



DRAFT DECISION
AusNet
Gas access arrangement
2018 to 2022

Attachment 11 – Reference
tariff variation mechanism

July 2017

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Note

This attachment forms part of the AER's draft decision on the access arrangement for AusNet for 2018-22. 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 - Value of imputation credits

Attachment 5 - Regulatory depreciation

Attachment 6 - Capital expenditure

Attachment 7 - Operating expenditure

Attachment 8 - Corporate income tax

Attachment 9 - Efficiency carryover mechanism

Attachment 10 - Reference tariff setting

Attachment 11 - Reference tariff variation mechanism

Attachment 12 - Non-tariff components

Attachment 13 - Demand

Attachment 14 - Other incentive schemes

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Shortened forms

Shortened form	Extended form
AER	Australian Energy Regulator
ATO	Australian Tax Office
capex	capital expenditure
CAPM	capital asset pricing model
CESS	Capital Expenditure Sharing Scheme
CPI	consumer price index
DRP	debt risk premium
ECM	(Opex) Efficiency Carryover Mechanism
ERP	equity risk premium
Expenditure Guideline	Expenditure Forecast Assessment Guideline
gamma	Value of Imputation Credits
MRP	market risk premium
NGL	National Gas Law
NGO	national gas objective
NGR	National Gas Rules
NPV	net present value
opex	operating expenditure
PTRM	post-tax revenue model
RBA	Reserve Bank of Australia
RFM	roll forward model
RIN	regulatory information notice
RPP	revenue and pricing principles
SLCAPM	Sharpe-Lintner capital asset pricing model
STTM	Short Term Trading Market
TAB	Tax asset base
UAFG	Unaccounted for gas
WACC	weighted average cost of capital
WPI	Wage Price Index

11 Reference tariff variation mechanism

This attachment sets out the AER's consideration of the reference tariff variation mechanism proposed by AusNet for its Victoria gas distribution network. The reference tariff variation mechanism:

- permits building block revenues to be recovered smoothly over the access arrangement period subject to any differences between forecast and actual demand
- accounts for actual inflation
- accommodates other reference tariff adjustments that may be required, such as for an approved cost pass through event
- sets administrative procedures for the approval of any proposed changes to reference tariffs.

11.1 Annual reference tariff variation mechanism

11.1.1 Draft decision

We do not approve AusNet's proposed haulage reference tariff variation mechanism for the 2018–22 access arrangement period.

Specifically, we have not approved elements of AusNet's proposed tariff variation mechanism formula. These include AusNet's proposed licence fee adjustment factor because our draft decision includes the annual licence fees in the opex forecast and approved revenue requirement for AusNet. Therefore, the provision to make annual licence fee adjustments to revenue through a tariff formula is not required. We also do not approve AusNet's proposed continuation of an 'Adjustment Factor' to account for pass throughs. Instead, for consistency with the formulas applies by other gas distributors, we have included a 'pass through' adjustment factor in the formula to accommodate any AER approved cost pass through amounts. We also have made minor modifications to the formula to improve clarity.

We approve AusNet's tariff variation formula for its ancillary reference services.

11.1.2 AusNet's proposal

AusNet proposed the continuation of a tariff basket price control reference tariff variation mechanism formula for its haulage reference services and a tariff variation formula for its ancillary reference services.¹ This type of formula is commonly known as a weighted average price cap.

¹ AusNet, *Gas access arrangement review 2018–22: Access arrangement information*, 16 December 2016, pp. 291–293.

AusNet noted that in deciding on a reference tariff variation mechanism the AER must have regard to the current regulatory arrangements and consistency of regulatory arrangements for similar services both within and across jurisdictions.² It noted tariff basket price controls have applied to the Victorian gas distributors over three consecutive access arrangement periods and that this type of control is applied universally by regulated gas distributors across jurisdictions. Therefore, AusNet submits its proposal satisfies our regard for consistency with the current arrangements in Victoria and other jurisdictions.

AusNet proposed one change to its current access arrangement formula.³ It proposed the consumer price index (CPI) escalation calculation be based on annual June quarter CPI movements—rather than September quarter movements—so that the CPI escalation would be known prior to submitting its tariff variation proposal.

It also proposed to have the ability to change, introduce or withdraw haulage reference tariffs within a calendar year. Our draft decision on this aspect of AusNet's proposal is in attachment 10—Reference tariff setting.

11.1.3 AER's assessment approach

Under the National Gas Rules (NGR), a reference tariff variation mechanism for an access arrangement:

- must be designed to equalise (in present value terms):
 - forecast revenue from reference services over the access arrangement period and
 - the portion of total revenue allocated to reference services for access arrangement period.
- may provide for variation of a reference tariff:
 - in accordance with a schedule of fixed tariffs or
 - in accordance with a formula set out in the access arrangement or
 - as a result of a cost pass through for a defined event or
 - by the combination of two or more of these operations.⁴

A formula for varying reference tariffs may (for example) provide for variable caps on the revenue to be derived from a particular combination of reference services; or tariff basket price control; or revenue yield control; or a combination of all or any of these

² AusNet, *Gas access arrangement review 2018–22: Access arrangement information*, 16 December 2016, p. 291.

³ AusNet, *Gas access arrangement review 2018–22: Access arrangement information*, 16 December 2016, p. 293.

⁴ NGR, rr. 92(2), r. 97(1).

factors.⁵ However, the reference tariff variation mechanism must give us adequate oversight and powers to approve reference tariff variations.⁶

We must have regard to various factors in deciding whether an access arrangement's reference tariff variation mechanism is appropriate. These are:

- the need for efficient reference tariff structures
- the possible effects of the reference tariff variation mechanism on administrative costs
- the regulatory arrangements (if any) applicable to the relevant reference services before the commencement of the proposed reference tariff variation mechanism
- the desirability of consistency between regulatory arrangements for similar services
- any other relevant factor.⁷

Having regard to these, we considered the implications of the proposed reference tariff variation mechanism for efficient tariff structures and administrative costs on natural gas consumers, potential users and AusNet. In doing so we took into account the nature and scope of pipeline reference services to which reference tariffs are applicable. Our assessment also included a comparison of:

- the proposed reference tariff variation mechanism arrangements with those in AusNet's current access arrangement
- other recent gas distribution access arrangement decisions (and electricity determinations under the NER)
- consistency in approach across the provision of similar services.

We assessed the potential impact of AusNet's proposal for achieving the national gas objectives and with the revenue and pricing principles.⁸ We also assessed the implications of AusNet's proposed reference tariff variation mechanism for effective risk management that would be in the long-term interests of consumers of natural gas.

11.1.4 Interrelationships

The haulage reference tariff variation mechanism has interrelationships with the total revenue AusNet can earn, the services it provides to its customers to recover those revenues and the tariffs it charges for the use of those services.

AusNet's haulage reference tariffs are adjusted annually by the application of a weighted average price cap formula. The X factor in the weighted average price cap

⁵ NGR, r. 97(2).

⁶ NGR, r. 97(4).

⁷ NGR, r. 97(3).

⁸ Including NGR, r. 97(3)(e).

formula is revised annually to reflect the updates to the return on debt as a result of the adoption of a trailing average approach to determining the cost of debt.

AusNet's haulage reference tariffs are derived from the total revenue requirement after consideration of demand for each tariff category. This means the tariffs we determine (including the means of varying the tariffs from year to year) are the binding constraint across the 2018–22 access arrangement period, rather than the total revenue requirement set out in our decision.

Our draft decision on:

- AusNet's total revenue requirement is set out in the Overview attachment
- the WACC annual adjustment is set out in attachment 3—Rate of return and X factors are discussed in the Overview attachment
- the services AusNet will offer to customers over the 2018–22 access arrangement period is set out in attachment 1—Services covered by the access arrangement
- the tariffs AusNet will charge for the provision of these services is set out in attachment 10—Reference tariff setting.

11.1.5 Reasons for draft decision

We do not approve AusNet's proposed haulage reference tariff variation mechanism for the 2018–22 access arrangement period

An annual reference tariff variation mechanism must be designed to equalise (in present value terms) the building block costs associated with reference services and the portion of total revenue allocated to reference services.⁹ While we consider AusNet's proposed haulage reference services annual reference tariff variation mechanism generally complies with this requirement, there are aspects of it we do not accept and which we require AusNet to amend.

Further, the quantum of AusNet's proposed reference tariffs must be revised to reflect the draft decision on total revenue and forecast demand. The changes in total revenue and forecast demand are outlined in the respective sections of this draft decision.

We approve AusNet's proposed tariff variation mechanism for its ancillary reference services.

The following section sets out the reasons for our draft decision.

Annual reference tariff variation mechanism

We approve AusNet's proposal to maintain a weighted average price cap formula as the tariff variation mechanism for its haulage reference services. We note a weighted

⁹ NGR, r. 92(2).

average price cap is a form of tariff basket price control, which is compliant with the NGR.¹⁰

We agree it is desirable to apply consistent regulatory arrangements for similar services across jurisdictions.¹¹ Stakeholders supported that a consistent regulatory approach be adopted for haulage reference services.¹²

The continuation of a weighted average price cap for AusNet's haulage reference services is consistent with this type of formula universally applied by gas distributors.

The application of a common tariff variation mechanism leads to reduced complexity and administrative burden for us and other stakeholders through standardisation of modelling approaches, incentive schemes and consultation requirements. As stakeholders submitted, these uniform aspects of the regulatory framework may also assist customers and other interest groups' in understanding and contributing to the access arrangement processes

Annual haulage reference tariff variation formula

We do not approve some aspects of AusNet's proposed annual reference tariff variation formula.

AusNet proposed the same weighted average price cap formula as applies in its current access arrangement.¹³ The proposed formula contained:

- a consumer price index (CPI) escalation adjustment
- an X factor adjustment¹⁴
- a licence fee adjustment factor
- an adjustments factor for AER approved cost pass through .

Each of the proposed formula adjustments is set out below.

Consumer price index

We approve AusNet's proposed method for calculating the consumer price index (CPI) escalation based on the annual movement between the Australian Bureau of Statistics'

¹⁰ NGR, r. 97(2).

¹¹ NGR, r. 97(3)(d).

¹² Consumer Challenge Panel (CCP11), *Response to proposals from AGN, AusNet and Multinet for the 2018–22 Access Arrangements*, 3 March 2017, p. 86; Origin Energy, *Victorian gas access arrangement review 2018–22 — Response to gas distribution businesses' proposals*, 17 February 2017, p. 3.

¹³ AusNet, *Gas access arrangement revision 2018–22: Part B of the access arrangement for the distribution system – Reference tariffs and reference tariff policy*, December 2016, pp. 9–10.

¹⁴ The X factor measures the real rate of change in annual expected revenue from one year to the next. A negative X factor represents a real increase in revenue. Conversely, a positive X factor represents a real decrease in revenue.

(ABS) published June quarter data. This method allows greater transparency in the annual tariff variation proposal.

In the current access arrangement period, the CPI escalation factor in AusNet's weighted average price cap formula is calculated based on movements between annual September quarter CPI. However, the release of the September quarter CPI typically occurs after AusNet is required to submit its annual tariff variation proposal—50 business days before the tariffs commence. Therefore, AusNet has had to either delay the submission of its proposal or submit a proposal with a 'placeholder' CPI until the actual CPI is known and then submit a supplementary proposal. This process is administratively inefficient for AusNet and us.

AusNet's proposed approach addresses this issue as it allows the actual CPI escalation to be known prior to the submission of the annual tariff variation proposal thus reducing the administrative burden of the current approach. This approach to calculating CPI escalation is consistent with the approach undertaken by other gas and electricity distributors which we consider is desirable.

We are also aware that gas retailers require approximately six weeks to incorporate network tariff changes into their billing systems and to give adequate notice to stakeholders.¹⁵ The proposed approach to calculating CPI escalation will ensure this can occur before the tariffs commence.

X factor adjustment

We approve AusNet's proposed X factor adjustment definition. This has been revised to include annual revisions to reflect the updates to the return on debt consequent to the adoption of a trailing average approach to determining the cost of debt.¹⁶

The annual update to the X factor in this manner is consistent with the X factor application by other gas and electricity distributors across jurisdictions.¹⁷ Further discussion on this adjustment can be found in attachment 3—rate of return—which discusses the WACC annual adjustment and the Overview attachment—which details issues relating to X factors.

Licence fee adjustment factor

We do not approve AusNet's proposal to continue with a licence fee adjustment factor in the weighted average price cap formula. Our draft decision has included in the operating expenditure forecast for AusNet the annual costs relating to the licence fees. Therefore, the provision to make annual revenue adjustments for these costs is not required as they are already provided for in the AER's draft decision total revenue

¹⁵ For example, see: Origin Energy, *Submission on Australian Gas Networks (South Australia) access arrangement proposal 2016–21*, 10 August 2015, p. 7.

¹⁶ AusNet, *Gas access arrangement revision 2018–22: Part B of the access arrangement for the distribution system – Reference tariffs and reference tariff policy*, December 2016, p. 10.

¹⁷ NGR, r. 97(3)(d).

requirement. Discussion on the licence fees can be found in attachment 7—operating expenditure.

Cost pass through adjustment factor

While we approve provision in the weighted average price cap formula to adjust revenues for AER approved cost pass through events, we do not approve AusNet’s proposed factor to make these adjustments.

AusNet proposed the continuation of the current access arrangements ‘Adjustment Factor’.¹⁸ However for consistency with the formulas applied by other gas distributors, our draft decision includes a separate pass through adjustment mechanism for these costs. We note that this change does not alter the outcome; the adjustment would be the same. The pass through adjustment factor is set out below in figure 11.3.

Minor modifications

Our draft decision has also made minor modifications to AusNet’s proposed weighted average price cap formula, to be consistent with the presentation of this formula as applied by other gas distribution networks. These modifications do not alter the application of the tariff variation mechanism. We consider consistency across distributors will assist stakeholder understanding of annual tariff variation mechanisms.

Our draft decision for AusNet’s annual reference tariff variation mechanism formula is set out in figure 11.1.

Figure 11.1 Annual haulage reference tariff variation formula

$$(1 + \Delta CPI_t)(1 - X_t)(1 + PT_t) \geq \frac{\sum_{i=1}^n \sum_{j=1}^m p_t^{ij} q_{t-2}^{ij}}{\sum_{i=1}^n \sum_{j=1}^m p_{t-1}^{ij} q_{t-2}^{ij}}$$

where:

ΔCPI_t is the annual percentage change in the ABS CPI All Groups, Weighted Average of Eight Capital Cities from the June quarter in year t-2 to the June quarter in year t-1, calculated using the following method:

The ABS CPI All Groups, Weighted Average of Eight Capital Cities for the June quarter in year t-1

divided by

¹⁸ AusNet, *Gas access arrangement revision 2018–22: Part B of the access arrangement for the distribution system – Reference tariffs and reference tariff policy*, December 2016, pp. 14–15.

The ABS CPI All Groups, Weighted Average of Eight Capital Cities for the June quarter in year t-2

minus one.

If the ABS does not, or ceases to, publish the index, then CPI will mean an index which the AER considers is the best available alternative index.

t is the year for which tariffs are being set.

X_t is the X factor for each year of the 2018–22 access arrangement period as determined in the PTRM as approved in the AER's final decision, and annually revised for the return on debt update calculated for the relevant year during the access arrangement period in accordance with that approved in the AER's final decision.

PT_t is the cost pass through factor for year t calculated as outlined in figure 11.3

n is the number of different reference tariffs

m is the different components, elements or variables ("components") comprised within a reference tariff

p_t^{ij} is the proposed component j of reference tariff i in year t

p_{t-1}^{ij} is the prevailing component j of reference tariff i in year t-1

q_{t-2}^{ij} is the audited quantity of component j of reference tariff i that was sold in year t-2 (expressed in the units in which that component is expressed (e.g. GJ)).

Rebalancing control formula

We accept the general structure of the rebalancing control formula proposed by AusNet.

Figure 11.2 Rebalancing control formula

$$(1 + \Delta CPI_t)(1 - X_t)(1 + PT_t)(1 + 0.02) \geq \frac{\sum_{i=1}^n \sum_{j=1}^m p_t^{ij} q_{t-2}^{ij}}{\sum_{i=1}^n \sum_{j=1}^m p_{t-1}^{ij} q_{t-2}^{ij}}$$

ΔCPI_t is the annual percentage change in the ABS CPI All Groups, Weighted Average of Eight Capital Cities from the June quarter in year t-2 to the June quarter in year t-1, calculated using the following method:

The ABS CPI All Groups, Weighted Average of Eight Capital Cities for the June quarter in year t-1

divided by

The ABS CPI All Groups, Weighted Average of Eight Capital Cities for the June quarter in year t-2

minus one.

If the ABS does not, or ceases to, publish the index, then CPI will mean an index which the AER considers is the best available alternative index.

t is the year for which tariffs are being set.

X_t is the X factor for each year of the 2018–22 access arrangement period as determined in the PTRM as approved in the AER's final decision, and annually revised for the return on debt update calculated for the relevant year during the access arrangement period in accordance with that approved in the AER's final decision

PT_t is the cost pass through factor for year t calculated as outlined figure 11.3

n is the number of different reference tariffs

m is the different components, elements or variables ("components") comprised within a reference tariff

p_t^{ij} is the proposed component j of reference tariff i in year t

p_{t-1}^{ij} is the prevailing component j of reference tariff i in year t-1

q_{t-2}^{ij} is the audited quantity of component j of reference tariff i that was sold in year t-2 (expressed in the units in which that component is expressed (e.g. GJ)).

Pass through factor formula

We have included in the reference tariff variation mechanism formula a pass through adjustment factor consistent with that we have applied to other gas distribution networks. Inclusion of an adjustment factor to accommodate AER approved cost pass through events enables a simple and transparent method for cost recovery and pass through of these costs to customers.

As noted above, AusNet proposed the continuation of an 'Adjustment Factor' to make these adjustments.¹⁹ However, we have made a change for consistency with the formulas applied by gas distributors in other jurisdictions. This common approach may also assist customers and other interest groups to understand and contribute to the access arrangement processes. Our approach is also less prescriptive than AusNet's proposals though leads to the same outcome.

¹⁹ AusNet, *Gas access arrangement revision 2018–22: Part B of the access arrangement for the distribution system – Reference tariffs and reference tariff policy*, December 2016, pp. 14–15.

The pass through adjustment factor formula is set out in figure 11.3.

Figure 11.3 Pass through adjustment factor formula

$$PT_t = \frac{(1 + PT'_t)}{(1 + PT'_{t-1})} - 1$$

where:

t is the year for which tariffs are being set

PT'_t is:

- (a) zero when financial year $t-1$ refers to year 2018
- (b) the value of PT'_t determined in the year $t-1$ for all other years in the access arrangement period

and

$$PT'_t = \frac{AP_t}{(1 + \Delta CPI_t)(1 - X_t) \sum_{i=1}^n \sum_{j=1}^m p_{t-1}^{ij} q_{t-2}^{ij}}$$

where

AP_t is:

- (a) any determined pass through amount that the AER approves in whole or part in year t ; and/or
- (b) any pass through amounts arising from pass through events (as that term is defined in the access arrangement applying to AusNet in the immediately prior access arrangement period) occurring in the immediately prior access arrangement period that AusNet proposed to pass through in whole or in part in year t ,

that includes an amount to reflect the time value of money between incurring the costs and recovering the costs, and excludes any amounts already passed through in reference tariffs.

ΔCPI_t is the annual percentage change in the ABS CPI All Groups, Weighted Average of Eight Capital Cities from the June quarter in year $t-2$ to the June quarter in year $t-1$, calculated using the following method:

The ABS CPI All Groups, Weighted Average of Eight Capital Cities for the June quarter in year $t-1$

divided by

The ABS CPI All Groups, Weighted Average of Eight Capital Cities for the June quarter in year t-2

minus one.

If the ABS does not, or ceases to, publish the index, then CPI will mean an index which the AER considers is the best available alternative index.

X_t means the X factor for each year of the 2018–22 access arrangement period as determined in the PTRM as approved in the AER's final decision, and annually revised for the return on debt update calculated for the relevant year during the access arrangement period in accordance with that approved in the AER's final decision.

p_{t-1}^{ij} is the prevailing component j of reference tariff i in year t-1

q_{t-2}^{ij} is the audited quantity of component j of reference tariff i that was sold in year t-2 (expressed in the units in which that component is expressed (e.g. GJ)).

Annual ancillary reference tariff variation formula

We accept AusNet's proposed annual ancillary reference tariff variation formula which is consistent with that of the current access arrangement. The proposed formula is also consistent with that applied by other gas distributors.

The approved ancillary reference tariff variation formula is set out in figure 11.4.

Figure 11.4 Ancillary reference tariff variation formula

$$ART_t = ART_{t-1} \times (1 + \Delta CPI_t)$$

where:

ART_t is the reference tariff that will apply to an ancillary reference service in year t

ART_{t-1} is the reference tariff applicable to an ancillary reference service in year t-1

ΔCPI_t is the annual percentage change in the ABS CPI All Groups, Weighted Average of Eight Capital Cities from the June quarter in year t-2 to the June quarter in year t-1, calculated using the following method:

The ABS CPI All Groups, Weighted Average of Eight Capital Cities for the June quarter in financial year t-1

divided by

The ABS CPI All Groups, Weighted Average of Eight Capital Cities for the June quarter in financial year t-2

minus one.

If the ABS does not, or ceases to, publish the index, then CPI will mean an index which the AER considers is the best available alternative index.

t is the financial year for which tariffs are being set.

Fixed principles

AusNet proposed the following two fixed principles that relate to tariff setting. We have considered these as follows;

AusNet's proposed fixed principle 7.2(a),

The Regulator will use incentive based regulation adopting CPI-X approach and not rate of return regulation.

This fixed principle will apply until the end of the Sixth Access Arrangement period.²⁰

We require AusNet to change this fixed principle so that it will apply until the end of the fixed period currently stated which is the fifth access arrangement period (2018-22 access arrangement period). The application of this fixed principle in subsequent access arrangement periods is more appropriately considered as part of our consultation on AusNet's proposals for those periods. Should AusNet propose this principle at the time of the next review, we will consider it at that point in time. We therefore require AusNet to amend its access arrangement to provide that the principle in clause 7.2(a) is a fixed principle for the 2018–23 access arrangement period only.

AusNet's proposed fixed principle 7(e) is a continuation of its current fixed principle 7 (4).

The Regulator will ensure that any mechanism for varying or adjusting the Haulage Reference Tariffs approved for the Fifth Access Arrangement period will, to the extent required to give full effect to such variation or adjustment, be carried forward into the Sixth Access Arrangement Period.

This fixed principle will apply to the end of the Sixth Access Arrangement Period.²¹

We accept the inclusion of this fixed principle. This is a continuation of the 2012–17 access arrangement. It allows for any variation required to tariffs that could not be accounted for in the fifth access arrangement to be fully accounted for in the sixth access arrangement.

²⁰ AusNet, Gas Access Arrangement Revision 2018–22, Part B of the access arrangement for the distribution system reference tariff and reference tariff policy–tracked, p. 32.

²¹ AusNet, Gas Access Arrangement Revision 2018–22, Part B of the access arrangement for the distribution system reference tariff and reference tariff policy–tracked, p. 32.

11.2 Cost pass through mechanism

11.2.1 Draft decision

We accept:

- AusNet's proposed process for notifying and seeking approval of a pass through amount, subject to a minor amendment to clarify the time limit for consideration of a pass through application
- the Natural Disaster Event, Service Standard Event and Changes in Taxes Event as proposed
- AusNet's proposal to delete the Mains Replacement Event
- the Insurance Cap Event, Insurer Credit Risk Event, Regulatory Change Event and Terrorism Event, but require AusNet to amend the definitions as set out in Table 11.1.

We require AusNet to replace the Declared Retailer of Last Resort Event with the Retailer Insolvency Event defined in Table 11.1.

We do not approve the National Energy Customer Framework Event and the National Greenhouse and Energy Reporting Event.

11.2.2 AusNet's proposal

The cost pass through mechanism allows us to vary reference tariffs following the occurrence of a specified event which materially increases or decreases the cost of providing the reference service.

Under the proposed process AusNet has 90 business days from the occurrence of an event to notify us of the fact. Notification is mandatory for events that decrease the costs and optional for events that increase costs.²² The costs of the event must be notified as soon as they are known or can reasonably be estimated. AusNet must provide any additional information we reasonably require within the specified time.²³

The access arrangement provides that we will notify AusNet of our decision on the proposed tariff variation within 90 days of receiving notification of the costs of the event and any additional information we have required. There is provision for us to extend this time limit for complex or difficult applications.²⁴ Any approved adjustment takes effect from the start of the calendar year after the event occurred.

AusNet proposed the following pass through events:

- Change in Taxes Event

²² AusNet Services, *Gas Access Arrangement Revision 2018-2022 Part B*, cl. 8(a).

²³ AusNet Services, *Gas Access Arrangement Revision 2018-2022 Part B*, cl. 8(b)-(c).

²⁴ AusNet Services, *Gas Access Arrangement Revision 2018-2022 Part B*, cl. 8(c)-(d).

- Declared Retailer of Last Resort Event ('ROLR Event')
- Insurer Credit Risk Event
- Insurance Cap Event
- National Energy Customer Framework Event ('NECF Event')
- Natural Disaster Event
- National Green Energy and Reporting Act Event ('NGER Event')
- Regulatory Change Event
- Service Standard Event
- Terrorism Event.

All of these events are in the current access arrangement except for the NGER Event. AusNet also proposed to delete the Mains Replacement Event which is in the current access arrangement.

AusNet proposed a materiality threshold of one per cent of annual revenue to apply to all events except the NGER event, for which it proposes no materiality threshold.²⁵

11.2.3 Assessment approach

The NGR state that a reference tariff variation mechanism may provide for the variation of a reference tariff.²⁶

as a result of a cost pass through for a defined event (such as a cost pass through for a particular tax).

As a component of the reference tariff variation mechanism, a cost pass through mechanism must be assessed having regard to the matters in rule 97(2)²⁷ of the NGR and must give us adequate oversight and power to approve reference tariff variations.²⁸

We must approach this assessment in a manner likely to contribute to the achievement of the National Gas Objective (NGO),²⁹ which states that the purpose of the NGL is to promote efficient investment, operation and use of natural gas services for the long term interest of consumers with regard to price, quality, safety and security of supply.³⁰

²⁵ AusNet, Gas Access Arrangement Revision 2018–2022, *Part A of the Access Arrangement for the Distribution System*, 16 December 2016, p. 25. AusNet, *Gas Access Arrangement Review 2018–2022: Access Arrangement Information*, 16 December 2016, p.282.

²⁶ NGR, r. 97(1)(c)

²⁷ In summary: efficient reference tariff structures; administrative costs; prior regulatory arrangements; consistency between regulatory arrangements; any other relevant factor.

²⁸ NGR, r. 97(3).

²⁹ NGL, s. 28(1)(a).

³⁰ NGL, s. 23.

In addition, we must take into account the Revenue and Pricing Principles (RPPs) whenever we exercise discretion in approving or making those parts of an access arrangement relating to a reference tariff.³¹ The RPPs state that the service provider should be provided with a reasonable opportunity to recover at least the efficient costs incurred in providing reference services and complying with a regulatory obligation or requirement.³² They also provide incentives to promote economic efficiency.³³ Together, the RPPs promote a balance between the economic costs and risks of the potential for under and over investment by a service provider, to promote efficient investment.³⁴

In the context of pass through events, the RPPs require us to have particular regard to the impact on price, quality, safety, reliability and security of supply that may arise as a result of any change in the efficient operation of, and ability and incentive of, a service provider to invest in its network.³⁵

Our decision on the cost pass through mechanism includes a decision on what categories of event to approve.³⁶ In approaching this part of our task we also take into account the following considerations:³⁷

- whether the type of event is covered by another category of pass through event;
- whether the nature or type of event can be clearly identified at the time the access arrangement is approved for the service provider;
- whether a prudent service provider could reasonably prevent an event of that nature or type from occurring or substantially mitigate the cost impact of such an event;
- whether the relevant service provider could insure against the event, having regard to:
 - the availability (including the extent of availability in terms of liability limits) of insurance against the event on reasonable commercial terms; or
- whether the event can be self-insured on the basis that it is possible to calculate the self-insurance premium; and the potential cost to the relevant service provider would not have a significant impact on the service provider's ability to provide network services.

These considerations appear in the National Electricity Rules (NER), where they guide the regulator's decision on whether to approve additional categories of pass through

³¹ NGL, s. 28(2)(a).

³² NGL, s. 24(2).

³³ NGL, s. 24(3).

³⁴ NGL, s. 24(6).

³⁵ NGL, s. 23; See also AEMC 2012, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, Sydney, p. 6.

³⁶ NGR, r. 97(1)(c).

³⁷ NGR, r. 97(3)(e).

event beyond those already included in the NER.³⁸ We consider they are consistent with the factors referred to in NGR (r. 97(2)), and pertinent to our examination of the degree to which a proposed category of event is likely to contribute to the achievement of the NGO.³⁹

The Australian Energy Market Commission (AEMC) described the purpose of these considerations as:

to incorporate and reflect the essential components of a cost pass through regime. It was intended that in order for appropriate incentives to be maintained, any nominated pass through event should only be accepted when event avoidance, mitigation, commercial insurance and self-insurance are unavailable. That is, a cost pass through event is the least efficient option for managing the risk of unforeseen events.⁴⁰

that a pass through event should only be accepted when it is the least inefficient option and event avoidance, mitigation, commercial insurance and self-insurance are found to be inappropriate. That is, it is included after ascertaining the most efficient allocation of risks between a service provider and end customers.⁴¹

Viewing pass throughs as a 'last resort' and accepting them only when event avoidance, mitigation and insurance are unavailable, is consistent with the RPPs and will contribute to the achievement of the NGO. It maintains the incentives on service providers to use market based mechanisms to mitigate the cost impacts that would arise if the event is triggered.⁴² In turn, this promotes the efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers with respect to price.⁴³

We also look to promote consistency in our approach to pass through categories across our electricity determinations and gas access arrangements.⁴⁴

11.2.4 Interrelationships

Tariffs are derived from the total revenue requirement after consideration of demand for each tariff category. AusNet operates under a weighted average price cap. This

³⁸ NER, cll. 6.5.10(b), 6A.6.9(b); NER Chapter 10: Glossary, definition of 'nominated pass through event considerations'.

³⁹ NGR, r. 100(a).

⁴⁰ AEMC 2012, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, Sydney, p. 19.

⁴¹ AEMC 2012, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, Sydney, p. 20.

⁴² NGL, s. 24(3); AEMC 2012, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, Sydney, p. 8.

⁴³ NGL, s. 23; AEMC 2012, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, Sydney, p. 8.

⁴⁴ See NGR r. 97(2)(d) and (e).

means the tariffs determined in the access arrangement and the approved means of varying the tariffs from year to year are the binding constraint across the 2018–2022 access arrangement period, rather than the total revenue requirement set in our decision.⁴⁵ Except as provided by a reference tariff variation mechanism, a reference tariff is not to vary during the course of an access arrangement period.⁴⁶

In assessing and approving a reference tariff variation mechanism, we consider the potential impact of the proposed mechanism on the service provider's incentives under the access arrangement to operate its network—and manage its risks—in a manner consistent with the NGO and RPPs.⁴⁷

The pass through component of the reference tariff variation mechanism is also interrelated with other parts of this decision, in particular with the forecast opex⁴⁸ and capex⁴⁹ and rate of return⁵⁰ included in our forecast revenue requirement. These interrelationships require us to balance the incentives in the various parts of our decision.

Pass through events are one way, but not the only way, in which service providers can manage their risks under an access arrangement. For systemic risks, service providers are compensated through the allowed rate of return. Service providers also face business-specific, or residual risks. Service providers are compensated for the prudent and efficient management of these risks through the forecast opex and capex we include in our forecast revenue requirement for strategies such as:

- prevention (avoiding the risk)
- mitigation (reducing the probability and impact of the risk)
- insurance (transferring the risk to another party)
- self-insurance (putting aside funds to manage the likely costs associated with a risk event).

An efficient business will manage its risk by employing the most cost effective combination of these strategies. In order to maintain appropriate incentives under an access arrangement, we only accept pass through events where we are satisfied that event avoidance, mitigation, commercial insurance and self-insurance under approved

⁴⁵ Where actual demand across the 2016–21 access arrangement period varies from the demand forecast in the access arrangement, APTNT's actual revenue will vary from the revenue allowance determined in our decision. In general, if actual demand is above forecast demand, APTNT's actual revenue will be above forecast revenue, and vice versa.

⁴⁶ NGR, r. 97(5).

⁴⁷ NGL, ss. 23, 24.

⁴⁸ See Attachment 7 (Operating expenditure) to this draft decision.

⁴⁹ See Attachment 6 (Capital expenditure) to this draft decision.

⁵⁰ See Attachment 3 (Rate of return) to this draft decision.

forecasts of prudent and efficient opex and capex, are either unavailable or inappropriate.⁵¹

For smaller expenditure a service provider should generally utilise its existing approved expenditure or reprioritise its work program rather than seeking approval of a pass through.⁵² This is reflected in the materiality threshold that applies to applications for cost pass through under the approved access arrangement.⁵³

Cost pass through amounts approved in an access arrangement period are added to forecast opex for the purpose of calculating efficiency carryover amounts under the efficiency carryover mechanism in the approved access arrangement.⁵⁴

11.2.5 Reasons for draft decision

The pass through process

Our draft decision is to approve AusNet's proposed process for notifying and seeking approval of a pass through, subject to one amendment.

The proposal is substantially identical to the process in AusNet's current access arrangement. We remain satisfied that it provides sufficient capacity for us to oversee and decide on tariff variation proposals in light of the NGO, RPPs and the considerations identified above.

However we require an amendment to clarify the time limit for consideration of a pass through application. While clause 8(c) of the proposed access arrangement provides that the regulator must decide on a pass through application within 90 business days, clause 8(d) refers to a time limit of 40 business days. For consistency between these subclauses we require the references in clause 8(d) to 40 business days to be corrected to 90 business days as set out in Table 11.1 below.

National Greenhouse and Energy Reporting Act Event

Our draft decision is to not approve AusNet's proposed NGER Event.

The NGER Event would allow a pass through of the costs of purchasing carbon credits to ensure AusNet complies with its obligations under the *National Greenhouse and*

⁵¹ This is consistent with the AEMC's conclusions in its review of the NER pass through arrangements. See: AEMC 2012, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, Sydney, pp. 19–20.

⁵² This is consistent with the AEMC's conclusions in its review of the NER pass through arrangements. See: AEMC 2012, *Economic Regulation of Network Service Providers, and Price and Revenue Regulation of Gas Services, Final Rule Determination*, 29 November 2012, Sydney, p. 186.

⁵³ AER, *Approved Access Arrangement for the Amadeus Gas Pipeline - 1 July 2016 to 30 June 2021*, May 2016, cl. 4.7.3, Definition of 'materiality threshold'.

⁵⁴ AER, *Approved Access Arrangement for the Amadeus Gas Pipeline - 1 July 2016 to 30 June 2021*, May 2016, cl. 8.1(i); See Attachment 9 (Efficiency carryover mechanism) to this draft decision.

*Energy Reporting Act 2007 (Cth) (NGER Act).*⁵⁵ AusNet also proposed that the materiality threshold not apply to the NGER Event.⁵⁶

The NGER Act establishes the ‘safeguard mechanism,’ which requires the operators of certain facilities to keep carbon emissions below a baseline level. An emitter has a range of options for keeping their emissions down, including purchasing carbon credits and surrendering them to offset their emissions, or generating carbon credits by carrying out a project under the Emission Reduction Fund (ERF). Alternatively, an emitter can apply for their baseline to be changed (e.g. in response to increased demand), or seek a longer monitoring period to allow additional time to reduce emissions. An emitter can also seek an exemption in the case of a natural disaster or criminal activity.⁵⁷

AusNet is subject to the NGER Act in respect of its Victorian distribution system, which emits carbon principally as a result of unaccounted for gas (UAFG), but also because of chemicals and gases used to transport gas. If it appears that emissions are likely to exceed the threshold, AusNet would need to decide whether to purchase and surrender carbon credits, generate carbon credits under the ERF, or pursue one of the additional options in the NGER Act.

AusNet submitted that it should be able to pass through the costs of purchasing carbon credits as it has ‘extremely limited opportunity’ to reduce emissions from the network and therefore would have no option but to purchase carbon credits if its emissions exceeded the benchmark level. AusNet stated that the unit costs and required volumes of carbon credits are uncertain because the safeguard mechanism has only recently become operative. AusNet submitted it is prudent to put in place contingencies to deal with the possibility that increased demand for gas will increase emissions beyond its reported emissions baseline. It stated that passing these costs to users is consistent with the ‘causer-pays’ principles applied in the energy sector.⁵⁸

The NGER Act safeguard mechanism commenced in 1 July 2016 and is yet to run a full cycle (i.e. registration, benchmarking, reporting, and compliance activity). We note AusNet’s submission that its potential liability under the scheme is uncertain.

However, AusNet has not substantiated its claim that a pass through event is justified having regard to the operation of the NGER Act or its own particular circumstances. It has not established that alternative options under the safeguard mechanism are unavailable or inapplicable to its circumstances. Aside from the possibility of purchasing carbon credits or creating them via the ERF, the safeguard mechanism incentivises carbon emitters to reduce emissions through operational measures.

⁵⁵ AusNet, *Gas Access Arrangement Revision 2018–2022, Part A of the Access Arrangement For the Distribution System*, 16 December 2016, p.23.

⁵⁶ AusNet, *Gas Access Arrangement Review 2018–22: Access Arrangement Information*, 16 December 2016, p. 282. <http://www.cleanenergyregulator.gov.au/NGER/The-safeguard-mechanism>, accessed 23 May 2017.

⁵⁷ AusNet, *Gas Access Arrangement Review 2018–22: Access Arrangement Information*, 16 December 2016, pp. 281 - 282.

Carbon emitters may also seek a lower emission benchmark or a longer reporting period to prevent an excess emission situation from arising. AusNet is far better placed than its customers to identify the least cost option (or combination of options) to ensure compliance with the NGER Act safeguard mechanism. It would have little incentive to seek out the least cost option if we approved its proposed NGER pass through as it could simply pass these costs through to customers.

National Energy Customer Framework Event

Our draft decision is to not approve the proposed NECF Event.

The NECF Event covers certain costs associated with the introduction of the NECF in Victoria.⁵⁹ We approved this event in AusNet's current access arrangement. However, on further review, we consider any cost adjustments caused by a future implementation of the NECF in Victoria would likely fall within the scope of the Regulatory Change Event and/or the Service Standard Event.

This is consistent with our recent electricity distribution determination for United Energy.⁶⁰ It also puts AusNet in the same position regarding any future transition to the NECF as network businesses in other jurisdictions that have adopted the NECF, where that transition was managed in the same way as other regulatory changes, including as to the operation of the materiality threshold.⁶¹

Declared Retailer of Last Resort Event

Our draft decision is to require AusNet to replace the RoLR Event with a Retailer Insolvency Event as defined in Table 11.1.

AusNet's current access arrangement includes a RoLR Event which applies where a retailer who is the gas supplier of last resort is unable to supply its customers, and its failure to do so materially increases or decreases the cost of providing reference services.⁶² AusNet proposed substantially the same event for the 2018-22 access arrangement period, with a minor change intended to clarify how the materiality threshold applies.⁶³

Including an event of this type in the access arrangement for the 2018–22 period will place AusNet in a similar position to gas distributors in NECF jurisdictions. Rule 520 of

⁵⁹ AusNet, *Gas Access Arrangement Revision 2018–2022, Part A of the Access Arrangement For the Distribution System*, 16 December 2016, pp.22–23.

⁶⁰ AER, *Final Decision for United Energy Distribution Determination 2016 to 2020, Attachment 15–Pass Through Events*, May 2016, p.15–10.

⁶¹ See AER, *Final Decision for AusNet Services distribution determination 2016 to 2020, Attachment 15–Pass Through Events*, May 2016, p.15–10.

⁶² AusNet, *Gas Access Arrangement Review 2018–2022: Access Arrangement Information*, 16 December 2016, p.283.

⁶³ AusNet, *Gas Access Arrangement Review 2018–2022: Access Arrangement Information*, 16 December 2016, p.283.

the NGR, which does not apply in Victoria because the NECF has not taken effect in Victoria, provides for the pass through of certain costs incurred by a distributor when a retailer becomes insolvent.

We approved an event dealing with retailer insolvency in the recent determinations for the five Victorian electricity distribution network service providers. In those determinations we defined the pass through event to refer directly to the equivalent pass through event applying in the NECF jurisdictions.⁶⁴

Referring directly to the NECF pass through event is also appropriate for the Victorian gas distributors' access arrangements. It ensures close alignment with the risk allocation in NECF jurisdictions, including as to the scope of the event. It is also drafted to ensure any changes to the NGR prescribed retailer insolvency event during the access arrangement period will apply consistently to Victorian gas distributors as they take effect.

We consider that it is preferable for AusNet and other Victorian gas distributors to apply the same definition for this type of nominated pass through event. This will ensure that costs and risks incurred for this type of event are consistent across the businesses.

Insurance cap event

The Insurance Cap Event addresses losses exceeding the maximum payout a service provider receives from its insurer when an insured risk eventuates.⁶⁵ AusNet proposed the following amendments to the definition in its current access arrangement:⁶⁶

Insurance Cap Event means an event whereby:

- (a) the Service Provider makes a claim or claims on a relevant insurance policy and receives the benefit of a payment or payments under that policy;
- (b) the Service Provider incurs costs beyond the relevant policy limit; and
- (c) the costs beyond the relevant policy limit materially increase the costs to the Service Provider of providing Reference Services.

For the purposes of this Insurance Cap Event:

- (d) the relevant policy limit is the greater of the Service Provider's actual policy limit at the time of the event that gives rise to the claim and its policy limit at the time the ~~AER~~ Regulator made its Final Decision on the Service Provider's access arrangement proposal for the ~~Fourth~~ Fifth Access Arrangement Period,

⁶⁴ E.g. AER, Final Decision for United Energy Distribution Determination 2016 to 2020, Attachment 15–Pass Through Events, May 2016, p.15–09.

⁶⁵ AusNet, *Gas Access Arrangement Review 2018–2022: Access Arrangement Information*, 16 December 2016, p.283.

⁶⁶ AusNet, *Gas Access Arrangement Review 2018–22: Access Arrangement Information*, 16 December 2016, p. 283.

with reference to the forecast operating expenditure allowance approved in the AER's Regulator's Final Decision and the reasons for that decision; and

(e) a relevant insurance policy is an insurance policy held during the ~~Fourth~~ Fifth Access Arrangement Period or a previous period in which access to the pipeline services was regulated;

(f) the Service Provider will be deemed to have made a claim on a relevant insurance policy if the claim is made by a related party of the Service Provider in relation to any aspect of the Distribution System or the Service Provider's business.

Note in making a determination in making a determination on an Insurance Cap Event, the Regulator will have regard to, amongst other things:

(1) the insurance policy for the event;

(2) the level of insurance that an efficient and prudent Service Provider would obtain in respect of the event; and

(3) any assessment by the Regulator of the Service Provider's insurance in making its access arrangement decision for the relevant period.

We accept AusNet's proposed amendments as they bring greater consistency, but also require a further amendment to remove subclause (d) from the definition – this was not included in our recent decisions⁶⁷ as it does not align with the determination of the opex forecast. Our amendments also align the definition with the corresponding event approved in our recent determinations.⁶⁸

Insurer credit risk event

The Insurer Credit Risk Event covers the situation where insurance costs change materially as a result of a service provider's insurer becoming insolvent. AusNet proposed several amendments to the current definition on the basis that it would improve clarity and align the event with our more recent decisions. The proposed definition, with AusNet's amendments marked, is as follows.⁶⁹

⁶⁷ AusNet, 2017, *Access Arrangement Information*, p. 280. AusNet indicated that it had regard to our recent regulatory decisions in formulating its pass through events, particularly AER *AusNet 2016-20 Electricity Distribution Price Review*; AER, 2016, *AGN (South Australia) Access Arrangement 2016-21*; AER 2015, *Jemena Gas Networks Access Arrangement 2015-20*.

⁶⁸ Our reasons are discussed more fully in AER, May 2016, *AGN (South Australia) Access Arrangement 2016-21 – Final Decision*, Attachment 11, p. 33.

⁶⁹ AusNet, *Gas Access Arrangement Review 2018–2022: Access Arrangement Information*, 16 December 2016, p.284. AusNet cited the following as comparators: AER, *AusNet 2016-20 Electricity Distribution Price Review*; AER, *AGN South Australian Distribution System Access Arrangement 2016-21*, AER, *Jemena Gas Networks Access Arrangement 2015-20*.

Insurer Credit Risk Event means ~~an event of insolvency~~ of the Service Provider's insurer experiences an Insolvency Event, as a result of which the Service Provider:

(a) incurs materially higher or materially lower costs for insurance premiums; or

(b) in respect of a claim for a risk that would have been insured by the Service Provider's insurers, is subject to a materially higher or materially lower claim limit or a materially higher or materially lower deductible than would have applied under that policy; or

(c) incurs additional costs associated with self funding an insurance claim, which, would have otherwise been covered by the insolvent insurer.

Note: In making its decision to approve or reject a proposed reference tariff variation arising from an Insurer Credit Risk Event, the Regulator will have regard to, amongst other things:

(d) the Service Provider's attempts to mitigate and prevent the event from occurring by reviewing and considering the insurer's track record, size, credit rating and reputation.

(e) in the event that a claim would have been made after the insurer became insolvent, whether the Service Provider had reasonable opportunity to insure the risk with a different insurer.

We remain satisfied that it is appropriate to pass through certain material cost changes caused by an insurer becoming insolvent. Service providers have limited capacity to address this risk through prevention, mitigation or insurance.

We accept AusNet's proposed clause above, except for subclause (a), referencing the cost of premium increases caused by insurer insolvency. Insurance premiums are a typical business expense subject to ordinary market factors. This is a risk businesses are best placed to manage, rather than customers. Consistent with our position in our recent decisions, including the comparator decisions identified by AusNet,⁷⁰ we consider it would be inappropriate to allow pass through of premium increases.

We also require an amendment to subclause (b) above to replace the words 'would have been' with the word 'was'. This is consistent with the definition in the comparator decisions, and ensures service providers are not incentivised to delay the purchase of alternative insurance, thereby transferring the risk of insurable events to customers.

Service standard event

The Service Standard Event covers cost increases and decreases caused by legislative or administrative changes affecting service standards and other aspects of

⁷⁰ AER *AusNet 2016-20 Electricity Distribution Price Review*; AER, 2016, *AGN (South Australia) Access Arrangement 2016-21*; AER 2015, *Jemena Gas Networks Access Arrangement 2015-20*

reference services. AusNet proposed no changes to the definition of this event for the 2018-22 access arrangement period.

While we remain satisfied this event should be included, we require an amendment to add the word ‘substantially’ before the phrase ‘varying [...] the manner in which the service provider is required to provide a reference service’. This will provide consistency with our recent decisions⁷¹ and the equivalent prescribed event that applies to AusNet’s electricity distribution network under the NER.⁷²

Terrorism event

The Terrorism Event was included in the current access arrangement. AusNet proposed an amendment adding a note referencing some of the matters relevant to assessing an application under this event.⁷³

We remain satisfied that this event is appropriate, although we require an amendment to delete the word materially from subclause (b) of AusNet’s proposed definition. This does not affect the operation of the event, but will align it more closely with the comparator decisions and the equivalent event approved for AusNet’s electricity transmission and distribution networks.

Events approved as proposed

Our draft decision is to accept the following events in the form proposed by AusNet:

- Change in Taxes Event
- Natural Disaster Event
- Regulatory Change Event

These events are clearly identified and are not covered by another category of event. Service providers have limited capacity to effectively prevent, mitigate or insure against them. The proposed definitions of these events are consistent with the definitions approved in our recent decisions.⁷⁴

⁷¹ E.g. AER, November 2015, *AGN (South Australia) Access Arrangement 2016-21 Draft Decision*, Attachment 11, pp. 29-30.

⁷² See AER, *Final Decision for Amadeus Gas Pipeline Access Arrangement 2016 to 2021, Attachment 11 – Reference tariff variation mechanism*, May 2016, p. 11–19. AER, *Final Decision for Australian Gas Networks Access Arrangement 2016 to 2021, Attachment 11 –Reference tariff variation mechanism*, May 2016, p.11-33.

⁷³ AusNet, *Gas Access Arrangement Revision 2018–2022, Part A of the Access Arrangement For the Distribution System*, 16 December 2016, p.28.

⁷⁴ See AER, *Final Decision for Amadeus Gas Pipeline Access Arrangement 2016 to 2021, Attachment 11 – Reference tariff variation mechanism*, May 2016, p. 11–19. AER, *Final Decision for Australian Gas Networks Access Arrangement 2016 to 2021, Attachment 11 –Reference tariff variation mechanism*, May 2016, p.11-33.

11.3 Revisions

The required revisions are set out in Table 11.1 below.

Table 11.1: Pass through revisions

Reference	Amendment
Part B, clause 3.1	Amend clause 3.1 in Part B of AusNet's proposed access arrangement to be consistent with figure 11.1, figure 11.2, figure 11.3 and figure 11.4 in our draft decision.
Part B, 7.2(a)	Amend the proposed access arrangement to specify that proposed fixed principle (a) will apply only to the 2018–22 access arrangement period.

Part A, Schedule 2

Definitions

Declared Retailer of Last Resort Event means the occurrence of an event (of the type contemplated in Division 6, Part 3 of the GIA or Part 6 of the National Energy Retail Law) whereby an existing User for Customers is unable to continue to supply gas and Customers of that User are transferred to, as applicable, the relevant supplier of last resort (as that term is used in the GIA) or the relevant designated RoLR (as that term is used in the National Energy Retail Law), and as a result the Service Provider incurs materially higher or materially lower costs in providing Reference Services than it would have incurred but for that event

Insurance Cap Event means an event whereby:

- (a) the Service Provider makes a claim or claims on a relevant insurance policy and receives the benefit of a payment or payments under that policy;

Reference

Amendment

- (b) the Service Provider incurs costs beyond the relevant policy limit; and
- (c) the costs beyond the relevant policy limit materially increase the costs to the Service Provider of providing Reference Services.

For the purposes of this Insurance Cap Event:

- (d) ~~the relevant policy limit is the greater of the Service Provider's actual policy limit at the time of the event that gives rise to the claim and its policy limit at the time the Regulator made its Final Decision on the Service Provider's access arrangement proposal for the Fifth Access Arrangement Period, with reference to the forecast operating expenditure allowance approved in the Regulator's Final Decision and the reasons for that decision; and~~
- (e) a relevant insurance policy is an insurance policy held during the Fifth Access Arrangement Period or a previous period in which access to the pipeline services was regulated;
- (f) the Service Provider will be deemed to have made a claim on a relevant insurance policy if the claim is made by a related party of the Service Provider in relation to any aspect of the Distribution System or the Service Provider's business.

Note in making a determination in making a determination on an Insurance Cap Event, the Regulator will have regard to, amongst other things:

- (1) the insurance policy for the event;
- (2) the level of insurance that an efficient and prudent Service Provider would obtain in respect of the event; and
- (3) any assessment by the Regulator of the Service Provider's insurance in making its access arrangement decision for the relevant period.

Insurer Credit Risk Event means the Service Provider's insurer experiences an Insolvency Event, as a result of which the Service Provider:

- (a) ~~incurs materially higher or materially lower costs for insurance premiums; or~~
- (b) in respect of a claim for a risk that ~~would have been~~ was insured by the Service Provider's insurer, is subject to a materially higher or materially lower claim limit or a materially higher or materially lower deductible than would have applied under that policy; or
- (c) incurs additional costs associated with funding an insurance claim which would have otherwise been covered by the insolvent insurer;

Note: In making its decision to approve or reject a proposed reference tariff variation arising from an Insurer Credit Risk Event, the Regulator will have regard to, amongst other things:

- (d) the Service Provider's attempts to mitigate and prevent the event from occurring by reviewing and considering the insurer's track record, size, credit rating and reputation.
- (e) in the event that a claim would have been made after the insurer became insolvent, whether the Service Provider had reasonable opportunity to insure the

Reference

Amendment

risk with a different insurer.

National Energy Customer Framework Event means a legislative act or decision that:

- (a) _____ occurs during the Access Arrangement Period;
- (b) _____ has the effect of implementing in Victoria, either in part or in its entirety, the National Energy Customer Framework; and
- (c) _____ increases the costs to the Service Provider of providing Reference Services.

For the purposes of this pass through event, the National Energy Customer Framework means any legislation, regulations or rules, that give effect in Victoria to any or all of the Schedule to the *National Energy Retail Law (South Australia) Act 2011*, the National Energy Retail Regulations (South Australia) and the National Energy Retail Rules (South Australia) as amended from time to time, including any amendment, withdrawal or introduction of any associated Victorian legislation, regulations or rules.

NGER Event is an event which occurs when the Service Provider gives notice to the Clean Energy Regulator under section 22XN(1) of the NGER Act that the Service Provider surrenders one or more Australian carbon credit units for the purpose of preventing an excess emissions situation from arising under section 22XE of the NGER Act, and the act of acquiring Australian carbon credit units increases the cost to AusNet of providing Reference Services;

Relevant Pass Through Event means:

- (a) a Change in Taxes Event;
- (b) _____ a Declared Retailer of Last Resort Event;
- (~~b~~ e) an Insurer Credit Risk Event;
- (~~c~~ d) an Insurance Cap Event;
- (d e) a National Energy Customer Framework Event;
- (e f) a Natural Disaster Event;
- (f g) an NGER Event;

Reference

Amendment

(g h) a Retailer Insolvency Event;

(h) a Regulatory Change Event;

(i) a Service Standard Event; or

(j) a Terrorism Event;

For the purpose of any Relevant Pass Through Event that includes a reference to materiality, an event is considered to materially increase or materially decrease costs where that event has an impact which is equal to or greater than one per cent of the smoothed forecast revenue specified in the Regulator's Final Decision, in one or more of the years for the Access Arrangement Period in which the costs are incurred;

Retailer Insolvency Event means:

The occurrence of an event where:

(a) a Retailer of Last Resort (RoLR) Event as defined in section 122 of the National Energy Retail Law has occurred; and

(b) Service Provider incurs costs in responding to the RoLR event in accordance with its obligations under the NERL, NERR, NGL or NGR (including Guidelines and procedures that are binding under those instruments), and

(c) the costs are not recoverable by Service Provider under other provisions of the NERL, NERR, NGL or NGR as in force at the time of the event, including but not limited to rule 531 of the NGR and other pass through events in this Access Arrangement.

Note for the avoidance of doubt, in making a determination on a Retailer Insolvency Event, the AER will have regard to, amongst other things, the extent to which Service Provider has taken steps to minimise the costs associated with its responsibilities in a RoLR Event, both prior to, and after, the RoLR Event was triggered.

RoLR Event has the meaning given to the term RoLR event in the National Energy Retail Law;

Service Standard Event means a legislative or administrative act or decision that falls within no other category of Relevant Pass Through Event that:

(a) has the effect of:

(1) substantially varying, during the course of an access arrangement period, the manner in which the Service Provider is required to provide a

Reference	Amendment
	<p>Reference Service;</p> <p>(2) imposing, removing or varying, during the course of an access arrangement period, minimum service standards applicable to Reference Services; or</p> <p>(3) altering, during the course of an access arrangement period, the nature or scope of the Reference Services, provided by the Service Provider; and</p> <p>(b) materially increases or materially decreases the costs to the Service Provider of providing Reference Services;</p>

Terrorism Event means an act (including, but not limited to, the use of force or violence or the threat of force or violence) of any person or group of persons (whether acting alone or on behalf of in connection with any organisation or government), which:

- (a) from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons (including the intention to influence or intimidate any government and/or put the public, or any section of the public, in fear); and
- (b) which materially increases the costs to the Service Provider of providing Reference Services.

Note for the avoidance of doubt, in making a determination on a Terrorism Event, the Regulator will have regard to, amongst other things:

- (c) whether the Service Provider has insurance against the event;
- (d) the level of insurance that an efficient and prudent service provider would obtain in respect of the event; and
- (e) whether a declaration has been made by a relevant government authority that an act of terrorism has occurred.

Part B

8(d) If the Regulator is satisfied that the making of a determination in respect of a Relevant Pass Through Event involves issues of such complexity or difficulty that the ~~40~~ 90 Business Day time limit should be extended, the Regulator may, by written notice to the Service Provider, extend the time limit by a further period of up to 60 Business Days. The Regulator must give written notice to the Service Provider of that extension not later than 10

Reference**Amendment**

Business Days before the expiry of the 40 90 Business Day time limit and such notice must set out the length of the extension and the reason the extension is required.
