



DRAFT DECISION
Australian Gas Networks
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 Australian Gas Networks' 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
ATO	Australian Tax Office
capex	capital expenditure
CAPM	capital asset pricing model
CCP	Consumer Challenge Panel
CESS	Capital Expenditure Sharing Scheme
CPI	consumer price index
CSIS	Customer Service Incentive Scheme
DRP	debt risk premium
EBSS	Efficiency Benefit Sharing Scheme
ERP	equity risk premium
Expenditure Guideline	Expenditure Forecast Assessment Guideline
gamma	Value of Imputation Credits
GSL	Guaranteed Service Level
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
NIS	Network Incentive Scheme
NPV	net present value
opex	operating expenditure
PFP	partial factor productivity
PPI	partial performance indicators
PTRM	post-tax revenue model
RBA	Reserve Bank of Australia

Shortened form	Extended form
RFM	roll forward model
RIN	regulatory information notice
RoLR	retailer of last resort
RPP	revenue and pricing principles
SLCAPM	Sharpe-Lintner capital asset pricing model
STPIS	Service Target Performance Incentive Scheme
TAB	Tax asset base
UAFG	Unaccounted for gas
WACC	weighted average cost of capital
WPI	Wage Price Index

12 Non-tariff components

Australian Gas Networks (AGN) proposed a revised access arrangement to apply for its South Australian gas distribution network for the 2016–21 access arrangement period.

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

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

- 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 terms and conditions 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 AGN's proposed terms and conditions as filed. We require AGN to make the amendments specified in section 12.7 below in order for us to accept the proposed terms and conditions. In our view these amendments will make the terms and conditions consistent with the applicable criteria in the NGL and NGR.²

12.1.2 AGN's proposal

The terms and conditions proposed in AGN's revised AA proposal are similar to those approved in the 2011–16 access arrangement determination. However, AGN has proposed some changes to its current terms and conditions.³ AGN's reasons for the proposed changes to its terms and conditions are:

- the introduction of the National Energy Customer Framework (NECF) in South Australia, including the NERL, NERR and amendments to the NGR⁴
- other gas decisions, in particular, our 2013–17 decisions on access arrangements for Victorian gas networks⁵. AGN has gas networks in several Australian states and territories. The terms and conditions of most of these access arrangements have been consulted on, reviewed and approved by us. AGN is seeking to standardise its terms and conditions across its gas networks⁶ to improve efficiency and lower transaction costs.⁷
- in preparing for this review AGN established a retailer reference group (RRG), which comprised representatives from four retailers that retail natural gas in South Australia.⁸ AGN has incorporated comments received from the RRG into its proposed terms and conditions.⁹

12.1.3 AER's assessment approach

The NGR require us to assess the terms and conditions in the proposed access arrangement 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'.¹⁰ The NGO states that the objective of the NGL is to promote efficient investment in and efficient operation and use of natural gas pipeline

² NGR, r.40(3).

³ AGN identified these proposed changes by including a marked up version of its proposed terms and conditions at Attachment 17.1.

⁴ AGN, *Access Arrangement Information*, pp. 276–277.

⁵ AGN, *Access Arrangement Information*, p. 275.

⁶ AGN, *Access Arrangement Information*, p. 275.

⁷ AGN, *Access Arrangement Information*, p. 276.

⁸ AGN, *Attachment 17.2, Engagement with the Australian Gas Networks Retailer Reference Group on Terms and Conditions*.

⁹ AGN, *Access Arrangement Information*, p. 275.

¹⁰ NGR, r. 100; 'Procedures' are described at Part 15B of the NGR.

services for the long term interest of consumers. The relevant procedures include the Retail Market Procedures applicable in South Australia.¹¹

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 terms and conditions if, in our opinion, a preferable alternative exists that complies with the requirements of the NGL and is consistent with the applicable criteria.¹²

We have adopted the approach of assessing each term and condition in the proposed access arrangement for consistency against the NGL and the relevant procedures and taking into account the submissions we have received from stakeholders. In so doing we have balanced the competing interests of AGN, users and consumers by considering whether the terms and conditions:

- appropriately allocate risk between AGN, 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 NGL.

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 access determination.¹³ Further, these terms and conditions are likely to form the starting point for commercial negotiations between AGN, 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.”¹⁴ 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.

¹¹ AEMO, *Retail Market Procedures (South Australia)*, version 7, 3 November 2014.

¹² NGR, r. 40(3).

¹³ NGL, s 189.

¹⁴ This is subject to section 135 of the NGL, which requires the service provider to comply with the queuing requirements of the applicable access arrangement – see section 12.2 below.

In some cases, greater prescription or intervention on our part in determining these terms and conditions may impede competitive market outcomes and be inefficient.¹⁵ There are two reasons for this: first, our lower level of information than that of AGN 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 the 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. It focuses on AGN's proposed amendments to its current terms and conditions.

AGN stated that there have been no major areas of dispute or disagreement with users in respect of its current terms and conditions.¹⁶ However, AGN has proposed amendments to its terms and conditions due to changes to the regulatory regime and input from stakeholders.

AGN proposed further amendments to harmonise the terms and conditions of its various networks, including those we approved for its Victorian network in 2013. We recognise that there may be benefits to users in aligning the access arrangements of several gas networks. We note, though, that there may be valid reasons for differences. In particular, AGN's South Australian network is subject to the National Energy Customer Framework, whereas its Victorian network is not.

AGN's proposed terms and conditions also incorporate comments received in consultation with its RRG.¹⁷ AGN provided drafts of its terms and conditions and attachment 17 of its access arrangement proposal to the RRG for comment on several occasions.¹⁸ Origin, one of the parties consulted as part of the RRG, stated it appreciated the efforts made by AGN to consult on its Terms and Conditions and encouraged other networks to adopt a similar process.¹⁹ AGL considered that AGN's stakeholder engagement program had been well resourced and proactive. However, AGL also stated that not all of its recommendations have been included in AGN's terms and conditions.²⁰

The key areas where we identified concerns, including those raised in submissions, are:

¹⁵ 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.

¹⁶ AGN, *Access Arrangement Information*, p. 276.

¹⁷ AGN provided a summary of the issues raised by retailers in consultation on its terms and conditions and AGN's responses and amendments made at Attachment 17.2 of its proposal.

¹⁸ AGN, *Access Arrangement Information*, p. 280.

¹⁹ Origin, *Submission on AGN 2016-21 Access Arrangement Proposal for its SA Gas Distribution Network – 10 August 2015*, p. 9.

²⁰ AGL, *Submission on Australian Gas Networks (South Australia) Access Arrangement Proposal 2016-21*, 11 August 2015, p. 1.

- Changes proposed to reflect the National Energy Customer Framework (NECF)
- Time limitations and exclusion of liability clauses
- Consistency with other relevant laws and duplication
- Overruns and maximum daily quantity (MDQ)
- Proposed additions to the terms and conditions.

We discuss these in turn below.

National Energy Customer Framework (NECF)

The NECF governs the relationship between service providers and users (including retailers) in respect of their shared customers. The requirements of the NECF, as they apply to AGN, are spread between the NERL, the NERR and Parts 12A and 21 of the NGR.

AGN has proposed amendments to some of its terms and conditions to be consistent with the NERR and NGL.²¹ In summary, AGN's amendments are intended to:

- incorporate the concept of a 'shared customer', which refers to a customer that is shared by a distributor and retailer
- provide for supply curtailment, disconnection and reconnection obligations consistent with Parts 5 and 6 of the NERR
- include revised credit support, billing, invoicing obligations consistent with Part 21 of the NGR
- update the glossary to reflect new terminology consequential to the introduction of the NECF.²²

We consider that the terms and conditions should clearly reflect the requirements of the NERL, the NERR and Parts 12A and 21 of the NGR. We are not satisfied that all areas of the proposed terms and conditions achieve this objective. The provisions that we are not satisfied with are considered below.

Recovery of charges

Sub-clause 3.3 describes when a user will be responsible to pay Haulage Service Charges. Sub-clause 20.2 describes the Distribution Services Charges a user may be liable for. Both include provisions that suggest AGN can recover charges from retailers when there is no shared customer. Rule 508 of the NGR prevents the network recovering from retailers when the retailer is unable to recover from a customer.

²¹ AGN, *Access Arrangement Information*, p. 279.

²² AGN, *Access Arrangement Information*, p. 279.

AGL submitted that sub-clauses 3.3 and 20.2 are not consistent with the NGR.²³ Specifically, it referred to rule 508 of the NGR which provides that:²⁴

- (1) If a retailer is not permitted to recover distribution service charges from a shared customer under the NERL or the NERR, then neither is the distributor permitted to recover those charges from the retailer.

AGN's proposal notes and responds to comments received from its RRG on these clauses as follows:

- sub-clause 3.3 is a new clause. It introduced this clause to clarify that a gas retailer remains liable for the charges associated with a delivery point whilst the gas retailer remains registered under the Retail Market Procedures as the current user for the delivery point.²⁵
- sub-clause 20.2 is important in the event that a haulage agreement is terminated before a statement of charges is given to a retailer or a user ceases to be the current user for a delivery point.²⁶ The clause sets out that the liability for the charges accrues when the service is provided by AGN, not when the statement of charges is provided. This enables AGN to issue a statement of charges after the agreement has terminated or the user has ceased to be the current user, in respect of the period during which the agreement was in force or the user was the current user.²⁷

We consider both clauses would benefit from clarification to avoid the perception that they seek to override the application of rule 508.

We consider the following phrases, which have given rise to the concerns raised in AGL's submission, can be removed without impacting the intended operation of these clauses:

- 'whether or not there is any Shared Customer in respect of that User DP' (sub-clause 3.3).
- 'whether or not the Shared Customer pays those Distribution Services Charges, or any other amount, to the Network User' (sub-clause 20.2).

This will remove the perceived requirement that a retailer pay charges to AGN that the retailer is not permitted to recover from a shared customer. We therefore require AGN to make amendments 1 and 2 to sub-clauses 3.3 and 20.2 as set out at section 12.7.

²³ AGL, *Submission on Australian Gas Networks (South Australia) Access Arrangement Proposal 2016-21*, 11 August 2015, p. 6.

²⁴ NGR, r. 508.

²⁵ AGN, *Access Arrangement Information, Attachment 17.2, Engagement with the Australian Gas Networks Retailer Reference Group on Terms and Conditions*, p. 9.

²⁶ AGN, *Access Arrangement Information, Attachment 17.2, Engagement with the Australian Gas Networks Retailer Reference Group on Terms and Conditions*, p. 4.

²⁷ AGN, *Access Arrangement Information, Attachment 17.2, Engagement with the Australian Gas Networks Retailer Reference Group on Terms and Conditions*, p. 4.

Access to premises

Clause 35 deals with AGN's right to access the premises of the user or the customer. Sub-clause 35.4 imposes certain obligations on the user to facilitate AGN's access to the user's premises. AGN proposes to include an obligation to use "reasonable endeavours" to ensure AGN is given safe, reasonable and unhindered access to any premises owned or occupied by the user or shared customer.

AGL did not support AGN's proposed wording 'use reasonable endeavours' in sub-clause 35.4 and argued that it is not consistent with Rule 94 of the NERR, which requires retailers to 'give reasonable assistance'. AGL stated that, under the NERL and NERR, AGN has a direct relationship (through the deemed standard connection contract) with the shared customer, and as such the retailer is not solely responsible for access issues.²⁸

The NERL and NERR create a triangular contractual relationship, whereby AGN and the retailer each have a contract with a shared customer that makes provision for access to premises. Section 70 of the NERL provides for a deemed standard connection contract between AGN and shared customers. The model terms and conditions for deemed standard connection contracts between the distributor and the shared customer are set out in Schedule 2 to the NERR.²⁹ Clause 9 of the model terms states:

Under the energy laws, you must provide us and our authorised representatives (together with all necessary equipment) safe and unhindered access to the premises, including taking appropriate action to prevent menacing or attack by animals at the premises, at any reasonable time to allow us to...

Rule 94 of the NERR imposes an obligation on distributors and retailers to give 'reasonable assistance' and cooperate with each other. They must provide reasonable assistance in the performance of their obligations and the enforcement of their rights in respect of the sale and supply of energy to shared customers under the Law, the Regulations, Rules and the Retail Market Procedures.

AGN's proposed wording in sub-clause 35.4, 'use reasonable endeavours' appears to place the onus on the retailer to ensure that AGN has access, rather than requiring them to assist AGN to gain access itself.

We therefore consider it preferable that sub-clause 35.4 adopt the same language as the NERR to ensure that the terms and conditions reflect this, and cannot be read as imposing additional obligations on retailers. We require AGN to amend sub-clause 35.4 of its terms and conditions by replacing the words 'use reasonable endeavours' with 'give reasonable assistance' as set out at section 12.7 (amendment 3).

²⁸ AGL, *Submission on Australian Gas Networks (South Australia) Access Arrangement Proposal 2016-21*, 11 August 2015, p. 6.

²⁹ NERL, s. 68; NERR, cl. 81.

AGN's proposed sub-clause 35.5 absolves AGN of any liability to the user where, despite AGN's reasonable endeavours, it is unable to gain access to the user's (or a shared customer's) premises. Sub-clauses 35.5(a) and (b) state that reasonable endeavours in this context would not require AGN to use force or take unreasonable risks.

AGL submitted that it disagreed that AGN should have no liability when it is unable to gain access to a meter.³⁰ Even when AGN has exercised reasonable endeavours to obtain access, it should still share some of the liability with retailers where it fails to do so.³¹

In its explanation of changes to the current general terms, AGN stated it amended sub-clause 35.5 to conform to the AER's amendments to the equivalent clause in the access arrangement for Envestra (Victoria).³²

The NECF has not been introduced in Victoria. We made our decision for Envestra (Victoria) on this basis:

The AER considers that it would not be appropriate to require Envestra to implement the NECF as though it had been adopted in Victoria. This is because the Victorian Government has made a decision to delay its adoption. For the AER to require Envestra to implement the NECF as though it had been adopted in Victoria would be to act inconsistently with the policy of the Victorian Government and to pre-empt the Government's decision. Further, this approach would also create inconsistency between the terms and conditions and the current regulatory framework.³³

The NECF does apply to AGN's South Australian network. As noted above, the NERL and NERR provide for a direct relationship between AGN and shared customers. We therefore do not consider AGN can remove all responsibility where it is unable to gain access to a shared customer's premises

We therefore require AGN to remove sub-clause 35.5 from the terms and conditions as set out at section 12.7 (amendment 4).

Time limitations and exclusion of liability clauses

Several provisions within AGN's terms and conditions impose time limitations on users, including retailers, to make claims against AGN. Other clauses propose to exclude

³⁰ AGL, *Submission on Australian Gas Networks (South Australia) Access Arrangement Proposal 2016-21*, 11 August 2015, p. 6.

³¹ AGL, *Submission on Australian Gas Networks (South Australia) Access Arrangement Proposal 2016-21*, 11 August 2015, p. 6.

³² AGN, *Access Arrangement Information, Attachment 17.2, Engagement with the Australian Gas Networks Retailer Reference Group on Terms and Conditions*, p. 13.

³³ AER, *Envestra draft decision*, pp. 438, 471.

liability from AGN in certain situations. Time limitations and exclusion of liability clauses can create issues if they:

- unfairly remove or limit the rights of users
- inefficiently allocate risks
- are inconsistent with the law.

Time limitations on adjustments to statement of charges

AGN's proposed clause 22 provides for adjustments to be made to a statement of charges. Sub-clause 22.2 states that adjustments to the statement of charges may occur because of differences between estimated and actual meter reading or because of errors in the metering data or the calculation of the distribution service charges. Sub-clause 22.3 imposes a time limitation of 11 months within which a user must make claims for an adjustment of the distribution service charges. Sub-clause 22.2 is limited by sub-clause 22.1 and rule 508(1) of the NGR, which prevent AGN recovering from retailers if the retailer is prevented from recovering under the NERL or the NERR.

AGL submitted that time limitations should not apply to sub-clauses 22.2 or 22.3. AGL expressed concern about clause 22.2 because retailers have an obligation to repay customers where they have been overcharged under Rule 31 of the NERR. Retailers are not protected from repaying customers by a time limitation unless the customer is at fault. In other cases, the retailer's obligation to repay amounts overcharged (which may include network charges) is not time limited.³⁴

In relation to sub-clause 22.3, AGL submitted that the time limitation does not reflect the realities of the market where issues may not be discovered within the timeframes contemplated. AGL should not have to bear the financial consequences when they have no ability to prevent the issue.³⁵

In response to comments received through consultation with its RRG, AGN stated that sub-clauses 22.2 and 22.3 reflect similar provisions in the NGR and the NERR.³⁶ Further, AGN amended sub-clause 22.3 to clarify that a retailer will not be prevented from making a claim against AGN if the retailer is required by law to make or pursue a claim on behalf of the shared customer.³⁷ Therefore, the time limit does not result in a situation where the retailer will bear the financial risk.

³⁴ AGL, *Submission on Australian Gas Networks (South Australia) Access Arrangement Proposal 2016-21*, 11 August 2015, p. 6.

³⁵ AGL, *Submission on Australian Gas Networks (South Australia) Access Arrangement Proposal 2016-21*, 11 August 2015, p. 6.

³⁶ AGN, *Access Arrangement Information, Attachment 17.2, Engagement with the Australian Gas Networks Retailer Reference Group on Terms and Conditions*, pp. 1, 2.

³⁷ AGN, *Access Arrangement Information, Attachment 17.2, Engagement with the Australian Gas Networks Retailer Reference Group on Terms and Conditions*, p. 1.

We also consider that user will not be disadvantaged by these sub-clauses where they discover an error after the time limit for adjustments has expired. In such circumstances they could use the dispute resolution mechanism in clause 23. We therefore have not proposed any amendments to sub-clauses 22.2 or 22.3.

Time limitations on claims for property damage, personal injury

Clause 29 states that AGN will indemnify the user against property damage or personal injury as a result of any negligent act or omission by AGN. Sub-clause 29.5 imposes a time limitation on the user to make a claim against AGN.

AGL submitted that time limitations should not apply to sub-clause 29.5 because the nature of the industry is that issues may not be identified within three months and can take time to investigate. It stated it is unreasonable for the retailer to suffer the financial burden of Network errors.³⁸

In response to comments about sub-clause 29.5, AGN stated:

- the three months only starts when a retailer becomes aware (or should have become aware) of the claim
- the three-month period is designed to ensure that a retailer does not fail to disclose claims of which it is aware
- the three months should give the retailer sufficient time to notify AGN of the claim.³⁹

In relation to sub-clause 29.5, we note our previous comments that time limitations provide incentives on the user to alert AGN to claims as soon as reasonably possible. Further, the time limitation of three months is qualified as ‘[t]o the extent permitted by law’. Ultimately, the user is only limited by the law in making a claim against AGN and not by this clause.

We do note, however, that the term ‘Claim’ in sub-clause 29.5 is not defined in AGN’s Access Arrangement or in the NGR and, therefore, is not clear or legally certain. We consider that adding a definition of ‘Claim’ will provide clarity and certainty to the terms and conditions. We therefore require AGN make amendment 5 to the glossary to its access arrangement to add a definition of ‘claim’ as set out at section 12.7.⁴⁰

Termination

Clause 28 sets out provisions for termination of the agreement by either party. Sub-clause 28.2 provides for when AGN may terminate the contract.

³⁸ AGL, *Submission on Australian Gas Networks (South Australia) Access Arrangement Proposal 2016-21*, 11 August 2015, p. 8.

³⁹ AGN, *Access Arrangement Information, Attachment 17.2, Engagement with the Australian Gas Networks Retailer Reference Group on Terms and Conditions*, p. 2.

⁴⁰ Our proposed definition is taken from the access arrangement approved for Envestra (Victoria); See: AER, *Access arrangement final decision Envestra Ltd 2013–17 Part 2: Attachments*, March 2013, pp. 266–267.

AGL submitted that sub-clause 28.2 is strict and does not seem appropriate to terminate an agreement if there were a dispute over charges.⁴¹

In its explanation of changes to the current general terms, AGN stated that this is a new clause which it introduced to satisfy the AER's concerns in its decision for Envestra (Victoria).⁴² AGN added that it has qualified this statement as follows:

Inserted "Subject to clause 28.4" at the beginning of clauses 28.2(a) and 28.2(b).⁴³

Consistent with our Envestra (Victoria) decision, we consider this reference to sub-clause 28.4 will prevent AGN from terminating an agreement if there were a dispute over charges.

However, AGN does not appear to have inserted this qualification at sub-clause 28.2(a) of its terms and conditions. We therefore consider that the clause as drafted is not appropriate as it is unclear whether AGN can terminate where there is a dispute over charges.

We therefore require AGN to make amendments 6 and 7 as set out at section 12.7. The amendments include the additional qualification to sub-clause 28.2(a) and the consequential amendment to sub-clause 28.4.

We also identified a typographical error at sub-clause 28.2 and propose to remove the word, 'to', also included at amendment 6.

Liability for network limitations

Clause 14 imposes an obligation on AGN to supply gas at the pressures prescribed by law or agreed to by the parties. Sub-clause 14.2(a) excludes AGN from liability where it fails to provide gas at the required pressure due to technical, practical or physical limitations on the network.

Origin submitted that sub-clause 14.2(a) provides for a very broad range of scenarios where AGN can be excused from its obligation to supply gas.⁴⁴

AGN responded to comments on this exclusion of liability clause, in its consultation with the RRG. AGN stated that an important premise of the NGR is that a service provider cannot be required to invest capital to increase the capacity of the network (NGR 4(3) and 118). Sub-clause 14.2(a) is designed to ensure that sub-clause 14.1

⁴¹ AGL, *Submission on Australian Gas Networks (South Australia) Access Arrangement Proposal 2016-21*, 11 August 2015, p. 8.

⁴² AGN, *Access Arrangement Information, Attachment 17.2, Engagement with the Australian Gas Networks Retailer Reference Group on Terms and Conditions*, p. 12.

⁴³ AGN, *Access Arrangement Information, Attachment 17.2, Engagement with the Australian Gas Networks Retailer Reference Group on Terms and Conditions*, p. 12.

⁴⁴ Origin, *Submission on AGN 2016-21 Access Arrangement Proposal for its SA Gas Distribution Network – 10 August 2015*, p. 10.

does not effectively impose an obligation on the service provider to fund increases in the capacity of the network. Sub-clause 14.2(a) qualifies sub-clause 14.1 to ensure it does not require it to alter the technical, practical or physical characteristics of the network.

We consider that sub-clause 14.2(a) ensures that AGN is not obliged to deliver more gas than the technical limitations of the network. The effect of sub-clause 14.2 is limited as follows:

- AGN is unable to rely on it where AGN's failure to meet its agreement is due to the negligence or an omission on the part of AGN (or any officer, servant, agent contractor or other person for whom AGN is liable).
- AGN is prevented by sub-clause 4.5 from connecting a new demand point or expanding the capacity of an existing demand point if there will be insufficient capacity in the network to meet the demand. The effect of this provision is that the technical, practical and physical limitations of the network will not prevent it under ordinary circumstances from being able to supply gas at the pressures prescribed by law and agreed with users.

We therefore do not consider that the drafting of this clause is too broad. We have not required an amendment to sub-clause 14.2(a) of the proposed terms and conditions.

Consistency with other relevant laws and duplication

The terms and conditions of the reference services agreement must be consistent with relevant legislation. We have outlined amendments that AGN must make where we have found that consistency with legislation is unclear.

Origin stated that some clauses in AGN's proposed terms and conditions are inconsistent with relevant legislation and, in other cases, there is unnecessary duplication between the terms and conditions and relevant legislation.⁴⁵

Origin submitted that AGN's proposed sub-clause 15.1(b) is inconsistent with the Retail Market Procedures.⁴⁶ Further, if the proposed drafting is accepted, Origin submitted that the clause could be read to allow one user to lay claim to gas delivered at another user's delivery point.⁴⁷

Clause 15 includes provisions around who has possession of gas and responsibility for it. Sub-clause 15.1 describes when a user will have possession of gas and when AGN will have possession of gas. In its explanation of changes to the current general terms,

⁴⁵ Origin, *Submission on AGN 2016-21 Access Arrangement Proposal for its SA Gas Distribution Network – 10 August 2015*, p. 9.

⁴⁶ Origin referred us to clauses 222, 227 and 307 of the Retail Market Procedures (South Australia).

⁴⁷ Origin, *Submission on AGN 2016-21 Access Arrangement Proposal for its SA Gas Distribution Network – 10 August 2015*, p. 10.

AGN stated that the reason for making the amendment was so that the clause conforms to the equivalent clause in the Envestra (Victoria) decision.⁴⁸

We consider the intent of the clause can be achieved without this amendment, and that the original drafting is clearer, and therefore preferable, in that it is specific to gas delivered out of the network “to or for the account of the Network User”. We therefore require AGN to make amendment 8 to clause 15 as set out at section 12.7.

In response to comments raised by its RRG during consultation, AGN stated that some of its amendments were to eliminate duplication.⁴⁹ Origin submitted that the AER should review clauses 9, 10 and 11 and remove duplication between the Retail Market Procedures and AGN’s terms and conditions. We do not consider duplication a problem per se, where there is no inconsistency between the terms and conditions and the relevant Retail Market Procedures. We therefore do not consider it is necessary to remove these references.

Overruns and maximum daily quantity (MDQ)

Clause 5 applies a daily overrun charge in the event that gas delivered exceeds the MDQ for a demand point. Sub-clauses 5.4 and 5.5 state that if the MDQ at a demand point is exceeded four times in a month or eight times in a year, then an increased MDQ will apply. Clause 6 states how long the increased MDQ will apply. Under sub-clause 6.3 the increased MDQ will apply for at least two years.

Nyrstar submitted that clauses 5 and 6 are unreasonable and should not apply to large users because, at times, they may be unable to control the gas demand and avoid exceeding MDQ for safety or operational reasons. Nyrstar questioned whether the administered 2-year period provides price signals which improve network efficiency and investment.⁵⁰

We consider that overrun charges and the MDQ are necessary provisions to maintain a balanced network which can efficiently deliver gas to customers. The terms and conditions already provide opportunity for users such as Nyrstar to request a temporary increase in MDQ (clause 8, discussed further below). We therefore do not agree that it would be appropriate to transfer this risk wholly to AGN by exempting large users from the overrun and MDQ provisions.

The process for a user requesting an increase in maximum daily quantity (MDQ) is set out at Clause 8. Sub-clause 8.2 includes the following fees for this type of request:

- administration fee of \$250 per request (increased from \$200 in the current period)

⁴⁸ AGN, *Access Arrangement Information, Attachment 17.2, Engagement with the Australian Gas Networks Retailer Reference Group on Terms and Conditions*, p. 10.

⁴⁹ AGN, *Access Arrangement Information, Attachment 17.2, Engagement with the Australian Gas Networks Retailer Reference Group on Terms and Conditions*, p. 3.

⁵⁰ Nyrstar, p. 2.

- engineering analysis fee (if required) of \$150 per hour per person.(increased from \$100 in the current period).

These fees have been updated in the proposed terms and conditions. Origin submitted that the increased administration fees for requests for a temporary increase in MDQ and the engineering analysis appear excessive.⁵¹

In its response to comments on this issue from its RRG, AGN stated that:

- these charges are rarely used and have not been updated for several years.
- the proposed charges are lower than its actual costs of administering the requests or the market price of seeking engineering analysis
- The charges would be fixed for the five year access arrangement period and not subject to annual escalation.⁵²

On this basis we consider the charges are not likely to be excessive, and do not require any amendment.

Additions to terms and conditions proposed in submissions

Submissions from retailers proposed the addition of several new terms.

AGL submitted that the terms and conditions should include a clause that AGN notify the current retailer when reconnecting a user delivery point after disconnection from the network.⁵³ It argued 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 to the customer to set up an account. 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 AGN, but our draft decision is not to require AGN to include this requirement in the terms and conditions.

AGL also argued that while negotiation of alternative terms and conditions is possible, it is difficult to incentivise service providers to prioritise commercial negotiation of commercial agreements. It also suggested that some service providers have expressed concern that there is no regulatory mechanism to allow such agreements. It therefore proposed the inclusion of the following clause:

⁵¹ Origin, *Submission on AGN 2016-21 Access Arrangement Proposal for its SA Gas Distribution Network – 10 August 2015*, p. 9.

⁵² AGN, *Access Arrangement Information, Attachment 17.2, Engagement with the Australian Gas Networks Retailer Reference Group on Terms and Conditions*, p. 1.

⁵³ AGL, *Submission on Australian Gas Networks (South Australia) Access Arrangement Proposal 2016-21*, 11 August 2015, p. 7.

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 that 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.⁵⁴

As noted in section 12.1.3 above, section 322 of the NGL provides that nothing in the NGL should 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.⁵⁵ We expect that both the service providers and users will negotiate in good faith, and in a timely manner, on such matters. Where issues do arise, clause 37 of the terms and conditions and Part 15C of the NGR provide for dispute resolution processes. We do not consider inclusion of such a clause in the terms and conditions is necessary to support these processes.

Clause 21 sets out the processes and requirements for providing a statement of charges. Origin suggested that sub-clause 21.2 be amended to include in the statement of charges 'any information agreed between the user and AGN'.

The clause already includes a statement that AGN may include in the statement of charges any information which it agrees to include. We do not consider that Origin's proposed amendment adds anything to the existing clause. We therefore do not require amendment to this clause.

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.⁵⁶

12.2.1 Draft decision

We accept AGN's proposal not to include queuing requirements in its access arrangement for the 2016-21 access arrangement period.

12.2.2 AGN's proposal

AGN's current access arrangement does not include any queuing requirements. For the 2016-21 access arrangement period, AGN did not propose any changes to this aspect of its current access arrangement.

⁵⁴ AGL, *Submission on Australian Gas Networks (South Australia) Access Arrangement Proposal 2016-21*, 11 August 2015, p. 3.

⁵⁵ This is subject to section 135 of the NGL, which requires the service provider to comply with the queuing requirements of the applicable access arrangement – see section 12.2 below.

⁵⁶ NGR, r. 103(3)

12.2.3 AER's assessment approach

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

Rule 103 of the NGR has specific provisions on queuing requirements and provides that:⁵⁷

- 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 arrangements
- queuing requirements must establish a process or mechanism (or both) 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

AGN (then Envestra) did not include queuing requirements in its access arrangement in the current (2011-16) and previous access arrangement periods. This approach was accepted on the basis that there was ample capacity in the network and queues were therefore unlikely to form.⁵⁸ We did not receive any submissions on this issue. We do not consider there is any information before us that warrants a change of approach in the 2016-21 access arrangement period.

12.3 Extension and expansion requirements

All access arrangements must include requirements relating to extensions of, and expansions to, a pipeline.⁵⁹ 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 approve AGN's proposed extension and expansion requirements for the 2016-21 access arrangement period.

⁵⁷ NGR, r. 103.

⁵⁸ AER, *Final decision, Envestra Ltd Access arrangement proposal for the SA gas network 1 July 2011-30 June 2016*, June 2011, p. 138; ESCOSA, *Proposed revisions to the access arrangement for the South Australian gas distribution system, draft decision*, March 2006, p. 219.

⁵⁹ 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.

12.3.2 AGN's proposal

Clause 8 of AGN's proposed access arrangement refers to requirements for network extensions and expansions.⁶⁰ AGN has not proposed any changes— except for a minor wording amendment—to clause 8 of its current access arrangement.

The wording amendment is to delete the words “(ie no change to the reference tariffs)” in clause 8.2:

8.2 Treatment of covered pipelines

If an extension or expansion is to be treated as a covered network under the access arrangement, [AGN] will offer reference services for that extension or expansion at reference tariffs ~~(ie no change to the reference tariffs)~~. [AGN] may levy a surcharge on users to recover non-conforming capital expenditure in accordance with rule 83 of the NGR.⁶¹

12.3.3 AER's assessment approach

The AER has assessed AGN'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:⁶²

- 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 time⁶³
- if an access arrangement is to apply to incremental services, the requirements must deal with the effect of the extension or expansion on tariffs
- the requirements cannot require the service provider to provide funds for extension or expansion works unless the service provider agrees.

12.3.4 Reasons for draft decision

AGN's proposed requirements for network extensions and expansions are the same for its 2016–21 access arrangement as those in its current access arrangement.

⁶⁰ AGN, *Access Arrangement for AGN's South Australian Gas Distribution Network, 1 July 2016-30 June 2021*, July 2015, cl. 8.

⁶¹ AGN, *Access Arrangement for AGN's South Australian Gas Distribution Network, 1 July 2016-30 June 2021*, July 2015, cl. 8.2.

⁶² NGR, r. 104.

We consider that the deletion of the phrase “(ie no change to the reference tariffs)” does not change the substance of the extension/expansion requirements.

We remain satisfied that AGN’s proposed extension/expansion requirements comply with rule 104 of the NGR.

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.⁶⁴ In doing so, it may enable a secondary market with more efficient price signals and levels of usage.

12.4.1 Draft decision

We do not approve AGN’s proposed capacity trading requirements for the 2016–21 access arrangement period as filed, and require AGN to make amendment 9 as set out in section 12.7.2.

12.4.2 AGN’s proposal

AGN proposed requirements for both (1) capacity trading and (2) changing receipt and delivery points in the one clause (clause 7) of its access arrangement proposal.⁶⁵ This is the same structure as in its current access arrangement.

However, in its proposed clause 7, AGN has deleted the provisions on the service provider’s consent to capacity transfers.

AGN submitted that:

There has never been any capacity trading on the Network, as it is a distribution system and, unlike with a transmission pipeline, Network Users do not own capacity on the Network. Nevertheless, the opportunity has been taken to simplify and align the wording in this section to that of Rules 105 and 106, which set out access arrangement capacity trading requirements and Delivery Point change requirements respectively.⁶⁶

In this section we set out our assessment of AGN’s proposed capacity trading requirements. We consider AGN’s proposed requirements for changing receipt or delivery points in section 12.5 below.

⁶⁴ NGR, r. 105(2).

⁶⁵ AGN, *Access Arrangement for AGN’s South Australian Gas Distribution Network, 1 July 2016-30 June 2021*, July 2015, cl. 7.

⁶⁶ AGN, *Access Arrangement Information for Australian Gas Networks’ South Australian Natural Gas Distribution Network*, July 2015, p. 282.

12.4.3 AER's assessment approach

We have assessed AGN'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:

- 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 7 of the proposed access arrangement which sets out the capacity trading requirements under AGN's proposed access arrangement.⁶⁷

We note that r. 105(2) to 105(4) and 105(6) of the NGR set out specific requirements that the service provider must adhere to for the transfer of capacity under certain circumstances. These rules concern the transfer of capacity trading requirements with or without the service provider's consent. Capacity trading requirements may specify conditions under which consent will or will not be given, and the conditions to be complied with if consent is given. A service provider is precluded from withholding its consent unless it has reasonable grounds, based on technical or commercial considerations, for doing so. We consider AGN's proposal does not satisfy all of these rules.

AGN's current access arrangement contains the following subclauses:

7.2 Bare Transfers

⁶⁷ AGN, *Access Arrangement for AGN's South Australian Gas Distribution Network, 1 July 2016-30 June 2021*, July 2015, cl. 7.

A Network User is permitted to transfer or assign all or part of its Contracted Capacity without the consent of [AGN] if:

- the Network User's obligations under the Agreement related to that Contracted Capacity remain in full force and effect after the transfer or assignment; and
- the terms of that Agreement are not altered as a result of the transfer or assignment (a Bare Transfer).

Prior to using any Contracted Capacity that is the subject of a Bare Transfer, the transferor must notify [AGN] of the nature of the Contracted Capacity that is subject to the Bare Transfer. The transferor must notify [AGN] of:

- the subcontract and its likely duration;
- the identity of the transferee; and
- the amount of contracted capacity transferred.

7.3 Other Transfers

A Network User is permitted to transfer or assign all or part of its Contracted Capacity (other than by way of a Bare Transfer) with the prior written consent of [AGN], where the transfer or assignment is commercially and technically reasonable. Following such a transfer, the transferor's rights against, and obligations to [AGN] are terminated or modified in accordance with these capacity trading requirements. A contract then arises between the transferee and [AGN] on terms and conditions in accordance with the capacity trading requirements.

[AGN] may withhold its consent only on reasonable commercial and technical grounds, and may make its consent subject to conditions, but only if they are reasonable on commercial and technical grounds.

Examples of the reasonable commercial or technical grounds upon which [AGN] will withhold its consent or make its consent subject to conditions include:

- where there is insufficient Capacity at any point in the Network (either before or as a result of the transfer) to enable the proposed Contracted Capacity to be transferred or assigned to the proposed User Delivery Point;
- where [AGN] would receive less revenue as a result of the proposed transfer or assignment of Contracted Capacity; and
- where the proposed transferee is unable to satisfy [AGN] that it is able to meet the requirements set out in section 6 of this Access Arrangement.

The above provisions relate to capacity trading requirements without the service provider's consent (subclause 7.2) and with the service provider's consent (subclause 7.3). These subclauses make the current access arrangement compliant with r. 105(2) to 105(4) and 105(6). However, AGN has removed these subclauses from its proposed 2016-21 access arrangement.

To assess whether these deleted provisions are stated (perhaps in a different form but with the same substance) elsewhere in AGN's proposed access arrangement, we reviewed Annexure G General Terms and Conditions, which is an annexure to the proposed access arrangement. In particular, we looked at clause 39 Assignment and

clause 41.3 Consents.⁶⁸ Clause 39.2 addresses the assignment by a user of any of its rights and obligations under the access agreement, with the service provider's consent and in accordance with the Retail Market Procedures, and with such consent not to be unreasonably withheld. We consider that a user's transfer of capacity is included in its rights and obligations under the access agreement. Clause 41.3 provides that if consent is required from either party under the agreement, that party must not unreasonably withhold its consent. Therefore, we consider clauses 39.2 and 41.3 of Annexure G satisfy r. 105(3) and 105(4).

However, we cannot find any relevant provision in the proposed access arrangement that addresses r. 105(2), relating to capacity transfer without the service provider's consent.

We examined AGN's stated justification in removing subclauses 7.2 and 7.3 from its current access arrangement. AGN explained that it made the changes 'to simplify and align the wording in this section to that of Rules 105 and 106...'.⁶⁹ Our assessment is that, without these subclauses, AGN's proposed clause 7 no longer satisfies r. 105(2) and no longer provides clarity and provides insufficient certainty to users.

The NGR require an access arrangement to have capacity trading requirements. Under r. 40(3) of the NGR, the AER has full discretion to impose preferable capacity trading requirements in an access arrangement review where they also comply with applicable requirements and criteria under the NGL and the NGR.

We require AGN to make amendment 9 to clause 7 of its proposed 2016–21 access arrangement, as specified in section 12.7 below. The amendment requires that the proposed access arrangement include, under capacity trading requirements, subclauses similar to subclauses 7.2 and 7.3 of the current access arrangement, notwithstanding any potential duplication with clauses in Annexure G. This required amendment makes clear to the user the requirements for any transfer of contracted capacity with or without the service provider's consent. We consider that an amended version of AGN's proposal would make AGN's capacity trading requirements compliant with r. 105 and better promote 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.⁷⁰ A user may wish to change the point at which they receive or take delivery of natural gas.

⁶⁸ Australian Gas Networks, *SA Access Arrangement Annexure G General Terms and Conditions, Terms & Conditions applicable to the provision of Reference Services*, SA Distribution Network, July 2015.

⁶⁹ AGN, *Access Arrangement Information for Australian Gas Networks' South Australian Natural Gas Distribution Network*, July 2015, p. 282.

⁷⁰ NGR, r. 3.

12.5.1 Draft decision

We do not approve AGN's proposed terms and conditions for changing receipt or delivery points for the 2016–21 access arrangement period, and require AGN to make amendment 10 set out in section 12.7.2.

12.5.2 AGN's proposal

AGN's current 2011–16 access arrangement contains only one clause (clause 7) for both requirements for capacity trading and changing receipt and delivery points.

In the proposed access arrangement for 2016-21, AGN has deleted subclause 7.5 of the current arrangement (procedure for changing receipt or delivery points).

As with its amendment on its capacity trading requirement, AGN submitted that it intended to simplify and align the wording of its requirement on changing receipt or delivery points with r. 106 of the NGR.⁷¹

12.5.3 AER's assessment approach

We have assessed AGN'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 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

AGN's proposed 2016–21 access arrangement sets out requirements for changing receipt or delivery points. This includes a requirement to obtain the service provider's consent. The proposed clause states that:

7.2 Delivery and Receipt Points

In accordance with rule 106 of the NGR, a Network User may change a Delivery Point and/or Receipt Point from that specified in an Agreement with AGN's consent.

⁷¹ AGN, *Access Arrangement Information for Australian Gas Networks' South Australian Natural Gas Distribution Network*, July 2015, p. 282.

AGN will not withhold its consent unless it has reasonable grounds, based on technical or commercial considerations, for doing so.

This is a change to the wording of the clause in the current access arrangement, which states:

7.4 Delivery and Receipt Points

A Network User is permitted to change a Delivery Point and/or Receipt Point from that specified in an Agreement with the prior written consent of [AGN] where the change is commercially and technically reasonable.

[AGN] may withhold its consent only on reasonable commercial and technical grounds, and may make its consent subject to conditions, but only if they are reasonable on commercial and technical grounds. An example might be, if [AGN] would not receive at least the same amount of revenue it would have received before the change.

We consider the change acceptable, as it does not change the substance of the requirement.

However, in addition to replacing clause 7.4 with the simpler clause 7.2, AGN has also proposed to remove subclause 7.5, which set out its procedure for changing delivery and receipt points:

7.5 Procedure

The following procedure is to be followed in relation to transfers or assignments of Contracted Capacity (other than Bare Transfers) and changes to Delivery and/or Receipt Points:

- the party requesting the transfer/assignment or a change to a Delivery Point/Receipt Point shall submit a written request to [AGN], setting out the applicable details. A fee of \$100, payable at the time of the request, will apply to each request.

- [AGN] will complete an analysis to determine whether the request is technically and commercially feasible and reasonable. The cost of completing this analysis will be borne by the party that makes the request. Charges for the analysis may be made in relation to Demand Delivery Points only, and may vary depending on the complexity of analysing the request, but will be agreed in advance with the party making the request. Costs will be based on an hourly rate of \$100 per person per hour for each hour after the first hour.

[AGN] will reply to requests for a transfer (other than a bare transfer) or for a change in Receipt Point or Delivery Point, within 14 Business Days of receiving the request, provided the request is accompanied by information which is reasonably necessary to enable [AGN] to consider the request.

If, at the time the request is made, the Network User informs [AGN] that, due to hardship, the Network User requires an urgent reply to its request, [AGN] will use reasonable endeavours to respond to the request within two Business

Days of receiving the request, provided the request is accompanied by information which is reasonably necessary to enable [AGN] to consider the request.⁷²

We consider that retention of this subclause is preferable, as it makes clear to a user how it may seek and obtain AGN's consent to a change of receipt or delivery point, and identifies the relevant conditions for that consent. We therefore require AGN to make amendment 10 to clause 7 of its proposed 2016–21 access arrangement, as specified in section 12.7.2 below.

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 do not approve AGN's proposed review submission date and revision commencement date, and require AGN to make amendments 11 and 12 set out in section 12.7.2.

12.6.2 AGN's proposal

AGN proposed that:

- the review submission date is on or before 1 July 2020⁷³
- the revisions commencement date is the later of 1 July 2021 and the date on which their approval takes effect under the NGR.⁷⁴

12.6.3 AER's assessment approach

We have assessed AGN'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

⁷² AGN, *Access Arrangement for Envestra's South Australian Gas Distribution System*, 8 July 2011–30 June 2016, July 2011, cl. 7.5.

⁷³ AGN, *Access Arrangement for AGN's South Australian Gas Distribution Network*, 1 July 2016–30 June 2021, July 2015, cl. 9.1. AGN referred to the review submission date as the 'Revisions Submission Date'.

⁷⁴ AGN, *Access Arrangement for AGN's South Australian Gas Distribution Network*, 1 July 2016–30 June 2021, July 2015, cl. 9.2.

- a revision commencement date will fall 5 years after the access arrangement took effect or the last revision commencement date.⁷⁵

We must accept a proposal made in accordance with the general rule.⁷⁶

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 revenue and pricing principles (RPP).⁷⁷

12.6.4 Reasons for draft decision

AGN proposed a review submission date of ‘on or before 1 July 2020’.

Rule 3 of the NGR defines a review submission date as ‘a date on or before which an access arrangement revision proposal is required to be submitted’.⁷⁸ To meet this requirement, we consider AGN’s access arrangement must include a single date for the submission of revisions. It is then open to AGN under rule 52 to submit an access arrangement revision proposal prior to that date. Our required amendment is specified in section 12.7.

AGN’s proposed revision commencement date was ‘the later of 1 July 2021 and the date on which their approval takes effect under the NGR’. Rule 3 of the NGR defines the revision commencement date for an applicable access arrangement as the date fixed in the access arrangement as the date on which revisions resulting from a review of the access arrangement are *intended* to take effect.⁷⁹ In doing so, it contemplates a fixed, single date. In contrast, AGN’s proposal contemplates a non-specific date of effect that falls on or after 1 July 2021. We therefore require AGN to make amendments 11 and 12 as set out in section 12.7.2 to provide for a single revision commencement date of 1 July 2021.

12.7 Revisions

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

12.7.1 Amendments to terms and conditions

Amendment

3.3 Fixed Component of Haulage Service Charges

1. The Network User will remain responsible to pay Haulage Service Charges in respect of each User DP for so long as the Network

⁷⁵ NGR, r. 50(1).

⁷⁶ NGR, r. 50(2).

⁷⁷ NGR, r. 50(4).

⁷⁸ NGR, r. 3.

⁷⁹ NGR, r. 3.

User remains the current user for that User DP (within the meaning of the Retail Market Procedures)(and, in particular, for so long as the Network User is the current user for a User DP, the Network User will remain liable to pay any part of the Haulage Service Charges that is payable under the Tariff Schedule, irrespective of the Quantity of Gas delivered through that User DP, ~~whether or not there is any Shared Customer in respect of that User DP~~).

20.2 Liability for Charges

2.

Subject to sub-clause 20.3, the Distribution Services Charges for which the Network User is liable in respect of a User DP or Shared Customer include the Distribution Service Charges which accrue, in respect of any User DP, whilst the Network User is registered under the Retail Market Procedures as the current user in relation to that User DP. Subject to sub-clause 22.1, if the Network User is a Gas Retailer, the Network User is liable for those Distribution Services Charges ~~whether or not the Shared Customer pays those Distribution Services Charges, or any other amount, to the Network User~~.

35.4 Network User's Obligation

3.

The Network User must ~~use reasonable endeavours~~ **give reasonable assistance** to ensure that AGN (and its officers, servants, agents or contractors) are given safe, reasonable and unhindered access whenever they require to any premises owned or occupied by the Network User (or, if the Network User is a Gas Retailer, any Shared Customer) for the purposes of:

- (a) performing the Agreement; or
- (b) exercising any right given to AGN under the Agreement.

Clause 35.5

4.

~~AGN will have no liability to the Network User for any failure to perform the Agreement to the extent that AGN is unable to perform the Agreement because it could not obtain safe, reasonable and unhindered access to any premises or place at the time or times it required, after exercising its reasonable endeavours to do so (provided that reasonable endeavours will not require AGN or any of its officers, servants, agents or contractors:~~

~~(a) to enter, or attempt to enter, any premises by force or to take any steps that might involve damage, or the risk of damage, to any~~

Amendment

~~property; or~~

~~(b) to take any steps that might involve a reasonable risk of physical injury or harm or a risk to the safety of any person.~~

Glossary

5.

'Claim' means any claim under or pursuant to an indemnity in the Agreement (or any other contract) or as a result of any breach of the Agreement (or any other contract) or in tort as a result of any negligence or any breach of any duty or as a result of any breach of any statutory duty or obligation or any other duty or obligation.

28.2 Termination by AGN

AGN may terminate the Agreement by seven days' notice given to the Network User at any time, in the event that:

6.

(a) ~~subject to clause 28.4~~, the Network User fails to pay any amount due to AGN on time in the manner required by the Agreement or any Related Haulage Agreement (other than where permitted by law (including clause 23)) and the Network User fails to pay the amount due within 14 days after it receives a written notice ~~to~~ specifying the amount that is due;

28.4 Disputed Right of Termination

7.

AGN may not give notice of termination under clause 28.2(a) or (b) for an alleged breach of an obligation by the Network User if the Network User, in good faith, disputes the alleged breach and gives AGN notice of that dispute in accordance with clause 37 within 14 days after the Network User receives notice of the alleged breach. This clause will not apply in any case where it has been determined that the Network User is in breach of an obligation (either by the Independent Expert appointed to resolve the dispute or by a court of law).

15.1

...

8.

(b) the Network User will be in control and possession of Gas after its delivery out of the Network ~~at any User DP to or for the account of the Network User~~; and

12.7.2 Amendments to other parts of the access arrangement

Amendment

In or after clause 7.1, insert:

[7.1A] Transfers without consent

A Network User is permitted to transfer or assign all or part of its Contracted Capacity without the consent of AGN if:

- the Network User's obligations under the Agreement related to that Contracted Capacity remain in full force and effect after the transfer or assignment; and
- the terms of that Agreement are not altered as a result of the transfer or assignment.

Prior to using any Contracted Capacity that is the subject of such transfer, the transferor must notify AGN of the nature of the Contracted Capacity that is subject to such transfer. The transferor must notify AGN of:

- the subcontract and its likely duration;
- 9. - the identity of the transferee; and
- the amount of contracted capacity transferred.

[7.1B] Other Transfers

A Network User is permitted to transfer or assign all or part of its Contracted Capacity (other than by way of a transfer pursuant to clause 7.2 above) with the prior written consent of AGN, where the transfer or assignment is commercially and technically reasonable. Following such a transfer, the transferor's rights against, and obligations to AGN are terminated or modified in accordance with these capacity trading requirements. A contract then arises between the transferee and AGN on terms and conditions in accordance with the capacity trading requirements.

AGN may withhold its consent only on reasonable commercial and technical grounds, and may make its consent subject to conditions, but only if they are reasonable on commercial and technical grounds.

In or after clause 7.2, insert:

[7.2B] Procedure

- 10. The following procedure is to be followed in relation to transfers or assignments of Contracted Capacity (other than by way of a transfer pursuant to clause 7.2 above) and changes to Delivery and/or Receipt Points:

- the party requesting the transfer/assignment or a change to a Delivery Point/Receipt Point shall submit a written request to AGN, setting out the applicable details. A fee of \$100, payable at the time of the request, will apply to each request.

Amendment

- AGN will complete an analysis to determine whether the request is technically and commercially feasible and reasonable. The cost of completing this analysis will be borne by the party that makes the request. Charges for the analysis may be made in relation to Demand Delivery Points only, and may vary depending on the complexity of analysing the request, but will be agreed in advance with the party making the request. Costs will be based on an hourly rate of \$100 per person per hour for each hour after the first hour.

AGN will reply to requests for a transfer (other than a transfer pursuant to clause 7.2 above) or for a change in Receipt Point or Delivery Point, within 14 Business Days of receiving the request, provided the request is accompanied by information which is reasonably necessary to enable AGN to consider the request.

If, at the time the request is made, the Network User informs AGN that, due to hardship, the Network User requires an urgent reply to its request, AGN will use reasonable endeavours to respond to the request within two Business Days of receiving the request, provided the request is accompanied by information which is reasonably necessary to enable AGN to consider the request.

9.1 Revisions Submission Date

11. AGN will submit revisions to this Access Arrangement to the Regulator on ~~or before~~ 1 July 2020.

9.2 Revisions Commencement Date

12. The revisions to this Access Arrangement referred to in section 9.1 will commence on ~~the later of~~ 1 July 2021 ~~and the date on which their approval takes effect under the NGR.~~