



National Gas Rules Stage 2  
Dispute Resolution  
Agreement

## Dispute Resolution Agreement

The purpose of this document is to establish a DRP for the determination of a dispute referred to the Adviser.

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**Parties to this Agreement:**

The persons referred to in item 1 of Schedule 1 (the **DRP Members**)

**AND**

The persons referred to in item 2 of Schedule 1 (the **Parties**)

**AND**

The person referred to in item 3 of Schedule 1 (the **Adviser**)

**Background**

- A The Adviser has referred the Rule Dispute to a Dispute Resolution Panel for determination, in accordance with rule 135HD of the National Gas Rules.
- B In order to facilitate the establishment of the DRP and the determination of the Rule Dispute by the DRP the Parties wish to enter into this Agreement with each of the DRP Members and the Adviser.

**Operative provisions**

**1 Engagement of DRP Members**

- 1.1 Each DRP Member agrees to his or her appointment as a member of the DRP to hear and determine the Rule Dispute in accordance with:
  - 1.1.1 Part 15C of the National Gas Rules; and
  - 1.1.2 the terms and conditions set out in this Agreement.

**2 Payment of Fees and Expenses**

- 2.1 The Parties are liable for the Fees and Expenses of the DRP Members set out in item 1 of Schedule 1 in accordance with clause 2.4. These may be invoiced as directed by the DRP.
- 2.2 The Parties are liable for the Fees and Expenses of the Adviser set out in item 3 of Schedule 1 in accordance with in clause 2.4.
- 2.3 The Fees and Expenses of the Adviser and the DRP include any fees incurred by the DRP or the Adviser as a result of any subsequent legal proceedings in which the validity or effect of the DRP's determination of the Rule Dispute is challenged. Such payment is subject to any Order that may be made by a Court pertaining to the fees, in any subsequent proceedings.
- 2.4 The Parties are liable for the Fees and Expenses in the respective shares in which the costs are to be borne in accordance with rule 135JA of the National Gas Rules, or as otherwise determined by the DRP.

- 2.5 Where the time required to hear and determine the Rule Dispute exceeds one month, the DRP Members and the Adviser are entitled to be paid on a monthly basis and may render an invoice accordingly.
- 2.6 The Adviser may, in her discretion, raise an invoice for a Party based on a reasonable pre-estimate of the Fees and Expenses for the Rule Dispute, or any stage of the Rule Dispute.
- 2.7 The Fees payable to a DRP Member or the Adviser may include a fee for cancellation of a hearing where a Party has:
- 2.7.1 changed the scheduled time, date or place, failed to attend, or cancelled the hearing, or part of hearing, of the Rule Dispute; and
  - 2.7.2 Not provided at least three week's notice of its intention not to attend the hearing or part of the hearing of the Rule Dispute. This includes cancellation due to settlement or other dispute resolution processes.
- 2.8 The Parties must pay all invoices within 30 days.

### **3 GST**

- 3.1 A Party must pay GST on a Taxable Supply made to it by the Adviser or a DRP Member under this Agreement, in addition to any Consideration (excluding GST) that is payable for that Taxable Supply.
- 3.2 A Party must pay GST on a Taxable Supply made to it by the Adviser or a DRP Member under this Agreement at the same time and in the same way as it is required to pay the Consideration for the Taxable Supply provided that a Tax Invoice is issued in accordance with clause 3.3.
- 3.3 A person making a Taxable Supply to a Party under this Agreement must issue a Tax Invoice to the Party, setting out the amount of the GST payable by the Party.
- 3.4 In this clause, 'Consideration', 'GST', 'Taxable Supply' and 'Tax Invoice' have the meanings attributed to those terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

### **4 Failure to comply with requirements or determinations**

The parties acknowledge that the failure by a Party to comply with a requirement or determination of the Dispute Resolution Panel does not constitute a breach of this Agreement

#### **Publication of determination.**

- 4.1 Each DRP Member:

- 4.1.1 jointly owns with other members of the Dispute Resolution Panel all intellectual property rights arising out of any determination made by the Dispute Resolution Panel; and
- 4.1.2 Gives the Parties, the AER and the Adviser an unlimited and perpetual licence to use, disclose, publish or copy the determination subject to and in accordance with the National Gas Rules.

## **5 Release and Indemnity**

- 5.1 Each Party releases and indemnifies each DRP Member and the Adviser in relation to any loss, damage or liability that the DRP Member or the Adviser suffers or incurs, or would, but for this release and indemnity, suffer or incur, as a consequence of any act or omission done in good faith in connection with the Rule Dispute.
- 5.2 This Agreement does not vary or exclude the operation of section 91KC of the National Gas Law.

## **6 Insurance**

- 6.1 None of the Parties, or the AER is required to provide any insurance in favour of a DRP Member.

## **7 Accession of other parties etc**

- 7.1 Any other person may become a party to this Agreement if that person is joined to a proceeding before the DRP in relation to the Rule Dispute under rule 135HE of the National Gas Rules, subsequent to which each party must execute a deed of accession.
- 7.2 If it is determined that any Party no longer to be a party to a proceeding before the Dispute Resolution Panel, all parties must execute a deed of variation releasing that Party from any further liability under this Agreement from the date of that Party's removal from the proceeding.

## **8 Conflicts of interest**

- 8.1 In clause 8, "**conflict of interest**" means an interest of a DRP Member that may conflict, or that may reasonably be seen to conflict, with the DRP Member's obligation to resolve the Rule Dispute impartially.
- 8.2 Each DRP Member must immediately advise each Party and the Adviser if the DRP Member becomes aware that the DRP Member has a conflict of interest.
- 8.3 Except with the consent of each Party and the Adviser, a DRP Member:
  - 8.3.1 must not continue to hear and determine the Rule Dispute if the DRP Member has a conflict of interest; and

- 8.3.2 is not entitled to be paid Fees in respect of any time spent hearing and determining the Rule Dispute that occurs after the DRP Member became aware, or ought reasonably to have become aware, of the conflict of interest.

## **9 General provisions**

### **Entire agreement**

- 9.1 Subject to the National Gas Rules, this Agreement contains everything the parties have agreed on in relation to the matters it deals with.
- 9.2 No party can rely on an earlier agreement, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this Agreement was executed, except as permitted by the National Gas Law or National Gas Rules.

### **Execution of separate documents**

- 9.3 This Agreement is properly executed if each party executes either this Agreement or an identical document embodying this Agreement.
- 9.4 If identical Agreements are executed, this Agreement takes effect when the separately executed Agreements are exchanged between the parties.
- 9.5 The parties will promptly do and perform all acts and things and execute all agreements as may from time to time be required, and at all times will act in good faith, for the purposes of or to give effect to this Agreement.

### **Governing law and jurisdiction**

- 9.6 This document is governed by the law of the State in which the Rule Dispute is to be heard, as specified in item 5 of Schedule 1.
- 9.7 The parties submit to the non-exclusive jurisdiction of the courts of the State as set out in item 5 of Schedule 1.
- 9.8 The parties must not object to the exercise of jurisdiction by the courts of the State as set out in item 5 of Schedule 1.

### **No agency or partnership**

- 9.9 No party is an agent, representative or partner of any other party by virtue of this Agreement.

### **No authority to act**

- 9.10 No party has any power or authority to act for or to assume any obligation or responsibility on behalf of another party, to bind another party to any agreement, negotiate or enter into any binding relationship for or on behalf of another party or pledge the credit of another party except as specifically provided in this Agreement or by express agreement between the parties.

### **Severability**

- 9.11 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 9.12 If any clause or part of a clause of this Agreement is illegal, unenforceable or invalid, that clause or part must be treated as removed from this Agreement, but the rest of this Agreement is not affected.

### **Variation**

- 9.13 No variation of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.

### **Waiver**

- 9.14 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party.
- 9.15 A waiver by a party is only effective if it is in writing.
- 9.16 A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

## **10 Definitions and interpretation**

### **Definitions**

- 10.1 In this Agreement the following definitions apply:

**Adviser** has the meaning given to that term in Part 15C of the National Gas Rules and is named in item 3 of Schedule 1.

**AER** means the Australian Energy Regulator, a constituent part of the Australian Competition and Consumer Commission.

**Agreement** means this agreement.

**Dispute Resolution Panel** or **DRP** means the panel established by the Adviser in accordance with clause 135HB to determine the Rule Dispute.

**Expenses** means the expenses (including room hire, travel, accommodation, provision of transcripts and other incidental expenses) that are reasonably incurred by a DRP Member and the Adviser in relation to the Rule Dispute. **Fees** means the fees payable to a DRP Member or the Adviser in relation to the Rule Dispute.

**National Gas Law** means the Schedule to the National Gas (South Australia) Act 2008.

**National Gas Rules** means the National Gas Rules as defined in the National Gas Law.

**Parties** includes each of the Parties named in item 2 of Schedule 1 and any other entity that becomes a party to this Agreement under clause 9. .

**Rule Dispute** has the meaning given to that term in Part 15C of the National Gas Rules and is briefly described in item 4 of Schedule 1.

## Interpretation

10.2 In this Agreement, unless the context otherwise requires:

- 10.2.1 a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- 10.2.2 a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- 10.2.3 a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement unless otherwise stated;
- 10.2.4 an expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency;
- 10.2.5 a reference to a business day means a day on which all banks are open for business generally in the State as set out in clause 5 of Schedule 1;
- 10.2.6 if the day on which any act, matter or thing is to be done under this Agreement is not a business day, that act, matter or thing may be done on the next business day;
- 10.2.7 a covenant or agreement on the part of two or more persons binds them jointly and severally; and
- 10.2.8 the schedules and attachments form part of this Agreement.



**Execution**

Executed as an agreement

Date:

Signed by DRP: .....

( Print Name):

Signed by the Dispute Resolution Adviser .....  
Shirli Kirschner

Signed for and on behalf of [Party One] by its  
authorised representative: .....  
(Print name):

Signed for and on behalf of {party 2] by its  
duly authorised representative: .....  
(Print Name):

## Schedule 1

### 1 **DRP Members**

1.1 The name, address, fees and expenses of each DRP Member are:

Name	DRP
Address	
Hourly fee	
Daily fee	
Expenses	Economy airfares and daily allowances

### 2 **Parties**

2.1 The name, ACN and addresses of each Disputing Party is:

Name	
Address	

Name	Australian Energy Market Operator Limited
ABN	94 072 010 327.
Address	15 William Street Melbourne Vic 3000

**3 Adviser**

3.1 The name, address, fees and expenses of the Adviser are:

Name	Shirli Kirschner
Address	PO Box Paddington 2021
Fee (administration)	\$70.00 outsourced
Fee (facilitation)	\$3,000.00 per day plus GST
Expenses	At Government rates for accommodation and meals

**4 Description of Rule Dispute**

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**5 Relevant State**

5.1 The State for the purposes of governing law, jurisdiction and business days is

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