

2013 – 2017 Gas Access Arrangements Review (GAAR)

SP AusNet Response to the AER's Draft Decision

RAAP Chapter 9: Non-tariff components

Submitted: 9 November 2012

RAAP 9: Non-tariff components

This chapter sets out SP AusNet's response to the amendments required by the AER on the non-tariff components of SP AusNet's 2013-2017 Gas Access Arrangement Revision ("Access Arrangement"), as set out in Chapter 15 of Part 1 and Attachment 12 of Part 2 of the AER's draft decision.

SP AusNet submitted its original proposed changes to its non-tariff components in Chapters 17 and 18 of its Access Arrangement Information (AAI) and in its revised Part A and Part C of its Access Arrangement submitted on 30 March 2012.

To the extent of any inconsistency between the information contained within SP AusNet's AAI and this chapter, the information contained in this chapter supersedes that in the AAI.

1 Introduction

As part of its 2013-2017 Gas Access Arrangement Revision proposal, SP AusNet adopted a 'minimal change' approach to the non-tariff components of its Access Arrangement. Nevertheless, SP AusNet did propose a number of changes, principally in anticipation of the introduction of the National Energy Customer Framework, which is expected to be introduced in Victoria during the next Access Arrangement period. SP AusNet welcomes the AER's Draft Decision on the non-tariff components of its Access Arrangement. SP AusNet notes that the AER substantially accepted SP AusNet's 'minimal change' approach to its non-tariff components and that the AER supports SP AusNet's proposed approach to address the anticipated introduction of the National Energy Customer Framework during the next Access Arrangement period.

Following a workshop with the AER and retailers and detailed submissions from retailers on the draft non-tariff components, SP AusNet submitted detailed responses to the AER on each of the retailer submissions. SP AusNet indicated a number of areas where it was amenable to making further amendments to its non-tariff terms and conditions to address issues raised by the retailers as well as indicating where it was not prepared to make further amendments. In accordance with the AER's request, SP AusNet has held further discussions with a number of retailers and SP AusNet expects to receive further substantive feedback through any submissions by retailers on the AER's Draft Decision. SP AusNet envisages this consultation process as being ongoing, and will continue to engage with retailers to seek to resolve any outstanding issues prior to the Final Decision.

The key amendments to the non-tariff components of SP AusNet's Access Arrangement required by the AER in its Draft Decision were as follows:

- The AER did not accept SP AusNet's extensions and expansions policy and requires SP AusNet to amend its Access Arrangement proposal set out in Part A of its proposed Access Arrangement.
- The AER requires minor amendments to SP AusNet's capacity trading requirements, queuing arrangements and review dates set out in Part A of its proposed Access Arrangement.

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- The AER did not approve SP AusNet's proposed terms and conditions set out in Part C of its proposed Access Arrangement. Whilst the AER decided to accept most of SP AusNet's terms and conditions as being consistent with the National Gas Objective, it requires a number of amendments to the terms and conditions.

SP AusNet has addressed each of the AER's required amendments to the non-tariff components of its Access Arrangement in the tables below.

Finally, SP AusNet notes there may be a need to make consequential changes to the non-tariff components in light of the AER's Final Decision. For example, if the Final Decision revokes the Financial Failure of a Retailer pass through event, it will be necessary to revisit and amend the credit support provision contained in the non-tariff terms and conditions. SP AusNet considers that the AER may need to consult with SP AusNet in light of its Final Decision and SP AusNet is committed to working with the AER to identify any such consequential changes.

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2 Response

The following tables set out SP AusNet’s responses to the AER’s required revisions to the non-tariff components of Parts A and C of SP AusNet’s 2013-2017 Gas Access Arrangement Revision, as set out in Chapter 15 of Part 1 and in Attachment 12 of the AER’s Draft Decision.

Revised versions of Parts A and C of SP AusNet’s Access Arrangement are also provided, showing the amendments accepted by SP AusNet together with any further revisions proposed by SP AusNet in response to the AER’s Draft Decision.

These tables do not address those provisions of Parts A and C which the AER indicated in its Draft Decision its agreement to, or which the AER considered a commercial matter best negotiated between the parties.

Gas Access Arrangement Revision 2013-2017 - Part A:

Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
5.3.1/ 5.4.1	Application of terms and conditions	<p>The AER does not accept clause 5.3.1 of Part A of SP AusNet’s terms and conditions. The AER requires SP AusNet to amend clause 5.3.1 in accordance with Revision 12.1.</p> <p>The AER considers that the terms and conditions should not be limited in their application to only those Users who are retailers, but that they should apply to all Users who request reference services from the Service Provider. Rule 48(1) of the NGR requires a full access arrangement to specify for each reference service the other terms and conditions on which the reference service will be provided.</p>	<p>The AER requires SP AusNet to amend clause 5.3.1 of Part A as follows:</p> <p>Delete all text after ‘The Terms and Conditions on which the Service Provider will supply each Reference Service are set out in Part C’.</p>	<p><i>Note: The reference to clause 5.3.1 of Part A of SP AusNet’s Access Arrangement in the AER’s Draft Decision should be a reference to clause 5.4.1.</i></p> <p>SP AusNet broadly accepts the AER’s Draft Decision that the Access Arrangement terms and conditions should apply to all Users and should form the basis of any negotiation with Users. As the AER acknowledges in its Draft Decision, the terms and conditions are largely tailored towards a User who</p>

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		<p>Clause 5.3 is therefore inconsistent with r. 48(1) of the NGR as it would operate to limit the application of the access arrangement terms and conditions to only those reference services that are provided to retailers, and exclude their application where a reference service is provided to an end user.</p> <p>While the AER recognises that the terms and conditions are largely tailored towards a User who is a retailer, the AER considers that s. 322 of the NGL operates to allow SP AusNet to negotiate terms that are appropriate to an end user, and that reflect issues and risks specific to the direct provision of services to that end user.¹ The terms and conditions in the access arrangement should still form the basis for any such negotiation, and therefore should continue to apply to all Users who request reference services from the Service Provider. The AER considers that this approach provides greater certainty and clarity to Users who are non-retailers, which reduces the level of risk borne by the User. The AER considers that additional risk to the User does not promote efficient investment in and operation of the network,</p>		<p>is a retailer, and so it is likely that the terms and conditions would need to be amended in the event that a non-retailer User required Pipeline Services.</p> <p>As now drafted, clauses 5.4.1 and 5.4.2 of Part A state that both Reference Services and Non-Reference Services will be supplied on the terms and conditions set out in Part C. In light of the AER’s draft decision, whilst SP AusNet does not propose amending this approach, it remains of the view that in order to provide maximum clarity to all prospective Users, it is preferable to make it clear that for non-retailer Users those terms and conditions are likely to require amending.</p> <p>SP AusNet, therefore, proposes to accept the AER’s required amendment to clause 5.4.1 and instead include a new clause 5.4.3 in Part A as follows:</p> <p><i>“5.4.3 Notwithstanding clauses 5.4.1 and 5.4.2 above, where appropriate and as permitted under the National Gas Law, the Service Provider and User</i></p>

¹ Section 322 of the NGL provides that: 'subject to section 135, nothing in this Law is to be taken as preventing a service provider from entering into an agreement with a user or a prospective user about access to a pipeline service provided by means of a scheme pipeline that is different from an applicable access arrangement that applies to that pipeline service'.

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		aspects of the NGO.		<p><i>may negotiate amendments to the terms and conditions set out in Part C on which the Service Provider will provide Distribution Services. In particular, amendments will be required for any non-retailer Users requiring Distribution Services to reflect the service requirements for any such User.</i></p> <p>SP AusNet believes this is consistent with the National Gas Rules and NGO and will add clarity for prospective Users seeking Reference Services.</p>
5.5	Queuing arrangements	<p>The AER accepts SP AusNet’s proposal in so far as it relates to new connections/modifications and does not include queuing requirements in relation to spare capacity. Nevertheless, for the sake of clarity the AER requires that SP AusNet relabel clause 5.5 of its proposal from ‘Queuing policy’ to ‘New connections and modifications’ since this clause does not relate to a queuing policy in relation to capacity as the current heading would indicate.</p> <p>As the capacity of SP AusNet’s distribution pipeline is managed by AEMO under Part 19 of the NGR, queuing arrangements are not applicable. To avoid confusion the heading to clause 5.5 of the proposal should be changed from ‘queuing policy’ to ‘new connections and</p>	Relabel clause 5.5 of the proposed access arrangement so that the heading reads <i>‘New connections and modifications’</i> .	<p>SP AusNet accepts the AER’s required revision and will amend the heading of clause 5.5 of Part A of its Access Arrangement accordingly. SP AusNet further proposes to amend the first line of clause 5.5.1 to replace the old Gas Code reference to “Queuing Policy” with a reference to “queuing arrangements” so that the clause reads as follows:</p> <p><i>“These queuing arrangements are applicable to requests for new Connections or modifications to existing Connections and are subject to the Extensions and Expansions Policy.”</i></p>

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		modifications’.		
5.6.1	Extension and Expansion requirements	<p>The AER does not accept SP AusNet’s extensions and expansions policy. The AER requires SP AusNet to amend its proposal so that all low and medium pressure pipelines are covered by the access arrangement by default. Whenever SP AusNet builds a high pressure pipeline extension to its distribution network, it must notify the AER and the AER will decide on a case-by-case basis whether the pipeline should be covered by the access arrangement. The AER considers that these changes will promote the efficient investment in and efficient use and operation of gas services, while promoting the long term interest of consumers with respect to price, each an aspect of the NGO.</p> <p>In particular, the AER does not accept SP AusNet’s proposal that the access arrangement does not apply to incremental reference services provided by a 'significant extension' where SP AusNet has given written notice to the AER that it will not form part of the access arrangement.</p> <p>Coverage – high pressure pipelines</p> <p>The AER considers that all extensions to high pressure pipelines should be assessed on a case-</p>	<p>Replace clause 5.6.1 of the proposed access arrangement with the following:</p> <p>5.6.1 Extensions</p> <p>High pressure extensions</p> <p><i>If SP AusNet proposes a high pressure pipeline Extension of the covered pipeline, it must apply to the AER in writing to decide whether the proposed Extension will be taken to form part of the covered pipeline and will be covered by this Access Arrangement.</i></p> <p><i>A notification given by SP AusNet under this clause 5.6.1 must:</i></p> <p><i>a) be in writing;</i></p> <p><i>b) state whether SP AusNet intends for the proposed high pressure pipeline Extension to be covered by this Access Arrangement;</i></p>	<p>SP AusNet has a number of concerns with the AER’s proposed Extension and Expansion requirements.</p> <p>In principle, SP AusNet notes that under the National Gas Law it is the National Competition Council (NCC), rather than the AER, that is empowered to make coverage determinations in respect of pipelines. Under the AER’s proposed wording, coverage determinations in respect of high pressure extensions would be made on a case-by case basis by the AER. SP AusNet would be concerned if this resulted in dual regulation and confusion over roles.</p> <p>That being said, SP AusNet does see that there are possible advantages to the AER’s proposal, subject to there being clarity on how the regulatory arrangements between the AER and NCC are to work and also on what is meant by “high pressure” in this context.</p> <p>As currently worded, the AER’s proposed wording does not define what</p>

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		<p>by-case basis for coverage—consistent with its previous AER decisions.² The AER will be better placed to consider such matters at the time it is notified of a proposed high pressure pipeline extension. There could be many different factors that would impact on whether a high pressure pipeline extension should be covered and whether it should be covered by the same terms as the original pipeline. For example:</p> <ul style="list-style-type: none"> • High pressure pipelines have similar characteristics to transmission pipelines, and could be used either as viable bypass options to end users, or to support the existing network. In this instance, the extension could lead to some competition for pipeline services—meaning that it may not be necessary for the extension to be covered. • The pipeline can be extended for a variety of reasons such as servicing a large industrial user requiring the network to be extended to its premises or supporting the distribution network generally. Where it is supporting the distribution network generally it may be appropriate for the extension to be 	<p><i>c) describe the proposed high pressure Extension and describe why the proposed Extension is being undertaken; and</i></p> <p><i>d) be given to the AER before the proposed high pressure pipeline extension comes into service.</i></p> <p><i>SP AusNet is not required to notify the AER under this clause 5.6 to the extent that the cost of the proposed high pressure pipeline Extension has already been included and approved by the AER in the calculation of the Reference Tariffs.</i></p> <p><i>After considering SP AusNet’s application, and undertaking such consultation as the AER considers appropriate, the AER will inform SP AusNet of its decision on SP AusNet’s proposed coverage approach for the high pressure pipeline extension.</i></p>	<p>is meant by “high pressure”. Under the Victorian Gas Distribution System Code, high pressure means anything above 140 kPa and SP AusNet does not build extensions at a lower pressure than this. SP AusNet considers that, for clarity, it is important the extensions/expansions policy defines what is meant by high pressure. SP AusNet’s preference is to define high pressure by reference to the Gas Distribution System Code.</p> <p>SP AusNet, therefore, proposes to accept the AER’s proposed Extensions/Expansions policy provided it contains the following additional provision:</p> <p><i>“For the purposes of this clause, high pressure has the meaning given in the Distribution System Code.”</i></p> <p>In addition, SP AusNet has proposed some minor drafting changes, such as changing references to SP AusNet to Service Provider.</p>

² For example: AER, Jemena Gas Network draft decision, February 2010, pp. 348–350; AER, ActewAGL draft decision, November 2009, pp. 185–186; AER, Country Energy draft decision, November 2009, pp. 140–141. Envestra Ltd Access arrangement proposal for the SA gas network 1 July 2011–30 June 2016, draft decision, June 2011, pp. 241–245.

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		<p>covered on the same terms as the original network. Non coverage could lead to cross-subsidisation.</p> <ul style="list-style-type: none"> Therefore, the reasons for the extension and the degree of its integration into the existing network will assist in determining whether the extension should be covered. <p>Pipelines that potentially extend to new parts of the market warrant consideration by the AER. New areas outside the current geographic reach of the network will be more likely serviced by high pressure pipelines. The AER accordingly considers that if a high pressure pipeline extension is planned, then an application should be made to the AER for a decision as to whether or not the extension is part of the covered pipeline. The use of ‘high pressure’ provides a means of generally distinguishing in-fill from new extensions to areas and customers.</p> <p>The AER considers that a case by case assessment approach for the coverage of high pressure pipelines has the benefit of promoting the efficient investment in and the efficient operation and use of natural gas services for the long term interests of consumers of natural gas in accordance with the national gas objective.³ Such</p>	<p><i>The AER’s decision referred to above may be made on such reasonable conditions as determined by the AER as will have the effect stated in the decision.</i></p> <p>Other extensions and expansions</p> <p><i>Any Extensions to the Distribution System which are not high pressure pipeline Extensions within the meaning of this clause will be covered by this Access Arrangement. Any Expansions in the Distribution System will be covered by this Access Arrangement.</i></p>	

³ NGL, s. 23.

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		<p>an approach provides flexibility to deal with the particular circumstances.</p> <p>The AER considers that an extension and expansion policy that:</p> <ul style="list-style-type: none"> • provides for a requirement that SP AusNet notify the AER where it proposes to build a high pressure extension to its network • enables the AER to make such a decision with respect to the coverage of the high pressure pipeline <p>is more consistent with the NGO and is a preferable alternative to SP AusNet’s proposal.</p> <p>Coverage – low and medium pressure pipelines</p> <p>The AER considers that all low and medium pressure pipeline extensions should be covered by the access arrangement. Low and medium pressure pipeline extensions to distribution networks are often embedded in and occur throughout the network. Coverage by default will allow such extensions to be built and covered by the access arrangement. Default coverage will provide regulatory efficiency through the avoidance of multiple and frequent applications for small extensions. This is likely to contribute to the promotion of the efficient investment in, and efficient operation and use of, natural gas services for the long-term interests of consumers of natural</p>		

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		<p>gas with respect to safety, reliability and security of supply of natural gas.⁴ For these reasons, the AER considers that all low and medium pipeline extensions should be covered by default.</p> <p>Coverage – expansions</p> <p>The AER proposes to accept SP AusNet’s proposal that all expansions to its distribution network will be covered by the access arrangement. Network expansions involve the augmentation of pipeline capacity within the existing network, and are likely to be used largely by existing network customers. Relative to network extensions, they are much less likely to serve a new or isolated customer or group of customers as a bypass option. As such, it is appropriate that any network expansions are covered as reference services under the access agreement. This provides certainty to end users.</p> <p>The AER considers that coverage on this basis would promote the efficient investment in, operation and use of natural gas services, which are aspects of the NGO.</p> <p>Effect of extension / expansion on reference tariffs</p> <p>The AER proposes to accept SP AusNet’s</p>		

⁴ NGL, s. 23.

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		proposal in relation to the effect of an extension and expansion on reference tariffs. The AER considers that this element of the proposal is consistent with the NGR.		
5.7	Capacity and trading rights	<p>To ensure that the access arrangement is consistent with the NGR, the AER requires SP AusNet to amend its proposal to state that there are no applicable capacity trading requirements for the purposes of rule 48(1)(f) or 105(1) of the NGR.</p> <p>Capacity trading is not possible on the Victorian gas network (including on SP AusNet’s distribution network). This is different to most Australian gas markets, which are based on bilateral arrangements between producers, major users and retailers linked together through pipeline hubs connecting gas fields to gas consumers.⁵</p> <p>By comparison, in Victoria a wholesale gas market has been established to enable competitive trading based on injections into and withdrawals from a transmission system that</p>	<p>The AER requires SP AusNet to amend clause 5.7 of its proposed access arrangement to include the following:</p> <p><i>“There are no applicable capacity trading requirements for the purposes of rules 48(1)(f) or 105(1) of the NGR.”</i></p>	<p>SP AusNet accepts the AER’s required revision and will amend clause 5.7 of Part A of its Access Arrangement accordingly. SP AusNet proposes to replace clause 5.7.2 of Part A of its revised access arrangement with the new wording proposed by the AER.</p>

⁵ This model is sometimes referred to as a contract carriage model.

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		<p>links multiple producers, major users and retailers.⁶ Under this model, Victorian gas networks (including SP AusNet’s distribution network) are subject to the Declared Wholesale Market Rules in part 19 of the NGR, which do not provide for capacity trading. Rather, AEMO is responsible for managing capacity, on a daily basis, throughout the Victorian wholesale gas market.⁷</p> <p>Capacity trading is therefore not applicable to SP AusNet’s network.</p> <p>Despite the practical situation, the NGR require that the access arrangement include capacity trading requirements. The AER considers that SP AusNet’s access arrangement may meet this requirement by specifying that there are no applicable capacity trading requirements.</p>		
5.9.1	Review dates	<p>The AER proposes to accept SP AusNet’s proposed revision commencement date but not its review submission date.</p> <p>The revision commencement date is consistent</p>	<p>Amend clause 5.9.1 of the proposed access arrangement as follows:</p> <p><i>“5.9.1 SP AusNet will submit revisions</i></p>	<p>SP AusNet does not accept the AER’s required revision. Moving the review submission date from 30 March 2017 to 1 January 2017 will not avoid the need for a 6 month tariff</p>

⁶ This model is sometimes referred to as a market carriage model. Australian Energy Market Operator, Victorian Wholesale Market, see: <http://www.aemo.com.au/en/Gas/Wholesale-Gas-Markets/Victorian-Wholesale-Market>, accessed 30 July 2012.

⁷ In accordance with the rules in Part 19 of the NGR.

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		with the general rule and the AER proposes to accept it. The review submission date of 30 March 2017 proposed by SP AusNet is later than the 1 January 2017 date indicated by the general rule under r. 50(1) of the NGR and the AER proposes not to accept it.	<i>to this Access Arrangements to the AER on or before 1 January 2017.”</i>	adjustment as the AER’s Final Decision will not be made in time for the preceding annual November tariff adjustment. SP AusNet considers that if the review submission date is to be moved, it is most efficient to move it to a date that will enable the annual tariff adjustment to reflect the AER’s final decision and avoid the need for a 6 month within year tariff adjustment. SP AusNet, therefore, proposes a review submission date of 1 October 2016. This earlier date will help promote efficiency and is consistent with the NGO.
Sch 1	Ancillary Reference Services	<p>The AER does not accept SP AusNet’s proposal to remove the on-site meter and gas installation test from its list of ancillary reference services in its access arrangement proposal.</p> <p>SP AusNet proposes to remove its Meter and Gas Installation Test from its list of ancillary reference services. The Meter and Gas Installation Test is an on-site test to check the accuracy of a meter and the soundness of a gas installation in order to determine whether the meter is accurately measuring the quantity of gas delivered. SP AusNet states that this service has been removed from its list of ancillary</p>	<p>Amend schedule 1 of the access arrangement proposal as follows:</p> <p>Include the following words to the list of ancillary reference service:</p> <p><i>‘On-site meter and gas installation test: on site testing to check the accuracy of a Meter and the soundness of a Gas Installation, in order to determine whether the Meter is accurately measuring the Quantity of Gas delivered.’</i></p>	SP AusNet accepts the AER’s required revision and will update Part A of its Access Arrangement Revision accordingly.

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		<p>reference services because, based on historical demands, it is not likely to be sought by a significant part of the market in the forthcoming regulatory period. SP AusNet also states that it is more cost effective to replace the meter and perform the test off-site. SP AusNet therefore proposes that the service be classed as a non-reference service and charged on a recoverable works basis.</p> <p>The AER considers that a significant part of the market is likely to seek a test to check the accuracy of a meter and the soundness of a gas installation. The AER considers that while a meter test may be conducted off-site, a test of the soundness of the installation can only be conducted on-site. The AER considers that this is an important test, both from the perspective of safety and invoice accuracy. Accordingly, the AER considers that a significant part of the market is likely to seek such a service.</p> <p>The AER also considers that the performance of this service would be consistent with the NGO. Such a test ensures safe connections and increases efficiency by detecting and reducing gas leaks. This will also ensure that gas use is correctly metered thereby better reflecting the costs of providing the gas services. This will promote the efficient operation and use of gas services, aspects of the NGO.</p>		

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		Finally, the AER notes that both Envestra and Multinet have proposed to provide an equivalent ancillary service.		

Gas Access Arrangement Revision 2013-2017 - Part C:

Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
4.4(c)	Entitlement to refuse service	<p>The AER accepts clause 4.4(c) of SP AusNet’s terms and conditions, but requires an additional clause be included in accordance with Revision 12.2.</p> <p>Clause 4.4(c) operates so that SP AusNet is not obliged to provide distribution services if the gas the User seeks to inject does not meet the Specifications or contains material properties that may be deleterious. If such gas is injected, whether by a User or another person, SP AusNet may curtail or interrupt provision of distribution services.</p> <p>The AER considers that a Service Provider has</p>	<p>The AER requires SP AusNet to insert the following after clause 4.4(c):</p> <p>“The Service Provider will notify the User as soon as reasonably practicable if the Service Provider becomes aware that the Gas of the type referred to in 4.4(c) is being injected.”</p>	<p>SP AusNet accepts the AER’s required revision and will update Part C of its Access Arrangement Revision accordingly. SP AusNet proposes to include the AER’s required clause as a new clause 4.4(d) and renumber existing clause 4.4(d) as 4.4(e).</p>

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		<p>no control over the gas injected into its distribution system. Therefore, it cannot take steps to mitigate the risk of gas injected into the system that does not meet the Specifications or contains material or properties that may be deleterious. Accordingly, the AER considers the contractual term proposed by SP AusNet permitting it to take steps to protect the integrity of the Network is consistent with the NGO.</p> <p>The AER considers that the addition of such an obligation is consistent with the NGO as it may increase the User’s opportunity to mitigate this risk, leading to reduced costs. If a User is informed by the Service Provider that gas is being injected on its behalf that does not meet the Specifications, the User may be able to mitigate the risk by rectifying this directly with the upstream producer.</p> <p>Finally, where SP AusNet takes steps such as flaring or releasing gas that has been injected on behalf of a User, this may impact on the User’s ability to meet its obligations to its customers. The AER therefore considers that it is reasonable to require SP AusNet to inform the User when it takes these actions and that this is consistent with the NGO.</p>		
4.7(c)	User Obligations/cap	The AER does not accept clause 4.7(c) of SP AusNet’s terms and conditions. The AER	The AER requires SP AusNet to amend clause 4.7(c) as follows:	SP AusNet accepts the AER’s required revision and will update Part

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	<p>acity management</p>	<p>requires SP AusNet to amend clause 4.7(c) in accordance with Revision 12.3.</p> <p>Clause 4.7(c) of SP AusNet's current access arrangement contains an obligation on the User to ensure that gas injected into the Distribution System complies with the Specifications. SP AusNet has proposed that, in addition to the requirement to comply with the Specifications, the User must ensure that gas injected into the Distribution System does not contain any material or have any properties deleterious to the Distribution System.</p> <p>Based on the information available to the AER, it considers that requiring a User to ensure that gas does not contain any material or properties deleterious to the Distribution System is not in accordance with accepted good industry practice. The AER understands that upstream suppliers will not agree to obligations over the Specifications. The AER considers that ambiguous requirements above accepted standards will be difficult to implement. This ambiguity creates additional risk to the User, which does not promote efficient investment in and operation of the Network, aspects of the NGO.</p> <p>Further, the AER considers that an obligation to ensure that gas complies with the Specifications</p>	<ul style="list-style-type: none"> • Delete ‘...and does not contain any material or have any properties deleterious to the Distribution System or to the operation of the Distribution System’. • Insert 'on its behalf' after the words 'ensure that Gas injected into the Distribution System'. 	<p>C of its Access Arrangement Revision accordingly.</p>

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		<p>provides SP AusNet with adequate protection, as gas that contains any material likely to be deleterious to the Network is unlikely to comply with the Specifications.</p> <p>Further, the AER considers that the User should only be required to ensure that gas injected into the Distribution System on its behalf complies with the Specifications. The AER does not consider that a User should bear the risk of other Users causing gas to be injected into the Distribution System that does not comply with the Specifications, as this is a risk which the User cannot avoid or mitigate. The AER considers that limiting the scope of the requirement in clause 4.7(c) to the extent that the User can avoid or mitigate the identified risk, is consistent with the NGO, as it provides greater certainty to Users. This promotes the efficient operation of natural gas services, an aspect of the NGO.</p>		
6.1(b)	Disconnection and Curtailment	<p>The AER does not accept clause 6.1(b) of SP AusNet’s terms and conditions. The AER requires SP AusNet to amend clause 6.1(b) in accordance with Revision 12.4.</p> <p>The AER considers that where the terms and conditions provide a party with a discretion, there should be a limitation on the extent of the discretion. This is particularly the case where the</p>	<p>The AER requires SP AusNet to amend clause 6.1(b) as follows:</p> <p>Insert “, acting reasonably,” before ‘determine’.</p>	<p>SP AusNet accepts the AER’s required revision and will update Part C of its Access Arrangement Revision accordingly.</p>

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		<p>discretion is on the part of the Service Provider and there is no indication as to how that discretion might be exercised.</p> <p>An unfettered discretion allows a party to act on its own belief, regardless of whether it has a reasonable basis for that belief. The AER considers that this is not consistent with the NGO because it allows an element of arbitrariness into the Agreement and creates uncertainty. This arbitrariness and uncertainty create additional risk to the User, which does not promote efficient investment in and operation of the network, aspects of the NGO.</p>		
7.1(b)	Payment and Invoicing for services - charges	<p>The AER does not accept clause 7.1(b) of SP AusNet’s terms and conditions. The AER requires SP AusNet to amend clause 7.1(b) in accordance with Revision 12.5.</p> <p>Clause 7.1(b) provides that a User does not have to pay the charge where the Customer has agreed to pay directly to the Service Provider provided that this clause ceases to apply if the customer ceases to be obliged to pay. The second part of clause 7.1(b) essentially means that the first part does not apply if the conditions in the second are met.</p> <p>The AER notes that the second part of clause 7.1(b) (i.e. from ‘provided that’ onwards) is</p>	<p>The AER requires SP AusNet to amend clause 7.1(b) as follows:</p> <p>Delete ‘...provided that this clause (b) ceases to apply to a type of Charge and a Customer if due to termination, expiry, rescission or amendment of the contract between the Customer and the Service Provider the Customer ceases to be obliged to pay that type of Charge directly to the Service Provider.’</p>	<p>SP AusNet does not accept the AER’s required revision.</p> <p>The intent of this clause is to provide clarity and certainty that the User (retailer) does not have to pay a charge to the Service Provider in respect of a Customer during such period as that Customer is required to pay that charge directly to the Service Provider. The effect of the AER’s amendment would be to prevent the Service Provider commencing to bill the retailer on expiry of the direct customer contract.</p>

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		<p>unclear and that there is potential uncertainty in the entire clause.</p> <p>Clause 7.1(b) also reflects the possibility that that under Rule 504 of the NGR, a customer may contract directly with the distributor for services.⁸ However, r. 504 of the NGR forms part of NECF and has not yet been adopted in Victoria.</p> <p>The second part of clause 7.1(b) goes beyond what is provided for in r. 504 of the NGR. The AER considers that where SP AusNet has chosen to adopt clauses from proposed regulations, it is not consistent with the NGO for it to expand that clause beyond what is contained in the regulation. Particularly where it may potentially inconsistent with r. 504(3) of the NGR once NECF is adopted in Victoria.</p>		<p>SP AusNet does not consider that it is desirable to leave uncertain what happens on expiry of a direct customer contract. Furthermore, SP AusNet does not consider it is consistent with the NGO for a clause to be ambiguous.</p> <p>In the absence of the wording deleted by the AER, the Service Provider is going to have to make an assessment on how to address the risk of liability for a charge not reverting to the retailer once the contract with the Customer ends.</p> <p>SP AusNet accepts that the proposed wording in clause 7.1(b) could be improved and so proposes the following alternative wording:</p> <p><i>“The User is not obliged to pay a specific Charge to the Service Provider in respect of a Customer where that Customer is contractually obliged to pay that Charge directly to the Service Provider.”</i></p> <p>This makes it clear that, for such</p>

⁸ SP AusNet, Access arrangement information, 30 March 2012, p. 257

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
				<p>period as a Customer is contractually obliged to pay a charge directly to the Service Provider the User does not have to pay it. However, if the Customer’s contract is amended or expires or is terminated such that the Customer no longer has to pay the charge then liability passes to the retailer.</p> <p>SP AusNet considers that this wording adds clarity and is consistent with the NGO. SP AusNet also considers that this wording is consistent with Rule 504. Rule 504(1) provides “Where a distributor and a shared customer agree that the customer will be responsible for paying distribution service charges directly to the distributor (a direct billing arrangement), the distributor may issue a bill to that customer for the services provided to that customer’s premises.”</p> <p>Rule 504(3) provides: “A retailer has no liability to pay distribution service charges that have been, or are to be, billed to the shared customer under a direct billing arrangement.”</p>

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
				The effect of these provisions is that where a charge is billed to the Customer directly, the retailer does not have to pay it. Once the Customer’s contract is amended, terminated or expires, such that the charge is no longer billed to the Customer, then Rule 504(3) ceases to apply and the liability passes back to the retailer, and the retailer must then commence paying the Service Provider.
7.4(g)	Distribution Services – Invoicing, Payment and Interest	<p>The AER does not accept clause 7.4(g) of SP AusNet’s terms and conditions. The AER requires SP AusNet to amend clause 7.4(g) in accordance with Revision 12.6.</p> <p>Clause 7.4(g) deals with situations where Metering Data is not available for a Customer. In certain situations, a Service Provider may either issue an invoice based upon an Estimated Meter Reading or include the charges for that Customer for the unavailable period in a subsequent invoice.</p> <p>Clause 7.4(g) allows the Service Provider to issue charges in a later invoice if the metering data for the relevant period is unavailable at the time of invoicing. However, the clause does not state when the new invoice will be issued, merely that it will occur after the data has</p>	<p>The AER requires SP AusNet to amend clause 7.4(g) as follows:</p> <p>Insert the following after “...becomes available”: “but no later than the second invoice after the Metering Data becomes available.”</p>	<p>SP AusNet does not accept the AER’s required revision.</p> <p>Under the AER’s proposed wording which would mandate invoicing “<i>no later than the second invoice after the Metering Data becomes available</i>”, an invoice would need to be provided within 4 weeks of the data becoming available for those retailers with two weekly billing cycles.</p> <p>It is SP AusNet’s policy, and the basis of our billing systems and processes, to avoid where possible billing customers on estimated reads, and further to ensure that bills are based on verified data and correctly assigned tariffs and customer</p>

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		<p>become available.</p> <p>The AER is concerned that the current drafting of this clause does not specify a limitation on how subsequent the subsequent invoice can be. This could potentially allow a payment to be included many months in arrears, rendering reconciliation by the User difficult.</p> <p>The AER considers that the charges should be invoiced no later than the second invoice after the data becomes available. This will allow the User to recover the costs of the service from the Customer while providing the Service Provider with greater certainty. The AER considers this outcome to be consistent with the NGO because it promotes the efficient operation and use of SP AusNet's gas services, aspects of the NGO.</p>		<p>parameters. This ensures that bills, when issued, are correct and helps reduce the time and effort from ourselves and the retailers associated with rebilling.</p> <p>Whilst generally this approach does not delay billing longer than a month after data is available, there are a few scenarios, applicable in a small number of cases, where billing of a retailer may be delayed more than 4 weeks after the data is received. A typical scenario might be where a new connection for a large customer has been established in our data system and metering data obtained, but for which details of tariff parameters are still being finalised and entered into our billing system. Another scenario may be where the data obtained in the first read of a customer is inconsistent with the information provided with a new connection and hence discussion regarding this data and potentially further discussions with respect to appropriate tariffs are required.</p> <p>SP AusNet accepts that invoices should be raised as soon as</p>

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
				reasonably practicable after the data becomes available and proposes that instead of the 2 invoicing period cut-off to insert a positive obligation on the Service Provider to invoice as soon as reasonably practicable after the metering data becomes available. This will provide a basis for retailers to raise concerns regarding unexplained delays in billing, but ensure that SP AusNet has discretion in a small number of cases to avoid potential rebilling by delaying billing to ensure that it has a rigorous basis.
7.6(d)	Guaranteed service level payment	<p>The AER does not accept the deletion of clause 7.6(d) of SP AusNet’s terms and conditions. The AER requires SP AusNet to reinsert clause 7.6(d) in accordance with Revision 12.6.</p> <p>Clause 7.6(d) was deleted on the basis that it is not required under the National Energy Retail Rules,⁹ and it is generally unnecessary that this notification be made by a distributor to a retail business.¹⁰</p>	<p>The AER requires SP AusNet to amend clause 7.6(d) as follows:</p> <p>Reinsert clause 7.6(d), which states: “The Service Provider must notify the User where it makes a Guaranteed Service Level payment directly to a Customer under the Regulatory Instruments.”</p>	SP AusNet accepts the AER’s required revision and will update Part C of its Access Arrangement Revision accordingly.

⁹ NERR, r. 84.

¹⁰ SP AusNet, *2013-2017 Gas Access Arrangement Review – Access Arrangement Information*, 30 March 2012, p. 258.

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		<p>The AER considers that, in view of the delay to the adoption of NECF in Victoria, clause 7.6(d) should be reinstated. The AER is concerned that if there was no obligation on a Service Provider to notify a User when it makes a Guaranteed Service Level payment, there would be a risk of double payments being made to Users. The AER considers this outcome to be consistent with the NGO because it promotes the efficient operation of natural gas services, an aspect of the NGO.</p>		
9.2(c)	<p>Provision of information concerning Class A Inquiries, Class B Inquiries and Class C Inquiries</p>	<p>The AER does not accept clause 9.2(c) or clause 9.2(d) of SP AusNet’s terms and conditions. The AER requires SP AusNet to amend clause 9.2(c) in accordance with Revision 12.8, and clause 9.2(d) in accordance with Revision 12.9.</p> <p>The AER considers that where a Service Provider is required to make information available to a User under clause 9.2(a), and the Service Provider elects to do so by publishing the information on its website in accordance with clause 9.2(c), then the Service Provider should be required to notify the User of any change to its website relating to the provision of such information. The AER considers that this requirement is necessary to ensure that the User is made aware of and is able to access</p>	<p>The AER requires SP AusNet to amend clause 9.2(c) as follows:</p> <p>“Where the Service Provider publishes information on a website maintained by or on behalf of the Service Provider under clause 9.2(c), the Service Provider must notify the User of that website’s URL.”</p>	<p>SP AusNet accepts the AER’s required revision and will update Part C of its Access Arrangement Revision accordingly.</p>

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		<p>information that a Service Provider is required to provide to it under cl 9.2(a) and the Regulatory Instruments referred to in that clause.</p> <p>The AER considers that clause 9.2(c) would otherwise be inconsistent with the NGO, as it may result in a situation where a User is not made aware of information that must be made available to it under clause 9.2(a), or is not able to access the information in a timely manner. It would also be inconsistent with the intent behind clause 9.2(a) and the regulatory instruments referred to in that clause, which seek to ensure that information regarding Class A, Class B and Class C Inquiries, and other inquires relating to the Distribution System, is made available to Users, who can in turn make the information available to customers.</p>		
9.2(d)	User indemnity	<p>The AER considers that clause 9.2(d) should include an additional qualification that nothing in the indemnity makes the User liable for disclosure of information where the Service Provider has consented to its disclosure. The AER considers that the inclusion of this carve out would clarify under what circumstances a User can disclose certain information to a customer where it is not expressly required under a relevant Regulatory Instrument. This is consistent with the NGO as it clarifies the parties obligations and ensures that Users are able to provide information to Customers</p>	<p>The AER requires SP AusNet to amend clause 9.2(c) as follows:</p> <p>Insert the following after ‘nothing in this clause 9.2(d) renders the User liable for providing information as required under a relevant Regulatory Instrument’: "or where agreed to in writing by the Service Provider."</p>	<p>SP AusNet accepts the AER’s required revision and will update Part C of its Access Arrangement Revision accordingly.</p>

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		where agreed to by the Service Provider, which in turn promotes the efficient operation of natural gas services.		
9.5(k)	New distribution supply points	<p>The AER does not accept clause 9.5(k) of SP AusNet’s terms and conditions. The AER requires SP AusNet to amend clause 9.5(k) in accordance with Revision 12.10.</p> <p>Clause 9.5 outlines what information must be provided by a User to the Service Provider for each new Distribution Supply Point which the User wishes to be Connected.</p> <p>The AER considers that clause 9.5(k) should be amended to be consistent with the Victorian Gas Interface Protocol (GIP), which provides that the certificate of compliance number is required for Type A meter fixes and the start Work Notice Number is required for Type B meter fixes. The AER considers that this approach is consistent with the NGO as it clarifies the parties’ obligations and ensures that the terms and conditions reflect current regulatory arrangements in Victoria.</p> <p>The AER’s decision takes into account SP AusNet’s submission, which stated that it</p>	<p>The AER requires SP AusNet to replace cl 9.5(k) with the following:</p> <p><i>“where a Certificate of Compliance reference number is not required, a Start Work Notice number.”</i></p>	SP AusNet accepts the AER’s required revision and will update Part C of its Access Arrangement Revision accordingly.

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		was amenable to amending clause 9.5(k) to be consistent with the GIP. ¹¹ This was in response to AGL’s submission which stated that it is current practice to only provide a start work notice number where there is no certificate of compliance. ¹²		
9.10(b)	Assignment of an changes in reference tariffs	<p>The AER does not accept clause 9.10 of SP AusNet’s terms and conditions. The AER requires SP AusNet to amend clause 9.10 in accordance with Revision 12.11.</p> <p>Clause 9.10 describes the obligations of the Service Provider to notify a User, and the obligations of the User to notify affected Customers, of changes in Reference Tariffs.</p> <p>The AER considers that the Service Provider should be required to advise the User of changes to Reference Tariffs within two business days of the Regulator advising the Service Provider that the changes have been verified as compliant. The AER considers that this requirement will ensure that the User is notified in a timely manner of changes to Reference Tariffs and, where the User is a</p>	<p>The AER requires SP AusNet to replace clause 9.10(b) with the following:</p> <p><i>“Where the Regulator advises the Service Provider that changes to Reference Tariffs have been verified as compliant by the Regulator, the Service Provider must notify the User within two business days of any changes that will occur to Reference Tariffs in accordance with the Reference Tariff Policy.”</i></p>	<p>SP AusNet broadly accepts the AER’s required revision and will update Part C of its Access Arrangement Revision accordingly. SP AusNet requests that the additional words “use all reasonable endeavours to” be inserted before the words “notify the User within two business days” just to avoid a situation where an unavoidable delay triggers an automatic breach.</p>

¹¹ SP AusNet/Multinet, Response to retailer submissions, 20 July 2012, p. 42.

¹² AGL, Submission to the AER: SP AusNet, Envestra and Multinet access arrangement proposals, 29 June 2012, Attachment A.

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		retailer, is able to prepare new retail prices and satisfy its own notification requirements to customers. The AER considers that this is consistent with the NGO as it promotes the efficient operation and use of natural gas services.		
10.3(b)	Force Majeure Notice	<p>The AER does not accept clause 10.3(b) of SP AusNet’s terms and conditions. The AER requires SP AusNet to amend clause 10.3(b) in accordance with Revision 12.12.</p> <p>The AER considers that where a r. 100¹³ notice (unplanned interruption) is intended to act as a force majeure notice, this should be made clear by the Service Provider. The AER also considers that such a notice should contain the same details as a force majeure notice. A force majeure event has consequences for the parties’ obligations and it is important that a party receiving a force majeure notice is aware that it is such a notice. Accordingly, the AER considers that a party issuing a force majeure notice should make clear that it is such a notice.</p> <p>The AER considers that the approach of requiring a r. 100 notice, that is also intended to operate as a force majeure notice, to state that it</p>	<p>The AER requires SP AusNet to amend clause 10.3(b) as follows:</p> <p>Insert the following after “...the Service Provider will issue a notice which complies with the requirements of the relevant regulatory instrument”: <i>“specifying that it is also a force majeure notice and containing full particulars of the force majeure event.”</i></p>	<p>SP AusNet broadly agrees with the AER’s Draft Decision.</p> <p>Rule 100 of the National Energy Retail Rules requires the Service Provider to provide information to a retailer at the same time as it is provided to Customers under rule 91. Rule 91 requires information to be provided within 30 minutes. SP AusNet considers that it would be very unlikely to be able to give consideration to the details of a Force Majeure event and notify a User within this timeframe.</p> <p>Therefore, whilst SP AusNet has no issue with the AER’s proposed wording, it does not believe that it would ever seek to combine a planned interruption notification with a</p>

¹³ NERR, r. 100.

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		is also a force majeure notice will avoid any potential uncertainty. This uncertainty creates unnecessary risk to the User, which is a cost. This does not promote an efficiently operating system, an aspect of the NGO.		force majeure notification. Therefore, SP AusNet is of the view that it would be preferable simply to delete its proposed clause 10.3(b) in its entirety and leave the obligation on the parties to notify each other of an FM event. SP AusNet considers this is a clearer way forward than trying to amalgamate an FM notice within a regulatory requirement that does not yet exist and which in any event is intended to achieve a different purpose.
11.2(c)	Consultation prior to Disconnection	<p>The AER does not accept clause 11.2(c) of SP AusNet’s terms and conditions. The AER requires SP AusNet to amend clause 11.2(c) in accordance with Revision 12.13.</p> <p>Clause 11.2 sets out the obligations of the Service Provider and the User to consult prior to the Service Provider disconnecting a customer. Clause 11.2(c) states that the Service Provider may take action to disconnect a customer without notifying or consulting with the User, where the disconnection is due to an Emergency, is undertaken due to a direction or order of an Authority or where relevant Regulatory Instruments require or allow the</p>	<p>The AER requires SP AusNet to amend clause 11.2(c) as follows:</p> <p>Insert the following words at the end of clause 11.2(c): "without notifying the User."</p>	SP AusNet accepts the AER’s required revision and will update Part C of its Access Arrangement Revision accordingly.

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		<p>Disconnection.</p> <p>The AER considers that the words ‘without notifying the User’ should be inserted at the end of clause 11.2(c) to clarify that the Service Provider can only rely on Regulatory Instruments that require or allow the disconnection without notification. The AER does not consider that the Service Provider should be permitted to disconnect a customer without notifying or consulting with the User in every situation where the disconnection is allowed or required under a relevant Regulatory Instrument. This would be inconsistent with the overall intent behind the notification and consultation provisions in clause 11.2. The AER considers that the Service Provider should only be permitted to disconnect a customer without first consulting with a User in certain exceptional circumstances, or where expressly permitted to do so under a Regulatory Instrument.</p> <p>The AER considers that the proposed amendment to clause 11.2(c) ensures that in most circumstances the Service Provider will notify a User prior to disconnecting a customer, and follow the consultation process set out in clause 11.2(a) and (b). This also allows the Service Provider and the User to agree on the procedure to be followed in effecting the Disconnection and the charges to be incurred by</p>		

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		the User. The AER considers that a requirement to notify the User of a disconnection, except in limited circumstances, promotes the efficient operation and use of natural gas services, an aspect of the NGO.		
13.5(c)	Indemnity by the User	<p>The AER does not accept clause 13.5(c) of SP AusNet’s terms and conditions. The AER requires SP AusNet to delete clause 13.5(c) as set out in Revision 12.14.</p> <p>Clause 13.5 describes the circumstances under which the User indemnifies the Service Provider. Clause 13.5(c) states that the User indemnifies the Service Provider against any revenue which, by virtue of clause 508(1) of the National Gas Rules, the Service Provider is unable to collect because of the act or omission of the User.</p> <p>The AER does not agree with the inclusion of clause 13.5(c) in SP AusNet’s proposed terms and conditions. Rule 508(1) of the NGR provides that if a retailer is not permitted to recover distribution service charges from a shared customer under the National Energy Retail Law (NERL) or the National Energy Retail Rules (NERR), then neither is the distributor permitted to recover those charges from the retailer. Rule 508(1) will be introduced into the NGR with the commencement of NECF and therefore will not apply until NECF is implemented in Victoria. The</p>	The AER requires SP AusNet to delete clause 13.5(c).	<p>SP AusNet does not agree with the AER’s required revision.</p> <p>SP AusNet maintains its position that Rule 508(1) could act to prevent the Service Provider recovering legitimate charges from retailers where a retailer is not permitted to recover those charges from a customer due to an act or omission (such as a delay in invoicing) of the retailer. SP AusNet considers that this scenario is not what Rule 508 intended, but is a real possibility due to the drafting of Rule 508(1).</p> <p>The intention of clause 13.5(c) is to provide that the User must compensate the Service Provider for lost charges revenue where the User is not permitted to charge a customer due to the fault of the User. It does not prevent the operation of Rule 508(1) but instead addresses the consequences where that rule is</p>

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		<p>AER considers that clause 13.5(c) would allow SP AusNet to circumvent the operation of r. 508(1) in anticipation of the commencement of NECF, by requiring the User to indemnify the Service Provider for any revenue which it cannot recover by virtue of r. 508(1), where it is due to the User’s act or omission.</p> <p>The AER considers that to ensure consistency with the NGO, the terms and conditions of an access arrangement should reflect and support the operation of relevant regulatory instruments. The regulatory framework has been designed to ensure the efficient operation of natural gas services, having regard to the long term interests of consumers, and therefore should not be circumvented via the terms and conditions of an access arrangement.</p> <p>The AER’s decision takes into account AGL and Origin’s submissions, which proposed deleting clause 13.5(c) on the basis that it seeks to make Users liable for loss of revenue of the Service Provider that it would be prohibited from recovering under r. 508 of the NGR.¹⁴ APG also considered that 13.5(c) should be amended to limit its application to situations where the</p>		<p>activated due to a default by the User.</p> <p>SP AusNet considers that the intent of clause 13.5(c) would be clearer if additional wording was added to the clause. SP AusNet has, therefore, redrafted the clause to provide that it is only activated where the User has not issued its own invoices in accordance with good industry practice (and so denying the Service Provider the opportunity to recover its revenue).</p> <p>SP AusNet does not consider this is inconsistent with rule 508(1). Rule 508(1) still operates, but the User must compensate the Service Provider where (and only where) the User has triggered its operation. Further SP AusNet considers its proposal is consistent with the NGO. SP AusNet contends that it is not consistent with the NGO that a Service Provider be exposed to a permanent loss of revenue by an act</p>

¹⁴ Origin, *Submission to the AER: SP AusNet, Envestra and Multinet access arrangement proposals*, 28 June 2012, p. 6; AGL, *Submission to the AER: SP AusNet, Envestra and Multinet access arrangement proposals*, 29 June 2012, Attachment A.

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		<p>Service Provider is unable to collect revenue due to the negligent act or omission of the User.¹⁵</p> <p>SP AusNet was not amenable to amending clause 13.5(c). SP AusNet did not agree with APG and argued that there may be scenarios where the User is not negligent but where the Service Provider should not be prevented from recovering charges, for example, where the User decides not to invoice a customer.¹⁶ In response to Origin and AGL’s submissions, SP AusNet argued that it would be unfair if a Service Provider is precluded from recovering charges by operation of r. 508 of the NGR, where a User cannot recover charges due to its own act or omissions.¹⁷ SP AusNet stated that the clause is not seeking to abrogate r. 508 of the NGR, but simply to ensure Users both recover legitimate charges from customers and do not seek to use r. 508 as a means to deny Service Providers legitimate charges.</p> <p>The AER acknowledges SP AusNet’s argument that it would be unfair to preclude a Service</p>		<p>or omission of the User and be denied any means of recovering this. Such a consequence threatens quality and security of supply because it jeopardises the ability of the Service Provider to recover its efficient costs.</p>

¹⁵ Australian Power and Gas, Submission to the AER: SP AusNet, Envestra and Multinet access arrangement proposals, 29 June 2012.

¹⁶ SP AusNet/Multinet, Response to retailer submissions, 20 July 2012, pp. 45–6.

¹⁷ SP AusNet/Multinet, Response to retailer submissions, 20 July 2012, p. 46.

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		<p>Provider from recovering charges where a User cannot recover the charges due to its own act or omission. However, the AER notes that s. 508(1) of the NGR only precludes a distributor from recovering charges where the retailer is not permitted to recover those charges under the NERL or the NERR. Section 508(1) of the NGR does not, therefore, apply to all circumstances where a User is unable to recover distribution service charges from a customer. The AER does not agree with SP AusNet’s submission on the basis that this clause is inconsistent with the NGO, as it seeks to circumvent the operation of s. 508(1) of the NGR in anticipation of the commencement of NECF in Victoria.</p>		
13.6(a)	Exemption of liability	<p>The AER does not accept clause 13.6(a) of SP AusNet’s terms and conditions. The AER requires SP AusNet to amend clause 13.6(a) in accordance with Revision 12.15.</p> <p>Clause 13.6 describes the circumstances under which a party will not be liable to the other party. Clause 13.6(a) provides that the Service Provider is not liable to any penalty or damages for failing to convey Gas through the Distribution System if the failure arises out of any accident or cause beyond the Service Provider’s control.</p> <p>The AER considers that the exemption in clause</p>	<p>The AER requires SP AusNet to replace clause 13.6(a) with the following:</p> <p>“The Service Provider is not liable to any penalty or damages for failing to convey Gas through the Distribution System to the extent that the failure arises out of any accident or cause, where that accident or cause is beyond the Service Provider’s control.”</p>	<p>SP AusNet accepts the AER’s required revision and will update Part C of its Access Arrangement Revision accordingly.</p>

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		<p>13.6(a) should only apply to the extent that the failure to convey Gas through the Distribution System arises out of any accident or cause beyond the Service Provider’s control. Where there are multiple causes for the Service Provider’s failure to convey Gas to a User, or where the Service Provider fails to take action which it could reasonably take to mitigate the risk that it will be unable to convey gas, then the Service Provider should be liable to the extent that the failure was within its control.</p> <p>The AER also considers that the clause should be amended to clarify that the exemption only applies to an accident that is also beyond the Service Provider’s control. As the clause is currently drafted, there is some ambiguity around whether the ‘accident’ as well as the ‘cause’ must be beyond the Service Provider’s control. The AER does not consider that the Service Provider should be exempt from liability for a failure to convey gas, where the failure is due to an accident which was within the Service Provider’s power to avoid or to mitigate.</p> <p>In summary, the AER considers that the above amendments to clause 13.6(a) are consistent with the NGO as they operate to ensure that the Service Provider bears the risk of failing to convey gas through the distribution system where it is able to avoid or mitigate that risk. The</p>		

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		<p>AER considers that this will incentivise the Service Provider to take active steps to avoid or mitigate this risk, which in turn promotes the efficient operation of natural gas services, an aspect of the NGO.</p> <p>The AER’s proposed amendment to clause 13.6(a) is supported in part by AGL’s submission, which stated that for the purposes of legal clarity, the exemption in clause 13.6(a) should only apply to the extent that the failure arises out of any accident.¹⁸ SP AusNet also stated that it was amenable to this aspect of the proposed revision to clause 13.6(a).¹⁹</p>		
19.2(b) and 19.2(c)	Amendment to an Agreement	<p>The AER does not accept clause 19.2(b) or clause 19.2(c) of SP AusNet’s terms and conditions. The AER requires SP AusNet to delete 19.2(b) in accordance with Revision 12.16, and amend clause 19.2(c) in accordance with Revision 12.17.</p> <p>Clause 19.2(b) provides that it is the intention of the Service Provider and the User that the terms of this Agreement are at all times the same as the Reference Service Terms.</p>	<p>The AER requires SP AusNet to delete clause 19.2(b).</p> <p>Replace 19.2(c) with the following:</p> <p>“If during the course of the Agreement, there are any additions or variations to the Reference Service Terms, the parties may agree in writing to amend the Agreement to adopt any of the new</p>	<p>SP AusNet does not agree with the AER’s required revisions to clauses 19(b) and 19(c).</p> <p>SP AusNet’s specific concern, which the proposed drafting had intended to overcome, is that once the AER has made its Final Decision, including in respect of the non-tariff terms and conditions, there is then a need to negotiate amendments to the existing</p>

¹⁸ AGL, Submission to the AER: SP AusNet, Envestra and Multinet access arrangement proposals, 29 June 2012, Attachment A.

¹⁹ SP AusNet/Multinet, Response to retailer submissions, 20 July 2012, p. 48.

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		<p>The AER considers that the ability for a Service Provider and User to negotiate the most appropriate agreement for their commercial circumstances is consistent with a competitive market outcome, which can drive efficiencies, an aspect of the NGO. The AER considers that the clause 19.2(b) acts to restrict the ability of the parties to negotiate and limits their commercial flexibility, which may impede competition at the retail level. SP AusNet’s proposed term is therefore not consistent with the NGO.</p> <p>The AER also notes that s. 322 of the NGL provides that nothing in the NGL is to be taken as preventing a Service Provider from entering into an agreement that is different from an applicable access arrangement that applies to that pipeline service.</p> <p>The AER considers that clause 19.2(c) has the effect of providing for an automatic variation to the Agreement when there is a change to the Reference Service Terms.</p> <p>The AER considers that the parties should have the flexibility to consider adopting changes to the Reference Service Terms, but that the automatic adoption of any changes could lead to terms they had agreed to exclude from the Agreement being included by the operation of clause</p>	<p>or varied Reference Service Terms.”</p>	<p>contractual arrangements with Users, which otherwise will continue to reflect the previous Access Arrangement terms and conditions. Historically, Users have not agreed to amend the existing terms and conditions, leaving the agreements with Users out of step with the approved Access Arrangement terms and conditions.</p> <p>SP AusNet is of the view that that it is both desirable and necessary for the terms and conditions on which pipeline services are provided correspond so far as possible to the relevant Reference Tariffs approved by the AER through the Access Arrangement Review process. The Reference Tariffs are based on a number of factors, including the terms on which Services are provided. If Reference Tariffs change at an Access Arrangement Review, but the haulage agreements do not change, then the Users are getting a Reference Tariff that is not applicable to the terms and conditions they have in place with Service Providers.</p> <p>The AER’s reasoning for this required</p>

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		<p>19.2(c).</p> <p>The AER considers that it is important to make it clear that any amendment to the Agreement will require the written agreement of both parties.</p> <p>The AER is concerned that a term providing for the automatic variation of the Agreement has potential to cause uncertainty and confusion. This uncertainty creates additional risk to the User, which does not promote efficient investment in and operation of the network, an aspect of the NGO.</p> <p>AGL submits that clauses 19.2(b)-(d) are superfluous and appear to enable the Service Provider to unilaterally change the terms. AGL proposed that the terms should therefore be deleted.²⁰</p> <p>The AER does not consider that clause 19.2(c) allows SP AusNet to unilaterally vary the Agreement, as submitted by AGL. Rather, the clause provides for an automatic variation to the Agreement when there is a change to the Reference Service Terms. However, the AER considers that this clause should be amended. For the reasons set out above, the AER does</p>		<p>revision is principally the fact that the AER is concerned the clauses proposed by SP AusNet eliminate the ability for the Users and the Service Provider to negotiate terms outside the approved terms and conditions of an Access Arrangement. SP AusNet, therefore, proposes to make it clearer in the drafting that, whilst the intention is for the haulage agreements to reflect the access arrangement terms and conditions, this is always subject to the User and Service Provider negotiating terms outside that framework. Please refer to clause 19.2 for SP AusNet’s revised wording.</p> <p>SP AusNet considers that this approach addresses the principal concerns of both the AER and SP AusNet, as well as being consistent with section 322 of the National Gas Law and the NGO.</p> <p>This is designed to avoid any confusion as to which terms and conditions are in effect between</p>

²⁰ AGL, *Submission to the AER: SP AusNet, Envestra and Multinet access arrangement proposals*, 29 June 2012, Attachment A.

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Clause	Description	Summary of AER Draft Decision	AER Required Revisions	SP AusNet Response
		not consider that a clause that provides for the automatic variation of the Agreement is consistent with the NGO.		Users and Service Providers and also avoids mechanically having to update each haulage agreement. The current position whereby Users get the benefit of new Reference Tariffs when approved, but refuse to amend their haulage agreements to reflect the corresponding approved terms and conditions is not ideal and not consistent with the NGO.