

Draft Decision

AusNet Gas Services

Access Arrangement 2023 to 2028

(1 July 2023 to 30 June 2028)

Attachment 11

Non-tariff components

December 2022

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Note

This attachment forms part of the AER’s draft decision on the access arrangement that will apply to AusNet Gas Services (AusNet) for the 2023–28 access arrangement period. It should be read with all other parts of the draft decision.

The draft decision includes the following documents:

Overview

Attachment 1 – Services covered by the access arrangement

Attachment 2 – Capital base

Attachment 3 – Rate of return

Attachment 4 – Regulatory depreciation

Attachment 5 – Capital expenditure

Attachment 6 – Operating expenditure

Attachment 7 – Corporate income tax

Attachment 8 – Efficiency carryover mechanism

Attachment 9 – Reference tariff setting

Attachment 10 – Reference tariff variation mechanism

Attachment 11 – Non-tariff components

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Attachment 13 – Capital expenditure sharing scheme

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11 Non-tariff components

This attachment sets out our draft decision on the following non-tariff components of AusNet’s proposed access arrangement for the 2023–28 access arrangement period:

- queuing requirements – a process or mechanism for establishing an order of priority between prospective users of spare and/or developable capacity
- extension and expansion requirements – the method for determining whether an extension or expansion is part of the covered pipeline and the effect this will have on tariffs
- capacity trading requirements – the arrangements for users to assign contracted capacity and change receipt and delivery points
- change of receipt or delivery point by the user – the process or mechanism for changing a user’s receipt or delivery point
- the terms and conditions for the supply of reference services
- a review submission date and revision commencement date for the next access arrangement period.

11.1 Draft decision

Our draft decision approves the majority of the non-tariff components of AusNet’s proposed access arrangement for the 2023–28 period.

AusNet’s proposed queuing, extension and expansion, and capacity trading requirements and proposed approach to changing users’ receipt or delivery points are substantively unchanged from those approved for the current, 2018–22 period. We received no submissions on these elements of the proposed access arrangement. We remain satisfied that they meet the requirements of the National Gas Rules (NGR), and our draft decision is to accept them.

We have also accepted AusNet’s proposed review submission and commencement dates for its 2023–28 access arrangement. AusNet’s next access arrangement period will commence on 1 July 2028. Its proposed review submission date of 1 June 2027 allows a period of 13 months in which we can consult on, and assess, its proposed revisions to the access arrangement before its commencement. This is one month longer than the minimum period required by the NGR. It provides valuable flexibility to our review process and the periods of time we will be able to allow for stakeholder submissions during that review.

There are, however, a small number of elements of the terms and conditions set out in Part C of AusNet’s proposed access arrangement around customer data and credit support that we have decided require further consideration by AusNet in its revised proposal before we can accept them. These are set out in section 11.5 of this attachment.

Since AusNet has submitted its proposal, the Australian Energy Market Commission (AEMC) has made the *National Gas Amendment (DWGM Distribution connected facilities) Rule 2022*. That rule amends the NGR to allow the participation of distribution connected facilities in the Victorian gas market. It contemplates a range of matters to be addressed, or managed, in accordance with the terms and conditions of a distributor’s access arrangement. The final

rule will come into effect on 1 May 2024, within the first year of the 2023-28 period. As the final rule was not made in time for AusNet’s proposal, we expect to see the rule fully addressed in the revised proposal.

We are mindful that there will be limited time for iterative engagement on options and solutions between submission of AusNet’s revised proposal in January 2023 and the close of stakeholder submissions in February 2023. We have therefore encouraged AusNet to make full use of the time available between the publication of the final rule in September and submission of its revised proposal in January 2023 to engage on options and solutions with a view to presenting a revised proposal that has stakeholder support.

11.2 Queuing requirements

Queuing requirements establish a process or mechanism (or both) for establishing an order of priority between prospective users of spare or developable capacity (or both) in which all prospective users (whether associates of, or unrelated to, the service provider) are treated on a fair and equal basis.¹

Clause 5.5.1-5.5.2 of Part A of AusNet’s proposed access arrangement sets out the queuing arrangements applicable to requests for new Connections or modifications to existing Connections. These are unchanged from those approved for the current access arrangement period. We have received no submissions on these arrangements, and remain satisfied that they satisfy the requirements of the NGR. Our draft decision is therefore to accept these elements of the proposed access arrangement.

11.3 Extension and expansion requirements

The extension and expansion requirements in an access arrangement specify the method for deciding whether an extension or expansion occurring during an access arrangement period will be treated as part of the covered pipeline and, if so, the impact this will have on reference tariffs. An 'extension' allows the pipeline to service new locations, while an 'expansion' increases the amount of gas an existing length of pipeline can carry.

The NGR requirements for extensions and expansions are in rule 104, which provides:

- the access arrangement may state whether it will apply to incremental services to be provided as a result of a particular extension to, or expansion of the capacity of, the pipeline, or outline how this may be dealt with at a later time: r. 104(1)
- if an access arrangement is to apply to incremental services, the requirements must deal with the effect of the extension or expansion on tariffs: r. 104(2)
- the requirements cannot require the service provider to provide funds for extension or expansion works unless the service provider agrees: r. 104(3).

AusNet’s proposed extensions and expansions requirements are set out in clause 5.6 of Part A of its access arrangement. These are substantively unchanged from those approved for the current access arrangement period. We have received no submissions on these

¹ NGR, r. 103(3).

arrangements. We remain satisfied that they satisfy the requirements of the NGR. Our draft decision is therefore to accept these elements of the proposed access arrangement.

11.4 Capacity trading requirements and changing receipt/delivery points

A typical access arrangement must set out capacity trading requirements, which deal with the transfer of a user's contracted capacity to another user.²

However, capacity trading between users is not possible on AusNet's Victorian distribution network. Unlike a transmission pipeline, Network Users do not have reserved capacity within the Network. The capacity of the Network is determined by the capacity of the Receipt Points to accept gas into the Network and the capacity of the delivery points to deliver gas out of the Network.

The Victorian gas market is different to other Australian gas markets. Those markets are based on bilateral arrangements between producers, major users and retailers linked together through pipeline hubs connecting gas fields to gas consumers. In Victoria, by comparison, the receipt points on a distribution network are 'system withdrawal points' for the purposes of the Declared Wholesale Gas Market (DWGM) rules which are set out in Part 19 of the NGR, and the capacity of those points is allocated in accordance with those rules.

Similarly, delivery points on the Victorian gas distribution networks are 'distribution supply points' for the purposes of the Victorian Retail Market Procedures, and can be transferred between network users in accordance with those procedures.

AusNet proposed no changes to the existing clauses dealing with capacity trading and changing receipt/delivery points, which are in clauses 7.7 and 7.8 of Part A of its access arrangement. These effectively provide that:

- There are no applicable capacity trading requirements for the purposes of rules 48(1)(f) or 105(1) of the NGR;
- Any change to a receipt or delivery point will require the consent of the Service Provider, which will not be withheld without reasonable technical or commercial grounds;
- As the only receipt points are the custody transfer points between AusNet's distribution system and other networks, it is unlikely the Service Provider would consent to a request to change a receipt point.
- Requests for changes to any Customer Distribution Supply Point will be considered on a case-by-case basis, subject to technical and commercial feasibility, and will continue to be offered as a Service other than a Reference Service.

We received no submissions on this component of the access arrangement. We maintain our view that this approach is acceptable in the unique arrangements governing the Victorian gas market. Our draft decision is therefore to accept these elements of the proposed access arrangement.

² NGR, r. 48(1)(f).

11.5 Terms and conditions

The National Gas Rules (NGR) require an access arrangement to specify, in addition to the reference tariff, the other terms and conditions on which each reference service will be provided.³ These must be consistent with the National Gas Objective (NGO):⁴

to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.⁵

In deciding whether the terms and conditions are appropriate, the AER must have regard to the risk-sharing arrangements implicit in the reference tariff.⁶ This requires us to assess and balance the competing interests of the service provider, network users and consumers, in particular:

- the allocation of risk, where we consider the NGO is generally best served where a risk is borne by the party best able to manage it; and
- the need to ensure clarity and certainty, while avoiding an unduly prescriptive approach on commercial matters.

AusNet's proposed terms and conditions are set out in Part C of its access arrangement. They have been amended from those approved for the current period to:

- Align the terms and conditions with the current NGR and retail market system business-to-business (B2B) procedures.
- Ensure consistency with jurisdictional terminology and definitions.
- Reflect electronic means of communications (e.g., adding customer email address and customer mobile phone number, and removing facsimile as a means of notification).
- Relocate non-reference services charges from Schedule 3 of Part C to Appendix A of AusNet's Reference Service Proposal.
- Make other minor editorial amendments.

While these amendments are limited, submissions to this review have identified a number of areas of concern with AusNet's proposed terms and conditions and asked us to consider whether further amendments should be required. We discuss these in the sections below.

Our required revisions also record a minor drafting error that AusNet has confirmed it will correct in its revised proposal.⁷

³ NGR, r. 48(1)(d)(ii).

⁴ NGR, r. 100(1)(a).

⁵ NGL, s. 23.

⁶ NGR, r. 100(2).

⁷ Proposed clause 1.1 of Part C of the access arrangement has been amended so that capitalised words or phrases in an Agreement have the definition given to that word or phrase in this Part C of the Access Arrangement, or otherwise, the definition given to that word or phrase in the National Electricity Law or the National Electricity Rules. This will be amended in the revised proposal to refer to the National Gas Law and Rules.

11.5.1 Access Arrangement Part C, clause 9.1(g) - Communications regarding customers and system data

Clause 9.1(g) of Part C of AusNet’s proposed access arrangement (unchanged from the current period) provides that:

The User acknowledges and agrees that in accordance with the Gas Leaks and Emergencies Calls Protocol, the User must:

- (1) provide to Customers supply and appliance faults contact telephone numbers; and
- (2) publish on its Customers’ accounts the “Supply and Appliance Faults Numbers” which may be a separate number for each of supply faults and appliance faults.

Submissions suggested that the Gas Leaks & Emergencies Calls Protocol is no longer a readily available document, making the requirements of this clause unclear. We put this concern to AusNet.⁸

AusNet has clarified that the Gas Leaks and Emergencies Calls Protocol is maintained by the Gas Retail Consultative Forum. It creates an agreed arrangement for retailers and distributors to handle customer gas leaks and emergency calls by prioritising ‘meter’ and ‘service’ call types as one of three classes (Class A, B or C) based on the action required to resolve the call and the associated risk.

The Protocol is referred to in a number of paragraphs of the proposed access arrangement, either directly (see clauses 9.1(g) and 9.1(h)) or indirectly, by referring to a Class A, B or C enquiry (see clauses 9.1(b), 9.1(c), 9.1(f), 9.1(h), 9.1(i), 9.1(k), 9.2(a), 9.2(b), 9.7(a), 9.7(b)).

Given its continued relevance to AusNet’s processes and ensuring a timely response to certain classes of customer enquiries, AusNet has indicated that it will take steps to make the Protocol more readily available by:

- re-publishing the Protocol for the benefit of retailers and other stakeholders on AusNet’s website.
- amending the definition of “Gas Leaks and Emergency Calls Protocol” in Part A of the proposed access arrangement to refer to the website.

We are satisfied that these measures will resolve the concern that has been raised, and our draft decision therefore accepts this clause subject to the revised definition proposed.

11.5.2 . Access Arrangement Part C, clause 9.4 – Customer details

Clause 9.4 of the proposed access arrangement lists information a User must provide to AusNet in respect of each customer, with some new or varied requirements relative to the current period.

⁸ AusNet - IR022 - AA non-tariff components - concerns raised in stakeholder submissions – 24 October 2022.

In submissions (and in early engagement with AusNet’s Retailer Reference Group), retailers questioned the level of detail required and whether this clause unnecessarily duplicates existing obligations on retailers. Additional concerns raised include that AusNet’s requirements include information retailers may not have, and that the means of providing this information to AusNet in accordance with the access arrangement may not be secure. We put these concerns to AusNet.⁹

AusNet has acknowledged that the proposed information requirements in clause 9.4 of Part C of its access arrangement are also included in the Gas Retail Market System’s B2B procedures, and the life support information specified Energy Retailer Code of Practice. In its proposal, AusNet submitted that inclusion of these requirements in the access arrangement is necessary because market procedures requiring provision of this information to AusNet may not be enforceable by AusNet itself.

In responding to our request for further information, AusNet expanded on this and explained that a number of information fields in market systems are optional for the purposes intended there, but needed by AusNet. These include the Gas Retail Market System’s B2B procedures for fields like customers’ phone numbers and email addresses, information for which AusNet has suggested accuracy is poor. The more stringent delivery requirements for phone numbers and email addresses to support customer service digitisation initiatives does not change the nature of the obligation or the intended usage. Rather it provides a pathway for AusNet to enforce the access to this information it is intended to have.

In further considering the issues raised, AusNet has indicated that it is open to some refinement and clarification of its information requirements, which we have included in the revisions required under this draft decision:

- to cross reference its information requirements for life support customers to the Gas Retail Market System’s B2B procedures and to the energy retailer code of practice
- to make clearer that the requirements in clause 9.4 apply ‘except to the extent the details have already been provided by the User to the Service Provider’
- to update clause 9.4(b)(3) to retain a 1 month timeframe requirement for being notified of a change in customer details (via the gas B2B transactions) and to include this proviso
- to make clearer where requirements apply only where information is available to the retailer.

We have also confirmed with AusNet that transfers of information from retailers to AusNet are via secure B2B transactions, and that any electronic transfers of requisite data from the retailer’s database would be via a mutually agreed manner and format.

11.5.3 Access Arrangement Part C, clause 7.8 – credit support

There are no prescribed credit support arrangements for gas distribution networks and retailers in Victoria. That means that these arrangements are reviewed, proposed and decided upon solely in approved access arrangements.

⁹ AusNet - IR022 - AA non-tariff components - concerns raised in stakeholder submissions – 24 October 2022.

In early engagement with the AER, and with AusNet through its Retailer Reference Group, smaller retailers raised concerns that the credit support arrangements in AusNet's gas distribution access arrangement are more onerous than those for electricity distributors (including AusNet) in Victoria, and for gas and electricity distributors in other jurisdictions. These concerns were raised again in submissions to us as part of this review.

Comparisons have been drawn to:

- The prescribed retail support arrangements between retailers and distributors under Part 21 of the NGR, which apply in jurisdictions other than Victoria and limit the circumstances in which credit support can be requested to retailers with a history of default on payments. These provisions rely instead on a retailer insolvency cost pass through event with no materiality threshold to manage the risk of unexpected retailer failure. This reduces the costs that retailers (and therefore customers) will pay to manage the risk of retailer failure on an on-going basis.
- The current arrangements for Victorian electricity distributors, which pre-date the current, NGR model but are considered to significantly limit the amount of credit support required to be provided relative to the current gas distribution arrangements, unless a retailer presents a high revenue and liquidity risk to the distributor.

AusNet's proposal retains its current credit support requirements, which it considers protects it from small retailer failure. In recognition of the concerns raised above, it noted that if the model in Part 21 of the NGR was adopted it should be adopted in its entirety including amendment of the related retailer insolvency cost pass through event to remove the materiality threshold. This would retain protection from small retailer failures, the costs of which may not pass the materiality threshold for pass through.

We sought information from AusNet in order to better understand how its credit support arrangements have applied in practice over the current access arrangement period. AusNet agreed that the gas credit support arrangements that exist in Victoria are different from those that apply to gas retailers in other jurisdictions and to electricity retailers. That said, while the provisions of its proposed access arrangement are more onerous, AusNet has advised that at least since the commencement of the Victorian gas market in 2001 it has not drawn on the credit support provisions in its access arrangements or otherwise requested a gas retailer to supply a bank guarantee or other form of credit support.

We agree with AusNet this should not be taken as an indication that robust protection against unpaid retailer charges is not required. It is not disputed that AusNet should be allowed to take prudent steps to mitigate the risks unpaid distribution charges pose for its business. What it does suggest is that the risk in question may be of a low probability, if potentially high impact, event.

In that context, we consider an alternative and more proportionate form of protection that manages that risk at a lower upfront cost to retailers (and therefore to customers) is likely to sit better with the NGO, and better balance the competing interests of the service provider, network users and consumers in allocating that risk.

In its revised proposal, we therefore require AusNet to consider and put forward an alternative credit support framework. That alternative—which may be based on Part 21 of the NGR (including related amendments to the retailer insolvency cost pass through event), the

credit support arrangements that apply to electricity distributors in Victoria, or another model—should seek to re-balance risk between AusNet, retailers and customers by exploring ways to reduce the cost of pre-emptive, up-front risk management and balancing this with ex post recovery only where the risk is realised.

11.6 Review submission date and revision commencement date

Rule 49(1) of the NGR requires that a full access arrangement that is not voluntary must contain review submission commencement dates and must not contain an expiry date.

Under the NGR:¹⁰

- a ‘review submission date’ means a date on or before which an access arrangement revision proposal is required to be submitted
- a ‘revision commencement date’ means the date fixed in the access arrangement as the date on which revisions resulting from a review of an access arrangement are intended to take effect.

AusNet’s proposed revision commencement date is 1 July 2028. This is consistent with the 5-year outlook adopted for its 2023-28 proposal and maintains the current cycle of 5-yearly access arrangement reviews.

AusNet’s proposed review submission date is 1 June 2027. This would allow a period of 13 months in which we can consult on and assess its proposed revisions to the access arrangement before its commencement. This is one month longer than the minimum period required by the NGR and provides valuable flexibility to our review process and the periods of time we will be able to allow for stakeholder submissions during that review.

Our draft decision is to accept both proposed dates.

We are conscious, however, that AGN and MGN have proposed reviews submission dates of 1 July 2027. Under the NGR we must accept this proposal, but our draft decisions for AGN and MGN encourage them nonetheless to consider 1 June 2027 as an alternative.

Given the potential benefits to us and to stakeholders of AusNet, AGN and MGN submitting their proposals for consultation at the same time, we would be open to AusNet changing its review submission date to 1 July 2027 if AGN and MGN maintain this position in their revised proposals.

¹⁰ NGR, r. 3.

11.7 Revisions

We require the following revisions to make the access arrangement proposal acceptable.

Table 11.1 Required revisions

Revision	Amendment
Revision 11.1	Make all amendments necessary to give full effect to the <i>National Gas Amendment (DWGM Distribution connected facilities) Rule 2022</i> from 1 May 2024.
Revision 11.2	Access Arrangement Part C, clause 1.1 – Definitions Replace the reference to “the National Electricity Law or the National Electricity Rules” with “the National Gas Law or the National Gas Rules”.
Revision 11.3	Access Arrangement Part A, S2.1 - Definitions Amend the definition of “Gas Leaks and Emergency Calls Protocol to refer to a website on which it can be reliably located throughout the access arrangement period.
Revision 11.4	Access Arrangement Part C, clause 9.4 Review and amend proposed clause 9.4: <ul style="list-style-type: none"> • to cross reference information requirements for life support customers to the Gas Retail Market System’s B2B procedures and to the energy retailer code of practice. • to make clearer that the requirements in clause 9.4 apply ‘except to the extent the details have already been provided by the User to the Service Provider’ • to update clause 9.4(b)(3) to retain a 1 month timeframe requirement for being notified of a change in customer details (via the gas B2B transactions) • to make clearer where requirements apply only where information is available to the retailer
Revision 11.5	Access Arrangement Part C, clause 7.8 – credit support Present an alternative credit support framework that re-balances risk between AusNet, retailers and customers by reducing the cost of pre-emptive, up-front risk management and balancing this with ex post recovery only where the risk is realised. This alternative may be based on Part 21 of the NGR (including related amendments to the retailer insolvency cost pass through event), current credit support arrangements for Victorian electricity distributors, or another model.

Glossary

Term	Definition
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
AGIG	Australian Gas Industry Group
AGN	Australian Gas Networks (Victoria and Albury)
AusNet	AusNet Gas Services Limited
DWGM	Declared Wholesale Gas Market
MGN	Multinet Gas Networks
NGL	National Gas Law
NGO	National Gas Objective
NGR	National Gas Rules