



Making a submission on applications made under the National Gas Law

(November 2013)

1 Background

- 1.1 Under the National Gas Law (NGL) the National Competition Council (Council) is responsible for considering the following applications relating to access to natural gas transmission and distribution pipelines:
- coverage and revocation of coverage (and in some cases, pipeline classification)
 - light regulation and revocation of a light regulation determination
 - greenfields pipeline incentives, being 15-year no-coverage determinations and price regulation exemptions, both of which will require the pipeline to be classified, and revocation of such incentives, and
 - pipeline reclassification.
- 1.2 The Council values the views of interested parties when considering applications. To this end the Council invites public submissions as required by the NGL and the National Gas Rules (Rules) and wherever appropriate and practicable.
- 1.3 The NGL set out a *standard consultative procedure* for most applications to the Council. A shorter *expedited consultative procedure* is prescribed for applications to reclassify a pipeline.¹ The NGL also prescribes a period of 30 business days for the Council to make a recommendation on an application for a price regulation exemption.
- 1.4 This document focuses on making a submission to the Council under the standard consultative procedure in relation to an application for:

¹ The key difference with the expedited consultative procedure from the standard consultative procedure is that there is no general call for submissions on the application. Following an application for reclassification the Council makes a draft decision which it releases for comment, inviting submissions and comments on the draft decision within 15 business days by public notice. The Council must then make its final decision within 20 business days of the closing date for submissions on the draft. The NGL and Rules do not prescribe an overall time period within which to make a decision under the expedited consultative procedure. However, given it dispenses with the requirement for submissions on the application, the decision making period is expected to be considerably reduced from the four months stipulated by the standard consultative procedure.

- a coverage determination (and where necessary, pipeline classification) or a coverage revocation determination
- a light regulation determination or revocation of same, or
- a 15-year no-coverage determination (including pipeline classification) or revocation of same,

as these are the applications most commonly made to the Council under the NGL.

- 1.5 Other than in respect of light regulation, under the NGL the Council makes recommendations to the relevant Minister in respect of the applications specified above.² The Minister then makes a decision on the application having regard to the Council's recommendation. In relation to applications for a light regulation determination, the Council is the decision maker and makes or decides not to make a light regulation determination. Accordingly, in the processes and outcomes undertaken by the Council this document refers to both recommendations and determinations.
- 1.6 Under the standard consultative procedure the Council has four months within which to consider and make its recommendation or determination, as the case may be, on these applications.
- 1.7 The process the Council uses in making its recommendation or determination under the NGL and how interested parties can make submissions during that process is explained below. An indication of the timing of the respective phases in the process is set out in Appendix A.
- 1.8 The Council has published a detailed *Guide to the National Gas Law* which addresses its areas of responsibility under the NGL. The *Guide to the National Gas Law* is available to download from the Council's website (www.ncc.gov.au). Parties intending to make a submission are advised to consult the *Guide to the National Gas Law* to assist in preparing the submission.
- 1.9 The Council reserves the right to depart from the process outlined in this document where it considers this necessary and to amend this process from time to time.

2 Process

- 2.1 Generally, the Council's process for considering an application 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.

² For information on identifying the relevant Minister, see paragraphs 2.25-2.30 and Figure 1 in the *Guide to the National Gas Law* (available on the Council's website, www.ncc.gov.au).

- The Council advises likely interested parties that it has received the application. The Council also consults with the Australian Energy Regulator (AER) in respect of the application.
- The Council publishes a call for **written submissions on the application** on its website and in a newspaper with national circulation (usually *The Australian*) and provides a period of 15 business days for submissions, as required by the Rules. The notice will specify the closing date for submissions.
- The Council publishes the submissions in response to the application on its website as soon as practicable after the period for submissions closes.
- The Council prepares and releases a draft recommendation or draft determination setting out its analysis and conclusions based on the information received and gathered to this point.
- The Council seeks **written submission on the draft recommendation/determination** and provides a further period for submissions of at least 15 business days. Given the overall four month time limit for considering applications under the standard consultative procedure, the Council generally allows the 15 business days prescribed in the Rules, for submissions in response to the draft. However, where an application raises particularly difficult or complex issues the Council may provide a longer period (see further below).
- The Council publishes the submissions in response to its draft recommendation on its website as soon as practicable after the period for submissions closes.
- The Council prepares its final recommendation or final determination³ and publishes it within 20 business days of the closing date for submissions on the draft recommendation/determination.
- Where the Council is making a recommendation, it provides it to the relevant Minister who must use his or her best endeavours to make a decision within 20 business days of receiving the Council's recommendation.

3 Time limits prescribed by the standard consultative procedure

3.1 Under the NGL the Council must make a decision on an application for coverage, revocation of coverage, light regulation, revocation of a light regulation determination, a 15-year no-coverage determination or revocation of a 15-year no-coverage determination within four months of receiving the application.

³ As required by the type of application.

- 3.2 Rule 11 assists in calculating time, such as the four months, and provides scope to extend the consideration period where an application involves unusual complexity or difficulty or because of circumstances beyond the Council's control. An extension is limited to a maximum of two months.
- 3.3 Where a need arises to extend the time period for consideration, the Council must give notice by publishing a notice of the extension on its website and in a national newspaper (usually *The Australian*).
- 3.4 The Rules also provide that where the NGL fixes a time limit, 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 for an applicant to correct or revise an application
 - any period allowed for public submissions on an application or on a draft recommendation/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.
- 3.5 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.
- 3.6 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.
- 3.7 The Council will consider stopping the clock in the event of court proceedings on a case by case basis. Generally the Council will not defer undertaking its responsibilities in respect of applications unless ordered to do so by a Court.

4 Public consultation periods, extensions and treatment of late submissions

- 4.1 The Council allows appropriate opportunities for submissions in accordance with the requirements of the Rules. Given the obligations required by the standard consultative procedure, the Council necessarily imposes time limits and closing dates for submissions which it expects to be met. When calling for submissions the Council will specify the date by which submissions must be received.
- 4.2 The Council will take account of all submissions received by the closing date.
- 4.3 Requests for extensions to a submission deadline are difficult to grant because of the strict time periods imposed by the standard consultative procedure. However, where a party considers it necessary to make such a request the Council will consider it. Such requests should be made as early as possible in the submission period and set out the exceptional circumstances or other factors that give rise to the request.

Wherever possible, parties should indicate they anticipate needing additional time when making a submission in the first round – ie in response to the application itself. Extensions granted to a specific party will not necessarily be extended to other parties unless the basis for granting the extension applies broadly.

- 4.4 Late submission may or may not be accepted at the discretion of the Council. Where the Council accepts a late submission it may afford that submission less weight given the Council will have a more limited opportunity to consider and test the content of the submission.

5 What should a submission contain?

- 5.1 There is no prescribed format for a submission. However submissions will be of greatest assistance where regard is had to the following.

- 5.2 A submission responding to an application under the NGL should:

- address some or all of the criteria and factors applicable to the application in question and the national gas objective. An examination of the criteria and factors can be found in the Council’s *Guide to the National Gas Law* and submitting parties are encouraged to utilise the guide in preparing a submission. In brief, a submission responding to an application for:
 - coverage or revocation of coverage should address some or all of the pipeline coverage criteria.
 - coverage will also need to address the form of regulation—light or full—as the Council’s recommendation must include a decision as to whether the pipeline, if covered, should be the subject of a light regulation determination. Accordingly, submitting parties are encouraged to also consider the form of regulation in making a submission in response to an application for coverage.
 - a light regulation determination or revocation of such a determination should address some or all of the form of regulation factors and the likely costs and effectiveness of light and full regulation.
 - a 15-year no-coverage determination should address some or all of the pipeline coverage criteria and also consider the appropriate classification for the greenfield pipeline.

Submitting parties need to be aware that in many cases only some of the criteria or factors will be examined and considered in the Council’s recommendation/determination, with the analysis of the remainder being relatively uncontroversial. Submitting parties are therefore encouraged to focus the submission on the key criteria or factors relevant to a particular application.

- As the national gas objective is relevant to all applications, submitting parties are encouraged to have regard to the objective in preparing a submission.
 - Assertions and conclusions within a submission should be supported by relevant facts and analysis.
 - Where statistics, prices, output volumes and similar factual information is provided, the sources of that information should be referenced.
 - Where estimates are provided, or economic, cost or other modelling is used, the critical assumptions used to make the estimates and in any models needs to be disclosed.
 - Ensure any quotations and references to other sources are accurate and complete.
 - Where material is 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*.⁴
 - A complete and signed Submission Cover Sheet in the form set out at the end of this document must be provided with each submission.
 - Contact details that allow verification of the authenticity of the submission are to 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.
- 5.3 Submissions need to be structured. All paragraphs in a submission are to be numbered. Pages should also be numbered. Appendices and other supporting materials should also be clearly identified and where possible these too should contain numbered paragraphs. So doing will assist referencing submissions in the Council's recommendation/determination.
- 5.4 **Submissions on an application** should address the basis on which the applicant has made its case and any other issues that a party considers the Council should take into account given the criteria, national gas objective and other prescribed factors relevant to the application. 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.
- 5.5 **Submissions on a draft recommendation or determination** should focus on the preliminary conclusions in the draft and the reasons for them 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, first round submissions and discussions with Council staff. If new issues are to be raised

⁴ Available for download at www.fedcourt.gov.au.

responding to the draft the relevant submission should address why the matter could not have been raised earlier.

- 5.6 Submissions on a draft recommendation or determination 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.
- 5.7 Submissions should be supplied to the Council in electronic and print form. Electronic form is required to facilitate the publication of submissions on the Council 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.

6 Lodging a submission

- 6.1 All submissions should be sent to the project specific email address identified in the notice, on the Council's website and on the submission cover sheet. A hard copy is also to be sent to:

Gas – submissions
National Competition Council
GPO Box 250
Melbourne VIC 3001

- 6.2 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 Code⁵ 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.

7 Publication of submissions and requests for confidentiality

- 7.1 The Council will publish each submission on its website as soon as practicable after the submission period has closed.
- 7.2 Where a submission is made by an individual, in their personal capacity, the Council identifies the submission on its website by publishing the individual's name, any affiliation the individual advises to the Council and the individual's state or territory of residence.
- 7.3 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 *Criminal Code Act 1995 (Cth)*

- 7.4 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 sensitive information may be withheld.
- 7.5 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 also needs to be provided to the Council. The Council will publish this 'non-confidential' copy of the submission. **Parties making submissions are responsible for ensuring confidential material cannot be restored from the 'non-confidential' version of submissions that are provided electronically. The Council does not accept responsibility for examining submissions to confirm this.**
- 7.6 If the Council declines 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 Rules.
- 7.7 Where the Council makes a recommendation, the Council will make confidential submissions available to the relevant Minister (and the Minister's advisers) at the time it provides its final recommendation.
- 7.8 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. The Council is also empowered to share confidential information with the AER, Economic Regulation Authority (Western Australia), Australian Competition and Consumer Commission, Australian Energy Market Commission and state or territory regulatory bodies. Where the Council considers it is desirable to share such information with one or more of these agencies, it will do so without further reference to the party supplying the information.
- 7.9 Subject to the above, the NGL and the Rules, the Council takes all reasonable measures to protect information given to it in confidence from unauthorised use or disclosure.

8 Contacting the Council

- 8.1 Any queries can be directed to the Council's Secretariat on (03) 9981 1600.

Appendix A – Standard consultative procedure; indicative 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 recommendation/determination	15-20	35-40
Submissions on draft recommendation/determination close	15-30	50-70
Final recommendation or 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 ordinarily advise the anticipated timing for each forthcoming stage in its deliberative process.

