



FINAL DECISION
Australian Gas Networks (SA)
Access Arrangement

2021 to 2026

Attachment 11
Non-tariff components

April 2021

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Note

This attachment forms part of the AER's final decision on the access arrangement that will apply to Australian Gas Networks (SA) ('AGN') for the 2021–26 access arrangement period. It should be read with all other parts of the final decision.

The final decision includes the following documents:

Overview

Attachment 2 – Capital base

Attachment 3 – Rate of return

Attachment 4 – Regulatory depreciation

Attachment 5 – Capital expenditure

Attachment 6 – Operating expenditure

Attachment 7 – Corporate income tax

Attachment 8 – Efficiency carryover mechanism

Attachment 11 – Non-tariff components

Attachment 12 – Demand

Attachment 13 – Capital expenditure sharing scheme

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11 Non-tariff components

This attachment contains our final decision and reasons on the non-tariff components of AGN's access arrangement proposal for the 2021–26 access arrangement period.

The non-tariff components of an access arrangement include:

- the terms and conditions for the supply of reference services
- 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
- capacity trading requirements – the arrangements for users to assign contracted capacity and change delivery and receipt points
- change of receipt or delivery point by the user – the process or mechanism for changing a user's receipt or delivery point
- a review submission date and a revision commencement date – in this case, those dates being 30 June 2025 and 1 July 2026 respectively, as proposed by AGN.

Together, we refer to these as the non-tariff components of the access arrangement.

11.1 Final decision

Our final decision approves AGN's non-tariff components, including the terms and conditions for the supply of gas in its 2021–26 access arrangement.

11.2 AGN's revised proposal

Our draft decision approved the amendments that AGN proposed to its terms and conditions for the supply of gas.¹ We also approved AGN's proposed non-tariff components for queuing requirements, extension and expansion requirements, capacity trading requirements, change of receipt or delivery point by the user, and the review submission and revision commencement dates.²

AGN's revised proposal adopted our draft decision without further amendment.³

We received three submissions on AGN's terms and conditions for the supply of reference services, from Origin Energy,⁴ Red Energy and Lumo Energy (Red/Lumo

¹ AER, *Draft decision, AGN(SA) access arrangement 2021–26, Overview*, November 2020, p. 50 and AER, *Draft decision, AGN(SA) access arrangement 2021–26, Attachment 11 – Non-tariff components*, November 2020, p. 4.

² AER, *Draft decision, AGN(SA) access arrangement 2021–26, Attachment 11 – Non-tariff components*, November 2020, pp. 10–14.

³ AGN, *Response to Draft Decision on Network Access, Attachment 14.4*, January 2021, p. 1.

⁴ Origin Energy, *AER Draft Decision and Revised Access Arrangement Proposal for AGN (SA) 2021–26*, 17 February 2021.

Energy)⁵ and AGL.⁶ Stakeholders did not provide any further submissions on AGN's other non-tariff components and our assessment below is limited to the consideration of the terms and conditions of the supply of reference services.

11.3 Terms and conditions

The NGR require an access arrangement to specify the terms and conditions on which each reference service will be provided.⁷ These must be consistent with the National Gas Objective (NGO).⁸

This requires us to assess and balance the competing interests of the service provider, network users and consumers, in particular:

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

AGN has been on a path to harmonise its terms and conditions across its SA, VIC and QLD (now a light hand regulated pipeline) networks since 2012 and has consulted extensively with retailers on the terms and conditions for the 2021–26 period.⁹ AGN's consultation on the terms and conditions appears genuine and robust and was supported by the CCP24.¹⁰

It is important that the network businesses continue to talk to customers about their service requirements and we encourage AGN to continue to work with both its major retailers and smaller connected customers on the terms and conditions for the supply of reference services.

Below we consider each submission received on our draft decision and AGN's revised proposal regarding the terms and conditions for the supply of reference services.

11.3.1 Origin Energy

Origin Energy's submission to the revised proposal is identical to Origin's submission on AGN's initial proposal.¹¹ Origin Energy consider that its liability under indemnities should be capped at a mutually agreed level. Our draft decision accepted AGN's

⁵ Red Energy and Lumo Energy, *Draft Decision on Gas Access Arrangement for Australian Gas Network*, 19 February 2021.

⁶ AGL, *Submission on Australian Gas Networks (SA) – 2021-26 Gas Access Arrangement*, 24 February 2021.

⁷ NGR, r. 48(1)(d)(ii).

⁸ NGR, r. 100.

⁹ AGN, *Attachment 14.1, Engagement with the AGN Retailer Reference Group*, 1 July 2020.

¹⁰ AER, *Draft decision, AGN(SA) access arrangement 2021–26, Overview*, November 2020, p. 50 and AER, *Draft decision, AGN(SA) access arrangement 2021–26, Attachment 11 – Non-tariff components*, November 2020, pp. 5–6.

¹¹ Origin Energy, *AER Draft Decision and Revised Access Arrangement Proposal for AGN (SA) 2021–26*, 17 February 2021, p. 2.

indemnity clause and did not make the changes suggested by Origin Energy, to preserve the existing risk balance between the parties. The clause in question was approved by us and included in AGN's 2016–21 South Australian Access Arrangement revision terms and conditions, and AGN's Victoria and Albury gas distribution networks for 2017–23.¹² As highlighted in our draft decision, there does not appear to be persuasive evidence that the risk is unmanageable or that there is a fundamental problem or failure. Origin Energy's submission provides no new information to the contrary and as shippers have been operating under the existing arrangements for a number of years, we are not proposing to make any changes and accept AGN's service and curtailment indemnity provisions.

11.3.2 Red Energy and Lumo Energy

Red/Lumo Energy's submission submitted comments on the following clauses, each of which are considered further below:

- Clause 11.1 – Scheduled meter readings
- Clause 22.3(c) – Adjustment of charges – time limit
- Clause 27.2 – Credit support
- Clause 32.2 – Network user to assist – customer details
- Clause 36(e) – Disclosure to associated companies.

Schedule meter reading

Red/Lumo Energy's submission questions why AGN has included a 'reasonable endeavour's caveat', where the obligations to read meters are clearly articulated in the Retail Market Procedures (SA) (RMP(SA)) as published by the Australian Energy Market Operator (AEMO). Red/Lumo are concerned that retailers maybe non-compliant with the National Energy Retail Rules (NERR) which requires retailers to issue bills once every 100 days.¹³

We consider AGN's scheduled meter reading provisions are reasonable because:

- the provision to use 'reasonable endeavours' mirrors clause 3.1.1(e) of the RMP(SA)¹⁴
- the access arrangement terms and conditions apply to both retailers, who are subject to the RMP(SA) and other users or prospective users who do not sell gas and as such may not be subject to the RMP(SA)¹⁵

¹² AER, *Draft decision, AGN(SA) access arrangement 2021–26, Attachment 11 – Non-tariff components*, November 2020, p. 9.

¹³ Red Energy and Lumo Energy, *Draft Decision on Gas Access Arrangement for Australian Gas Network*, 19 February 2021, p. 4.

¹⁴ AEMO, *Retail Market Procedures (South Australia), Version 17*, 20 February 2020, Clause 3.1.1(e), p. 28.

¹⁵ The RMP(SA) are made under Chapter 2, Part 7, Division 2 of the National Gas Law and form part of the regulatory framework applicable to the retail gas market of South Australia. Participation in that retail gas market is

- the RMP(SA)¹⁶ and South Australian Gas Metering Code¹⁷ require AGN to provide estimated meter reads, where scheduled meter reads cannot be conducted – retailers can then issue customers with a bill based on the estimated meter read in compliance with the NERR.¹⁸

For these reasons, we accept AGN's terms and conditions for the schedule meter reading.

Adjustment of charges - time limits

Clause 22.3 provides a 3 month time limit for Network Users to advise AGN of claims for an adjustment of the statement of charges – a claim is required to be given by the Network User to AGN within three months after the claim becomes known (or should have become known) to the Network User.

Red/Lumo Energy does not support the inclusion of clause 22.3(c),¹⁹ which provides the meaning of the term “should have become known” for the purposes of clause 22.3(a)(i).²⁰

This clause is not new and was approved by us in our decision on AGN's 2016–21 South Australian Access Arrangement revision.²¹ In that decision we considered that:

- clause 22.3 reflected similar provisions in the NGR and the NERR at the time.
- the provision also states 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. Therefore, the time limit does not result in a situation where the retailer will bear the financial risk.

governed by rule 135AB(3) of the National Gas Rules (see clause 1.1 of the RMP(SA)). Rule 135AB(3)(d)(ii) only covers self-contracted users who are “an end user or an exempt seller that sells gas only to end users that are related bodies corporate of that exempt seller”.

¹⁶ AEMO, *Retail Market Procedures (South Australia)*, Version 17, 20 February 2020, Clause 3.5.3, p. 31.

¹⁷ Essential Services of South Australia, *Gas Metering Code*, February 2013, Clause 4.5.1, p. 10.

¹⁸ Rule 24(1) of the NERR states that “a retailer must issue bills to a small customer at least once every 100 days.”

¹⁹ Red Energy and Lumo Energy, *Draft Decision on Gas Access Arrangement for Australian Gas Network*, 19 February 2021, p. 4.

²⁰ Clause 22.3 of AGN's terms and conditions states:

(a) Subject to clause 22.3(b), the Network User may not make any claim for an adjustment of the Distribution Service Charges in a statement of charges: (i) unless full particulars of that claim are given by the Network User to AGN within three months after the claim becomes known (or should have become known) to the Network User (or its officers, servants, agents or contractors); or (ii) in any event, more than eleven months after the date of the relevant statement of charges.

(b) If the Network User is a Gas Retailer, clause 22.3(a) will not limit any claim, or the time for any claim, which the Network User is required by law to make or pursue on behalf of a Shared Customer.

(c) For the purposes of this clause, “should have become known” means would have become known to the Network User if the Network User had exercised reasonable care and acted in a diligent and prudent manner.

²¹ AER, *Draft decision, AGN(SA) access arrangement 2016 to 2021, Attachment 12 – Non-tariff components*, November 2015.

- users 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 23.²²

For these reasons, we accept AGN's terms and conditions for the adjustment of charges time limit.

Credit support

Red/Lumo Energy does not support the credit support clause 27.2,²³ in particular the requirement to provide credit support in 5 business days.²⁴ Clause 27.2 reflects NGR, rule 515(2)(b).^{25,26} For this reason, we accept AGN's terms and conditions for credit support.

Customer details

Red/Lumo Energy does not support the new clause 32.2, allowing AGN to request shared customer details from Network Users. It considers that this gives AGN unlimited power and would prefer to have additional shared customer information provide for through AEMO's procedures rather than the Access Arrangement.²⁷

We considered this provision in our draft decision²⁸ which was highlighted by our CCP24.²⁹ We considered that retailers were largely supportive of the generic obligation to provide shared customer information to AGN within the terms and conditions.³⁰ We consider that AGN should have the ability to obtain customer information from Networks Users for purposes relating to the operation, maintenance and management

²² AER, *Draft decision, AGN (SA) access arrangement 2016 to 2021, Attachment 12 – Non-tariff components*, November 2015, pp. 15–16.

²³ Clause 27.2 of AGN's terms and conditions states:

The credit support provided by the Network User must be: (a) for an amount reasonably requested by AGN; (b) provided within five Business Days of AGN's request; and (c) an acceptable form of support in favour of AGN.

²⁴ Red Energy and Lumo Energy, *Draft Decision on Gas Access Arrangement for Australian Gas Network*, 19 February 2021, p. 5.

²⁵ NGR, rule 515(2) states:

The credit support provided by a retailer must be: (a) for an amount requested by the distributor, not exceeding an amount equal to the charges contained in the most recent statement of charges that gave rise to the requirement for the retailer to provide credit support under rule 514(1); and (b) provided within 5 business days of the distributor's request; and (c) an acceptable form of credit support in favour of the distributor (see rule 516).

²⁶ AGN's terms and conditions for the 2016–21 access arrangement period allowed 10 business days to provide credit support. This reflected rule 523 of the NGR at the time. This rule was repealed and replaced with rule 515. See AEMC, *National Gas Amendment (Retailer-Distributor Credit Support Requirements) Rule 2017*, dated 9 February 2017.

²⁷ Red Energy and Lumo Energy, *Draft Decision on Gas Access Arrangement for Australian Gas Network*, 19 February 2021, p. 5.

²⁸ AER, *Draft decision, AGN (SA) access arrangement 2016 to 2021, Attachment 12 – Non-tariff components*, November 2015, pp. 8–9.

²⁹ CCP24, *Advice to Australian Energy Regulator on Australian Gas Networks Final Plan for AGN Gas Networks (South Australia) Access Arrangement 2021– 26*, 10 August 2020, p. 38.

³⁰ AER, *Draft decision, AGN (SA) access arrangement 2016 to 2021, Attachment 12 – Non-tariff components*, November 2015, p. 9.

of the network. It is important in times of unplanned outages and would assist in effective communication for restoring supply and reconnecting customers. This is particularly the case where the network service provider needs to be physically present at individual premises to ‘relight’ the supply of gas. The ability to obtain mobile phone numbers and phone or text individual customers in these circumstances would allow the network service provider to quickly restore supply. We note that there have been instances of significant unplanned outages on the network requiring co-ordinated relighting of premises.³¹

For these reasons, we accept AGN’s terms and conditions for the provisions for the network user to assist and provide customer details.

Disclosure to associated companies

Red/Lumo Energy does not support clauses 36.7(a)–(e) allowing AGN to disclose information to associated companies in certain circumstances. Red/Lumo Energy state that in general, it does not object to the sharing of information between AGN and any of its affiliated companies as long as they do not offer services into a competitive market.³²

Clause 36.7 is a new provision in AGN’s South Australian 2021–26 Access Arrangement revision. We consider that AGN should have the ability to disclose information to associated companies in certain circumstances and clause 36.7 ensures that:

- information is disclosed only to the extent reasonably necessary for proper corporate purposes
- AGN must ensure that its associate companies comply with any confidentiality obligations imposed pursuant to the National Gas Law or the National Gas Rules.

Further, and more importantly, AGN is required to comply with the minimum gas distribution ring-fencing obligations under the NGR.³³ The inclusion of the specific clause relating to the disclosure of information to associated companies does not bypass AGN’s obligation to comply with its ring fencing obligations under the NGR.

For these reasons, we accept AGN’s terms and conditions for the disclosure of information to associated companies.

³¹ On 9 September 2020, a supply interruption occurred upstream of the Mount Gambier city network, effecting 9 286 premises. This required the APA Group who manages and operates the South Australian Natural Gas network on behalf of AGN to visit every property twice to reconnect customers to the network. The provision of customer mobile phone numbers, by the incumbent retailer, Origin Energy in this instance would have assisted AGN in restoring supply. See AGN Media Release: Gas Supply Disruption at Mount Gambier, 14 September 2020. <https://www.australiangasnetworks.com.au/our-business/about-us/media-releases/gas-supply-disruption-at-mount-gambier>

³² Red Energy and Lumo Energy, *Draft Decision on Gas Access Arrangement for Australian Gas Network*, 19 February 2021, pp. 5–6.

³³ NGL, Minimum ring-fencing requirements, ss. 139–141.

11.3.3 AGL

AGL submitted that clause 20.2(a), deems that the gas retailer is liable for any network charges at the delivery point, despite there being no customer and is contrary to r. 503 and inconsistent with r. 508(1), of the NGR.³⁴

This provision dealing with the user's liability for distribution charges at the delivery point is not new. The provision was approved by us in AGN's 2016–21 Access Arrangement for South Australia³⁵ and 2018–22 Access Arrangement for Victoria/Albury,³⁶ following a submission from AGL and revisions made by us during the South Australian Access Arrangement review process.³⁷

In response to our draft decision on AGN's 2016–21 Access Arrangement for South Australia, AGN incorporated our amendment to clause 20.2, but added provisions to clarify how the clause as a whole is intended to operate in light of r. 508(1) of the NGR.³⁸ The effect of this was:

- where there is no shared customer for a delivery point, the user is liable for any distribution service charges which accrue in relation to the delivery point
- if there is a shared customer, and the user is not permitted to recover the charges from that customer under the National Energy Retail Law (NERL) or National Energy Retail Rules (NERR), AGN is not permitted to recover those charges from the user
- in all other cases where there is a shared customer, the user is liable for the charges in respect of the delivery point even if the customer does not pay those charges to the user.³⁹

AGL disagreed with our draft decision and further submitted that the proposed amendment is inconsistent with the NGR and the NERL on the basis that:

- the NGR r. 503 requires a retailer to pay a distributor the charges payable in respect of each shared customer but does not oblige payment where there is no shared customer, and
- the NERL defines gas 'network charges' as charges a distributor is entitled to charge for customer connection services under the access arrangement, Part 12

³⁴ AGL, *Submission on Australian Gas Networks (SA) – 2021-26 Gas Access Arrangement*, 24 February 2021, p. 2.

³⁵ AER, *Final decision, AGN (SA) access arrangement 2016 to 2021, Attachment 12 – Non-tariff components*, May 2016, pp. 7 and 10–12.

³⁶ AER, *Draft decision, AGN Victoria and Albury access arrangement 2018 to 2022, Attachment 12 – Non-tariff components*, July 2017, p. 7; AER, *Final decision, AGN Victoria and Albury access arrangement 2018 to 2022, Overview*, November 2017, p. 36.

³⁷ AER, *Draft decision, AGN (SA) access arrangement 2016 to 2021, Attachment 12 – Non-tariff components*, November 2015, pp. 11–12.

³⁸ AGN, *Attachment 17.3, Response to Draft Decision: Non-Tariff Components, 2016/17 to 2020/21 Access Arrangement Information Response to Draft Decision*, January 2016, p. 4.

³⁹ AER, *Final decision, AGN (SA) access arrangement 2016 to 2021, Attachment 12 – Non-tariff components*, May 2016, p. 11.

and Part 12A of the NGR, the latter two of which do not contemplate that these charges should be paid by the retailer where there are no customers.⁴⁰

We did not agree with AGL's submission on our draft decision for the 2016–21 Access Arrangement for South Australia regarding this issue and considered that AGN's additions to clause 20.2 were not inconsistent with r. 508(1).⁴¹

Further, we did not accept AGL's submission on AGN's 2018–22 Victorian and Albury Access Arrangement revision regarding the same clause:

We recently approved similar clauses for AGN's South Australian distribution network. Our decision noted that a retailer could cease to be the registered user for any particular delivery point to avoid being liable for these charges. In the same way, we consider a retailer using AGN's Victorian and Albury network can decide whether it wishes to remain financially responsible for the base charges or alternatively whether it wishes to request the decommissioning of the supply point.⁴²

As this issue was dealt with in previous Access Arrangement reviews and AGL has not provided anything further in support of its submission, we accept AGN's terms and conditions for distribution service charges.

⁴⁰ AER, *Final decision, AGN (SA) access arrangement 2016 to 2021, Attachment 12 – Non-tariff components*, May 2016, p. 12; AGL, *Re: AER Draft Decision on the Australian Gas Networks (South Australia) - Access Arrangement 2016–21*, 4 February 2016.

⁴¹ AER, *Final decision, AGN (SA) access arrangement 2016 to 2021, Attachment 12 – Non-tariff components*, May 2016, p. 12.

⁴² AER, *Draft decision, AGN Victoria and Albury access arrangement 2018 to 2022, Attachment 12 – Non-tariff components*, July 2017, p. 7.

Shortened forms

Shortened form	Extended form
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
CCP24	Consumer Challenge Panel, sub-panel 24
NGL	National Gas Law
NERL	National Energy Retail Law
NERR	National Energy Retail Rules
NGO	National Gas Objective
NGR	National Gas Rules