



Economic Regulation Authority

# Compliance report 2022

For non-scheme gas pipelines

22 August 2023

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## Introduction

The Economic Regulation Authority regulates third party access to gas pipelines in Western Australia under the *National Gas Law* and *National Gas Rules*, as applied in WA. Gas pipelines in Western Australia are classified under three forms of regulation: full regulation, light regulation, and non-scheme. There are currently three fully regulated pipelines, one lightly regulated pipeline, and more than 80 non-scheme gas pipelines in Western Australia.<sup>1</sup>

On 23 December 2017, Western Australia adopted the non-scheme information disclosure and arbitration framework, which is set under Chapter 6A of the NGL (WA) and Part 23 of the NGR (WA) ('Part 23 regime').<sup>2</sup> The framework is designed to prevent monopolistic practices by pipeline operators and aims to facilitate access to services provided by non-scheme pipelines on reasonable terms. It consists of information disclosure, access negotiations, and arbitration in the event of a dispute. A key component of the framework is to provide prospective users of non-scheme pipelines with increased information to reduce the imbalance in bargaining power when negotiating access.

As the non-scheme pipeline administrator in Western Australia, part of the ERA's role is to monitor and enforce compliance with the non-scheme information disclosure and arbitration framework.

This report focuses on non-scheme gas pipelines, in particular their compliance with the Part 23 requirements. This is the first compliance report published by the ERA for non-scheme gas pipelines in Western Australia. While the ERA has conducted compliance reviews prior to 2022 it has not published its findings. The ERA will seek to further increase transparency on compliance performance by non-scheme gas pipelines in the future.

The Part 23 regime requirements and the outcomes of the ERA's 2022 compliance review are discussed in the following sections.

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<sup>1</sup> The three fully regulated pipelines in Western Australia are (i) Dampier to Bunbury Natural Gas Pipeline, (ii) Goldfields Gas Pipeline and (iii) Mid-West and South-West Gas Distribution System. The Kalgoorlie to Kambalda Pipeline is subject to light regulation.

<sup>2</sup> Since March 2023, Part 23 of the NGR no longer exists outside of Western Australia. The framework has been moved to Part 10 and has been amended to include scheme gas pipelines. Western Australia has yet to adopt these reforms. If these reforms are adopted, this report in future would also include scheme gas pipelines.

## Part 23 National Gas Rules requirements

The Part 23 regime was established to facilitate access to pipeline services on reasonable terms and conditions (including prices) that, so far as practical, reflect the outcomes of a workably competitive market.<sup>3</sup> To achieve this objective, the rules prescribe obligations on service providers of non-scheme pipelines.<sup>4</sup>

These obligations include the publication of specific information (see Table 1). Pipeline operators and prospective users negotiate the prices and other terms and conditions for access to pipeline services. Negotiations for access to non-scheme pipelines are initially informed by the pipeline information available for prospective users. For instance, capacity and usage information will help prospective users to decide whether to negotiate for access to a particular service. Up to date financial information will also help determine whether the prices being offered are reasonable.

**Table 1: Information disclosure requirements under Part 23 of the NGR**

Type of information	Timing
a. Service and access information	
1. Pipeline information	No later than 20 business days after the application date or after there is a change.
2. Pipeline service information	No later than 20 business days after the application date or after there is an addition or a change.
3. Service information usage	Monthly after the application date, by the last business day of the month for the prior month.
4. Service availability information	Monthly after the application date, by last business day of the month for the next 36 or 12 months as applicable.
b. Standing terms	No later than 20 business days after application date or after there is an addition or a change in pipeline service.
c. Financial information	Yearly, no later than 4 months after the end of service provider's reporting period.
d. Weighted average price information	Yearly, no later than 4 months after the end of service provider's reporting period.

Sources: NGR, rule 552 and ERA Non-scheme Financial Reporting Guideline.

In addition to the information disclosure requirements above, service providers must also develop, maintain, and publish in a publicly accessible part of its website a user access guide to assist prospective shippers/users seeking to access pipeline services.<sup>5</sup> Penalties may apply for failure to comply with certain provisions under the Part 23 regime.

<sup>3</sup> NGR, rule 546.

<sup>4</sup> A *service provider* means a person who (i) owns, controls or operates; or (ii) intends to own, control or operate, a pipeline or any part of a pipeline (NGL, section 8). If more than one service provider (a service provider group) carries out a controlling pipeline activity in respect of a pipeline (or a part of a pipeline), a service provider of the service provider group (the *complying service provider*) may act on behalf of the other service providers if the complying service provider has the written permission of all of the service providers of that group to act on behalf of the service provider group.

<sup>5</sup> NGR, rule 558.

A service provider for a non-scheme pipeline may apply to the ERA for an exemption from certain obligations under the Part 23 regime. There are three exemption categories available for non-scheme pipelines (see Table 2). Exemptions may be subject to conditions and varied at the ERA's discretion.

**Table 2: Exemption categories and criteria under Part 23 of the NGR**

Exemption Category	Exemption Criteria
Category 1: Exemption from access requests and negotiations (Division 3), and arbitrations of access dispute requirements (Division 4).	The non-scheme pipeline is not a third party access pipeline.
Category 2: Exemption from information disclosure requirements (Division 2).	Either of the following: The pipeline is not a third party access pipeline. The pipeline is a single shipper pipeline.
Category 3: Exemption from information disclosure requirements under Division 2 other than pipeline information and pipeline service information.	At any time, the average daily injection of natural gas into the non-scheme pipeline calculated over the immediately preceding 24 months is less than 10TJ/day.

Source: NGR, rule 558.

## Outcome of non-scheme compliance monitoring

In 2022, the ERA conducted compliance monitoring which involved checking whether a service provider for a non-scheme pipeline published the required information or document in the correct form and on time. The ERA has also commenced analysing some aspects of the financial information published by service providers to ensure that it is consistent with the ERA's Financial Reporting Guideline.

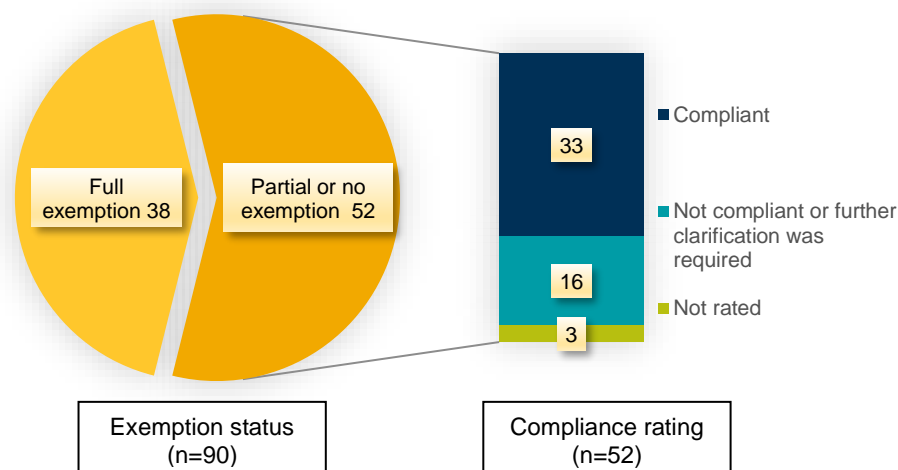
As of 31 December 2022, there were 81 non-scheme pipelines (comprising 90 pipeline licences) in Western Australia.<sup>6</sup> Since exemptions under Part 23 are issued on a pipeline licence basis, the ERA has also assessed compliance of non-scheme pipeline service providers against the Part 23 requirements on a pipeline licence basis.

Of the 90 non-scheme pipeline licences, 38 were fully exempt which means the pipelines were exempt from the obligation to publish information under Division 2 (Information) and from the operation of Division 3 (Access requests and negotiations) and Division 4 (Arbitration of access disputes) of the Part 23 regime.<sup>7</sup> The ERA assessed compliance with the Part 23 regime for the remaining 52 non-scheme pipelines (comprised of 28 partly exempt pipelines and 24 pipelines without exemptions). The ERA found that:

- 33 were compliant, which means service providers have disclosed and published the required information.
- 16 were found to be either non-compliant for failing to publish required information in the right form and frequency or some information published needs further clarification.
- 3 were not rated since the pipeline has not yet been constructed, or the pipeline is not yet operating on a commercial basis, or the pipeline has ceased to operate.

A breakdown of the non-scheme pipelines is provided below.

**Figure 1: Breakdown of non-scheme gas pipelines in Western Australia in 2022, by exemption status and compliance rating**



<sup>6</sup> The definition of 'pipeline' in the NGL is broader than a pipeline licence. The term also refers to a pipeline system. In some instances, the Department of Mines, Industry Regulation and Safety requires a separate pipeline licence number for an extension or realignment of an existing pipeline. This means that a pipeline (or pipeline system) could have multiple pipeline licences (for instance, the Murrin Murrin Lateral which has three pipeline licences: PL 36, PL 115 and PL 118).

<sup>7</sup> A non-scheme pipeline is considered fully exempt if it has either Category 1/2/3 exemptions or Category 1/2 exemptions. Category 3 is considered a weaker form of Category 2 exemption.

In summary, the outcome of the current round of non-scheme compliance monitoring is an improvement on the outcome of the 2021 review.<sup>8</sup> There were fewer non-scheme pipeline licences found to be either non-compliant or with minor issues, down from 24 to 16. In addition, the issues found in nine out of the 16 pipeline licences arose from the review of the financial disclosures, which was not undertaken in the previous year.

As at 31 December 2022, the non-compliant pipelines were:

- Gorgon Domgas pipelines<sup>9</sup>
- Wheatstone Ashburton West Pipeline<sup>10</sup>
- Beyondie Gas Pipeline<sup>11</sup>
- King of the Hills Pipeline<sup>12</sup>

Chevron's Gorgon Domgas pipelines and AGIG's Wheatstone Ashburton West Pipeline were again found to be non-complying in the 2022 review.

The ERA also found inconsistencies in the disclosure of certain financial information of some APA pipelines with the ERA's Financial Reporting Guideline. The ERA did not consider these inconsistencies as necessarily non-compliance and required further information. However, the ERA considered that any errors or inconsistencies had to be rectified to provide more meaningful information for prospective users when seeking to negotiate with service providers.

Compliance with the information disclosure and arbitration framework is an obligation, and non-scheme pipeline service providers must have appropriate checks and systems in place to ensure timely and accurate provision of required information. In March 2023, the ERA wrote to the service providers of non-compliant pipelines and instructed them to address the non-compliance.

The relevant service providers have since taken actions to address the non-compliance by updating the published information, publishing a user access guide, or lodging an application to exempt the pipeline from the Part 23 requirements. The ERA met with APA to clarify some inconsistencies in its financial reporting and with AGIG to better understand how its reporting of certain financial information may breach commercial confidentiality.

A summary of the compliance issues found, actions taken, and current compliance status is provided in Table 3.

<sup>8</sup> The outcome of the 2021 compliance monitoring was not published but non-complying service providers were informed of the issues found and were asked to address these issues to resolve non-compliance.

<sup>9</sup> Gorgon Domgas pipelines comprise of Gorgon Domgas Offshore Pipeline (TPL/24) and Gorgon Domgas Onshore Pipeline (PL 92). The pipelines are owned by Gorgon Joint Venture and operated by Chevron Australia (complying service provider).

<sup>10</sup> Wheatstone Ashburton West Pipeline is comprised of Wheatstone Ashburton West Pipeline (PL 103), Wheatstone Ashburton West Pipeline Deviated Section (PL 112) and Ashburton West Lateral (PL19). AGIG is the operator and complying service provider for the pipeline.

<sup>11</sup> Beyondie Gas Pipeline (PL 117) is a relatively new pipeline which started commercial operation in 2022 to support Kalium Lake's Beyondie Sulphate of Potash Project.

<sup>12</sup> King of the Hills Pipeline (PL 129) is a new pipeline owned by the APA Group which commenced operation in 2022.



**Table 3: Non-scheme compliance monitoring 2022: outcome and current compliance status**

Pipeline and service provider	Compliance issues found	Actions taken	Current Status
Gorgon Domgas pipelines <i>Chevron Australia</i>	<ul style="list-style-type: none"> <li>All required information under Division 2, Part 23 of NGR was not published.</li> <li>A user access guide was not published.</li> <li>Chevron had previously argued that Gorgon Domgas pipelines are not non-scheme pipelines and are thus not covered by Part 23 of NGR since 2018.</li> </ul>	<ul style="list-style-type: none"> <li>Chevron lodged an application for Category 1 and 2 exemptions on 30 June 2023, which the ERA approved in August 2023</li> </ul>	COMPLIED
Wheatstone Ashburton West Pipeline <i>Australian Gas Infrastructure Group</i>	<ul style="list-style-type: none"> <li>Service usage information published was not up to date. This was a reoccurring issue, as ERA notified AGIG in 2021 that this information was also not up to date.</li> <li>Financial information reporting for CY 2021 was not based on ERA's current prescribed template and related party transactions were not disclosed.</li> </ul>	<ul style="list-style-type: none"> <li>In April 2023, AGIG updated the pipeline's service information published on its <a href="#">website</a><sup>13</sup>.</li> <li>AGIG also published its financial report for CY 2022 using the ERA's current template. AGIG also indicated that financial information for CY 2021 will be published using the current template after an independent audit.</li> <li>To avoid breaching commercial confidentiality AGIG advised on 19 May 2023 that it can provide related party information to the ERA on a confidential basis. ERA agreed with this approach.</li> </ul>	COMPLIED
Beyondie Gas Pipeline <i>Kalium Lakes</i>	<ul style="list-style-type: none"> <li>All required information under Division 2, Part 23 of NGR was not published.</li> <li>A user access guide was not published.</li> </ul>	<ul style="list-style-type: none"> <li>Kalium Lakes subsequently applied for Category 1, 2 and 3 exemptions, which ERA approved in June 2023.</li> </ul>	COMPLIED
King of the Hills Pipeline <i>APA Group</i>	<ul style="list-style-type: none"> <li>A user access guide was not published.</li> </ul>	<ul style="list-style-type: none"> <li>A <a href="#">user access guide</a> applicable to King of the Hills Pipeline has been published.<sup>14</sup></li> </ul>	COMPLIED

<sup>13</sup> AGIG, last accessed on 30 June 2023.

<sup>14</sup> APA amended its APA-wide User Access Guide to include the King of the Hills Pipeline as one of the covered pipelines.

Pipeline and service provider	Compliance issues found	Actions taken	Current Status
<i>Other APA pipelines</i>	<ul style="list-style-type: none"><li>Inconsistencies in the disclosure of some financial information with the ERA's Financial Reporting Guideline</li></ul>	<ul style="list-style-type: none"><li>APA and ERA held discussions to better understand the inconsistencies found.</li><li>In July 2023 APA agreed to correct reporting of financial information that was found to be inconsistent with the ERA Guideline from 2023 financial year.</li></ul>	WILL COMPLY ERA TO REVIEW GUIDELINE FOR IMPROVEMENTS

## Next steps

All the identified instances of non-compliance in 2022 have been addressed or are being addressed through administrative resolution.

The ERA will continue to regularly monitor compliance against the Part 23 requirements with increased focus on accessibility, transparency, and consistency of published information. For instance, the ERA will consider whether information and documents can be easily found in the service provider's website, if information is clearly structured and labelled, and whether documents and data are up to date.

In future, the ERA will conduct more in-depth analysis of the reported financial information, recognising that inaccurate information could mislead users seeking to negotiate access with pipeline operators. Our engagement with the service providers has made us aware of potential limitations of the current Financial Reporting Guideline and Financial Reporting Template for non-scheme pipelines. The ERA will review the guideline and template to improve transparency, usability, and reliability of financial information, as well as mitigate any misinterpretation by service providers, and continue to engage with gas service providers on financial information disclosure through this process.

However, the ERA is aware that Western Australia may soon adopt regulatory reforms affecting non-scheme pipelines and will await the adoption of any reforms before commencing its review.

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## Appendix 3 Abbreviations

AGIG	Australian Gas Infrastructure Group
CY	Calendar year
ERA	Economic Regulation Authority
NGL	National Gas Law
NGR	National Gas Rules