APA submission – Draft legislation to implement the Decision Regulation Impact Statement

14 October 2021

Australian Pipeline Limited ACN 091 344 704
Level 25, 580 George Street, Sydney NSW 2000
PO Box R41, Royal Exchange NSW 1225
P: +61 2 9693 0000 | F: +61 2 9693 0093
APA Group | apa.com.au

Mr Sean Sullivan
Deputy Secretary
Department of Industry, Science, Energy and Resources

Lodged online

14 October 2021

RE: APA Submission to draft legislative package to implement the Decision Regulatory Impact Statement

Dear Mr Sullivan,

Thank you for the opportunity to comment on the draft amendments to the National Gas Law and National Gas Rules to give effect to the Gas Pipeline Decision Regulatory Impact Statement (Gas Pipeline DRIS) published in May 2021. We appreciate Energy Ministers seeking public views prior to finalising the legislative package.

APA is an ASX listed owner, operator, and developer of energy infrastructure assets across Australia. Through a diverse portfolio of assets, we provide energy to customers in every state and territory on mainland Australia. As well as an extensive network of natural gas pipelines, we own or have interests in gas storage and generation facilities, electricity transmission networks, and over $750 million in renewable generation.

While we support many aspects of the draft legislative package, the *Improving Gas Pipeline Regulation* Consultation Paper (Consultation Paper) raises a number of concerns. Energy Ministers' proposal to retrospectively overturn a previous regulatory decision made under a binding access arrangement undermines investor confidence and the principle of regulatory independence. Furthermore, the costs and benefits of extending price regulation into competitive markets, such as gas storage, do not appear to have been adequately considered by Energy Ministers.

We would appreciate the opportunity to discuss with officials the issues raised in this submission. APA's Manager Policy, John Skinner, will be in contact to arrange a follow-up meeting and can be reached at john.skinner2@apa.com.au.

Regards,

Peter Bolding
General Manager
Economic Regulation & Policy

Australian Pipeline Limited ACN 091 344 704
Level 25, 580 George Street, Sydney NSW 2000
PO Box R41, Royal Exchange NSW 1225
P: +61 2 9693 0000 | F: +61 2 9693 0093
APA Group | apa.com.au

1 Executive Summary

Key points

- In contrast to electricity infrastructure, gas infrastructure providers operate in a competitive market.
- Commercial negotiation underpinned by long term contracts has facilitated the efficient investment in gas transportation and storage infrastructure. A number of aspects of the draft legislative package undermine these arrangements.
- The costs and benefits of extending price regulation into competitive markets such as gas storage do not appear to have been adequately considered.
- Retrospectively overturning a previous regulatory decision made under a binding access arrangement undermines investor confidence.
- Proportionate 'checks and balances' should be placed around the powers of the relevant regulator when making its decisions.

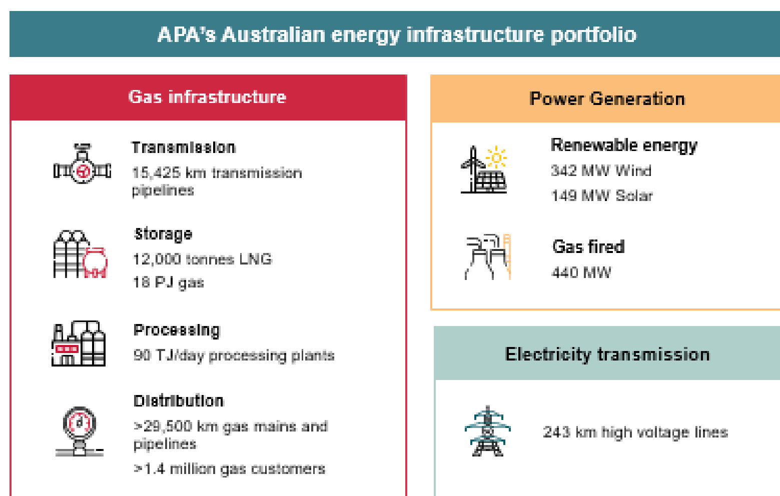
APA is a leading Australian Securities Exchange (ASX) listed energy infrastructure business. Consistent with our purpose to strengthen communities through responsible energy, our diverse portfolio of energy infrastructure delivers energy to customers in every state and territory on mainland Australia.

Our 15,000 kilometres of natural gas pipelines connect sources of supply and markets across mainland Australia. We operate and maintain networks connecting 1.4 million Australian homes and businesses to the benefits of natural gas. And we own or have interests in gas storage facilities, gas-fired power stations.

Our investments also include over $750 million in renewable generation, while our high voltage electricity transmission connects Victoria with South Australia and New South Wales with Queensland.

APA is supporting the transition to a lower carbon future. Our ambition is to achieve net zero

Figure 1



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operations emissions by 2050. Through our Pathfinder Program, we are investigating how hydrogen and other technologies such as batteries and microgrids, can support a lower carbon future.

Gas infrastructure has an essential role to play in helping Australia meet its net zero ambitions targets. As the penetration of variable renewable energy sources, such as wind and solar, increase, and aging coal power stations retire, Gas Powered Generation (GPG) will play a critical role in meeting electricity demand and maintaining the security of the system. This was demonstrated clearly in May and June 2021 when the gas was able to quickly respond following the impairment of coal generation in both Queensland and Victoria.

We recognise that the Gas Pipeline DRIS outlined many agreed policy positions relating to the new regulatory framework. That said, the Consultation Paper also outlined several policy clarifications and proposed refinements to the regulatory framework outlined in the Gas Pipeline DRIS which have not previously been consulted on.[1] Many of these clarifications and refinements raise important issues that need to be considered prior to finalisation of the legislative package.

In contrast to electricity markets, outside of the Victorian Transmission System gas infrastructure providers operate in a competitive market underpinned by commercial negotiation and long-term contracts. This approach has facilitated the efficient investment in gas transportation infrastructure and the development of new markets, such as gas storage.

A number of aspects of the proposed legislative package undermine these arrangements. We have concerns about proposals to:

- extend price regulation into competitive markets such as gas storage without any assessment of whether regulation is required or appropriate.
- overturn a binding regulatory decision relating to the Goldfields Gas Pipeline

The impact of these proposals on future investment in competitive markets do not appear to have been adequately considered.

We are also concerned about the lack of checks and balances on the relevant regulator when making its decisions. Our submission therefore makes several recommendations for how proportionality can be introduced in the relevant regulator's decision-making processes.

We would like to engage further with officials on some of these issues. The complex bilateral contracts underpinning service pricing mean that implementing some of the proposed reforms may be a difficult and resource intensive task, and some detailed requirements may operate contrary to stated policy aims. These complexities should

[1] Energy Ministers, *Improving gas pipeline regulation,* September 2021, p2

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be considered when finalising the legislative drafting, particularly for information disclosure provisions.

Many factors have driven Energy Ministers' proposed reforms to gas pipeline regulation. It is important to recognise, however, that the proposed reforms are a result of concerns that were identified some four or five years ago and are only now being implemented.

At present, the key issue facing the gas sector and consumers is the lack of security about the availability of gas. The issues identified by the Gas Pipeline DRIS surrounding information and access are relatively minor compared to the bigger problem of securing gas supplies. We therefore recommend that as well as progressing gas pipeline reforms, that Energy Ministers continue to prioritise the development of domestic gas supplies to ensure there is adequate gas available for domestic markets.

Our submission to the Consultation Paper is structured as follows:

- PART A contains the key issues we wish to raise in response to the Consultation Paper
- PART B contains answers to the questions for stakeholders outlined in the Consultation Paper.

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2 PART A – Overview

2.1 The gas infrastructure market in Australia

Gas infrastructure providers operate in a competitive market. Unlike electricity infrastructure providers, gas transmission pipelines are not legislated monopolies and do not have a jurisdictional/regional customer base. The market model that operates in gas infrastructure provision is a transactional one with gas pipeline investment underpinned by bespoke, long-term contracts between customer(s) (often shippers) and the pipeline infrastructure provider.

This model has delivered investment in a dynamic, responsive and efficient gas infrastructure sector, that has grown in response to the needs of customers. To date, the incremental expansion of existing infrastructure has been the most efficient, and lowest cost solution to ensure that gas is delivered where and when it is needed. For example, on 5 May 2021 APA announced that it had reached Final Investment Decision to commence expansion of transportation capacity on the East Coast Grid by 25%. The signing of a new agreement with Origin Energy and ongoing discussions with other gas users indicate that this staged and flexible approach to the expansion of the national gas network will support future energy needs across the country.

This competitive nature of gas infrastructure provision (compared to the electricity sector) and the bespoke nature of long-term contracts has several implications for developing legislation to implement the Decision RIS. For example:

- Contractual arrangements relating to infrastructure developments are often commercially sensitive, both for the service provider and the gas shipper. The disclosure of individual customer pricing could have implications for the development of healthy competition and future investment in gas transportation and storage infrastructure.
- Publishing individual customer pricing on a 'like for like' basis will be a difficult task given the complex contractual arrangements underpinning pipeline service pricing. The requirement to publish an explanation for how any conversion was made may require the disclosure of confidential contractual arrangements.
- The proposed greenfields incentive framework may not capture all possible competitive processes that result in the development of a greenfields pipeline, such as inter-energy competition between natural gas, diesel renewables and batteries. Furthermore, price protection offered by a greenfields incentive determination only applies if the service sought by subsequent shippers is exactly the same as the foundation service. If a subsequent shipper seeks a different service, the price protection won't provide any protection in an arbitration.

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2.2 Publication of individual pricing for storage services

In the March 2020 *Measures to Improve Transparency in the Gas Market Regulation Impact Statement for Decision* (Transparency DRIS), Energy Ministers decided that compression and storage facility operators that are providing third party access should publish:

- Standing terms and standing prices for each service offered; and
- Information on the prices actually paid by users for primary capacity (to take the form of weighted average prices unless changes are made through the Gas Pipeline RIS).[2]

In the Gas Pipeline DRIS, Energy Ministers agreed that pipeline service providers should be required to publish the individual prices (including key terms and conditions) paid by shippers rather than weighted average prices.

However, the Gas Pipeline DRIS clearly considered the form of price reporting in the context of pipeline transportation services, not gas storage services. The costs and benefits of individual price reporting for gas storage service do not appear to have been considered. In the Gas Pipeline DRIS regulatory impact assessment, storage services are not mentioned in the context of the risk assessment, cost benefit analysis or competition effects analysis.

Despite this, a new Part 18A of the National Gas Rules will require publication of a wide range of information about gas storage services, including:

- the price paid for storage and compression services as specified in individual contracts,
- the methodology used to calculate standing prices, including the inputs used in price calculations.

We are therefore concerned that price regulation is being extended to storage facilities without any transparent assessment of whether publication of prices and pricing methodologies for storage services is appropriate and in the long-term interests of customers.

In 2013 APA invested a significant sum in its Mondarra Gas Storage Facility in Western Australia, which is an underground gas storage facility with a risk profile very different to typical pipeline storage services. Investment in Mondarra was supported by commercial negotiations with its initial users and price regulation is now being applied without any consideration of the circumstances in which APA made this investment.

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[2] Energy Ministers, *Transparency DRIS*, March 2020, p128

Australian Pipeline Limited ACN 091 344 704
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Soon after APA made its investment, Australian Gas Infrastructure Group (AGIG) began development of its Tubridgi gas storage facility and Mondarra must now compete with AGIG's facility.

A small number of shippers utilise gas storage services. Gas storage is expected to become increasingly important as coal power stations retire and gas becomes an essential firming to support renewables. Full consideration must be given to the imposition of price regulation in a working competitive market. The gas storage market is a competitive environment and we question whether adequate consideration has been given to this issue.

Prior to the introduction of individual price reporting in competitive gas storage markets, a transparent assessment must be undertaken of the potential costs and benefits, particularly in the case of WA, given the absence of any consideration of this matter to this point.

2.3 Treatment of previously 'uncovered' expansions

In May 2014 the Economic Regulation Authority (ERA) of Western Australia determined that a $200m expansion of the Goldfields Gas Pipeline (GGP) to support iron ore mining in the Pilbara would be 'uncovered' for the purposes of economic regulation.[3]

In its determination, the ERA recognised the unique circumstances in the Pilbara and noted that if the large customers on the GGP, i.e. BHP Billiton and Rio Tinto, judged that coverage of the full capacity of the GGP would deliver significant net benefits for the community, they would be open to apply for coverage.

Since that time, the AEMC has conducted a review into the scope of economic regulation applied to covered pipelines and recommended that existing pipeline expansions not currently included in the existing access arrangement must be included at the next access arrangement revision.[4] The Consultation Paper indicates that transitional provisions will be inserted in the final legislative package to reflect these arrangements but has not included these provisions in the draft legislative package.[5] Furthermore, this issue does not appear to have been considered in the Gas Pipeline DRIS or otherwise been formally adopted as official government policy.

This issue is of significant concern to APA for several reasons:

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[3] Economic Regulation Authority, *Notice – Application for expansion of the GGP to be not regulated*, 30 May 2014

[4] AEMC, *Review into the scope of economic regulation applied to covered pipelines*, Final report, 3 July 2018

[5] Energy Ministers, *Improving gas pipeline regulation Consultation Paper*, September 2021, p58

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- The decision of the ERA not to cover the GGP expansion was made through a public process and in accordance with a binding extension and expansion policy in the GGP access arrangement. Energy Ministers now propose that the GGP expansion is to become fully regulated through a legislative amendment, rather than through a transparent regulatory process. In our view, past decisions of the regulator should not be overturned without a dedicated consultation process and proper consideration of the issues. This will include a competition assessment of the market in question.
- The risk profile of investment in the Pilbara and other part of regional Western Australia is very different to investment in urban areas. Gas pipelines in regional Western Australia often support relatively risky mining and mineral processing operations. Increasingly, those operations are looking for firming generation in the transition to lower emission generation. Gas is able to meet this firming need, but increasingly competes with diesel, liquid natural gas (LNG) and batteries. Retrospective coverage of the GGP expansion through an act of the legislature undermines the business case for the investment, which was based on negotiated terms and conditions, at commercial tariffs.

  The different risk profile associated with investment in the Pilbara is evident in the ERA's 2021 Determination on the 2021 Weighted Average Cost of Capital for WA railways, which determined a pre-tax real WACC of 2.20% for the urban Public Transport Authority, and 7.19% for the Pilbara railways.[6]
- The decision to cover the GGP expansion is being undertaken without consideration of the commercial decisions of the large customers who have contracted that capacity and who have chosen not to seek full regulatory coverage of that capacity.
- It is not clear why the GGP expansion is being fully covered through a legislative act, rather than through a form of regulation assessment or other regulatory process. The fact that a legislative path is proposed is:
  - inconsistent with the approach to extensions and contrary to other aspects of the Gas Pipeline DRIS which require the relevant regulator to undertake form of regulation assessments
  - significantly increases regulatory risk for pipeline owners and introduces a form of sovereign risk to infrastructure development decisions. The proposed coverage of the GGP expansion could have significant and unforeseen consequences on investment.

[6] Economic Regulation Authority, *Determination on the 2021 weighted average cost of capital for the freight and urban railway networks, and for Pilbara railways*, 21 July 2021

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APA considers it is poor regulatory practice for Energy Ministers to retrospectively overturn a past decision of a relevant regulator, particularly when that decision was made under a binding access arrangement. For this reason, we propose that the transitional provisions grandfather previous regulatory determinations that approved expansions as being uncovered.

2.4 Checks and balances on the relevant regulator under the proposed reforms

The Gas Pipeline DRIS outlined a broad package of reforms that energy ministers have agreed to implement, including an expanded role for the relevant regulator. Under the proposed reforms, the relevant regulator will be responsible for:

- Monitoring pipelines and reporting to energy ministers every two years;
- Deciding whether to conduct a form of regulation assessment;
- Conducting a form of regulation assessment; and
- Making the decision on whether a pipeline should be a lightly regulated non-scheme pipeline or whether it should be fully regulated.

This new framework represents a major change to the process of decision making through which gas pipelines become regulated. A decision that a pipeline should be subject to full regulation is currently made by the responsible minister following a recommendation from the National Competition Council. Under the proposed reforms, this decision is to become a scheme pipeline determination made by the relevant regulator.

While the role of the relevant regulator has been agreed upon by energy ministers, the draft legislative package has not included any 'checks and balances' on the power of the relevant regulator when undertaking its duties. For example, there are no preconditions that the relevant regulator must meet when deciding whether to conduct a form of regulation assessment and then make a decision as to whether a pipeline should be fully regulated.

Given these decisions were previously made by more than one administrative body, we think it important that proportionate 'checks and balances' are placed around the powers of the relevant regulator to ensure that it is not 'at large' when making these important decisions.

Before doing so, we think it important to re-iterate some of the cogent reasons expressed by the Productivity Commission and Hilmer Committee for why there should be a separation of power between policy and administrative functions.

Australian Pipeline Limited ACN 091 344 704
Level 25, 580 George Street, Sydney NSW 2000
PO Box R41, Royal Exchange NSW 1225
P: +61 2 9693 0000 | F: +61 2 9693 0093
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Back in 1993, when the foundations of Australian economic regulation were first set down, the Hilmer Committee was clear that:[7]

> *The efficient operation of a market economy relies on the general freedom of an owner of property and/or supplier of services to choose when and with whom to conduct business dealings and on what terms and conditions. This is an important and fundamental principle based on notions of private property and freedom to contract, and one not to be disturbed lightly.*

The Hilmer Committee therefore advised:

> *As the decision to provide a right of access rests on an evaluation of important public interest considerations, the ultimate decision on this issue should be one for Government, rather than a court, tribunal or other unelected body.*

The Productivity Commission came to a similar conclusion:[8]

> *The current arrangements clearly distinguish between a decision on whether a pipeline is to be covered and decisions on access arrangements for covered pipelines. ...*
>
> *This role differentiation is consistent with the principle of separating policy-type functions from administrative-type regulatory functions. The incentives of the NCC are not clouded by the prospect of having to implement and administer its own policy decision. If the same entity was responsible for both policy and administration, it is conceivable that decisions on policy could be inappropriately influenced by the administration experience. Similarly, there could be a contagion of administration decisions from a decision on coverage.*

For the above reasons, we think it appropriate to introduce some appropriate safeguards for when the relevant regulator exercises its new functions. Our suggested safeguards are outlined in the table below:

Relevant regulator power	Section / clause	Appropriate safeguard
Drawing adverse inference if the service provider does not provide information	Rule 16(4)(a)	Consistent with s.59 of the NGL, there must be a level of reasonableness about any assumptions made by the regulator

[7] Hilmer Committee, *National Competition Policy*, 1993, p242

[8] Productivity Commission, *Review of the Gas Access Regime*, Inquiry Report No 31, 11 June 2004

Deciding whether to conduct a form of regulation assessment	NGL Part 4	Before undertaking a form of regulation assessment, the relevant regulator must be able to demonstrate that shippers have not been able to procure access on reasonable terms
Making a decision on the form of regulation	NGL Part 4	The decision-maker must only be able to move a pipeline from a non-scheme to a scheme pipeline if it is satisfied that doing so would address the relevant issue

2.5 Greenfields incentive determination

APA supports the development of an effective greenfields exemption framework. As we outlined in our January 2020 submission to the Consultation Regulatory Impact Statement, the risk of regulation being imposed after a competitive process has been won changes the risk profile of an investment decision making process. A greenfields exemption process needs to provide increased investment certainty to allow new pipeline investment to occur at lower foundation contract tariffs.

The key feature of greenfields investment is that it occurs in the context of a competitive environment. For a particular project, a number of pipeline companies will compete for the opportunity to build the greenfields pipeline, which will be undertaken through a foundation shipper contract.

The successful pipeline proponent may be the company that can build the pipeline project at lowest cost or with the best service offering. In reality, it is more likely that the successful proponent will be the one that has the best market insights, the largest risk appetite, and makes the most optimistic assumptions regarding the scope for future load growth and contract renewal. It may be that only one proponent actually has the risk appetite to develop the proposed pipeline. In these circumstances, it should still have access to the greenfields protection.

The tariffs set through the foundation contract negotiation will therefore reflect the optimistic assumptions on load and revenue growth, and contract renewal, and reflect the competitive tension inherent in the greenfields pipeline development process.

The ability of the pipeline proponent to attract capital to the project will depend on the probability that those optimistic assumptions can be realised. This is where the risk of future regulation (or arbitration) becomes relevant, as uncertainty will ultimately be priced into any investment decisions.

If the pipeline proponent perceives an increased risk of post-construction regulation or arbitration being imposed, and importantly a risk of a regulator or arbitrator

Australian Pipeline Limited ACN 091 344 704
Level 25, 580 George Street, Sydney NSW 2000
PO Box R41, Royal Exchange NSW 1225
P: +61 2 9693 0000 | F: +61 2 9693 0093
APA Group | apa.com.au

determining lower tariffs being applied to late-coming shippers, the optimistic future revenue assumptions underpinning the pipeline's development will be undermined. This, in turn, will reduce the proponent's willingness to take risk on a larger residual value, and inevitably result in higher foundation contract tariffs. Those gas-using projects unable to carry the higher tariffs will not proceed, with the cascading implications for employment and economic productivity. This would be a sub-optimal economic outcome produced by the failure of the greenfields exemption regime.

With these preliminary comments in mind, there are three key issues that need to be resolved to ensure an effective greenfields framework:

- there should be a stronger link between the duration of the greenfields exemption and the pipeline investment horizon. The pipeline investment horizon might be in excess of 30 years, but the current greenfields exemption provides regulatory certainty for only 15 years. A longer greenfields exemption period would allow certainty of capital recovery over a longer time horizon, resulting in lower foundation tariffs.
- While we support the inclusion of a competitive tender process provision in the greenfields incentive mechanism, the proposed drafting may not capture all possible competitive processes that result in the development of a greenfields pipeline e.g.
  - competition between multiple gas pathways, which is recognised by the ACCC as a form of competition) and
  - inter-energy competition, such as competition between natural gas, diesel, renewables and batteries. Many competitive tender processes are technology agnostic, particularly for mining and other large scale industrial processes. These sorts of processes would not be captured by the proposed requirements of rule 27 but are competitive processes that arguably should be eligible for a greenfields incentive determination.

  There are many pipeline developments, such as APA's recent Northern Goldfields Interconnect, where a pipeline operator takes a risk position based on future growth opportunities in a market with competitive energy alternatives (such as diesel and renewables). In our view, the greenfields incentive mechanism should be broad enough to capture pipeline projects such as these.
- the tariff protection in rule 113Z (4)(c) only applies to the price for a particular pipeline service. This may render the protection ineffective if the service sought by a new user differs slightly from that specified in the greenfields determination.

2.6 Small shippers

The Consultation Paper is seeking views on several issues relating to small shippers, including measures to strengthen the threat of dispute by smaller shippers:

- **Definition of small shipper** – while defining a small shipper by a daily consumption threshold has its attractions, the proposed definition applies to an individual pipeline and service provider. This means that a very large shipper with many contracts across many pipelines could still qualify as a small shipper. A large shipper could also have a contract with a Maximum Daily Quantity (MDQ) of zero, which would allow that shipper to contract capacity at very short notice without a later contract variation. In our view, the definition of small shipper should exclude any entity which is:
    - listed on the ASX or equivalent overseas stock exchange with market capitalisation of above $500m, or is a related body corporate of such an entity
    - part of the Crown or a statutory corporation
    - included within the definition of "Large Proprietary Company" under s.45A of the *Corporations Act 2001* and referred to in the AER's *Network Service Provider Registration Exemption Guideline*.
- **Dispute resolution costs** – if Energy Ministers maintain their position that the exemption should apply, then we propose that small shippers should only be able to access the exemption from paying part or all of the costs of another party once every five years.

2.7 Implementation issues for information disclosure requirements

The proposed drafting may give rise to some significant implementation issues for service providers. The draft legislation requires the publication of price, terms, and other information for every service in place as at the commencement date. On the basis of APA's initial analysis, APA alone could be required to publish information for over 700 individual pipeline services.

Some elements of the reporting requirements are also not consistent with reporting services that may have been contracted some time before the compliance date, such as the requirements to report prices as set out in the contract. Compliance with this obligation would involve review and extraction of information from the original contract, rather than extracting current information from a database of prices in today's dollars. Similarly, preparing an explanation about how any conversion was made (draft rule 101E(1)(l)), or information about other terms and conditions ((draft rules 101E(1)(i) and (j)), cannot simply be extracted from a database. For this reason, we consider a six-month transitional period to implement the proposed reforms is more

appropriate, given the significant changes required to business systems and processes.

Further comments on the information disclosure requirements are outlined in Part B of our submission.

2.8 Duplication of effort across the ACCC and AER

The draft monitoring and reporting provisions of ss. 63A and 63B of the NGL appear to overlap considerably with the current reporting of the ACCC. Given the ACCC gas reporting will continue until 2025, there could be considerable duplication of effort on the part of the ACCC, AER and service providers. Energy Ministers should consider whether both reporting regimes should continue in their current form.

3 PART B – Responses to questions for consideration

The table below contains our responses to each question in the Energy Ministers' submission template

Number	Question	Response
1 Page 22	Do you agree with the proposal to allow Chapter 4 of the NGL, or particular provisions in this chapter, to be applied to a person other than a service provider if prescribed in Regulations? If not, please explain why not.	We are comfortable with this proposal.
2 Page 22	Do you think it is necessary to prescribe any persons other than a service provider in the Regulations at the commencement of the legal package, or should it be assessed at a later stage? If you think the Regulations should prescribe any persons other than a service provider at the commencement of the legal package, please explain why.	We do not see the need to prescribe any person in the Regulations at the commencement of the legal package.
3 Page 22	Do you agree with the proposal to replace the voluntary access arrangement mechanism with a scheme election option? If not, please explain why not.	We are comfortable with this proposal.
4 Page 25	Do you agree with the proposal to allow the relevant regulator to determine that a pipeline should be subject to full regulation if the service provider has not provided any of the required information in a timely manner and to the reasonable satisfaction of the relevant regulator? If not, please explain why not.	No, we do not agree with this proposal. It is not clear why such a power is necessary given the powers of the Relevant Regulator to request information through a Regulatory Information Notice. Section 59 of the NGL – Assumptions where there is non-compliance with regulatory information instrument – contains much more balanced wording, including that the regulator may make *reasonable assumption.* The proposed rule 16(4) relates to a similar topic as s.59 of the NGL. We therefore support the adoption of the words from s.59 of the NGL in the rules.
5 Page 27	Do you agree with the proposal to employ the same test for form of regulation and greenfields incentive determinations, but modified in the manner set out above?	We do not agree with the proposal to remove subclause (g) from the Form of Regulation Factors. That Form of Regulation Factor is: *(g) the extent to which there is information available to a prospective user or user, and whether that information is adequate, to enable the prospective user or user to negotiate on an informed basis with a service*

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Level 25, 580 George Street, Sydney NSW 2000
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Number	Question	Response
		provider for the provision of a pipeline service to them by the service provider. The reasoning provided in the Consultation Paper for the removal of subclause (g) is that under all the policy options being contemplated, service providers will be required to publish a wide range of information under the new Information Disclosure Requirements. We are strongly of the view that subclause (g) should be retained. Under the agreed reforms, the coverage test will be removed and the form of regulation test will employ the Form of Regulation Factors to determine whether a pipeline will be a scheme or non-scheme pipeline. One of the key factors that should be taken into account when making this decision is the extent to which there is information available to enable a prospective user to negotiate on an informed basis. This should be taken into account regardless of the existence of the new Information Disclosure Requirements. For this reason, subclause (g) should be retained.
6 Page 28	Do you agree with the proposal to remove the 15-year price regulation exemption and to treat all pipelines in the same manner for the purposes of any greenfields incentive? If not, please explain why not.	We are comfortable with the proposal to remove the 15-year price regulation exemption for international pipelines and treat all pipelines in the same manner for any greenfields incentive.
7 Page 30	Do you agree with the proposal to require expansions of non-scheme pipelines to be treated as part of the same pipeline for the purposes of the NGL and NGR? If not, please explain why not.	No, we do not agree with this proposal. See section 2.3 of our submission.
8 Page 32	Do you agree with the proposed changes to the pipeline classification and reclassification mechanism? If not, please explain why not.	We are comfortable with the proposed changes.
9 Page 34	Rule 109 currently prohibits a service provider from making it a condition of the provision of a particular pipeline service that the prospective user accept a	The existing rule 109 recognises that the bundling of services is often necessary and in the customer's interests. We don't see the purpose of a prohibition on bundling gratuitous services.

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Number	Question	Response
	non-gratuitous service unless the bundling of services is reasonably necessary. Do you: (a) Agree with the scope of this prohibition, which has been adopted in the draft legal package and only applies to the bundling of non-gratuitous services? (b) Think the prohibition should apply more broadly to any bundling of services (i.e., gratuitous and non-gratuitous services) unless it is reasonably necessary?	
10 Page 35	Do you think s. 134 of the NGL (renumbered s. 148E), which imposes obligations on producers in relation to the supply and haulage of natural gas using scheme pipelines, should be retained in the regulatory framework or removed? Please explain your response to this question.	On reflection, we consider that this section should be retained. We would like to discuss the original intent of this section with officials following lodgement of this submission.
11 Page 35	If you think the obligation (refer to question 10) should be retained in the NGL, do you think: a. it should continue to just apply to producers, or do you think the obligation should extend to retailers? Please explain your response to this question. b. it should continue to just apply to scheme pipelines, or do you think the obligation should extend to non-scheme pipelines? Please explain your response to this question.	Not applicable.
12 Page 38	Do you agree with the proposed interconnection requirements, or are there: - other requirements that you think should be specified in the NGR? - some requirements listed in section 4.2 that you think should not be specified in the NGR? If you think the proposed interconnection requirements need to be amended, please explain why you think this is required.	In the Gas Pipeline DRIS, Energy Ministers agreed that service providers would be required to comply with pipeline interconnection principles set out in the NGR. Energy Ministers also recognised that interconnection services are currently unregulated and not reference services. This is reflected in draft rule 38, which recognises that the party seeking to establish the interconnection can choose who to construct, operate and maintain the interconnection. The provision of interconnection services is a contestable service. For this reason, if the existing service provider develops the interconnection, we do not consider that the interconnection fee for scheme pipeline interconnections should be

Australian Pipeline Limited ACN 091 344 704
Level 25, 580 George Street, Sydney NSW 2000
PO Box R41, Royal Exchange NSW 1225
P: +61 2 9693 0000 | F: +61 2 9693 0093
APA Group | apa.com.au

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		calculated in accordance with the regulated rate of return determined by the AER's Rate of Return Instrument. The regulated rate of return does not recognise the risks associated with the provision of contestable services, including the risk of arbitration. The draft legislation includes a new rule 37 clarifying that a person has a right to connect a facility to a pipeline. This draft rule does not recognise that an interconnecting facility can change the operating conditions of an existing pipeline. We therefore recommend that subrule 37(b) be amended to indicate that the person must fund the costs of the interconnection as well as any costs to maintain the safe operation of the wider network.
13 Page 40	Do you agree with the proposal to limit the prohibition on cross-subsidising the development of new capacity to transmission pipelines operating under the contract carriage model? If not, please explain why not.	We recognise that the prohibition on increasing the charges payable by existing shippers to cross subsidise the development of new capacity is a settled policy position. We consider that there should be further exemptions to this rule, such as when this is the choice of a customer.
14 Page 40	Do you agree with the proposal to require the dispute resolution body in a scheme pipeline access dispute and the arbitrator in a non-scheme pipeline access dispute to (where relevant) give effect to the prohibition on cross-subsidising the development of new capacity in their access determinations?	No response.
15 Page 45	Do you agree with the proposed cost allocation principles in the draft rules? If not, please explain why not.	The cost allocation principles in the consultation document are discussed at two different levels: • the costs allocated to a particular non-scheme pipeline from within a larger corporate group, and • the costs allocated to particular service or customer in the determination of individual tariffs. On the first point, APA currently publishes its approach to allocating costs to particular pipelines within the corporate group, and this is disclosed in the Part 23 and Part 7 reporting Bases of Preparation. This approach is consistent with that currently contained in the NGR and NER.

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		However, tariffs to individual non-scheme pipeline services or customers are not determined through a rigid cost allocation methodology as envisioned in the draft Rules – they are determined through a vigorous bilateral negotiation process which often reflects the cost of competing alternatives rather than any cost allocation methodology. This is discussed in the APA Pricing Methodology document prepared as part of the current Part 23 requirements. See https://www.apa.com.au/globalassets/our-services/gas-transmission/tariffs-terms-and-offers/current-tariffs-and-terms/apa-pricing-methodology.pdf To require the pipeline to purport that tariffs are derived through a set of artificial cost allocation principles set out in the Rules risks sending spurious pricing signals to potential shippers and causing confusion in the marketplace. We do not support rules containing cost allocation principles, or rules requiring that shadow prices be calculated according to a regulator-determined template, for non-scheme pipelines.
16 Page 45	Are the proposed cost allocation principles likely to conflict in any way with the principles applying to scheme pipelines in Part 9 of the NGR? If so, please explain in what way they conflict and how the conflicts could be resolved.	Yes, the proposed cost allocation principles are likely to conflict with principles applying to scheme pipelines in Part 9. This is because the way costs are allocated across a large service provider may bear little resemblance to the way tariffs are calculated in a commercial setting. While foundation contracts generally underpin investment in new pipeline developments and influence foundation tariffs, many other factors will influence competitive standard tariffs, including the price of competitive alternatives, and the opportunity cost of short term and part haul services.
17 Page 47	Do you agree with the proposal to require service providers to publish the following non-price terms and conditions alongside the individual prices paid by shippers: (i) the date the trade was entered into and the service term; (ii) the type of service provided and the service priority (e.g. firm, as available or interruptible);	We have a few suggestions for how the information disclosure obligations could be improved: • **Continuous disclosure of actual prices paid (rule 101A(2))** – this will be practically challenging for service providers to comply with, particularly in the current market where customers are increasingly seeking short term transportation contracts. A better option would be monthly updating of actual prices, with information published no later

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	(iii) the receipt and delivery points at or between which the service is provided and in the case of a forward haul or backhaul service, the direction of the service; (iv) the contracted quantities, expressed as a maximum daily quantity (in GJ/day) and maximum hourly quantity (in GJ/hour); (v) the price escalation mechanism; (vi) whether or not the transaction is on the same or substantially the same terms as the pipeline's standard terms for that service; and (vii) the imbalance and overrun allowance associated with the service? If you do not agree with this proposal because you think there are: a other non-price terms and conditions or information that should also be reported (e.g. other non- liability caps, gas specification, higher heating value requirements etc), please identify what those other non-price terms and conditions are and why you think they should be reported; and/or b some non-price terms and conditions listed in (i)-(vii) that should not be reported, please identify what those non-price terms and conditions are and why you think they should not be reported.	than six weeks from the contract being entered into (to accommodate contracts signed towards the end of the month) • **Notification to the AER (rule 101A(4))** – for continuous reporting obligations, this will mean the AER will be continuously spammed with email. A move to monthly updating would make this notification more meaningful. • **Expired prices (rule 101A(6))** ¬– the requirement to keep historical prices on websites for five years means that customers could be comparing prices completely divorced from current pricing and service arrangements. Suggest this period be shortened to perhaps two years. • **Actual prices paid information (rule 101E)** – publishing the wide range of information required is likely to change the behaviour of market participants in unforeseen ways. For example, if a small retailer adds a new delivery point to its contract and that information is published, that will telegraph to a large competitor that the small customer is targeting a customer. This is likely to lead to a counteroffer and a change in the behaviour of market participants. Small retailers, for example, may be dissuaded from making offers under some circumstances, to the detriment of competition.
18 Page 52	In relation to past capital contributions, do you: (a) Agree with the proposal to extend the requirement to consider past capital contributions to non-scheme pipelines? If not, please explain why not. (b) Think the requirement to consider past capital contributions should only apply to contributions of capital by the user to fund installations or the construction of new facilities, or should it also apply to contributions to the original construction of the pipeline? Please explain your response. (c) Think the extent to which a party has fully recouped past capital contributions should be taken into account by the relevant adjudicator when making an access determination?	It should not be mandatory for a commercial arbitrator to consider past capital contributions when making a determination for non-scheme pipelines. Rather, it should be open to the arbitrator to do so considering the circumstances of the dispute.

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19 Page 52	Do you agree with the proposal to extend the safety of operation provisions to non-scheme pipelines? If not, please explain why not.	We are comfortable with this recommendation.
20 Page 56	Do you agree with the proposed definition of a small shipper? If not, please explain why you think this threshold is not appropriate and set out the alternative definition you think should be employed.	No, we do not agree with the proposed definition of small shipper. See section 2.6 of our submission.
21 Page 56	Do you agree with the proposal to accord small shippers that are using either a scheme or non-scheme pipeline the option to elect to have a dispute mediated by a regulator appointed mediator? If not, please explain why you think the extension of this option to scheme pipelines should not occur.	We are comfortable with this recommendation.
22 Page 58	Do you agree with the proposed approach to each of the transitional arrangements set out in Table 9.1? If not, please explain why not.	As outlined in section 2.7 of our submission, we do not support a transitional period of two months for publication of pricing information. We consider a six-month transitional period to implement the proposed reforms is more appropriate, given the significant changes required to business systems and processes.
23 Page 58	Are there any other transitional arrangements that you think need to be provided for in the NGL or NGR? If so, please explain what they are and why they are required.	As outlined in section 2.3 of our submission, we consider that an additional transitional provision should be included to grandfather previous regulatory determinations that approved expansions as being uncovered.
24 Page 58	Do you agree with the proposal to treat expansions that do not currently form part of a scheme pipelines that is subject to full regulation as part of the scheme pipeline from the commencement of the new package and to be rolled into the access arrangement at the next access arrangement review? If not, please explain why not.	No, we do not agree with this proposal for the reasons outlined in section 2.3 of our submission.
25 Page 58	Are you aware of any transitional arrangements that would need to be provided for to account for similar examples under the regulatory framework?	No response.

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26 Page 68	Do you agree with the proposal to remove the scheme pipeline grandfathering arrangement for contracts that were in force prior to 30 March 1995? If not, please explain why not.	APA continues to rely on the grandfathering arrangements (see for example, section 1.1 of the 2020-24 Goldfields Gas Pipeline (GGP) Access Arrangement). The GGP has contractual arrangements attached to it in the Agreement ratified by the Goldfields Gas Pipeline Agreement Act 1994 (WA) (GGP State Agreement) which pre-date 30 March 1995. These types of arrangements may have been overlooked in the proposal to remove the scheme pipeline grandfathering arrangements for certain contracts that were in force prior to 30 March 1995 and for this reason, we suggest that the grandfathering arrangements be retained.

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	Do you agree with the proposal to require the following non-price terms and conditions to be published by Part 18A facility service providers alongside the individual price information?
	- the facility by means of which the service is provided;
	- the date the contract was entered into or varied and the service term (start and end dates);
	- the type of service provided (for example, a storage service, compression service) and the priority given to the pipeline service (such as firm, as available or interruptible);
	- the contracted quantity, which for:
	  – a compression service facility should be the maximum daily quantity (in GJ/day);
	  – a storage facility should be:
	    • the storage capacity the subject of the transaction (in GJ); and
	    • where relevant, the injection and withdrawal capacity, expressed as a maximum daily quantity or MDQ (in GJ/day);
	- whether the service is provided on the same or substantially the same non-price terms as those set out in the standing terms published by the service provider;
		No, we do not agree that individual price information or the non-price terms and conditions should be published by Part 18A facility service providers. We are concerned that price regulation is being extended to storage facilities without any transparent assessment of whether publication of prices and pricing methodologies for storage services is appropriate and in the long-term interests of customers.
		
		See section 2.2 of our submission for further details.

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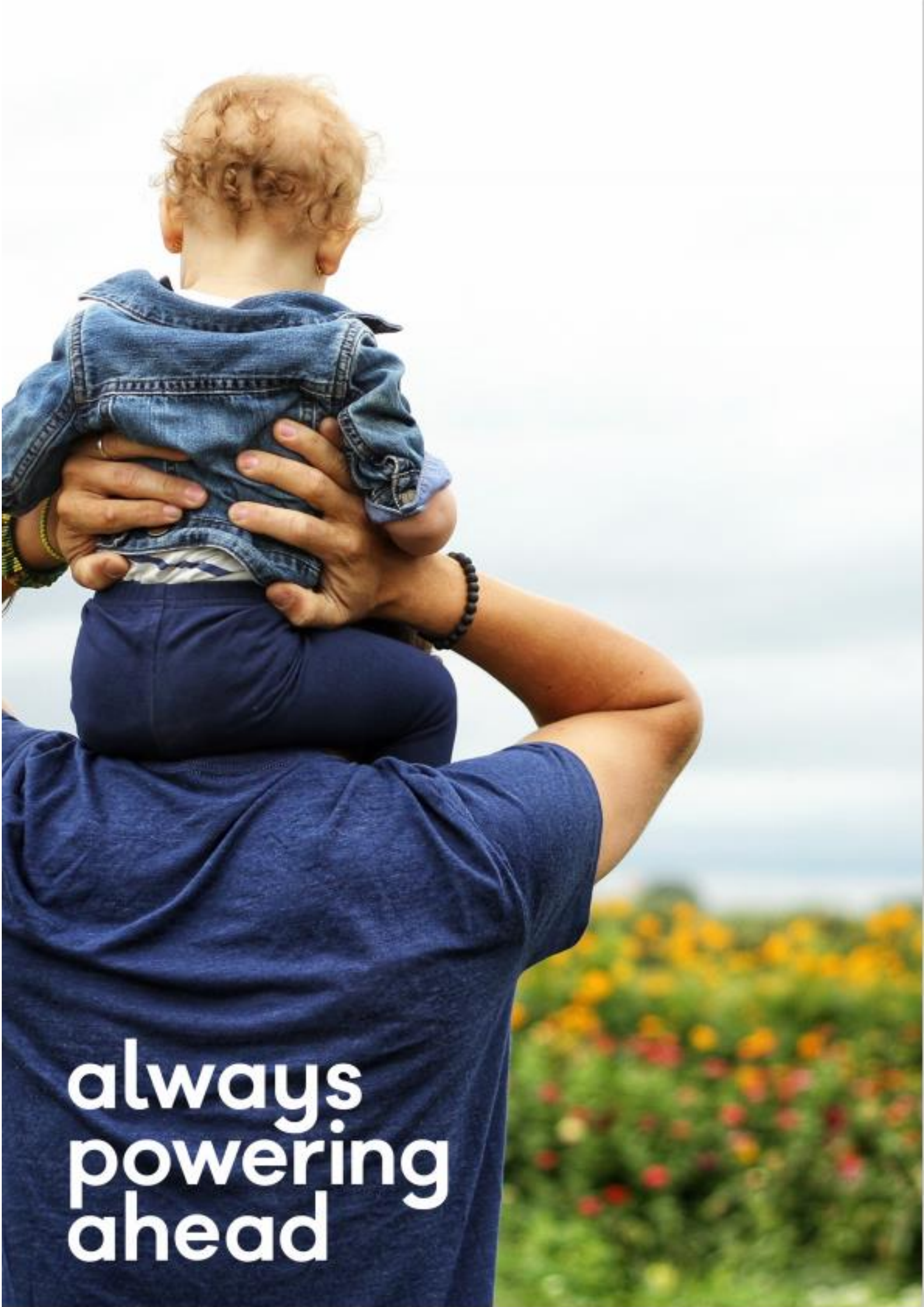
	- the price paid for the service as specified in the contract (if these prices are not expressed on a $/GJ/day or $/GJ basis, service providers will also be required to publish the price converted to such a basis together with an explanation as to how the conversion was made); - the price structure applicable to the service (for example, whether it is a fixed price or a variable price or a combination of the two); and - any price escalation mechanism applicable to the price paid for the service. If you do not agree with this proposal because you think there are: a) other non-price terms and conditions or information that should also be reported, please identify what those other non-price terms and conditions are and why you think they should be reported; and/or b) some non-price terms and conditions that should not be reported, please identify what those non-price terms and conditions are and why you think they should not be reported.	
28 Page 77	Do you agree with the proposal to align the requirements for the standing terms with those that will apply to pipeline service providers? If not, please explain why not.	Storage and compression are bespoke services and are very different to transportation services. It may therefore not be appropriate to align the standing terms that must be published by Part 18A storage and compression service providers and pipeline service providers.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