

Extract from the draft Royal Decree

6. General comments

The provisions of the new Chapter 9 in the Petroleum Regulations regulate transports of natural gas through pipelines from the Norwegian Continental Shelf and processing of natural gas in facilities linked to these pipelines. The provisions in Chapter 9 are designed within the framework of the Gas Market Directive (European Parliament and Council Directive 98/30/EC concerning common rules for the internal market in natural gas). In conjunction with the Petroleum Act, Section 4-8, first paragraph, new second and third sentences, these provisions shall satisfy Norway's obligations as regards the implementation of the rules of the Directive relating to upstream pipeline networks. The obligations under the Gas Market Directive are to ensure that natural gas undertakings and eligible customers, as defined in Article 18 of the Directive, are given the right of access to upstream pipeline networks, including facilities providing technical services linked with such access, in accordance with Article 23 of the Directive. Those parts of such upstream pipeline networks and facilities that are used for local production operations at the deposit where the natural gas is being produced are exempted from this right of access.

The Ministry now sees a need for compiling the rules for access to upstream pipeline networks in regulations, inter alia, in the form of tariffs for the right of use being determined by the Ministry in separate regulations. This particularly applies in cases where an upstream pipeline network is used by someone other than the owner and/or where two or more upstream pipeline networks are collected under one owner constellation. This will be the case as regards the new Gassled joint venture, which is establishing a new owner structure for most of the Norwegian gas pipelines and related processing facilities. The wholly state-owned company Gassco is the operator for Gassled. In such cases the proposed rules will help to ensure natural gas undertakings and eligible customers access to available capacity in upstream pipeline networks on objective and non-discriminatory terms.

In Chapter 9 the intention is to establish a distinction between upstream pipeline networks for which tariffs are determined by the Ministry in separate regulations (Gassled), and upstream pipeline networks where the parties themselves have the opportunity to negotiate commercial agreements for rights of use as before. Furthermore, agreements on the use of capacity in upstream pipeline networks for which tariffs are determined by the Ministry will have to be made in line with standard agreements drawn up by the operator and approved by the Ministry. In other upstream pipeline networks the agreements for rights of use will be subject to approval by the Ministry pursuant to Section 4-8 of the Petroleum Act, as before. However, the right for the Ministry to determine tariffs is not confined to such cases as mentioned above.

Tariffs determined by the Ministry will contribute to good predictability and transparency for potential users of the upstream pipeline networks, and thus help to

ensure natural gas undertakings and eligible customers access to the upstream pipeline networks. Furthermore, fixed tariffs that are known in advance will create suitable conditions for good management of resources, while at the same time simplifying the existing complex commercial arrangements.

The distinction between the upstream pipeline networks for which tariffs are determined by the Ministry and the others will appear from the fact that not all of the provisions of Chapter 9 will be applicable to all upstream pipeline networks located on or originating from the Norwegian shelf. Pursuant to the first paragraph of Section 69, certain provisions will be applicable only to those upstream pipeline networks and other facilities to which separate regulations for the determination of tariffs shall apply.

7. Commentary to the individual provisions

Re Section 59

Section 59, first paragraph

The main rule in Chapter 9 is stated in the first paragraph of Section 59, pursuant to which natural gas undertakings and eligible customers shall have a right of access to upstream pipeline networks, including facilities providing related technical services in connection with such access. This provision reflects the main rule of the Gas Market Directive, Article 23 (1). A right of access implies that the owner of the upstream pipeline network, or the operator acting on behalf of the owner, may not act in a manner that, contrary to the rules laid down in the regulations, prevents natural gas undertakings and eligible customers from gaining access to an upstream pipeline network. Furthermore, the right of access also implies that when the owner or operator of the upstream pipeline network receives an inquiry from a natural gas undertaking or an eligible customer concerning a right to use capacity, the owner or operator will be obliged to let them have the right to use capacity available in the particular upstream pipeline network on objective and non-discriminatory terms, provided that all other conditions for such use under this chapter are satisfied. Natural gas undertakings and eligible customers shall be entitled to a right of access to upstream pipeline networks when capacity is available whenever the party initially entitled to use the capacity, no longer has a duly substantiated reasonable need of this capacity, cf. Section 64, second paragraph.

“*Natural gas undertaking*” and “*eligible customer*” are defined in the Petroleum Act, Section 1-6, new items n) and o) respectively. “*Owner*” is defined in Section 60, first paragraph. “*Spare capacity*” is defined in Section 60, second paragraph.

The rules of Chapter 9 apply to upstream pipeline networks, including facilities providing related technical services connected with the right of access. “*Upstream pipeline network*” is defined in the Petroleum Act, Section 1-6, new item m). Facilities providing related technical services connected with such access will also be considered to be part of an upstream pipeline network. This will include, e.g. facilities where gas is made ready for further transport through an upstream pipeline, for example Draupner E and S, where gas flows are mixed to obtain the required quality. For access to such related technical services it is a condition that access is needed in

connection with access to the upstream pipeline network. In other words, there is no question of an independent right of access to such services.

Pursuant to Section 69, second paragraph, the Ministry may determine that the rules of Chapter 9 concerning upstream pipeline networks shall also apply to other facilities related to the upstream pipeline network. This shall apply even if they do not provide related technical services connected with access to the upstream pipeline network, in this respect see the notes to Section 69, second paragraph.

For natural gas undertakings and eligible customers to be entitled to access to available capacity, they must have a “*duly substantiated reasonable need of transportation and/or processing of natural gas*”. This is in conformity with the Gas Directive, Article 23, 2 c). This provision implies that, to obtain a right of access to an upstream pipeline network according to the rules of this Chapter, the natural gas undertakings and eligible customers must substantiate their need for this capacity. Natural gas undertakings and eligible customers are not entitled to access to such capacity beyond their need for transportation of natural gas. Natural gas undertakings and eligible customers who have or will have production of their own or who have purchased, borrowed or exchanged natural gas, or intend to purchase, borrow or exchange natural gas, and this natural gas may, and probably will be delivered through the upstream pipeline network concerned, will be considered to have a need of capacity. In such cases natural gas undertakings and eligible customers may reserve capacity in proportion to their needs and which results in a reasonable flexibility in relation to the deliveries of natural gas concerned. For further understanding of the term “*duly substantiated reasonable need*”, reference is made also to the notes to Section 61, seventh paragraph. In the upstream pipeline networks for which tariffs are determined by the Ministry (Gassled), it will be for the operator to decide whether a duly substantiated reasonable need does exist, cf. Section 59, last paragraph, and Section 69, first paragraph, second sentence.

The expression “*transportation and/or processing*” is included to emphasise that some of the upstream pipeline networks that are subject to the rules in Chapter 9 offer transportation only, that others only offer processing, while still others offer both. Depending on which upstream pipeline network the natural gas undertaking or eligible customer wishes to access, it will be entitled to access provided that it has or will have a need for either transportation or processing or both.

The initiative to gain access to spare capacity must be taken by the party desiring such access. Furthermore, the fact that natural gas undertakings and eligible customers shall be entitled to access to the upstream pipeline network, does not imply that available capacity shall be placed at their disposal unconditionally. Thus, payment may be required for access to such capacity and other appropriate, non-discriminatory and objective conditions may be imposed, such as requirements regarding security for payments. For the upstream pipeline networks for which tariffs are determined by the Ministry, it will – to the extent this is not regulated under the standard agreement, cf. Section 65, the second and third sentences - be for the operator to decide what other conditions may be imposed, cf. Section 59, last paragraph, and Section 69, first paragraph, second sentence.

Section 59, second paragraph

The second paragraph provides that the owner and the party entitled to use the upstream pipeline network, or the operator acting on their behalf, shall receive inquiries concerning access to use capacity and shall ensure that such inquiries are handled within a reasonable period of time. Based on this, a party in need of transport for natural gas will always know where to address a request for access to use of capacity in an upstream pipeline. What is to be considered to be a “reasonable” period of time will vary and cannot be defined exactly. In cases where capacity for small volumes within a short period of time is requested, the application must be handled accordingly, so that the handling of the application does not block the right to access. On the other hand, somewhat more time can be used in cases of requests for capacity for a large volume at a future time.

Section 59, third paragraph

The first sentence provides that certain technical and operational conditions must be satisfied before natural gas undertakings and eligible customers may be given the right to use upstream pipeline networks. First, it is a condition that the natural gas in question has “*specifications that are reasonably compatible with the technical and operational requirements for the upstream pipeline network concerned*”. One of the reasons for including the condition that the natural gas concerned shall satisfy certain specifications is that there can be great variations in the composition of the gas in the different upstream pipelines. This is both due to the fact that there are great differences in gas from the separate fields, and because the different upstream pipelines carry both processed and unprocessed gas. The specifications may be incompatible due to factors in the gas itself or in the infrastructure. A main distinction in regard to gas is made between rich gas and dry gas. In general, rich gas is not processed and contains wet components (wet gas), whereas the wet gas has been separated from dry gas.

If the gas for which transportation is required comes from the same fields as the other natural gas in the pipeline, the specifications will normally not be incompatible. The problem of incompatible technical specifications is most likely to occur if the natural gas for which transportation is required comes from a field having special characteristics, or if use of a special transportation route is required for the natural gas.

Under the requirement that the natural gas in question must have specifications that are mutually compatible with the technical and operational requirements for the particular upstream pipeline network, consideration of the “*delivery requirements*” is mentioned as a particular factor. The composition of the natural gas in dry gas pipelines from the Norwegian Continental Shelf is adapted to specifications in the gas sales contracts such as, for example, a requirement concerning the CO₂ content or calorific value. A condition for access is that the natural gas for which transportation is required may, together with the natural gas already being transported in the pipeline, be adapted to these requirements. Such adaptation to the requirements can be made if there are appropriate processing facilities with sufficient capacity, or if the natural gas, for example by agreement, can be mixed with natural gas belonging to another.

A condition for the right to use an upstream pipeline network is that the specifications of the natural gas in question may “*reasonably*” be considered to be compatible with the technical and operational requirements. This means that the natural gas

undertakings and eligible customers have a right to use the capacity even if initially the specifications are not compatible, provided that this can “*reasonably*” be overcome, that is to say in a reasonably simple manner. This criterion does not impose strict requirements on the owner or operator. In assessing what can “*reasonably*” be done it will be necessary to consider the potential consequences in the form of technical problems and practical and financial consequences that follow, for example, from the increase in the volume of work, changes in the times of use and the establishment of new routines.

A further condition for transportation of natural gas in upstream pipeline networks is that the natural gas in question is “*delivered at the inlet with adequate pressure so that the natural gas can reach the outlet*”. The reason for this requirement is that a definitive condition for transportation of natural gas through pipelines is that there is sufficient pressure in the pipeline to carry the gas to the outlet from the pipeline in question. Anyone wishing to use capacity in an upstream pipeline network must therefore be capable of delivering natural gas with sufficient pressure.

Section 59, fourth paragraph

Pursuant to the fourth paragraph, first sentence, the “*operator*” may refuse to allow access if the conditions for the right of use pursuant to this provision are not satisfied. This implies that the operator must decide whether natural gas undertakings and eligible customers have a duly substantiated reasonable need for transport and/or processing of natural gas, and whether the specifications of the natural gas for transportation and/or processing are reasonably compatible with the technical and operational requirements of the upstream pipeline network and relevant delivery requirements. Gassco is the operator of the upstream pipeline networks encompassed under Gassled. When performing these tasks the operator may not under any circumstance take instructions from the owner of the upstream pipeline network concerned, cf. Section 69, first paragraph, second sentence.

Re Section 60

This provision gives certain definitions for the purposes of this Chapter and provisions laid down by virtue thereof.

Section 60, first paragraph:

The first paragraph is a definition of “*owner*”. In this Chapter “*owner*” means the joint ventures and companies owning upstream pipeline networks, as well as the individual participants in such joint ventures or companies. Whether a provision in which the word “*owner*” is used means the joint venture/company as such or only the individual participant, or both, may vary in each individual case. This must be decided by interpretation in each particular instance.

Section 60, second paragraph:

The second paragraph is a definition of “*spare capacity*”. For the purpose of this Chapter, spare capacity means the capacity that is physically available, having regard to the capacity necessary to meet existing obligations for use of the upstream pipeline network in question, and having regard to the fact that efficient operation does not always mean that it is expedient to use all physically available capacity in all pipelines. For purposes of the best possible utilisation of several pipelines collectively

or for purposes of maintenance, or for maintaining a correct pressure, it may be necessary to not use the full physical capacity in some pipelines. It is only the capacity that is spare after these factors have been allowed for, that is considered to be spare capacity for the purpose of these Regulations.

The considerable limitation of the definition of spare capacity in the second paragraph follows from the reference to the fact that spare capacity does not include the capacity necessary to meet the obligations of those who already have a right to use the upstream pipeline network. Such right of use may derive from contracts entered into before the entry into force of these Regulations, and from subsequent contracts. Basically, there is no spare capacity if a right to use the capacity exists.

Section 60, third paragraph:

The third paragraph defines a contract in the primary market. These are contracts entered into with the owner as such, that is to say, in his capacity as owner. In a joint venture, the joint venture will act as owner in the capacity of owner. Contracts for the use of an upstream pipeline network entered into with anyone other than the owner in this sense are considered to be contracts in the secondary market, cf. fourth paragraph.

Section§ 60, fourth paragraph:

The fourth paragraph defines contracts in the secondary market. Contracts in the secondary market consist of transfers of a right to use capacity in the upstream pipeline network other than those entered into by contract in the primary market. A transfer of the right of use by contract in the secondary market will always derive from a right of use acquired under a contract in the primary market. A right to use capacity in an upstream pipeline network can be assigned by contract in the secondary market in several stages, all of which will be considered to be contracts in the secondary market.

Section 60, fifth paragraph:

The fifth paragraph defines “tariff” for the purpose of Chapter 9. A tariff is payment for the right to use capacity in an upstream pipeline network. For the upstream pipeline networks for which tariffs are determined by the Ministry, available capacity distributed in the primary market will be regulated. A right to use capacity which is assigned in the secondary market will not be subject to the regulated tariffs – in such cases the tariffs will initially be negotiated between the parties in the appropriate contract in the secondary market or through trading in the market place, cf. Section 64, fourth paragraph.

Re Section 61

Section 61 first paragraph:

Except for the first sentence of the seventh paragraph, Section 61 applies only to upstream pipeline networks for which the tariffs are determined by the Ministry, cf. Section 69, first paragraph, which in practice comprises the pipelines included in Gassled. For these upstream pipeline networks it follows from the first paragraph of Section 61 that all spare capacity in the primary market shall be made available collectively through the operator. Furthermore, contracts in the primary market shall be made with the operator on behalf of the owner. The second sentence provides that

contracts for the use of spare capacity in upstream pipeline networks may not be entered into with anyone other than natural gas undertakings and eligible customers.

There is a dual reason for providing that the spare capacity in these upstream pipeline networks shall be offered collectively through the operator. Firstly, in such pipeline networks there may be a great number of owners. For the right to use upstream pipeline networks for which tariffs are determined by the Ministry, it will therefore not be necessary for a potential user to contact each individual owner to find spare capacity. Secondly, the owners of such upstream pipeline networks will not have the commercial freedom to negotiate terms and conditions for the use of the network with potential users of spare capacity in the upstream pipeline network. This is due to the fact that the primary market is characterised by the use of a standard tariff determined by the Ministry, and standard contracts that are drawn up by the operator and approved by the Ministry, cf. Section 65, second paragraph. Furthermore, the provision also implies that the individual owner of the upstream pipeline network in question must approach the operator to obtain access to use spare capacity in that network. However, in this connection reference is made to the last paragraph of Section 61, pursuant to which the owner is to be given first priority when allocating spare capacity in the primary market.

Section 61 second, third, fourth and fifth paragraphs:

These provisions provide for the manner in which spare capacity shall be made available in upstream pipeline networks for which tariffs are determined by the Ministry, which essentially means Gassled. The operator is responsible for implementing these rules; in the case of Gassled that means Gassco. Only the main rules are determined in the third, fourth and fifth paragraphs. Within the framework of these rules the operator himself will determine the further procedures for reserving capacity in the primary market. The Ministry presupposes that the operator will consult the users before determining such procedures, but emphasises that it is the operator who decides the further details of how these procedures are to be determined and how the provisions of these Regulations are to be implemented, cf. Section 69, first paragraph, second sentence. Determining what capacity is physically available also requires the approval of the joint venture, adopted in accordance with the ordinary voting rule, cf. the definition in Section 61, second paragraph. Physically available capacity forms the starting point for determining spare capacity, cf. the definition in Section 60, second paragraph. Natural gas undertakings and eligible customers may reserve capacity for the period of time for which they have a duly substantiated reasonable need for capacity.

Section 61, sixth paragraph:

The *sixth* paragraph contains rules for prioritising if the capacity sought exceeds the spare capacity available. A distribution formula shall be determined for prioritising in such cases. The distribution formula shall be determined by the operator and shall apply for a set period of time. As already mentioned, Gassco is the operator of Gassled. In this connection reference is made to Section 69, first paragraph, second sentence, pursuant to which the owner of the upstream pipeline network concerned will have no influence in deciding this distribution formula. The Ministry presumes that as a general rule the formula will be determined on an annual basis, but the provision allows for it being determined for other periods. A new distribution formula may also be determined within an already stipulated period.

For determination of the distribution formula the starting point shall be the need of each party for transportation of natural gas, either from his own production or from purchases, sales or loans of natural gas or combinations of such resulting in a need for the transportation and/or processing of natural gas. If, for example, a company has a production of 100, but has already sold 10 on a platform so that transportation is not needed for this, the distribution formula for that company will be determined on the basis of 90. The distribution formula determines a proportionate distribution. For production, purchases, sales or loans of natural gas to be included in the distribution formula, it is a condition that the natural gas in question satisfies the conditions in Section 59, third paragraph.

To compile a forecast for production in the short term, the operator will initially have to base this on the production permits. The production permits determine the maximum annual quantity of petroleum that may be produced from each field. Furthermore a right is given to extract, within the framework of the production licence, volumes not extracted under production permits granted for previous years. Natural gas production permits are granted for periods of different lengths, of time down to one year at a time. Accordingly, they will not always form a basis for distributing spare capacity in a more distant future. On the other hand, for forecasting what production a natural gas undertaking or eligible customer may have at some future point in time, it is natural to base this on the course of production approved pursuant to the Petroleum Act, Section 4-4, first paragraph. In any case, the approved course of production will have to be adjusted for any knowledge acquired after such approval that renders it probable that the actual production will differ from the approved production. In such matters it is natural for the operator to seek information to obtain a best possible estimate of future production. For fields on the Norwegian Continental Shelf, it will be natural to obtain such information from the Norwegian Petroleum Directorate.

In addition, it will be possible to take into account the planned production from fields for which the course of production has still not been approved pursuant to Section 4-4, first paragraph, i.e. fields for which the Plan for development and operation has not yet been approved pursuant to the Petroleum Act, Section 4-2. In such cases the licensee will have to give an estimate of future production. It will be natural for the operator to accept this estimate and seek other relevant information to substantiate it before determining the estimates on which the reservation shall be based. If variations later occur for these fields, between the estimate on which a reservation was based and the subsequent approval pursuant to Section 4-4, first paragraph, the reservation can subsequently be adjusted by the operator, based on the approved course of production. If a course of production for the appropriate field is not approved pursuant to Section 4-4, first paragraph, that is to say, if the Plan for development and operation is not approved pursuant to Section 4-2, the operator may decide that the whole of the reservation based on it being approved, shall lapse.

Section 61, seventh paragraph:

This provision provides that, before spare capacity is allocated, account shall first be taken of the owner's reasonable need for capacity in preference to other users. If the owner has a "*duly substantiated reasonable need*" for capacity himself, the natural gas undertakings and eligible customers will not then be entitled to use this capacity.

Access to natural gas that can be transported through the particular upstream pipeline network is a basic requirement for a need for capacity. Access to natural gas may be acquired either through one's own production or by buying or borrowing natural gas. It must be possible to transport this natural gas through the relevant upstream pipeline network.

Obligations of the owner as a seller of gas under a gas sales contract to deliver volumes of gas that may vary within a given band, is one example of such "need" relative to existing contracts. Under such contract the buyer of the gas is entitled to take out varying volumes within specified maximum and minimum limits (usually given on both a daily and a yearly basis). Accordingly, the buyer may change his orders on a daily basis. The seller is obliged to deliver in accordance with the orders and must be able to deliver maximum volumes every day, unless otherwise provided for in the contract. Some contracts also allow for the alteration of orders within certain limits. This means that in situations where the buyer orders less than the maximum limits, the seller must nonetheless be prepared to deliver the maximum quantity. In some cases geographical flexibility is also linked with the buyer's rights, so that the buyer can change the delivery point at short notice. The seller's need for capacity will then change accordingly. The seller's need to retain capacity to enable him to meet such maximum delivery obligations is regarded as a reasonable need for the purposes of this provision. Further, a duly substantiated reasonable need for capacity may exist in order to have a possibility of operating in a short-term market.

Reservoir considerations may be another example of such needs. Uncertainty regarding the future development of the reservoir, the need for short or long term gas injection and other similar considerations, may constitute grounds for allocation of spare capacity. The same applies in respect of production considerations. This may include a need for headroom for varied take-off from gas production in associated gas fields.

A duly substantiated reasonable need for capacity may also exist in situations where a field is not yet in production, but where the Plan for development and operation is approved or is being drawn up.

The owner's prior right pursuant to Section 61, seventh paragraph, is limited upwards to twice his equity interest in the upstream pipeline network concerned. That is to say, if a company owns 10% of an upstream pipeline network, it may be entitled to a first priority capacity reservation for its duly substantiated reasonable needs for up to 20% of the spare capacity. To meet its duly substantiated reasonable needs in excess of twice its equity interests, a company being an owner of the upstream pipeline network in question, will have to compete on objective and non-discriminatory terms on an equal basis with other natural gas undertakings and eligible customers for the right to use this spare capacity. The reason why an owner has first priority for up to twice his equity interests is that the owner will often have a need for transportation of more than his equity interests in the upstream pipeline network in question. The Ministry assumes that a limitation to twice the equity interests will provide for the owner's needs to a reasonable extent, while those who are not owners can also be assured of access to the upstream pipeline network when the owner does not have duly substantiated reasonable need of the spare capacity.

Since the owner is given a first priority that exceeds his equity interests in percentage, a rule for allocation among owners is also needed. If the capacity applied for by the owners exceeds the spare capacity available, the capacity shall be divided among the owners on the basis of a distribution formula determined in accordance with the sixth paragraph.

In consequence of the Instructions for the marketing and sale of oil and gas adopted by Statoil's General Meeting in May 2001, under which Statoil is required to sell the State's oil and gas together with its own, Statoil will have at its disposal Petoro's first priority under this provision on behalf of the State.

Re Section 62

This is a specific provision for the right to use new capacity that becomes available as the result of an expansion of the capacity in the upstream pipeline network. The provision gives first priority to those who bore the cost of the expansion, initially limited upwards to the proportional share of the investments that was paid by the user in question. On the other hand, the Ministry may determine that the limitation to this share of the investment shall not apply, and in so doing may set a different ceiling for the proportional share of the investment for which the party who bore the cost of it, shall have first priority. The Ministry could make such a decision when there is an imbalance between the individual share of the investment and the volume the individual is expected to transport through the upstream pipeline network in question. The provision is a natural continuance of Section 61, seventh paragraph pertaining to priority for owners of facilities when allocating rights to use spare capacity.

In consequence of the Instructions for the marketing and sale of oil and gas adopted by Statoil's General Meeting in May 2001, under which Statoil is required to sell the State's oil and gas together with its own, Statoil will have at its disposal Petoro's first priority on behalf of the State under this provision, in the same way as under Section 61, seventh paragraph.

Re Section 63

Section 63 first paragraph:

The first paragraph provides that an owner of an upstream pipeline network for which tariffs are determined by the Ministry, may not claim payment for the right of use, except as provided for in rules given in or by virtue of Chapter 9. In practice, this implies that tariffs in the primary market for the use of capacity in Gassled will be regulated in separate regulations issued by the Ministry. The provision further implies that natural gas undertakings being owners of the upstream pipeline network in question and wishing to have rights to use this network, must pay the same tariff as a natural gas undertaking or eligible customer that is not an owner. The determined tariffs apply to contracts in the primary market only.

Section 63, second paragraph:

The second paragraph establishes that - for upstream pipeline networks for which the tariffs are determined by the Ministry - these shall be paid for reserved capacity

irrespective of whether the capacity is used or not. This will help to ensure a more effective use of the capacity.

Section 63, third paragraph:

The third paragraph determines that the tariff consists of two main elements, a capital element and an operating element. What is included in these two main elements is described in the fourth and fifth paragraphs in this provision.

Section 63, fourth paragraph:

The fourth paragraph states the rules for determining the capital element. The capital element is determined by the Ministry. The second sentence provides that when determining the capital element, the Ministry shall give consideration to promoting the best possible management of resources. From the third sentence it follows that the capital element must be determined in such manner that the owner may expect a reasonable return on the capital invested. In the newer pipelines tariffs have been determined in such manner as to let the owners expect a real pre-tax return of 7% on total capacity, with a possibility of smaller sums in additional income as an incentive for greater utilisation and cost-efficient operations. The return stipulated for pipelines and related facilities are based partly on the assumption that profits shall mainly be earned from the field. The last sentence in this provision states that “*other special circumstance*” may also be taken into consideration. As previously mentioned, such other “special circumstances” may be contracts already entered into concerning the use of upstream pipeline networks.

Section 63, fifth paragraph:

The fifth paragraph contains rules concerning the operating element of the tariff. In addition to the capital element determined by the Ministry, the owners of the upstream pipeline network for which the Ministry determines the tariff, may claim payment of an operating element. This may be claimed by the owner of the upstream pipeline network or by the operator on behalf of the owner and must be calculated in accordance with this provision. This implies that the operating element claimed shall be such that neither the owner nor the operator of the network will have any profit or loss on the management of the network other than that determined pursuant to the fourth paragraph. To ensure that the operating element claimed is as provided for in the first sentence, the Ministry may determine which costs shall be taken into account when calculating the operating element, also which costs may not be included. The last sentence provides that the Ministry may consent to the operating element being collected in a manner that differs from the principle in the first sentence, as an incentive for efficient management.

Re Section 63, sixth paragraph

The Ministry has commenced work to determine the manner by which costs related to obligations for future use of installations for transport of natural gas shall be met.

Re Section 64

Section 64, first paragraph:

Section 64 provides for a secondary market for rights to use upstream pipeline networks. Rights to use capacity may be transferred in the secondary market by bilateral contracts entered into between a party who has a contract for the right to

capacity in either the primary or the secondary market, and a natural gas undertaking or an eligible customer, or through entering into contracts via the market place for sales of the use of rights that is established pursuant to Section 64, fourth paragraph.

For making contracts in the secondary market it is a condition that the natural gas undertaking or eligible customer who wishes to obtain a right to use capacity, has a need for transportation of natural gas and that this gas satisfies the specification requirements applying to the relevant upstream pipeline network. These requirements are defined above, see the notes to Section 59. Moreover, in contracts in the secondary market rights to use of capacity may only be transferred to natural gas undertakings or eligible customers. For the upstream pipeline networks for which tariffs are determined by the Ministry in separate regulations (Gassled), the tariffs so determined shall not apply in the secondary market. The price agreed upon in the secondary market may differ from the tariff in the primary market. Nevertheless, pursuant to Section 67, first paragraph, the Ministry may, in particular cases, order that natural gas undertakings and eligible customers be given a right to use capacity, including the determination of tariffs and other conditions on which rights of use may be transferred in the secondary market.

Section 64, second paragraph:

The second paragraph states when a party who initially has a right to use an upstream pipeline network, shall be obliged to relinquish to others this right to use of capacity. The authority for this provision derives from the Petroleum Act, Section 4-8, first paragraph, first sentence, which provides that the Ministry may determine that facilities shall be used by others, a new second sentence which provides that natural gas undertakings and eligible customers shall have a right of access to upstream pipeline networks, as well as a new third sentence which provides that the Ministry may issue further provisions, impose conditions and issue orders for such access, cf. the Proposal to Odelstinget No. 81 (2001-2002).

To ensure natural gas undertakings and eligible customers the right of access to upstream pipeline networks pursuant to the Petroleum Act, Section 4-8, first paragraph, new second sentence as intended, a user who does not need all or part of his right to use capacity, must not retain this capacity to the unreasonable deprivation of others. For this reason a user who does not have a duly substantiated reasonable need for all or part of the capacity, must let others have the opportunity to use it. This obligation to allow others access to this capacity implies that the capacity must be made available on commercial terms. However, a party who has been allocated capacity in the primary market, or who has acquired capacity in the secondary market, may not require an unreasonably high payment for allowing others to use capacity for which he himself does not have a duly substantiated reasonable need.

What is a “duly substantiated reasonable need” cannot be determined in general, but must be decided in each individual case. For example, a user may have a reasonable need for access to capacity which he is not using at the moment, if it is necessary to enable him in future to fulfil his existing contractual obligations to a buyer of natural gas. A party who has entered into a contract concerning a right to use capacity may also have a reasonable need for this capacity in a short-term market to enable him to sell gas in this market in a suitable manner. In this connection reference is made also

to the notes to Section 61, sixth paragraph, which also describe further the meaning of the condition a “*duly substantiated reasonable need*”.

Section 64, third paragraph:

The first sentence of the third paragraph imposes an obligation on users to give information to the operator. Firstly the operator shall be given information concerning the matters mentioned in the second paragraph. That is to say, if a user does not need capacity in the future, he shall inform the operator accordingly. The operator shall also be informed of contracts entered into in the secondary market.

This provision ensures the operator an overview of those who at any time have a right to use an upstream pipeline network. This duty to supply information is imposed to enable the operator to fulfil his responsibilities as system operator, and in consideration of third parties who desire access to use of an upstream pipeline network, so that they can obtain information concerning spare capacity and capacity not being used. cf. Section 66, fourth paragraph. Pursuant to Section 66, fourth paragraph second sentence it is the operator’s duty to ensure that business secrets disclosed to the operator in accordance with the first sentence are not disclosed to others, including owners of upstream pipeline networks and other users.

Section 64, fourth paragraph:

According to this provision the operator, that is to say Gassco for the upstream pipeline networks in Gassled, is required to arrange and conduct a market place for transferring rights to use capacity in upstream pipeline networks in the secondary market. The rules drawn up by the operator for the market place are subject to approval by the Ministry. It is presupposed that the operator will consult the users before submitting the rules to the Ministry for approval. Whether the parties choose to enter into contracts in the secondary market on a bilateral basis or through the market place arranged by the operator, is a voluntary matter. Nobody other than the operator may conduct such a market place without first obtaining the consent of the Ministry. On the other hand the rules requiring consent to conduct a market place do not prevent an individual party from marketing his own right to use of capacity in an upstream pipeline network.

Re Section 65:

Pursuant to the Petroleum Act, Section 4-8, first paragraph, contracts concerning the use of facilities in accordance with Sections 4-2 and 4-3 of the Petroleum Act, must be submitted to the Ministry for approval. An upstream pipeline network will be considered to be a facility within the meaning of the Petroleum Act. The obligation to submit contracts to the Ministry for approval under this provision, will apply also to secondary market transfers of the right to use an upstream pipeline network. However, pursuant to Section 65 the separate contracts concerning use of an upstream pipeline network, for which the tariff is determined by the Ministry in special regulations (Gassled), need not normally be submitted for approval. Nevertheless, the Ministry may decide that all or some of the contracts or types of contracts shall be submitted for approval in the normal manner, according to the rules of Sections 4-8 of the Petroleum Act. Pursuant to the second paragraph, contracts in the primary market shall be in accordance with standard contracts formulated by the operator and approved by the Ministry. The Ministry shall consult the owner before approving a standard contract. The last paragraph gives the Ministry or its appointed representative

– for example the operator of the particular upstream pipeline network - the opportunity to follow up developments in prices and other conditions for rights of use in the secondary market.

Re Section 66:

Section 66 regulates the operator's responsibility for operating upstream pipeline networks. The operator of an upstream pipeline network has an important task in contributing towards the overall good utilisation of the resources on the Norwegian Continental Shelf. The restructuring that has taken place of late, particularly in regard to gas management, has given greater relevancy to the need for further regulating the operator's responsibility for operation of the upstream pipeline network.

Field neutral gas was sold through the Gas Negotiation Committee (GFU) and after the contracts were made they were allocated to fields according to socio-economic criteria. The GFU has now been terminated permanently as from 1 January 2002. Whereas the situation previously was that gas sales contracts were entered into for the individual field, but nevertheless by the owner of the gas on the one hand and the buyer on the other, the situation now is that the individual company is itself responsible for selling its proportionate share of the gas from the particular field on an individual basis. When gas is sold on an individual basis by each company, the challenges of the operator in regard to ensuring efficient operation of the upstream pipeline network are magnified. Performance of the one sales contract may, to a greater extent than before, conceivably come into conflict with the good, overall utilisation of the upstream pipeline network.

Formerly, the operation of the upstream pipeline network was undertaken by one of the owners of the particular upstream pipeline network, through that owner being given the role of operator. To a large extent the legal basis for the operator's activities was regulated by the Owners' Agreement and by the transport agreements between owners and users of the pipelines. The transport agreements prescribe procedures, routines etc. in connection with the operator's planning, monitoring, coordinating and supervising transportation of gas from the fields where the natural gas is produced, and to the landing point. Collectively these agreements gave a basis for the operator's management of the upstream pipeline network.

For efficient operation of upstream pipeline networks, one condition is that the operator is enabled to instruct users of the upstream pipeline network and the licensees of the producing field, to adapt their operations. In some cases such adaptation will be necessary to ensure the good, overall utilisation of the resources on the Norwegian Continental Shelf. Now that company-based sales have commenced, the operator will have to relate to each company that owns the natural gas to be transported. To the extent the desires of two or more companies relating to the use of an upstream pipeline network are incompatible, the operator must be able to conduct operations in an appropriate manner. Against this background the Ministry considers it necessary to regulate the operator's management responsibilities through regulations.

The first paragraph of Section 66 provides that the operator shall operate the upstream pipeline network in a prudent and safe manner. In performing these tasks the operator shall act in an objective and non-discriminatory manner.

The second, third and fourth paragraphs apply to upstream pipeline networks to which the Regulations relating to the determination of tariffs apply. In practice this will be those pipelines that are in Gassled, and where Gassco is the operator.

The second paragraph of Section 66 regulates the operator's responsibility for coordination in connection with the operation of the upstream pipeline network. This concerns the processes for nominating gas quality, the planning of maintenance and development of the upstream pipeline network as a whole. This is a highly comprehensive task that requires great professional competence. It is important that these processes should be coordinated and therefore it is appropriate that the operator be made responsible for this coordination.

In connection with the responsibility for coordinating the processes for developing upstream pipeline networks, it is the operator's duty to draw up an overall transportation plan for natural gas in upstream pipeline networks and appurtenant facilities, to keep this plan updated.

The third paragraph of Section 66 gives the operator the right to require, under certain circumstances, that users of upstream pipeline networks and licensees of the producing fields adapt their operations to ensure the proper management of resources and the efficient operation of the particular upstream pipeline network. Such adaptations may involve, for example, that they be required to produce more or less petroleum than originally planned.

The right of the operator to require adaptation of operations arises when "*unforeseen events*" occur that may lead to "*appreciable*" operational disturbances or to the inability to meet the specification requirements at the outlet from the upstream pipeline network. It is only under "*special circumstances*" that the operator may require a producer of natural gas who is not a user of the particular upstream pipeline network, to adapt his operations. "*Special circumstances*" must, for example, be considered to exist when it will not be possible to avoid substantial operational disturbances by requiring adaptations on the part of existing users.

One example of an "*unforeseen event*" would be where a field supplying natural gas which is necessary for the composition of gas in the upstream pipeline network has to shut down outside of the planned shut-downs. Planned shut-downs and anticipated interruptions in operations will not be considered to be unforeseen events and must be allowed for when planning operations. In such cases the operator is not empowered to issue instructions under this provision.

What constitutes "*appreciable*" problems cannot be determined in general, but must be decided in each individual case. The operator will decide what is appreciable in the individual case.

The fourth paragraph of Section 66 regulates the information to be made available by the operator concerning the upstream pipeline network. The purpose of this provision is to ensure that existing and potential users can obtain information concerning the capacity available in an upstream pipeline network. The operator is under the obligation to ensure that no information is given concerning business secrets, for

example information concerning the capacity at the disposal of a particular user in the upstream pipeline network.

Re Section 67:

This provision gives the Ministry the right to issue orders relating to upstream pipeline networks in two different types of events. Pursuant to the first paragraph, the Ministry may issue orders to ensure that natural gas undertakings and eligible customers are given a right to use an upstream pipeline network in accordance with the provisions of this chapter. Such orders may, for example, be issued when the owner fails to make all spare capacity available without due reason. In addition, such orders may be given in cases where a party who is entitled to use capacity in the upstream pipeline network and who no longer has a duly substantiated reasonable need of this capacity, without due reason fails to make this capacity available in accordance with the provision in Section 64, second paragraph.

Pursuant to the second paragraph, orders concerning a different distribution of the capacity than that which follows from the provisions of this chapter may also be issued by the Ministry, if consideration of the best possible management of resources, including regularity of supplies and regularity of production, so dictates and such distribution does not unreasonably supplant the owner's own needs or the needs of those who already have been given a right of use. Similarly, the Ministry may issue orders concerning the distribution and redistribution of capacity in consideration of effective existing and future production. Such orders may also be justified in consideration of effective production from fields of marginal economic viability. This reflects the provision in the Gas Market Directive, Article 23, 2 b).

The Ministry may issue orders pursuant to the *first and second paragraphs* directly or through the operator. The order shall be addressed to the owner or a party entitled to use the upstream pipeline network, with the objective of giving a specific natural gas undertaking or eligible customer, or a group of such, access to the upstream pipeline network for a specified period of time, for a specified quantity of natural gas, for all the natural gas from a specific field, or the like. In such cases the Ministry may determine the price and other conditions for this use. The price stipulated must be based on the costs the party surrendering capacity has had in procuring the capacity, cf. third paragraph.

Re Section 68

This provision stipulates rules regarding a dispute settlement mechanism. The provision in Section 68 was adopted as part of the implementation of Article 23 (3) of the Gas Market Directive into Norwegian legislation. The Ministry may be the dispute settlement authority itself, or may appoint such authority. It will be for the Ministry to decide whether to establish a separate dispute settlement authority on a permanent basis or appoint an authority to convene when needed. The parties to such a dispute could normally be, on the one hand, the individual natural gas undertaking or eligible customer who desires access to use of capacity, and on the other hand the operator who manages the upstream pipeline network or the owner of it.

Re Section 69

Section 69, first paragraph:

The first paragraph defines a limitation of the scope of some of the provisions in Chapter 9. Only some of the provisions in Chapter 9 shall be applicable to upstream pipeline networks to which the separate regulations for determination of tariffs do not apply, i.e. the upstream pipeline networks that are not included in Gassled. For the further reasons for this difference, reference is made to the above general comments and the comments on Section 59.

In addition the second sentence provides that, in upstream pipeline networks for which tariffs are determined by the Ministry in regulations the operator, i.e. Gassco, shall have a free hand relative to the owners of the upstream pipeline network, i.e. Gassled. As mentioned above, a distinctive feature of such upstream pipeline networks is that they are used by third parties and that two or more upstream pipeline networks are collected under one owner structure. To contribute towards ensuring natural gas undertakings and eligible customers access to such upstream pipeline networks on objective and non-discriminatory conditions, it is especially important to ensure the independence of the operator. This is provided for by stating that the operator is not to take general or specific instructions from the owners of the particular upstream pipeline networks in so far as concerns the tasks assigned to the operator in or by virtue of this Chapter. For example, this could be decisions on whether a duly substantiated reasonable need for transportation and/or processing of natural gas does exist and what spare capacity is available. In one provision the owner is given a right of veto, in the sense that the owner's approval is required, cf. Section 61, second paragraph concerning what shall be considered to be physically available capacity.

Section 69, second paragraph:

The second paragraph enables the Ministry to determine that the rules regarding upstream pipeline networks that are issued in or by virtue of this chapter, shall also apply to facilities linked to the upstream pipeline network. It could be appropriate to determine this for such facilities in order to ensure a uniform regulation of two or more facilities for transporting and processing natural gas. Regulation corresponding to that applying to an upstream pipeline network may thus be appropriate even if in a certain case the facility does not come under the definition of an upstream pipeline network and for linked facilities for transport and processing of condensate. This could, for example, be the case for receiving terminals on the continent, which according to the Gas Market Directive are not to be regarded as upstream pipeline networks.

Re Section 70

By virtue of this provision the Ministry may issue supplementary provisions by regulations or by individual decision. Regulations relating to the determination of tariffs for the use of upstream pipeline networks will, for example, be adopted by virtue of this rule.