



DRAFT DECISION
Multinet Gas
Access arrangement
2018 to 2022

Attachment 12 – Non tariff
components

July 2017

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Note

This attachment forms part of the AER's draft decision on the access arrangement for Multinet Gas 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

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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

12 Non-tariff components

This attachment contains our draft decision and reasons on the non-tariff components of Multinet's access arrangement proposal.

The non-tariff components are as follows:

- the terms and conditions for the supply of reference services
- extension and expansion requirements—the method for determining whether an extension or expansion is a 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 delivery and receipt points
- provisions for receipt and delivery point changes, and
- a review submission date and a revision commencement date.¹

12.1 Draft decision

Our draft decision (subject to correcting some minor typographical errors) is to accept Multinet's proposed non-tariff components except for clause 9.1(j) of the terms and conditions.

12.2 Terms and conditions

The NGR require an access arrangement to specify the terms and conditions on which each reference service will be provided.² These must be consistent with the NGO.³ 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.

Our draft decision is to accept the terms and conditions as proposed except for clause 9.1(j), subject to the correction of a few minor typographical errors.

¹ Although not required in the present case, all transmission pipelines and some distribution pipelines are also required to set out how any spare or developable capacity will be allocated among prospective users ('queuing requirements' - see NGR r. 103.)

² NGR, r. 48(1)(d)(ii).

³ NGR, r. 100.

Multinet proposed the following amendment to clause 9.1(j):

The User is responsible for providing Customers with information relating to any interruption or curtailment or irregularity in the supply of Gas which is caused by the factors upstream of the Distribution System (for example an interruption or curtailment in the supply of Gas by gas producers due to faults or failures of the gas producers' production facilities) or caused by act or omission of the User (for example supply by the User to the Service Provider of Gas which does not comply with the Specifications).

The proposed amendment is a material change from the current clause under which a user is responsible for informing customers about disruptions caused by the user's own acts or omissions. Absent any justification⁴ we are not persuaded this change is appropriate. Our draft decision is to not approve clause 9.1(j) as proposed, and to require Multinet to amend it to align with the version which appears in the current access arrangement.

Multinet's other terms and conditions are largely identical to those in its current access arrangement. Multinet has appropriately updated some references and we consider other changes appropriately balance the competing interests. In particular, we have accepted Multinet's proposed substantive amendments to clauses 9.4 and 12.2.

Clause 9.4 now provides that the retailer is to supply certain customer details to Multinet, namely a customer's mobile phone number and email address, where it is provided by the customer to the retailer. Multinet justified this on the basis that there need to be options available to inform customers of any gas supply issues and planned maintenance works via SMS notifications in the future. We consider this requirement to be reasonable.

Multinet has also proposed that where a customer is dependent upon life support equipment, a retailer must provide certain details and a copy of the certificate from a medical practitioner confirming this. This clause reflects the expanded version of life support equipment in the Victorian Energy Retail Code and we accept this change. Following consultation with retailers, Multinet has also addressed retailer concerns over liability for this information if it is inaccurate. The provision limits liability to the extent that a retailer has exercised due diligence. We consider this to be reasonable. We also accept the inclusion of clause 9.4 because it limits Multinet's use of this customer information.

Multinet has included clause 12.2(e) to address the possible insolvency of a retailer. We consider this reasonable for the purpose of allowing Multinet to manage that risk.

⁴ See Multinet, *Gas Access Arrangement Review 2018-22, Attachment 22.1: Access Arrangement Revisions*, December 2016, p. 25.

We received a late submission from AGL which acknowledged Multinet's frank and open consultation, but suggested a number of amendments to the proposed terms and conditions.⁵ These matters are considered below.

Duty to negotiate

AGL submitted that an amendment is needed to better facilitate the creation of commercial agreements differing from the terms and conditions in the access arrangement. It states that distributors are reluctant to negotiate and this is hampering the introduction of new services by retailers. AGL acknowledges the NGL already provides for commercial negotiation, but states it has experienced difficulty in progressing negotiations. AGL's proposed clause is:⁶

The Service Provider must exercise best endeavours to enter into a commercial arrangement with a User in a timely manner where the user can demonstrate the agreement would provide benefits to the end customer and the agreement can mitigate risk to the service provider and be provided in a fair and equitable format to all Users.

We recently rejected AGL's request for the same clause to be included in AGN's access arrangement for its South Australian distribution network. We considered the clause to be unnecessary given the processes in the NGL and the NGR for negotiating access and resolving disputes.⁷ We stated that we expect that both the service providers and users will negotiate in good faith, and in a timely manner, on such matters. We remain of the view that AGL's proposed negotiation clause is unnecessary.

We note that the COAG Energy Council has tasked the AEMC to review Parts 8-12 of the NGR, and to consider amendments to ensure pipeline operators with regulated transmission pipelines are unable to exercise market power on unregulated services.⁸ We consider the AEMC's review is the appropriate path for addressing any issues regarding the accessibility of the dispute resolution mechanism in the NGL and NGR.

Reconnection

AGL submitted that the terms and conditions should require the service provider to notify the current retailer when reconnecting a user delivery point after disconnection from the network. AGL stated that the incumbent retailer is not advised by the network at the time of reconnection (from which point the network starts billing the incumbent retailer for consumption) that meter status should be switched from inactive to active. If it was so advised, AGL suggests that the retailer would try to make contact with the customer to set up an account. It proposed a new clause 6.4 to impose this obligation.

⁵ AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

⁶ AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

⁷ AER, *Draft Decision – Australian Gas Networks Access Arrangement 2016-21 – Attachment 12 - Non-tariff components*, November 2015, p. 12-21.

⁸ COAG Energy Council, *Communique – Gas Market Reform Package*, 19 August 2016, measure 5.

We considered a similar AGL proposal in our decision on AGN's South Australian Distribution Network.⁹ Consistent with our earlier decision, we consider this is more appropriately a matter for the Retail Market Procedures or, if it is not an obligation to apply to all distributors, for commercial agreement between the parties. It is open to users to negotiate a similar term with Multinet. For these reasons our draft decision is not to require Multinet to include this requirement in the terms and conditions.

Other amendments

AGL proposed changes to clauses 4.8, 7.4 and 13.2. These clauses are in Multinet's current access arrangement. While AGL's proposed amendments are substantive, AGL provided little supporting discussion and did not identify any problems or issues arising from the current drafting other than to note that its suggested amendment to clause 13.2 would provide for greater clarity. Without further explanation for AGL's proposed amendments, our draft decision is to accept Multinet's drafting. We invite AGL to provide further information as to why there should be a shift in the balance of risk and how this would be consistent with the NGO.

AGL proposed minor changes to clauses to 14.8 and 17.3 to address possible cross-referencing errors. Multinet has confirmed that these are typographic errors, and will correct them in its revised proposal.

12.3 Extensions and expansions

These provisions 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.¹⁰ 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).

The extensions and expansions clauses proposed by the three Victorian gas distribution businesses are quite similar to one another and virtually identical to the

⁹ AER, *Draft Decision – Australian Gas Networks Access Arrangement 2016-21 – Attachment 12 - Non-tariff components*, November 2015, p. 12-20.

¹⁰ NGR, r. 48(1)(g) for full access arrangements, r. 45(1)(f) for limited access arrangements for light regulation services, r. 129(1)(f) for international pipelines, and r. 24(2)(c)(v) for CTP access arrangements.

clause approved in Multinet's current access arrangement for its Victorian distribution system.

Clause 5.5.1(f) of Multinet's proposal deals with extensions to un-reticulated townships. Among other things, it provides that capital expenditure on such extensions will not reduce the carry-over of cost-related efficiencies to the next access arrangement period. This clause also appeared in the access arrangements for the previous access arrangement periods, and is in the current proposals of AusNet and AGN. The clause and its antecedents ensure that capital expenditure on extensions to un-reticulated townships would not prejudice the carryover of efficiency gains against capital expenditure benchmarks under the efficiency carryover scheme which then applied to the network.

Multinet has confirmed that it wishes to retain the clause despite not currently being subject to a capital expenditure efficiency scheme, and not having proposed to introduce one for the coming access arrangement period.¹¹ Multinet states this will promote consistency with the other Victorian gas distributors, both of which have proposed to introduce a CESS scheme in the coming access arrangement period. We accept Multinet's proposal, despite its access arrangement not including a CESS at this time.

12.4 Capacity trading, receipt and delivery points

An access arrangement must set out capacity trading requirements, which deal with the transfer of a user's contracted capacity to another user.¹² It must also state the terms and conditions for changing receipt and delivery points.¹³

However capacity trading between users is not possible on GasNet'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 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.

¹¹ Multinet, Response to AER Information Request 9, 15 March 2017.

¹² NGR, r. 48(1)(f).

¹³ NGR, r. 48(1)(h).

Multinet proposed very minor changes to its existing requirements, effectively:¹⁴

- A user may change a transfer point with the service provider's consent, on condition that the user has any necessary approval of AEMO or the Transmission Pipeline owner or operator (as applicable)
- A user may change a distribution point with the service provider's consent, and on condition of compliance with Part 12A of the NGR¹⁵ (if in force in Victoria)
- The service provider will not withhold its consent to a change to a transfer or distribution point without reasonable technical commercial grounds, and
- There are no applicable capacity trading requirements for the purposes of Rules 48(1)(f) or Rule 105(1) of the NGR.

We maintain our view that these clauses are acceptable in the unique arrangements governing the Victorian gas market.

12.5 Revision submission and commencement

Rule 49(1) of the NGR says that a full access arrangement must contain a review submission date and a revision commencement date. As a general rule:¹⁶

- a review submission date will fall four years after the access arrangement took effect or the last revision commencement date; and
- a revision commencement date will fall five years after the access arrangement took effect or the last revision commencement date.

The AER is required to accept a service provider's proposed review submission and commencement dates if these are made in accordance with this general rule.

Multinet proposed a review submission date of 1 January 2022 and a revisions commencement date of 1 January 2023. This complies with the general rule and our draft decision is to accept it.

However we note that AGN proposed a review submission date of 1 December 2021, and AusNet has indicated it is also prepared to adopt this earlier date. We welcome this approach as it will avoid the administrative difficulties of receiving review submissions in the middle of the holiday season. We would encourage Multinet to also bring forward its review submission date by one month to 1 December 2021.

¹⁴ Multinet, *Gas Access Arrangement Review 2018-22, Attachment 22.2.1 – Principal Arrangements*, December 2016, cl 5.4

¹⁵ NGR Part 12A: Gas Connection for Retail Customers

¹⁶ NGR, r. 50.

12.6 Revisions

Clause	Revision
Reference service terms and conditions	
9.1(j)	The User is responsible for providing Customers with information relating to any interruption or curtailment or irregularity in the supply of Gas which is caused by the factors upstream of the Distribution System (for example an interruption or curtailment in the supply of Gas by gas producers due to faults or failures of the gas producers' production facilities) or caused by act or omission of the User (for example supply by the User to the Service Provider of Gas which does not comply with the Specifications).
14.8	Notwithstanding a reference of a dispute to the dispute resolution procedure in this clause 0-14 : (a) the parties shall, so far as it is reasonably practicable, continue to perform and comply with their respective obligations under this Agreement to the extent that such obligations are not the subject of that dispute; and (b) the parties are not precluded by this clause 0-14 from exercising their rights of termination in accordance with clause 0-12 (term and termination).
17.3	(a) In the case of a disclosure under clause 17.1(d)(1) or 17.1(e), the party proposing to make the disclosure shall inform the proposed recipient of the confidentiality of the information and the party proposing to disclose shall take all reasonable precautions to ensure that the proposed recipient keeps the information confidential. (b) If a party is permitted to disclose any confidential information in accordance with this clause 16.5(a) <u>17</u> , the party proposing to disclose shall use reasonable endeavours to limit the disclosure to those matters which reasonably need to be disclosed in order to accomplish that purpose.