



FINAL DECISION
ActewAGL Distribution
Access Arrangement
2016 to 2021

Attachment 12 – Non-tariff
components

May 2016

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Note

This attachment forms part of the AER's final decision on the access arrangement for ActewAGL Distribution for 2016–21. It should be read with all other parts of the final decision.

The final decision includes the following documents:

Overview

Attachment 1 - Services covered by the access arrangement

Attachment 2 - Capital base

Attachment 3 - Rate of return

Attachment 4 - Value of imputation credits

Attachment 5 - Regulatory depreciation

Attachment 6 - Capital expenditure

Attachment 7 - Operating expenditure

Attachment 8 - Corporate income tax

Attachment 9 - Efficiency carryover mechanism

Attachment 10 - Reference tariff setting

Attachment 11 - Reference tariff variation mechanism

Attachment 12 - Non-tariff components

Attachment 13 - Demand

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Shortened forms

Shortened form	Extended form
AA	Access Arrangement
AAI	Access Arrangement Information
AER	Australian Energy Regulator
ASA	Asset Services Agreement
ATO	Australian Tax Office
capex	capital expenditure
CAPM	capital asset pricing model
CCP	Consumer Challenge Panel
CMF	construction management fee
CPI	consumer price index
DAMS	Distribution Asset Management Services
DRP	debt risk premium
EBSS	Efficiency Benefit Sharing Scheme
ECM	Efficiency Carryover Mechanism
EIL	Energy Industry Levy
ERP	equity risk premium
Expenditure Guideline	Expenditure Forecast Assessment Guideline
gamma	value of imputation credits
GSL	Guaranteed Service Level
GTA	Gas Transport Services Agreement
ICRC	Independent Competition and Regulatory Commission
MRP	market risk premium
NECF	National Energy Customer Framework
NERL	National Energy Retail Law
NERR	National Energy Retail Rules
NGL	National Gas Law
NGO	National Gas Objective
NGR	National Gas Rules
NPV	net present value
opex	operating expenditure

Shortened form	Extended form
PFP	partial factor productivity
PPI	partial performance indicators
PTRM	post-tax revenue model
RBA	Reserve Bank of Australia
RFM	roll forward model
RIN	regulatory information notice
RoLR	retailer of last resort
RSA	Reference Service Agreement
RPP	revenue and pricing principles
SLCAPM	Sharpe-Lintner capital asset pricing model
STTM	Short Term Trading Market
TAB	tax asset base
UAFG	unaccounted for gas
UNFT	Utilities Network Facilities Tax
WACC	weighted average cost of capital
WPI	Wage Price Index

12 Non-tariff components

This attachment contains our decisions and reasons on the non-tariff components of ActewAGL's revised access arrangement proposal.

The non-tariff components are as follows:

- the terms and conditions on which ActewAGL offers to supply reference services, which are set out in the Reference Service Agreement (RSA) which forms part of the access arrangement
- queuing requirements—a process or mechanism for establishing an order of priority between prospective users of spare 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
- provisions for receipt and delivery point changes, and
- a review submission date and a revision commencement date.

12.1 Decision

We approve the non-tariff components of ActewAGL's revised access arrangement proposal except for clause 9.1 (extensions and expansions policy).

We have revised the access arrangement having regard to our reasons for refusing to approve ActewAGL's proposal and the further matters identified in NGR section 64(2). Our revision is reflected in clause 9.1 of the Approved Access Arrangement for ActewAGL's Gas Distribution Network in the ACT for 2016-21, which gives effect to this decision.

12.2 Terms and conditions

An access arrangement must specify the terms and conditions on which the reference services will be provided.¹

These do not exhaustively set out the contractual arrangements between a service provider and a user. The NGL permits the service provider and the user to agree on terms and conditions different to those specified in the applicable access

¹ NGR, r. 48(1)(d)(ii).

arrangement.² However, if an access dispute arises and is referred for determination, the relevant regulator must give effect to the access arrangement.³

12.2.1 Final decision

We approve the access terms and conditions in the RSA which forms part of ActewAGL's revised access arrangement proposal.

12.2.2 ActewAGL's revised proposal

Our draft decision required five amendments to the terms and conditions in ActewAGL's RSA. ActewAGL's revised access arrangement proposal incorporates three of these. ActewAGL made alternative amendments to those we required dealing with the remaining two issues:

- ActewAGL discretion, and
- bulk transfer process.

As discussed below we are satisfied with ActewAGL's amendments on these issues. The table below provides a high level overview of ActewAGL's response and our final decision on the amendments required in our draft decision.

Table 12.1 Overview - Final Decision on RSA Terms and Conditions

Draft decision	ActewAGL response	Final decision
CI 1.1 - Minimum network standards	Amended as required	Accept
CI 1.3 - Change of law	Amended as required	Accept
CI 25 - Right to terminate	Amended as required	Accept
CI 11.4 - Bulk transfer to new tariffs	Amended, not in required form	Accept
CI 32.11 - Different standards in NSW and ACT	Amended, not in required form	Accept

Source: AER analysis.

12.2.3 AER's assessment approach

The NGR requires us to assess the terms and conditions in the proposed access arrangement for consistency with the NGL, the NGR and the relevant procedures.⁴ The NGL states that the objective of the NGL is to promote efficient investment in, and

² With the exception that a service provider must comply with the queuing requirements in an applicable access arrangement: NGL, ss. 135 and 322.

³ NGL, s. 189.

⁴ NGR, r. 100.

efficient operation and use of, natural gas pipeline services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas. The relevant procedures include the retail market procedures applying in the ACT and NSW.⁵

The NGR gives us discretion to withhold our approval of the non-price terms and conditions proposed in an access arrangement if we consider a preferable alternative exists which complies with the NGL and is consistent with the applicable criteria.

Our draft decision details our approach to assessing ActewAGL's proposed RSA.⁶ We have applied the same approach in this final decision.

12.2.4 Reasons for final decision

ActewAGL's revised access arrangement proposal incorporated the following changes to its RSA which we required in our draft decision:

- Clause 1.1 - correct minor drafting error to the definition of 'minimum network standard'
- Clause 1.3 - remove ActewAGL capacity to unilaterally amend RSA for change of law
- Clause 25 - correct paragraph numbering.

We received no submissions on these issues, and for the reasons set out in our draft decision we maintain our decision to approve these amendments in this final decision.

ActewAGL's revised RSA made alternative amendments to those we required to the following clauses:

- Clause 11.4 - bulk transfer to new tariffs, and
- Clause 32.11 - different standards in NSW and ACT.

12.2.4.1 Bulk transfer to new tariffs

Clause 11.4 of the RSA sets out a process for transferring users from their current gas transport agreements to the new tariff structure which will apply under the 2016–21 access agreement.

Our draft decision required ActewAGL to amend clause 11.4(c)(v), relating to bulk transfers to non-default tariffs, to remove the requirement for users to take certain actions prior to the approval and commencement of the new access arrangement.⁷

⁵ AEMO, *Retail Market Procedures (NSW and ACT), version 14*, 3 November 2014

⁶ AER, *Draft Decision, ActewAGL Distribution Access Arrangement 2016 to 2021, Attachment 12 - Non-tariff components*, November 2015, section 12.1.3, p. 12-9.

⁷ AER, *Draft Decision, ActewAGL Distribution Access Arrangement 2016 to 2021, Attachment 12 - Non-tariff components*, November 2015, section 12.1.3, p. 12-15.

ActewAGL made the requested change and proposed a new process for bulk transfers to non-default tariffs. Under the revised proposal, the user must identify by notice to ActewAGL, any delivery points which the user wishes to be assigned to a non-default tariff. The schedule must also identify the requested tariff category and provide information demonstrating the eligibility of the delivery point for the requested tariff category.⁸

As with the process for bulk transfers to default tariffs, users will need to execute the RSA within two weeks of the commencement of the 2016 access arrangement and issue a notice seeking bulk transfer within three business days of the execution of the agreement.

ActewAGL submitted its alternative process would provide information necessary for its business operations and would ensure tariffs are correctly assigned. ActewAGL also submitted that the process should not be seen as onerous, given that a user ought to have satisfied itself as to customer's eligibility for a non-default tariff before requesting transfer of that user.⁹

ActewAGL's changes to clause 11.4(c) address our comments in the final decision, and we accept these amendments.

Origin made a submission on ActewAGL's revised access arrangement proposal which stated:

We support the AER approach of requiring affected parties to agree the terms of the transfer. However, we believe this approach must be underpinned by clearly defined resolution criteria to apply in the event that parties cannot agree on acceptable transfer terms.¹⁰

In this respect we note that both the current and proposed access arrangements rely on the dispute resolution provisions in the NGL Chapter 6 and NGR Part 12, which we consider adequate for this purpose.

ActewAGL's revised access arrangement proposal includes a provision specifically stating it may re-assign a wrongly transferred delivery point to its correct tariff category and adjust charges to recover any shortfall.¹¹ We received no submissions on this clause and we consider it acceptable.

⁸ ActewAGL Revised 2016–21 Access Arrangement Proposal, Response to AER's Draft Decision, January 2016, Appendix 13.02, Table of Amendments, Revised Reference Service Agreement, p. 2.

⁹ ActewAGL Revised 2016–21 Access Arrangement Proposal, Response to AER's Draft Decision, January 2016, Appendix 13.02, Table of Amendments, Revised Reference Service Agreement, p. 2.

¹⁰ Origin Re: ActewAGL Revised Access Arrangement Proposal, 4 February 2016, p. 3.

¹¹ ActewAGL, Reference Service Agreement submitted to AER on 6 January 2016, ActewAGL's Gas Distribution Network, 1 July 2016–30 June 2021, cl. 11.4(g).

Different standards in NSW and ACT

ActewAGL did not adopt our amendment to clause 32.11, which allows the service provider but not the user to determine which standard will apply in situations where the standards in one jurisdiction are different to those in another. Our required amendment and ActewAGL's revised proposal are compared below:

Table 12.2 Comparison, clause 32.11

AER draft decision clause 32.11	ActewAGL revised proposal clause 32.11
In circumstances where a Gas Law applicable in one Relevant Region applies a higher standard than the Gas Law which is applicable in the other Relevant Region, the higher standard will apply in both regions for the purposes of this Agreement	In circumstances where a Gas Law applicable in one Relevant Region applies a higher standard than the Gas Law which is applicable in the other Relevant Region, the higher standard will apply in both regions where ActewAGL, after consulting with users, considers, acting reasonably, that such different standards cannot practically, safely or efficiently be applied to the different Regions. Where such a higher standard is to apply ActewAGL will advise Users by notice in writing.

Our draft decision required the amendment set out above as we considered ActewAGL's proposal gave ActewAGL a high degree of discretion such as to raise questions of clarity, predictability and symmetry as between the rights of ActewAGL and its users under the RSA.¹²

Under ActewAGL's revised proposal, ActewAGL can still determine the applicable standard, but the proposal provides that ActewAGL may do this after consulting with users and if it considers, act reasonably that such different standards cannot practically, safely or efficiently be applied to the different regions. We are satisfied that ActewAGL's proposal adds sufficient transparency and predictability, and accordingly we accept it.

12.3 Extension and expansion requirements

Access arrangements must include requirements relating to extensions of and expansions to a pipeline.¹³ An extension allows a pipeline to receive or deliver gas to or from new locations whereas an expansion augments its capacity.

12.3.1 Final decision

We approve the extension and expansion requirements in ActewAGL's revised access arrangement proposal, except in respect of the provision that the anticipated Molonglo Valley pipeline is not a high pressure pipeline extension.¹⁴

¹² AER, *Draft Decision, ActewAGL Distribution Access Arrangement 2016 to 2021, Attachment 12 - Non-tariff components*, November 2015, section 12.1.3, p. 12-11.

¹³ NGR, r. 48(1)(g) for full access arrangements.

¹⁴ ActewAGL, *Access Arrangement for the ACT, Queanbeyan and Palerang Gas Distribution Networks, 1 July 2016–30 June 2021*, January 2016, cl. 9.

12.3.2 ActewAGL's revised proposal

Our draft decision found that the extensions and expansions policy complied with rule 104 of the NGR but required two amendments to produce a preferable extensions and expansions policy:

- Revise clause 9.1 to remove the provision that the anticipated Molonglo Valley pipeline is not a high pressure pipeline extension for the purposes of the extensions and expansions policy
- Revise clause 9.4 relating to the timing and process for our consideration of a notification that a high pressure pipeline extension will be covered or not covered.¹⁵

ActewAGL's revised proposal incorporates our required amendment to clause 9.4 but did not make the required change to clause 9.1.

12.3.3 AER's assessment approach

Attachment 12 of our draft decision set out our approach to assessing ActewAGL's proposed extension and expansion requirements.¹⁶ We have used the same approach in our final decision.

12.3.4 Reasons for final decision

Clause 9 of ActewAGL's access arrangement proposal deals separately with "extensions of the high pressure network" and "other extensions and expansions." High pressure extensions are defined as follows:¹⁷

For the purposes of [the extensions and expansions policy] a "high pressure pipeline extension" is an extension to ActewAGL's Covered Pipeline with a direct connection to a transmission pipeline that provides reticulated gas to a new development or an existing development not serviced with reticulated gas.

The anticipated extension in the Australian Capital Territory from Belconnen across the Molonglo Valley to Phillip does not represent a high pressure pipeline extension for [the extensions and expansions policy].

Our draft decision sought a revision to remove the Molonglo Valley 'carve-out'. We considered ActewAGL's inclusion of capital expenditure for this extension suggested it should be considered a high pressure pipeline extension, and that the exclusion was

¹⁵ AER, *Draft Decision, ActewAGL Distribution Access Arrangement 2016 to 2021, Attachment 12 - Non-tariff components*, November 2015, section 12.3, p.12–22.

¹⁶ AER, *Draft Decision, ActewAGL Distribution Access Arrangement 2016 to 2021, Attachment 12 - Non-tariff components*, November 2015, section 12.2, p.12-21.

¹⁷ ActewAGL, *Access Arrangement for the ACT, Queanbeyan and Palerang Gas Distribution Networks, 1 July 2016–30 June 2021*, January 2016, cl. 9.1.

inappropriate and should be removed.¹⁸ In response, ActewAGL did not make this amendment, noting that the Molonglo Valley carve-out was included in the current (2010–15) access arrangement at the AER's request, and submitting that insufficient basis has been provided for the change of position.¹⁹ While we acknowledge these arguments, we consider it preferable to remove the Molonglo Valley clause for the reasons set out below.

ActewAGL correctly observes that the AER required the Molonglo Valley carve-out in the 2010-2015 access arrangement. The reasons for that decision stated:

[...] it is important to distinguish between in-fill development within the geographic reach of the existing network on one hand and new developments serving new areas outside the existing geographic reach of the network and existing development previously not serviced with reticulated gas when deciding whether a pipeline extension is covered by default under the access arrangement. This is because in the case of new extensions to areas and customers without reticulated gas, pipelines are potentially extended to a new part of the market. This warrants consideration by the AER. New areas outside the current geographic reach of the network will be more likely serviced by high pressure pipelines. The AER accordingly considers that if a high pressure pipeline extension is planned, then an application should be made for a decision as to whether or not the extension is part of the covered pipeline. The use of 'high pressure' provides a means of generally distinguishing in-fill from new extensions to areas and customers.²⁰

The effect of the carve-out in the earlier decision is that the Molonglo Valley extension would have been covered by default, rather than subject to the more detailed consideration applying to high pressure pipelines under the access arrangement.

The extensions and expansions clause in the 2016–21 access arrangement proposal follows the same structure. High pressure extensions must be notified to the regulator, who then consults and decides on whether it will be covered. Other extensions are covered by default, although some provision exists for non-coverage. Under either procedure, projects for which the cost has already been included in the calculation of the reference tariffs must be covered by the access arrangement.

There is a degree of uncertainty as to when and how a pipeline from Molonglo to Philip will be developed. In these circumstances we consider it inappropriate to exclude it outright from the detailed examination of the coverage question that applies to high pressure pipelines. We have therefore removed the Molonglo Valley carve-out from the access arrangement.

¹⁸ AER, *Draft Decision, ActewAGL Distribution Access Arrangement 2016 to 2021, Attachment 12 - Non-tariff components*, November 2015, p. 12-22.

¹⁹ ActewAGL *Revised 2016–21 Access Arrangement Proposal, Response to AER's Draft Decision*, January 2016, Appendix 13.02, p. 142.

²⁰ AER, *Final Decision - Access Arrangement for ACT, Queanbeyan and Palerang Gas Network 2010 - 2015*, p. 128.

12.4 Other non-tariff components

ActewAGL's revised proposal restated without revision its original proposals on the following non-tariff components:

- queuing requirements
- capacity trading requirements
- changing receipt and delivery points
- review submission date and revision commencement date.

Our draft decision approved ActewAGL's proposals on each of these components. Our assessment approach is set out in Attachment 12 of our draft decision, and we have used the same approach in this final submission.

We received no submissions on these components, and for the reasons set out in our draft decision we maintain our position to approve ActewAGL's proposals in this final decision.