



DRAFT DECISION
ActewAGL Distribution
Access Arrangement
2016 to 2021

Attachment 12 – Non-tariff
components

November 2015

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Note

This attachment forms part of the AER's draft decision on ActewAGL Distribution's access arrangement for 2016–21. 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
AA	Access Arrangement
AAI	Access Arrangement Information
AER	Australian Energy Regulator
ASA	Asset Services Agreement
ATO	Australian Tax Office
capex	capital expenditure
CAPM	capital asset pricing model
CCP	Consumer Challenge Panel
CESS	Capital Expenditure Sharing Scheme
CMF	construction management fee
CPI	consumer price index
DAMS	Distribution Asset Management Services
DRP	debt risk premium
EBSS	Efficiency Benefit Sharing Scheme
EIL	Energy Industry Levy
ERP	equity risk premium
Expenditure Guideline	Expenditure Forecast Assessment Guideline
gamma	Value of Imputation Credits
GSL	Guaranteed Service Level
GTA	gas transport services agreement
ICRC	Independent Competition and Regulatory Commission
MRP	market risk premium
NECF	National Energy Customer Framework
NERL	National Energy Retail Law
NERR	National Energy Retail Rules
NGL	national gas law
NGO	national gas objective
NGR	national gas rules
NPV	net present value
opex	operating expenditure

Shortened form	Extended form
PFP	partial factor productivity
PPI	partial performance indicators
PTRM	post-tax revenue model
RBA	Reserve Bank of Australia
RFM	roll forward model
RIN	regulatory information notice
RoLR	retailer of last resort
RSA	Reference Service Agreement
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
UNFT	Utilities Network Facilities Tax
WACC	weighted average cost of capital
WPI	Wage Price Index

12 Non-tariff components

ActewAGL proposed a revised access arrangement to apply for its gas distribution network for the 2016–21 access arrangement period.

ActewAGL's proposed 2016–21 access arrangement includes its Reference Service Agreement (RSA). The RSA sets out terms and conditions on which ActewAGL offers to supply its Haulage Reference Services, Ancillary Reference Services, and Negotiated Services. They are important because they describe the relationship between ActewAGL and users, including setting out, amongst other things, their obligations and liabilities under the agreement.

ActewAGL's access arrangement also includes specific provisions around the following, which are considered in further detail in this attachment:

- 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 a part of the covered pipeline and the effect this will have on tariffs. These requirements are relevant when identifying the covered pipeline and pipeline services that will be regulated through the access arrangement.
- capacity trading requirements—how users may assign contracted capacity and change delivery and receipt points
- changing receipt and delivery points—the process or mechanism for changing a user's receipt or delivery point
- review submission date and revision commencement date.

Together we refer to these as the non-tariff components of the access arrangement. Our assessment of each non-tariff component is set out below.

12.1 Terms and conditions

Rule 48(d)(ii) of the NGR requires an access arrangement to specify the terms and conditions on which each reference service will be provided.

The terms and conditions specified in an access arrangement do not exhaustively set out the contractual arrangements between a service provider and a user for access to a pipeline service. Many aspects of these contractual arrangements are negotiated commercially between the parties. The NGL permits both the service provider and the user to negotiate and enter into an agreement on terms and conditions that differ to those specified in the applicable access arrangement.¹

¹ With the exception that a service provider must comply with the queuing requirements in an applicable access arrangement: NGL, ss 135 and 322.

12.1.1 Draft decision

Our draft decision is to not approve ActewAGL's proposed RSA as filed. We require ActewAGL to make the amendments specified in section 12.7 below in order for us to accept the proposed RSA. In our view, these amendments will make the RSA consistent with the NGL and the applicable criteria.²

12.1.2 ActewAGL's proposal

ActewAGL proposed significant changes to the non-tariff components of its access arrangement. In the 2016–21 access arrangement period, it proposed that users of the reference service enter into a reference service agreement (RSA)—submitted as a schedule to its access arrangement—instead of the individually negotiated gas transport services agreements (GTAs) that currently apply.³ This would align ActewAGL's approach with that approved for Jemena Gas Networks (NSW) Ltd (JGN) in June 2015.

ActewAGL indicated that the key changes to its terms and conditions from its 2010-15 access arrangement are:

- Minimum networks standards
- Additional terms and conditions
- Charges
- Invoicing and payment
- GST
- Responsibility for gas
- Gas quality and variations
- Measuring equipment.

ActewAGL noted that it consulted with retailers in 2015 to discuss, among other things:

- its intention to adopt a form of RSA similar to JGN in the NSW access arrangement
- the key differences between ActewAGL's proposed RSA and JGN's RSA.

The CCP commented that this was more at the 'inform' level on the International Association for Public Participation (IAP2) Federation public participation spectrum.⁴ However, ActewAGL submitted that retailers were generally supportive of the proposed

² NGR, r. 40(3).

³ ActewAGL, *Regulatory proposal, Attachment 14: Non-tariff elements*, p. 5.

changes to harmonise with JGN's form of RSA,⁵ and its proposal to move from the two GTAs to one RSA which will form part of the 2016–21 access arrangement.⁶

12.1.3 AER's assessment approach

The NGR require us to assess the terms and conditions in the proposed access arrangement and RSA for consistency against the National Gas Objective (NGO), the NGR and the 'Procedures as in force when the terms and conditions of the access arrangement are determined or revised'.⁷ The NGO states that the objective of the NGL is to promote efficient investment in and efficient operation and use of natural gas pipeline services for the long term interest of consumers. The relevant procedures include the Retail Market Procedures applicable in the ACT.⁸

This is an area in which we have full discretion. This means that we are able to withhold our approval of any aspect of the proposed RSA if, in our opinion, a preferable alternative exists that complies with the requirements of the NGL and is consistent with the applicable criteria.⁹

We assess the terms and conditions in the proposed access arrangement for consistency against the NGO, the NGR and the relevant procedures, and taking into account the submissions we have received from stakeholders.¹⁰ In so doing we look to balance the competing interests of ActewAGL, users and consumers by considering whether the terms and conditions:

- appropriately allocate risk between ActewAGL, users and consumers
- are clear and legally certain
- are consistent with the relevant requirements in the NGL, NGR, the National Energy Retail Law (NERL), the National Energy Retail Rules (NERR) and the relevant procedures in force.

The terms and conditions should allocate risk to the party that is best able to control or manage that risk. Importantly, that party has the ability to control or manage the likelihood of the risk occurring and the consequences of the risk if it occurs. The incentive to mitigate that risk is therefore best placed with that party. Effective risk mitigation is likely to reduce the total costs of providing reference services to consumers in the long-term, and is therefore consistent with the NGO.

The terms and conditions also need to be clear and legally certain. This is because the terms and conditions would be used in resolving any access dispute and in making any

⁵ ActewAGL, *Access arrangement information for the 2016-21 ACT, Queanbeyan and Palerang access arrangement, Submission to the Australian Energy Regulator*, June 2015, pp. 34–36.

⁶ ActewAGL, *Regulatory proposal, Attachment 14: Non-tariff elements*, p. 10.

⁷ NGR, r. 100; 'Procedures' are described at Part 15B of the NGR.

⁸ AEMO, *Retail Market Procedures (NSW and ACT), version 13*, 1 July 2014.

⁹ NGR, r. 40(3).

¹⁰ We received submissions on the terms and conditions from Origin and the North Canberra Community Council.

access determination.¹¹ Further, these terms and conditions are likely to form the starting point for commercial negotiations between ActewAGL, retailers and other users.

Section 322 of the NGL provides that “nothing in [the NGL] is to be taken as preventing a service provider from entering into an agreement with a user or prospective user about access to a pipeline service by means of a scheme pipeline that is different from an applicable access arrangement that applies to that pipeline service.”¹² The parties may wish to reach agreement on aspects of their commercial relationship, separate from the access arrangement's terms and conditions. These aspects are likely to depend on the parties' particular circumstances.

In some cases, greater prescription or intervention on our part in determining these terms and conditions may impede competitive market outcomes and be inefficient.¹³ There are two reasons for this: first, our lower level of information than that of ActewAGL and users and second, the user-specific nature of many issues.

Accordingly, we will generally avoid proposing amendments in these cases where flexibility to negotiate commercial outcomes is desirable. We expect that both service providers and users will negotiate in good faith on such matters.

12.1.4 Reasons for draft decision

This section discusses the reasons for our draft decision. The key areas where we identified concerns, including those raised in submissions, are:

- The level of discretion allowed ActewAGL in certain clauses of the RSA
- ActewAGL's proposed bulk transfer process, to transition customers to new tariffs.

We have also noted some minor drafting errors in ActewAGL's proposed RSA, and confirmed with ActewAGL that they should be rectified.¹⁴

ActewAGL discretion

Certain terms in the RSA allow ActewAGL to vary or amend the RSA, or change the way that it applies. These clauses give ActewAGL discretion as to whether and when it would do so. The level of discretion that ActewAGL is provided under the proposed RSA raises questions of clarity and predictability for both ActewAGL and users. In some cases it may be necessary or appropriate to allow ActewAGL a broad level of discretion or to act unilaterally. In others, however, it may create unreasonable

¹¹ NGL, s. 189.

¹² This is subject to section 135, which requires the service provider to comply with the queueing requirements of the applicable access arrangement – see section 12.2 below.

¹³ See: Application by WA Gas Networks Pty Ltd (No 3) [2012] ACompT 12 at [261]-[278]; and Australian Competition and Consumer Commission v Telstra Corporation [2009] FCAFC 68.

¹⁴ ActewAGL, *Response to Information Request 025*, 20 August 2015, p. 4; ActewAGL, *Follow up to response to information request 025*, 24 August, 2015.

asymmetry in the rights of ActewAGL and its users under the RSA. Where the basis on which discretion will be exercised is not adequately described, discretion can also create uncertainty as to rights and obligations under the RSA.

Our draft decision is that two clauses in ActewAGL's proposed RSA require amendments to address this. These are discussed below.

Change of law

Clause 1.3 of ActewAGL's proposed RSA provides for amendments to the RSA due to a change of law. A change in law is defined as including the introduction of a new law or changes to an existing Gas Law and a new or changed interpretation of a Gas Law from a decision that is binding on ActewAGL.¹⁵

ActewAGL noted¹⁶ that we approved a similar clause in our recent review of JGN's access arrangement. In that decision, we explained that:

We consider the inclusion of a balanced amended clause, that provides clarity to users, complies with the applicable requirements and criteria and is preferable to the uncertainty of JGN's proposed approach. We therefore maintain our draft decision requiring inclusion of an amended clause 1.3, to allow a clear mechanism for either JGN or the user to initiate negotiations for amendments due to change of law.

ActewAGL's proposed clause 1.3 is largely consistent with that approved for JGN. Sub-clauses 1.3(b)-(f) allow either party to initiate a change and require a process of consultation on that change. However, clause 1.3 in ActewAGL's proposed RSA differs from the JGN approved RSA in one key respect: sub-clause 1.3(a) allows ActewAGL (but not the user) to make a decision to amend the RSA to accommodate a change in law. The proposed RSA limits the application of this discretion to circumstances where ActewAGL, acting reasonably, considers that the change will not adversely affect the user's rights or obligations under the agreement.

ActewAGL stated this clause provides additional flexibility not found in JGN's RSA¹⁷ which allows changes to be made 'in an efficient manner'.¹⁸ It considered this would not compromise users' rights, as amendments made under sub-clause 1.3(a) could be challenged under the dispute resolution procedures of the RSA (clause 30) or the access dispute regime in Chapter 6 of the NGL.¹⁹

Our concerns with ActewAGL's proposed sub-clause 1.3(a) are two-fold:

¹⁵ ActewAGL, Proposed RSA, cl. 1.1.

¹⁶ ActewAGL, *Response to information Request 025*, 20 August 2015, p. 1.

¹⁷ ActewAGL, *Response to Information Request 025*, 20 August 2015, p. 1.

¹⁸ ActewAGL, *Regulatory proposal, Attachment 14: Non-tariff elements*, pp. 20–21.

¹⁹ ActewAGL, *Response to Information Request 025*, 20 August 2015, pp. 1–2.

1. Sub-clause 1.3(a) creates uncertainty for users about when ActewAGL will consult on a change under sub-clauses 1.3(b)–(f), and when it will make that change unilaterally. Sub-clause 1.3(a) does seek to constrain this by requiring ActewAGL to form a view as to whether an amendment will adversely affect its users' rights or obligations. However, we consider users are better placed than ActewAGL to make decisions about what may (or may not) adversely affect them. We therefore consider the consultation process that would otherwise apply under sub-clauses 1.3(b)–(f) is preferable to leaving this to ActewAGL's sole discretion.
2. We also consider the prior consultation process under sub-clauses 1.3(b)–(f) is likely more efficient than, and therefore preferable to, use of formal dispute resolution processes, where there is disagreement. We therefore do not consider proposed sub-clause 1.3(a) provides efficiencies over sub-clauses 1.3(b)–(f).

Accordingly, we require ActewAGL to make amendment 1 to sub-clause 1.3(a) as set out at section 12.7.1.

Different standards in ACT and NSW

Where a gas law in one jurisdiction applies a higher standard than the gas law in the other jurisdiction, clause 32.11 allows ActewAGL (but not a user) to determine that the higher standard will apply. This would be communicated to users by written notice on a case by case basis.

ActewAGL provided the following reasons for including this provision:²⁰

Clause 32.11 recognises that the AAD network is located in two jurisdictions which creates the risk that different legislative obligations may apply to different parts of the network. The network operates as a single integrated network, meaning that consistent standards should be applied to all parts of the network and it is, therefore, appropriate to specify the highest standard in any one instance. It is not practical or reasonable to have a lower standard applying in one jurisdiction - for example:

(a) It would be impossible to apply a different gas specification to gas in the “NSW network” compared to gas in the “ACT network”.

(b) If different standards applied to the measurement of gas quantities, AAD would have to calculate charges under the RSA differently for delivery points in NSW than for those in the ACT, adding cost and complexity to billing processes for both AAD and users.

We agree with ActewAGL that operating a network which is subject to different standards might be problematic. However, we are concerned that clause 32.11 creates uncertainty for users during the access arrangement period as to whether and when a higher standard will apply.

²⁰ ActewAGL, *Response to Information Request 025*, 20 August 2015, p. 3.

In relation to the governing laws of the RSA, ActewAGL has inserted clause 32.10 to promote 'consistency and legal certainty given ActewAGL Distribution's network extends beyond the ACT into NSW'.²¹ We consider a similar approach is appropriate for clause 32.11. Therefore, we consider that this clause should stipulate that, where the gas laws of one jurisdiction impose standards which are different to those in the other, the higher standard will always apply.

Accordingly, our draft decision is to require ActewAGL to make amendment 2 to clause 32.11 of its proposed RSA as set out at section 12.7.1.

Bulk transfer to new tariffs

For the 2016–21 access arrangement period, ActewAGL's users will move from their current GTAs to the RSA.²² ActewAGL has also proposed, and we have approved, changes to its tariff structure.²³ The new tariff categories and the criteria for determining tariff categories are set out at clause 2 of Schedule 3 to the access arrangement.

To facilitate the transfer of customers to the RSA, ActewAGL proposed two bulk transfer processes which it included at sub-clauses 11.4(a) and 11.4(c)(v) of the RSA:

- bulk transfer to default tariffs — users will need to execute the agreement within two weeks after the commencement of the 2016 access arrangement and issue a notice seeking the bulk transfer within three business days after the execution of the Agreement.²⁴
- bulk transfer to tariffs other than the default tariffs — users will need to provide ActewAGL with the list of customers seeking the alternative tariff (including evidence) at least three months prior to the commencement of the revised access arrangement on 1 July 2016.²⁵

In response to the first of these, Origin submitted:²⁶

...that a more efficient and streamlined process would be for the RSA replace the existing GTAs and take automatic effect from 1 July 2016 without the parties explicitly having to sign it. This ensures certainty of implementation and would negate unnecessary delays and associated costs for all parties to the RSA, which represents a fairer approach as neither party is penalised should the other delay signing the RSA.

²² ActewAGL, *Regulatory proposal, Attachment 14: Non-tariff elements*, p. 12.

²³ AER, *Draft decision ActewAGL Distribution access arrangement - Attachment 10 - Reference tariff setting*, November 2015.

²⁴ ActewAGL, Proposed RSA, cl. 11.4(a).

²⁵ ActewAGL, Proposed RSA, cl. 11.4(c)(v).

²⁶ Origin, *Submission on ActewAGL Distribution 2016-21 Access Arrangement Proposal for ACT*, 10 August 2015, p. 8.

If the AER deems it necessary, a process could be outlined in the AA whereby should a retailer not agree to the automatic adoption of the RSA, it must advise ActewAGL Distribution of this in writing before 1 July 2016. However, Origin suggests such an eventuality is highly unlikely.

Automatic adoption of the RSA would necessitate a change to the second step of the bulk transfer process which currently requires that within three business days of entering the RSA, the retailer must provide ActewAGL Distribution with formal notification to bulk transfer its customers to the RSA. Origin suggests that in place of this, ActewAGL Distribution should be required to send out a notice to its retailers on 1 July 2016 seeking agreement to bulk transfer its customers. A retailer's signed return of this notice to ActewAGL Distribution would indicate its formal agreement to the bulk transfer.

In other access arrangements we have approved provisions for automatic adoption of approved revisions to an RSA from one access arrangement period to the next. Clause 1.2 of ActewAGL's proposed RSA does this for any revisions for the period commencing 1 July 2021. However, for the transition from the current GTAs to the new RSA, ActewAGL has proposed its users execute new agreements. It does not consider the GTAs provide a suitable mechanism to support an automatic transition. ActewAGL advised that the current GTAs have an expiry date of 1 July 2015, and are continuing on a monthly basis. ActewAGL advised that clause 3 of the GTAs does contemplate limited amendments from one access arrangement period to the next until a new agreement is entered into (to the extent necessary to comply with a new access arrangement). However, ActewAGL submits that clause 3 does not contemplate—and is not suited to—substitution of a whole new agreement, as would be required to transition retailer users from two GTAs to a new, single RSA. Further, because of the differences between the GTAs and the RSA, relying on clause 3 may create uncertainty as to how the agreements would operate from 1 July 2016.²⁷

In these circumstances, we are satisfied that ActewAGL's proposed process for execution of the RSAs that will replace the current GTAs with its users is appropriate. This will be a one-off transition, and as noted above any future revisions to the RSA will take effect through clause 1.2.

Origin did not support the proposed notice period required to request a different tariff category to the default tariff category to apply from 1 July 2016. It stated:

The proposal requires retailers to provide a list of customers to be assigned to a different tariff category plus the required evidence at least three months notice prior to 1 July 2016, that is by 1 April 2016. Given the time-consuming process of advising customers of the tariff change and gathering the requisite evidence, retailers would need at least two months to undertake this work. The date by which this work would need to commence, 1 February 2016, is well before the AER would have made a final decision on the AA. As a result, retailers would need to initiate this process before the final tariff structure had

²⁷ ActewAGL Distribution response to AER query 040, 15 October 2015.

been decided. This is not appropriate and could lead to inefficiencies where retailers have to communicate with its customers on changes that have yet to be agreed and then again once the changes have been agreed.²⁸

Origin added that the AER should review the process required by retailers to notify ActewAGL Distribution of requests for a different tariff category to ensure it is efficient and fair for ActewAGL, retailers and customers.²⁹

We recognise that ActewAGL's proposal to consult prior to the commencement of the 2016–21 access arrangement period to facilitate the bulk transfer to a tariff other than the default tariff could be efficient and provide a smooth transition to the new RSA. However, ActewAGL's proposal to include its preferred process as an obligation on users under the RSA is problematic because:

- it requires users to comply with deadlines that fall due before we have made our final decision on the RSA (in late April 2016), including our final decision on whether to accept the revised tariff structure and ActewAGL's proposed transfer process), and
- it requires users to comply with obligations under the RSA before the commencement of approved revisions to the access arrangement on 1 July 2016.

That is, these clauses set out obligations that fall prior to the approval and commencement of the RSA. We do not consider it appropriate to approve them under the NGR. There is no practical or legal certainty about how they would apply.

ActewAGL stated it was acting on the assumption that we would approve its new tariff structure in the draft decision. Therefore it considered that retailers will have sufficient information to commence consultation on the new tariffs after this draft decision was released. ActewAGL also submitted that:³⁰

AAD considers that network users are able to nominate sites for which a different tariff category is required prior to the release of the AER's final decision and approval of the RSA. While transportation services to delivery points will be provided under the RSA, there is no legal or regulatory impediment to retailers, prior to the release of the final decision, nominating the sites where the default tariff (once approved) is not to be applied.

Our draft decision is subject to further consultation, and we cannot pre-empt what our final decision may be. We therefore do not consider it reasonable for the RSA to bind users to outcomes contingent on certain obligations having been met before a decision that is yet to be made.

²⁸ Origin, *Submission on ActewAGL Distribution 2016-21 Access Arrangement Proposal for ACT*, 10 August 2015, p. 8.

²⁹ Origin, *Submission on ActewAGL Distribution 2016-21 Access Arrangement Proposal for ACT*, 10 August 2015, p. 9.

³⁰ ActewAGL, *Response to information request 025*, 20 August 2015, p. 5.

While we agree that there is nothing in the legislation which prevents ActewAGL consulting with users prior to the commencement of the revised access arrangement period, we do not consider it appropriate to approve those obligations. We would, however, encourage ActewAGL and its users to cooperate in determining a process outside the access arrangement and GTAs that is efficient and fair for ActewAGL, retailers and customers.

We therefore require ActewAGL to amend those clauses of the RSA which set deadlines that fall prior its approval and commencement, in particular we require it to make amendment 3 to clause 11.4(c)(v) as set out in section 12.7.1.

Issues raised in submissions

Indemnities and liabilities

Clause 9 of the RSA deals with possession of, and responsibility for, gas as it comes into, passes through, and leaves the network. Sub-clause 9.4(b) requires a user to indemnify ActewAGL against risks associated with gas before it enters and after it leaves ActewAGL's network.

The North Canberra Community Council submitted that if sub-clause 9.4(b) remains in the RSA, a similar provision stating that ActewAGL indemnifies users for loss relating to gas and gas leaks from ActewAGL's network should be included to clarify who has responsibility for gas leaks occurring at the connection between ActewAGL's network and a user's network or equipment.³¹

We consider that this is adequately addressed in the preceding sub-clause 9.4(a), which makes ActewAGL responsible for gas in its custody and control between the receipt stations and the delivery station at each delivery point and requires ActewAGL to replace any gas lost in its care and control. Sub-clause 9.4(b) makes the user responsible for gas prior to it entering the network at the receipt station and after it leaves the network at the delivery point.

These key terms are defined in the RSA as follows:

- receipt station means the facilities at which gas is received into the network
- delivery point means the point at which gas is withdrawn from the network.³²

Taken together, these provisions make clear when ActewAGL and the user will be responsible. We are therefore satisfied that the RSA addresses the concern of the North Canberra Community Council, and do not require any amendment to this clause.

The proposed RSA includes detailed liability provisions in clause 26. This clause is consistent with our recent final decision on the access arrangement for JGN.³³ The

³¹ North Canberra Community Council, *Submission on ActewAGL's access arrangement proposal*, 10 August 2015, p. 5.

³² ActewAGL, Proposed RSA, cl. 1.1.

North Canberra Community Council stated that clause 26 is not necessary and the default law should apply because these provisions transfer risk to other parties who are less able to control the risk.³⁴ However, we consider them appropriate because:

- they provide clarity around the liability provisions
- they are symmetrical, and allocate the risks equally between ActewAGL and the user.

We remain of the view that this is in the long term interest of consumers and consistent with the NGO. We therefore do not require any amendments to these provisions.

Relevant customer lists

Clause 3 of the RSA states that ActewAGL will provide Haulage Reference Services according to the RSA where the requirements of the RSA have been met. Clause 3.3 states that ActewAGL will issue a certificate as to the information contained in the 'relevant customer list' including all information relating to the delivery points listed in that list. The relevant customer list includes the 'demand customer list' and 'volume customer list' set out certain information such as the tariff category and assignment date, the commencement date and the receipt point. Clause 3.3 also states that the certificate is conclusive evidence of the information contained in the certificate (except in the case of manifest error) or if the user provides evidence that the certificate is incorrect.

The North Canberra Community Council submitted that it is uncertain what deficiency in evidence the clause is correcting.³⁵

The certificate issued by ActewAGL under clause 3.3 provides certainty as to the status of the Relevant Customer List in the provision of, and levying of charges for, the reference service. We therefore do not require any amendment to this clause.

Minor drafting errors in ActewAGL's proposed RSA

In the course of our review we identified two minor drafting errors. We brought these to ActewAGL's attention and confirmed that:

- The definition of 'minimum network standards' in the glossary to the Access Arrangement and the glossary to the RSA should be the same. The correct definition is that in the glossary to the access arrangement:³⁶

³³ AER, JGN Final decision, RSA, cl. 26.

³⁴ North Canberra Community Council, *Submission on ActewAGL's access arrangement proposal*, 10 August 2015, p. 5.

³⁵ North Canberra Community Council, *Submission on ActewAGL's access arrangement proposal*, 10 August 2015, p. 5.

³⁶ ActewAGL, *Follow up to response to information request 025*, 24 August, 2015.

Minimum Network Standards means the Minimum Service Standards under the Utilities (Consumer Protection Code) Determination 2012, or any determination replacing that determination or if that determination is repealed and not replaced, ActewAGL Distribution's Minimum Standards for Network Operation adopted by ActewAGL in compliance with its licence requirements in the Australian Capital Territory and New South Wales, in force from time to time.

- Sub-clause 25.2(a)(iii) of the RSA has been misnumbered, and should be numbered 25.2(b).

For the purposes of this draft decision we have included correction of these drafting errors as required amendments 4 and 5 as set out at section 12.7.1.

12.2 Queuing requirements

Queuing can be used to determine access to a pipeline that is fully, or close to being fully, utilised. Queuing requirements establish a process or mechanism for establishing an order of priority among prospective users to obtain access to spare and/or developable capacity on a covered pipeline.³⁷

12.2.1 Draft decision

We approve ActewAGL's proposed queuing requirements for the 2016-21 access arrangement period.

12.2.2 ActewAGL's proposal

ActewAGL submitted that its proposed queuing requirements for the 2016-21 access arrangement 'substantially retains' those in its current access arrangement.³⁸

ActewAGL further submitted that the proposed RSA provides additional information on the queuing policy, and that these changes are intended to align with the approach adopted by JGN for its 2015-20 access arrangement.³⁹

12.2.3 AER's assessment approach

The NGR require us to assess ActewAGL's proposed queuing requirements for consistency with the NGO and rule 103 of the NGR.

³⁷ NGR, r. 103(3).

³⁸ ActewAGL, *Appendix O.04 Explanation of Proposed Amendments to 2010-15 Access Arrangement, Access Arrangement Information for the 2016-21 ACT, Queanbeyan and Palerang Access Arrangement, Submission to the Australian Energy Regulator*, June 2015, p. 11.

³⁹ ActewAGL, *Attachment 14: Non-tariff elements, Access Arrangement Information for the 2016-21 ACT, Queanbeyan and Palerang Access Arrangement, Submission to the Australian Energy Regulator*, June 2015, p. 23.

Rule 103 of the NGR has specific provisions on queuing requirements and provides that:⁴⁰

- queuing requirements must be included in an access arrangement for a gas distribution pipeline where the AER notifies the service provider that the access arrangement must contain queuing arrangements⁴¹
- queuing requirements must establish a process or mechanism for establishing an order of priority between prospective users of spare or developable capacity in which all prospective users are treated on a fair and equal basis
- queuing requirements must be sufficiently detailed to enable prospective users to understand the basis of determining the order of priority and the prospective user's position in the queue.

12.2.4 Reasons for draft decision

We have assessed ActewAGL's proposed queuing requirements for the 2016-21 period:

- Clauses 12.1 to 12.5 set out how a queue is formed and how users are advised of their position in the queue, in accordance with r. 103(3)–(5) of the NGR
- Clauses 12.6 to 12.10 set out the conditions applicable to a queue. This satisfies the requirements of r. 103(3) and r. 103(5) of the NGR.
- Clause 12.11 sets out the procedure when capacity can be made available.
- Clause 12.12 sets out the priority of prospective users in accordance with r. 103(4) of the NGR
- Clause 12.13 sets out the compensation (if any) from the user for holding capacity, and
- Clauses 12.14 to 12.16 set out general terms. These include the treatment of requests in the event of a dispute, and the ability of prospective users to get access to gas supply at the time ActewAGL's haulage service is to be provided.

As ActewAGL has noted in its proposal, these are largely similar to those we approved in the 2010-15 access arrangement period. However, we note that there are three key changes to the current queuing requirements:

1. *Capacity can be made available to a user in part* – The proposed 2016-21 access arrangement provides that capacity will be offered to users in the queue, notwithstanding that the capacity may not be sufficient to meet that user's needs. If the offer of capacity meets the user's need in part only, the user can take the partial offer, or the user's position in the queue will be held until its need is met in

⁴⁰ NGR, r. 103.

⁴¹ NGR, r. 103(2). The AER notified ActewAGL that its access arrangement proposal must provide details of its queuing arrangements (Schedule 1 clause 19.2 of the AER's Regulation Information Notice dated 17 April 2015).

full by available capacity.⁴² We consider this an improvement over the current arrangement, which provides that capacity will be offered to users whose ‘requirements can be fully satisfied by the available capacity’⁴³ – which meant that there is no certainty that a user would keep its place in the queue if it needs more gas than could be provided by the available capacity at that time.

2. *Small users will have priority over large users* – The proposed new access arrangement provides that requests for services of less than one TJ of gas per annum will have priority over requests for services of more than one TJ per annum.⁴⁴ We consider that prioritising the small user over a large user is preferable. Without this provision, prospective large users could use their commercial position to negotiate with ActewAGL to access its spare or developable capacity, to the detriment of small users. The monopoly service provider has the incentive to maximise its sale of haulage volume or capacity at the least cost, and could favour its large customers over smaller ones. The provision creates a balance between the competing interests of users and the service provider, and promotes the treatment of all prospective users on a fair basis, and therefore promotes the NGO.
3. *Connection contracts* – ActewAGL’s proposal inserts a new clause⁴⁵ which provides that, when administering a queue, ActewAGL may take into account a connection contract it has entered into. This includes a connection contract under Part 12A of the NGR with a retail customer. In these circumstances, a request from a user with an existing connection contract may receive priority over a request from other users in the queue. We accept this proposed clause and consider this clause will improve the operation of the access arrangement. It provides further detail to the proposed access arrangement to enable prospective users to understand the basis on which an order of priority between them will be determined.

We accept that the above four changes to the current access arrangement provide more detail, transparency, clarity and certainty to users. Providing more transparency, clarity and certainty to users will promote the efficient operation and use of ActewAGL’s network, and is therefore consistent with the NGO.

⁴² ActewAGL, *Access Arrangement for the ACT, Queanbeyan and Palerang gas distribution network*, 1 July 2016–30 June 2021, 30 June 2015, cl. 12.11.

⁴³ ActewAGL, *Access Arrangement for the ACT, Queanbeyan and Palerang gas distribution network*, 1 July 2010–30 June 2015, April 2010, cl. 9.9.

⁴⁴ ActewAGL, *Access Arrangement for the ACT, Queanbeyan and Palerang gas distribution network*, 1 July 2016–30 June 2021, 30 June 2015, cl. 12.12(c).

⁴⁵ ActewAGL, *Access Arrangement for the ACT, Queanbeyan and Palerang gas distribution network*, 1 July 2016–30 June 2021, 30 June 2015, cl. 12.16, p. 37

12.3 Extension and expansion requirements

All access arrangements must include requirements relating to extensions of, and expansions to, a pipeline.⁴⁶ An extension relates to extending the pipeline to receive or deliver gas to or from new locations. An expansion relates to augmenting the pipeline's capacity that enhances its capacity to deliver an increased volume of gas to users.

12.3.1 Draft decision

We do not approve ActewAGL's proposed extension and expansion requirements for the 2016–21 access arrangement period, and require ActewAGL to make the amendments set out in section 12.7.2.

12.3.2 ActewAGL's proposal

ActewAGL proposed drafting changes in its extensions and expansions requirements.⁴⁷ It submitted that the extension/expansion regime in part 9 of its proposed access arrangement is 'substantially unchanged', and that the clause on surcharges⁴⁸ on extensions/expansions in the current access arrangement has been removed because clauses 4.6 to 4.8 (surcharges on capital expenditure) in the proposed 2016–21 access arrangement make it superfluous.⁴⁹

12.3.3 AER's assessment approach

The AER has assessed ActewAGL's extension and expansion requirements for consistency with the NGO and rule 104 of the NGR.

Rule 104 of the NGR specifies the extension and expansion requirements and provides that:⁵⁰

- the requirements may state whether the access arrangement 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)

⁴⁶ Rule 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.

⁴⁷ ActewAGL, *Access Arrangement for the ACT, Queanbeyan and Palerang gas distribution network, 1 July 2016–30 June 2021*, 30 June 2015, cl. 9; ActewAGL, *Attachment 14: Non-tariff elements, Access Arrangement Information for the 2016-21 ACT, Queanbeyan and Palerang Access Arrangement, Submission to the Australian Energy Regulator*, June 2015, pp 21-22.

⁴⁸ ActewAGL, *Access Arrangement for the ACT, Queanbeyan and Palerang gas distribution network, 1 July 2010–30 June 2015*, April 2010, cl. 7.9.

⁴⁹ ActewAGL, *Appendix O.04 Explanation of Proposed Amendments to 2010-15 Access Arrangement, Access Arrangement Information for the 2016-21 ACT, Queanbeyan and Palerang Access Arrangement, Submission to the Australian Energy Regulator*, June 2015, p. 11.

⁵⁰ NGR, r. 104.

- 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).

12.3.4 Reasons for draft decision

Other than the structural changes noted in section 12.3.2 above, ActewAGL's proposal remains largely unchanged and we consider it is consistent with r. 104 of the NER.

However, we require two further changes from the current access arrangement. We consider these will produce a preferable extensions and expansions policy which is consistent with the NGR and our more recent decisions (including our final decision on the access arrangement that applies to JGN's gas distribution network in NSW).

First, the current extensions and expansions policy records an exclusion for a particular extension that was anticipated at the time of our decision on that policy:

The anticipated extension in the Australian Capital Territory from Belconnen across the Molonglo Valley to Phillip does not represent a high pressure pipeline extension for the purposes of this section 9.

ActewAGL has retained this exclusion in its proposed access arrangement for 2016-21. However, its proposal also includes forecast capital expenditure for this extension which suggests that this project be considered a high pressure pipeline extension. We therefore consider the exclusion is no longer appropriate and should be removed. (See amendment 6 in section 12.7.2 below.)

Second, the proposed access arrangement sets a 20 business day time limit for us to make a decision on ActewAGL's proposed coverage approach for an extension. It contemplates an extension to this time limit for the purposes of further consultation with ActewAGL.⁵¹ In more recent decisions, including our final decision on the access arrangement for JGN, we have approved extensions and expansions policies that do not impose such strict timelines, and which explicitly contemplate wider consultation. We have also approved extensions and expansions policies that allow us to make our decision on such conditions as we determine are reasonable. We consider these policies preferable to the corresponding policies in ActewAGL's current access arrangement, and require ActewAGL to make amendment 7 set out in section 12.7.2 below.

We consider this approach provides greater certainty to stakeholders that a proposed coverage approach will be open to appropriate consultation with stakeholders, allowing us to arrive at a decision that is fair and reasonable and that promotes the NGO. These

⁵¹ ActewAGL, *Access Arrangement for the ACT, Queanbeyan and Palerang gas distribution network*, 1 July 2016–30 June 2021, 30 June 2015, cl. 9.4.

amendments align with the approach adopted by JGN for its 2015–20 access arrangement and approved by the AER.

12.4 Capacity trading requirements

The capacity trading requirements of an access arrangement may allow a user to transfer, by way of a subcontract, all or any of the user's contracted capacity to another user.⁵² In doing so, it may enable a secondary market with more efficient price signals and levels of usage.

12.4.1 Draft decision

We approve ActewAGL's proposed capacity trading requirements for the 2016–21 access arrangement period.

12.4.2 ActewAGL's proposal

ActewAGL's 2010–15 access arrangement contained one part for both requirements for (a) capacity trading and (b) changing receipt or delivery points. This was part 8 – Trading Policy.

In the proposed access arrangement for 2016-21, the old part 8 has been altered in structure and wording:

- There are now separate clauses for capacity trading (clause 10) and for changing receipt or delivery points (clause 11).
- More detail on the requirements is now contained in the RSA (schedule 5 of the access arrangement) rather than the access arrangement itself.

ActewAGL submitted that these changes align with the approach adopted by JGN for its 2015-20 access arrangement.⁵³

In this section we set out our assessment of ActewAGL's proposed capacity trading requirements. We consider ActewAGL's proposed terms and conditions for changing receipt or delivery points in section 12.5 below.

12.4.3 AER's assessment approach

We have assessed ActewAGL's proposed capacity trading requirements for consistency with the NGO and r. 105 of the NGR.

Rule 105 has specific provisions on capacity trading requirements and, at a high level, provides that:

⁵² NGR, r. 105(2).

⁵³ AER, *Attachment 14: Non-tariff elements, Access Arrangement Information for the 2016–21 ACT, Queanbeyan and Palerang Access Arrangement, Submission to the Australian Energy Regulator*, June 2015, p. 22.

- the requirements must provide for capacity transfers in accordance with the rules or procedures of the relevant gas market, if the service provider is registered as a participant in a particular gas market: r. 105(1)
- a user may transfer all or part of its contracted capacity without the service provider's consent, with particular consequences: r. 105(2)
- a user may transfer all or part of its contracted capacity with the service provider's consent, with particular consequences: r. 105(3)
- a service provider must not withhold its consent unless it has reasonable grounds, based on technical or commercial considerations, for doing so: r. 105(4)
- a capacity transfer does not affect a user's rights and liabilities retrospectively: r. 105(5)
- the requirements may specify in advance the conditions under which consent will or will not be given: r. 105(6)

12.4.4 Reasons for draft decision

We assessed clause 10 of the proposed access arrangement and clause 27 of the proposed RSA which set out the capacity trading or transfer requirements under ActewAGL's proposed access arrangement.⁵⁴

We consider clause 27 of the proposed RSA satisfies the requirements of r. 105(1)(b) and r. 105(2) to (6) of the NGR.

Rule 105(1)(a) of the NGR requires that capacity trading requirements in an access arrangement must provide for transfer of capacity, if the service provider is registered as a participant in a particular gas market, in accordance with rules or procedures governing the relevant gas market.⁵⁵ ActewAGL is a registered participant in the ACT gas market and in the short term trading market as a network operator.⁵⁶

ActewAGL's current access arrangement makes explicit provision for the r. 105(1)(a) requirement:

8.1 Transfers of contracted Capacity will be undertaken:

(a) where the relevant parties are registered as participants under the Gas Market Procedures – in accordance with the Gas Market Procedures; or

⁵⁴ ActewAGL, *Access Arrangement for the ACT, Queanbeyan and Palerang gas distribution network, 1 July 2016-30 June 2021*, 30 June 2015, cl. 10; ActewAGL, *Reference Service Agreement, ActewAGL's gas distribution network, 1 July 2016-30 June 2021*, cl. 27.

⁵⁵ NGR, r. 105(1)(a).

⁵⁶ www.aemo.org.au/Gas/Registration .

(b) if the relevant parties are not so registered – in accordance with rules 105 and 106 of the National Gas Rules and this Part 8.⁵⁷

The proposed 2016-21 access arrangement does not retain clause 8.1(a). Instead, it provides at a higher level that:

1.10 All provisions in this Access Arrangement are subject to Applicable Laws.⁵⁸

The proposed access arrangement defines Applicable Laws to include the NGR.⁵⁹ Part 15B of the NGR sets out the scope of activities to be managed by the Australian Energy Market Operator under the gas procedures. These procedures cover retail market procedures, wholesale market procedures, bulletin board procedures, and short term trading market procedures.⁶⁰ Wholesale market procedures may deal with the following matter (among others):

(q) transfer of entitlements to utilise pipeline capacity;⁶¹

Therefore, we consider that under the proposed access arrangement, transfers of contracted capacity will be undertaken in accordance with market procedures set out in Part 15B of the NGR, in particular, retail and wholesale market procedures in the ACT.

While less explicit than the current access arrangement, we are satisfied that the capacity trading requirements provided in clauses 1.10 and 10 of the proposed access arrangement and clause 27 of the RSA satisfy rule 105 of the NGR and provide clarity and certainty to users. This promotes the efficient operation and use of ActewAGL's network and is consistent with the NGO.

12.5 Changing receipt or delivery points

A receipt or delivery point is a point on a pipeline at which a service provider takes delivery of natural gas, or delivers natural gas.⁶² A user may wish to change the point at which they receive or take delivery of natural gas.

⁵⁷ ActewAGL, *Access Arrangement for the ACT, Queanbeyan and Palerang gas distribution network*, 1 July 2010–30 June 2015, April 2010, cl. 8.1.

⁵⁸ ActewAGL, *Access Arrangement for the ACT, Queanbeyan and Palerang gas distribution network*, 1 July 2016–30 June 2021, 30 June 2015, cl. 1.10.

⁵⁹ ActewAGL, *Access Arrangement for the ACT, Queanbeyan and Palerang gas distribution network*, 1 July 2016–30 June 2021, 30 June 2015, Schedule 1: Definitions. Applicable Law is defined as any legislation, subordinate legislation, licence code, rules, sub-code, guideline, safety case, order or regulation that applies to ActewAGL, the Network, the operation of the Network, and/or provision of services on the Network, whether specific to ActewAGL or regulating the gas industry or aspects of the gas industry more generally and includes the *Utilities Act 2000* (ACT), the *Utilities (Technical Regulation) Act 2014* (ACT), the *Gas Safety Act 2000* (ACT), the *National Gas (ACT) Act 2008* (ACT), the *National Gas (New South Wales) Act 2008* (NSW), the Minimum Network Standards, the *Gas Supply Act 1996* (NSW), the National Energy Retail Law and National Energy Retail Rules, any other applicable market, industry or technical code, any licence issued under the *Utilities Act 2000* (ACT), the *Utilities (Technical Regulation) Act 2014* (ACT) and the *Gas Supply Act 1996* (NSW).

⁶⁰ NGR, Part 15B Procedures.

⁶¹ NGR, r. 135EA(2)(q).

12.5.1 Draft decision

We approve ActewAGL's proposed terms and conditions for changing receipt or delivery points for the 2016-21 access arrangement period.

12.5.2 ActewAGL's proposal

ActewAGL's 2010-15 access arrangement contained only one section for both requirements for capacity trading and changing receipt and delivery points.

In the proposed access arrangement for 2016-21, the current part 8 has been altered in structure and wording. There are now two separate clauses for capacity trading and for changing points (clauses 10 and 11, respectively), and more detail on the requirements is now contained in clause 27 of the RSA rather than the access arrangement itself.

ActewAGL submitted that these changes align with the approach adopted by JGN for its 2015-20 access arrangement.⁶³

12.5.3 AER's assessment approach

We have assessed ActewAGL's terms and conditions for changing receipt or delivery points against the NGO and rule 106 of the NGR.

Rule 106 of the NGR has specific provisions on the change of receipt or delivery point by user and provides, at a high level, that:

- a user may change its receipt or delivery point with the service provider's consent
- the service provider must not withhold consent unless it has reasonable grounds, based on technical or commercial considerations, for doing so
- the access arrangement may specify in advance conditions under which consent will or will not be given.

12.5.4 Reasons for draft decision

ActewAGL's proposed 2016-21 access arrangement and RSA includes requirements for changing receipt or delivery points, including for the service provider's consent.

The proposed RSA provides that ActewAGL must not withhold its consent unless it has reasonable grounds, based on technical or commercial considerations, for doing so.⁶⁴ As the clause mirrors r. 106(1)(b) of the NGR, we accept it.

⁶² NGR, r. 3.

⁶³ ActewAGL, *Attachment 14: Non-tariff elements, Access Arrangement Information for the 2016–21 ACT, Queanbeyan and Palerang Access Arrangement, Submission to the Australian Energy Regulator*, June 2015, p. 39.

12.6 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 a review submission date and a revision commencement date and must not contain an expiry date.

12.6.1 Draft decision

We approve ActewAGL's proposed review submission date and revision commencement date.

12.6.2 ActewAGL's proposal

ActewAGL proposed that, for the purposes of rule 49(1) of the NGR:

- the review submission date is 30 June 2020
- the revision commencement date is 1 July 2021.⁶⁵

12.6.3 AER's assessment approach

We have assessed ActewAGL's review submission date and revision commencement date against the NGO and rules 49 to 50 of the NGR.

Rule 50(1) of the NGR provides that, as a general rule:

- a review submission date will fall 4 years after the access arrangement took effect or the last revision commencement date; and
- a revision commencement date will fall 5 years after the access arrangement took effect or the last revision commencement date.⁶⁶

We must accept a proposal made in accordance with the general rule.⁶⁷

We may also approve dates that do not conform to the general rule if we are satisfied that the dates are consistent with the NGO and the RPP.⁶⁸

⁶⁴ ActewAGL, *Reference Service Agreement, ActewAGL's gas distribution network*, 1 July 2016–30 June 2021, cl. 13.

⁶⁵ ActewAGL, *Access Arrangement for the ACT, Queanbeyan and Palerang gas distribution network*, 1 July 2016–30 June 2021, 30 June 2015, cl. 1.9.

⁶⁶ NGR, r. 50(1).

⁶⁷ NGR, r. 50(2).

12.6.4 Reasons for draft decision

ActewAGL's 2010-15 access arrangement was approved by the AER in April 2010 (and subsequently amended by the Australian Competition Tribunal in October the same year).

In the 2010-15 access arrangement, the approved review submission date was 30 June 2014 and the revision commencement date was 1 July 2015.

However, based on transitional provisions for amendments to the NGR,⁶⁹ the AER exercised its power to extend the review submission date to 30 June 2015. The revisions approved in this review will therefore not commence until 1 July 2016.

ActewAGL's proposed review submission date of 30 June 2020 will fall four years after 1 July 2016, which is consistent with the intent of the general rule.

ActewAGL's proposed revision commencement date of 1 July 2021 will fall five years after 1 July 2016. This is also consistent with the intent of the general rule.

We have therefore approved these dates.

12.7 Revisions

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

12.7.1 Revisions to the reference service agreement

We require ActewAGL to make the following amendments and any additional consequential changes to its 2016–21 access arrangement proposal to make it acceptable to the AER.

Clause 1.3 [this will require consequential formatting amendments]

- ~~(a) ActewAGL may amend the terms and conditions set out in this Agreement to accommodate a Change in Law if ActewAGL, acting reasonably, considers that the change will not adversely affect the User's rights or obligations under this Agreement.~~

~~(b) Where clause 1.3(a) does not apply,~~ ActewAGL and the User may seek to amend the terms and conditions set out in this Agreement to accommodate a Change in Law in accordance with clauses 1.3~~(ba)~~-(~~fe~~).

⁶⁹ Released by AEMC in November 2012.

Clause 32.11

2.

In circumstances where a Gas Law applicable in one Relevant Region applies a higher standard than the Gas Law which is applicable in the other Relevant Region, ~~ActewAGL may, by notice in writing, determine that~~ the higher standard will apply in both regions for the purposes of this Agreement.

Clause 11.4

...

3.

(v) the Assignment Date for the assignment of each Bulk Transfer Delivery Point to a Tariff Category pursuant to clause 11.4(c)(iii) or clause 11.4(c)(iv) will be deemed to be 1 July 2016. ~~provided, in relation to clause 11.4(c)(iv):~~

~~(A) at least 3 months' prior to 1 July 2016, the User provides ActewAGL with:~~

~~1) a list of the Delivery Points to be assigned to a different Tariff Category to the Default Tariff Category;~~

~~2) the requested Tariff Category for each Delivery Point; and~~

~~3) where applicable, information to demonstrate eligibility to the requested Tariff Category for each Delivery Point in accordance with the Access Arrangement;~~

~~(B) the User issues a notice under this Agreement formally seeking the tariff assignments described in clause 11.4(c)(v)(A) at the same time as the Bulk Transfer notice under clause 11.4(a)(ii);~~

~~(C) the tariff assignment list provided under clause 11.4(c)(v)(A) is the same as the formal tariff assignment notice provided under clause 11.4(c)(v)(B); and~~

~~(D) ActewAGL agrees the Delivery Point is eligible for the requested Tariff Category;~~

Clause 1.1 Definitions and interpretation

4.

Minimum Network Standards ~~means ActewAGL's Minimum Standards for Network Operation adopted by ActewAGL in compliance of its licence requirements in the Australian Capital Territory and New South Wales, in force from time to time;~~ the Minimum Service Standards under the Utilities (Consumer Protection Code) Determination 2012, or any determination replacing that determination or if that determination is repealed and not replaced, ActewAGL Distribution's Minimum Standards for

Network Operation adopted by ActewAGL in compliance with its licence requirements in the Australian Capital Territory and New South Wales, in force from time to time.

Clause 25

25.2 Right of ActewAGL to terminate

...

5. ~~(iii)~~(b) ActewAGL may only exercise its right to terminate under clause 25.2(a)(ii) if ActewAGL and the User, negotiating in good faith, have been unable to agree to amend this Agreement in accordance with clause 1.3, to deal with the impact of the relevant Change in Law.

12.7.2 Revisions to the access arrangement

9.1 If ActewAGL proposes a high pressure pipeline extension, it must advise the Relevant Regulator in accordance with clause 9.2 of this Access Arrangement.

For the purposes of this section 9, a "high pressure pipeline extension" is an extension to ActewAGL's Covered Pipeline with a direct connection to a transmission pipeline that provides reticulated gas to a new development or an existing development not serviced with reticulated gas.

6.

~~The anticipated extension in the Australian Capital Territory from Belconnen across the~~

~~Molonglo Valley to Phillip does not represent a high pressure pipeline extension for the~~

~~purposes of this section 9.~~

9.4 ~~After considering~~ Within 20 Business Days of receiving a notification under clause 9.1 ~~and undertaking such consultation as the Relevant Regulator considered necessary~~, the Relevant Regulator must notify ActewAGL:

7.

~~(a)~~ of its decision on ActewAGL's proposed coverage approach for the high pressure pipeline extension. ~~;~~ ~~or~~

~~(b) The Relevant Regulator's decision referred to in clause 9.4(a) above, may be made on such reasonable conditions as determined by the Relevant Regulator and will have the effect stated in the decision whether the Relevant Regulator requires an extension of time including to allow further consultation with ActewAGL before making a decision.~~