Regulation National Package”.

Alternatively, you can post your submission using the following details:

South Australian Derogation on Price Reporting from the Gas Pipeline Regulation National Package  
ATTENTION: Rebecca Knights  
Department for Energy and Mining  
Energy and Technical Regulation Division  
GPO Box 320  
ADELAIDE SA 5001

All submissions will be published on the Government of South Australia website including your name and organisation (if applicable), however your contact details will not be published.

**Please indicate clearly on the front of your submission if you would like it to be treated as confidential, in full or part, and the reason why it should not be made publicly available.**

Under the *Freedom of Information Act 1991*, the Government of South Australia may also be required by law to release your submission to a third party. If a request is made under the Act, you will be contacted prior to the release of any material.