



Making a submission: coverage and revocation under the National Gas Law

(December 2012)

1 Background

- 1.1 The National Competition Council is responsible for considering a variety of types of applications under Part IIIA of the *Competition and Consumer Act 2010* (Cth) and in relation to gas pipelines under the National Gas Law (NGL). The Council considers the views of interested parties when considering these applications by inviting public submissions wherever appropriate and practicable.
- 1.2 Generally, the Council's process for considering an application for coverage (or revocation of coverage) under the NGL involves the following steps:
 - Upon receipt of an application, the Council publishes the application on its website (www.ncc.gov.au) and notifies the pipeline owner(s), where the owner is not the applicant.
 - The Council advises likely interested parties that it has received the application.
 - The Council publishes a call for **written submissions on the application** on its website and in *The Australian* newspaper (or another newspaper with national circulation) and provides a period of 15 business days for submissions, as required by the National Gas Rules (NGR). The notice will specify a closing deadline for submissions.
 - The Council publishes the submissions on the application on its website as soon as practicable after the closing date.
 - The Council prepares and releases a draft recommendation setting out its analysis and conclusions based on information received and gathered to this point.
 - The Council seeks **written submissions on the draft recommendation** and provides a further period for submissions of no less than 15 business days.
 - The Council publishes the submissions on the draft recommendation on its website as soon as practicable after the closing date.
 - The Council prepares its final recommendation and publishes it within 20 business days of the closing date for submissions on the draft recommendation.
 - The Council provides its final recommendation to the designated Minister who must use his or her best endeavours to make a decision 20 business days after receiving the Council's final recommendation.

2 Timing for Council recommendations

- 2.1 The NGR provides that applications for coverage (and revocation of coverage) be considered in accordance with the standard consultation procedure. This requires the Council to make its recommendation within 4 months of receipt of the application.
- 2.2 Rule 11 of the NGR assists in calculating time, such as the 4 months, and scope also exists to extend the consideration period in situations of unusual complexity or difficulty or because of circumstances beyond the Council's control. An extension is limited to a maximum of 2 months.
- 2.3 In both situations, concerning the calculation of time and the need for an extension, notice of any change to the 4 month period must be provided by the Council.

Public consultation periods, time extensions and the treatment of late submissions

- 2.4 The Council allows appropriate opportunities for submissions and in accordance with the NGR. Given the timing obligations imposed by the NGR, the Council necessarily imposes deadlines for submissions, which it expects to be met. When calling for submissions the Council will specify the date by which submissions must be received.
- 2.5 The Council will take account of all submissions received by a deadline.
- 2.6 Requests for extensions to submission deadlines are unlikely because of the strict time periods imposed by the standard consultation procedure in the NGR. However, should a party consider it necessary to make such a request the Council will consider the request, provided it is made as early as possible in the submission period and it establishes exceptional circumstances in support of the request. Extensions granted to a specific party will not necessarily be extended to other parties unless the basis for granting an extension applies broadly.
- 2.7 Late submissions may or may not be accepted at the discretion of the Council. Where the Council accepts a late submission it may, at its discretion, afford that submission less weight given the Council will have a more limited opportunity to test and consider the submission.

3 What should a submission contain?

- 3.1 The Council will publish a notice in a nationally circulating newspaper inviting submissions from interested parties on the application for coverage (or revocation of coverage). Upon release of its draft recommendation the Council will again call for submissions via its website and by notification to interested parties. The public notice/call for submissions will provide brief details of the application, details of where additional information can be obtained (usually from the Council's website), and the closing date for submissions.
- 3.2 There is no prescribed format for a submission.

3.3 A submission should:

- Address some or all of the pipeline coverage criteria applicable to the recommendation sought by an applicant, while also having regard to the National Gas Objective. The Council's *Guide to the National Gas Law, Part B Coverage* provides a detailed discussion of the pipeline coverage criteria and the process for considering an application and making a recommendation to the relevant Minister. The Guide is available on the Council's website.
- In many cases the Council's recommendation will be largely determined by only some of the pipeline coverage criteria, with the analysis of other criteria being relatively uncontroversial. Submissions should generally focus on the key criteria applicable to a particular application.
- Address the different forms of regulation under coverage – light or full – as the Council is required, at the same time as it makes its coverage recommendation to the relevant Minister, to decide whether the pipeline should be subject to a light regulation determination. Section 122 of the NGL provides the principles that govern the making of a light regulation determination, including having regard to the National Gas Objective and the form of regulation factors in s 16 of the NGL. Part C of the Council's guide to the NGL, *Light regulation of covered pipeline services*, provides a detailed discussion.
- Assertions and conclusions within a submission should be supported by relevant facts and analysis.
- Where statistics, prices, output volumes and similar factual information are provided the sources of that information should be supplied.
- Where estimates are provided, or economic, cost or other models are used, the critical assumptions used to make the estimates and in any models should be disclosed.
- Where submissions include material provided by economic or other independent experts, these should meet the requirements of the Federal Court's Practice Note CM 7 - *Expert witnesses in proceedings in the Federal Court of Australia*.¹
- Submissions should be supplied to the Council in identical electronic and print form. Electronic form is required to facilitate the publication of submissions on the Council's website. Electronic documents should be in Adobe PDF format, or another format that can be read by MS Word 2010 – where this poses particular difficulties or submissions are expected to contain maps, or other exhibits that cannot readily be reproduced, this should be discussed with Council staff prior to the submission deadline.

¹ Available for download at www.fedcourt.gov.au.

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- Submissions should contain numbered paragraphs to assist in referencing the submission in the Council's recommendation. Pages should also be numbered.
 - A complete and signed Submission Cover Sheet in the form set out at the end of these guidelines must be provided with each submission.
 - Relevant contact details that allow verification of the authenticity of the submission should be supplied. These include the name of the person providing the submission, the organisation represented and position details (where relevant) and a phone contact, email and postal address.
- 3.4 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 Code² 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.
- 3.5 **Submissions on the application** should address the basis on which the applicant has sought a coverage or revocation of coverage recommendation and the pipeline coverage criteria in s 15 of the NGL.
- 3.6 **Submissions on the draft recommendation** should focus on the preliminary conclusions in the recommendation and the reasons for these and seek to provide additional information and analysis to that already available to the Council. In most cases the Council expects that all significant issues should have been highlighted in the application, first round submissions and discussions with Council staff. If new issues are to be raised at this stage the relevant submission should address why the matter could not have been raised earlier.
- 3.7 Submissions on the draft recommendation also provide the applicant and interested parties with an opportunity to respond to the submissions and factual material provided to the Council up to this point. Repetition of points that have been made earlier is unlikely to be of assistance.

4 Lodging a submission

- 4.1 All submissions should be sent both electronically to:

Email: gas@ncc.gov.au

and in hard copy to:

South Eastern Pipeline System
National Competition Council
GPO Box 250
Melbourne VIC 3001

² *Criminal Code Act 1995* (Cth).

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 submission period has closed. Generally, the Council will publish all submissions following the deadline for providing submissions – that is, when all submissions have been lodged.
- 5.2 Where a submission is made by an individual, on his or her own behalf, the Council identifies the submission on its website by publishing the individual's name, any affiliation the individual advises 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. The Council may give less weight to information that it is unable to test through a public process.
- 5.4 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.
- 5.5 A submission containing confidential information should have the confidential sections clearly identified and marked 'confidential'. A second copy of the submission, with all the confidential material removed and identifying or marking where this information has been removed, should also be provided to the Council. The Council will publish this 'non-confidential' copy of the submission.
- 5.6 The Council will make confidential submissions available to the relevant Minister (and the Minister's advisors) at the time it provides its final recommendation.
- 5.7 The Council may also be required to 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.
- 5.8 The Council takes all reasonable measures to protect information given to it in confidence from unauthorised use or disclosure.

Other matters

- 5.9 Copyright in submissions resides with the author(s). The Council accepts no responsibility for the content or accuracy of any information contained in submissions.
- 5.10 Any queries should be directed to the Council Secretariat on (03) 9981 1600.



Submission coversheet

Re application for coverage of the South Eastern Pipeline System under the NGL

Please complete and submit 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: _____

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)