



FINAL DECISION
Australian Gas Networks
Access Arrangement
2016 to 2021

Attachment 12 – Non-tariff
components

May 2016

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or publishing.unit@acc.gov.au.

Inquiries about this publication should be addressed to:

Australian Energy Regulator
GPO Box 520
Melbourne Vic 3001

Tel: (03) 9290 1444

Fax: (03) 9290 1457

Email: AERInquiry@aer.gov.au

Note

This attachment forms part of the AER's final decision on the access arrangement for Australian Gas Networks' South Australian distribution network 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

Attachment 14 - Other incentive schemes

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Shortened forms

Shortened form	Extended form
AA	Access Arrangement
AAI	Access Arrangement Information
AER	Australian Energy Regulator
AGN	Australian Gas Networks
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
ECM	Efficiency Carryover Mechanism
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

Shortened form	Extended form
PTRM	post-tax revenue model
RBA	Reserve Bank of Australia
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

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

The non-tariff components are as follows:

- the terms and conditions on which AGN offers to supply reference services
- 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 AGN's revised access arrangement proposal except for clause 35.5 of Annexure G.

We have revised the terms and conditions having regard to our reasons for refusing to approve AGN's proposal and the further matters identified in the NGR section 64(2).¹

Our revision is reflected in clause 35.5 of Annexure G of the Approved Access Arrangement for Australian Gas Networks' South Australian distribution network 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 each reference services will be provided.²

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 Rule 64(2) provides that the AER's proposal for an access arrangement or revisions is to be formulated with regard to (a) the matters the Law requires an access arrangement to include, the service provider's access arrangement proposal, and the AER's reasons for refusing to approve that proposal.

² NGR, r. 48(1)(d)(ii).

arrangement.³ However, if an access dispute arises and is referred for determination, the relevant regulator must give effect to the access arrangement.⁴

12.2.1 Final decision

We approve the terms and conditions in AGN's revised access arrangement proposal except for clause 35.5 (which concerns liability for breach caused by failure to access premises).

12.2.2 AGN's revised proposal

Our draft decision required eight revisions to the terms and conditions in AGN's access arrangement proposal. AGN accepted five of the required amendments and made further submissions on the remaining three issues, namely:

- Clause 35.5 - liability for breaches caused by failure to access premises
- Clause 20.2 - recovery of charges where there is no shared customer, and
- Clause 15.1 - possession and control of gas.

As discussed below we are not satisfied with AGN's response on the first of these issues, but we are satisfied on the second and third. The table below provides a high level overview of AGN's response and our final decision on the amendments required in our draft decision.

Table 12.1 Overview – Final Decision on Terms and Conditions

Draft decision	AGN response	Final decision
Glossary - 'Claim'	Amended as required	Accept
CI 3.3 ⁵ - Fixed component of haulage charge	Amended as required	Accept
CI 20.2 - Liability for charges	Required amendments made and further provisions added	Accept
CI 35.4 - Obligations re access to premises	Amended as required	Accept
CI 35.5 - Liability re access to premises	Not amended	Not accept

³ With the exception that a service provider must comply with the queuing requirements in an applicable access arrangement: NGL, ss. 135 and 322.

⁴ NGL, s. 189.

⁵ This reference and all subsequent references in this table are to AGN, *SA Access Arrangement Annexure G – General Terms and Conditions*, January 2016.

CI 28.2 & 28.4 - Termination	Amended as required	Accept
CI 15.1 - Possession and control of gas	Not amended	Accept

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 and the relevant procedures.⁶ The NGO states that the objective of the NGL is to promote efficient investment in, and efficient operation and use of, natural gas 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 South Australia.⁷

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.⁸

Our draft decision details our approach to assessing AGN's terms and conditions.⁹ We have used the same approach in this final decision.

12.2.4 Reasons for final decision

AGN incorporated our revisions to the following clauses in its revised access arrangement proposal:

- Clauses 28.2 and 28.4 - no termination for dispute about charges, and
- Glossary - add definition of 'claim'.

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.

The following paragraphs set out our reasons on the remaining issues.

Access to premises

Two amendments required by our draft decision concerned access by AGN to the premises of a shared customer:

⁶ NGR, r. 100.

⁷ AEMO, *Retail Market Procedures (South Australia)*, version 8, 14 September 2015.

⁸ NGR, r. 40(3).

⁹ AER, *Draft Decision, Australian Gas Networks Access Arrangement 2016 to 2021, Attachment 12 - Non-tariff components*, November 2015, p. 12-8.

- Clause 35.4 - user to give reasonable assistance to ensure AGN access, and
- Clause 35.5 - AGN liability for failure to perform agreement due to failure to access premises despite reasonable endeavours.

AGN's revised proposal incorporated the required amendment to sub-clause 35.4. We did not receive any submissions on this amendment, and for the reasons set out in our draft decision we maintain our decision to approve the amended clause 35.4 in this final decision.

The draft decision required AGN to delete clause 35.5, which provides in part:

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 required, after exercising its reasonable endeavours to do so [...]

The draft decision expressed our view that AGN should not be completely relieved of responsibility where it is unable to gain access to a shared customer's premises since, under the NECF, both AGN and users have a direct relationship with the shared customers.¹⁰ We noted the submission from a network user, that:¹¹

AGL disagrees that AGN should have no liability when they are unable to gain access to a meter. With the introduction of NECF there is now a joint responsibility between the retailer and the network.

It is no longer the duty of the retailer to provide access but to provide reasonable assistance, it is unreasonable for AGN to have no liability to the Network User.

Furthermore the meter is the asset of AGN and AGN should take an element of responsibility for its own property.

This clause should be deleted.

AGN did not delete the clause as required by the draft decision, arguing that the reference to 'reasonable endeavours' means sub-clause 35.5 strikes a reasonable and appropriate balance between the interests of AGN and users.¹² We do not agree with AGN on this issue. As noted in our draft decision, the NERL and the NERR create a triangular relationship whereby both service provider and retailer each have a contract

¹⁰ AER, *Draft Decision - Australian Gas Networks (South Australia) Access Arrangement Proposal 2016 - 21*, November 2015, p. 12-13.

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

¹² 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. 6.

with a shared customer providing for access to premises.¹³ AGN's terms for deemed standard connection contracts with shared customers provide:¹⁴

Under the energy laws, you must provide us [i.e. AGN] 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:

- (a) read, test, maintain, inspect or alter any metering installation at the premises; and
- (b) calculate or measure energy supplied or taken at the premises; and
- (c) check the accuracy of metered consumption at the premises; and
- (d) replace meters, control apparatus and other energy equipment of ours; and
- (e) connect or disconnect the premises; and
- (f) examine or inspect an energy installation at the premises; and
- (g) inspect, make safe, operate, change, maintain, remove, repair or replace any of our works at the premises; and
- (h) undertake repairs, testing or maintenance of the distribution system; and
- (i) clear vegetation from the distribution system including any equipment owned by us; and
- (j) take action to determine the appropriate tariff or charging category for the premises; and
- (k) perform services requested by you or your retailer.

Thus shared customers have an obligation directly to AGN to provide access, which obligation AGN can enforce directly against the shared customer. Where AGN has not done so, we do not accept there is justification to displace the right of users to pursue AGN for failure to perform the agreement because of failure to access premises. Accordingly our approved access arrangement does not include clause 35.5.

Recovery of charges

Our draft decision required amendments to clauses 3.3 and 20.2, which deal with the user's liability for certain charges while it is listed as the current user for a delivery point. The clauses contemplate AGN recovering charges from retailers in

¹³ AER, *Draft Decision - Australian Gas Networks (South Australia) Access Arrangement Proposal 2016 - 21*, November 2015, p. 12-13.

¹⁴ AGN *Deemed Standard Connection Contract version 2.0* November 2011 clause 9, which picks up the model term in NERR Schedule 2 Clause 9.

circumstances where there is no shared customer and thus no party from whom the retailer might recover the charges. In our draft decision we expressed concern that the clauses could be perceived to seek to override NGR rule 508(1),¹⁵ which provides:

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 a retailer.

AGN made the required amendment to clause 3.3. We received no submissions on this amendment, and for the reasons set out in our draft decision we approve the revised clause 3.3 in this final decision. AGN also 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 rule 508(1). The effect of AGN's proposal is:

- 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 NERL or 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.¹⁶

This follows from the view, set out in AGN's response to our draft decision, that rule 508(1) applies to situations where there is a shared customer and not where there is no shared customer. This situation might arise where a retailer is registered as the current user of a delivery point in respect of which the relevant house or business premises is unoccupied. A base charge would continue to accrue daily regardless of throughput, and under AGN's proposal it would recover this charge from the user. AGN submitted that retailers could escape such charges by requesting decommissioning of disused delivery points.¹⁷

AGL disagreed with this interpretation of rule 508(1) submitting that:

A more sensible interpretation would be that if there is no shared customer then the distributor is not allowed to recover charges from the retailer due to there being no customer and no ability for the retailer to recover those charges on behalf of the distributor.¹⁸

¹⁵ NGR, r. 508. The requirements of the NECF as they apply to AGN are in the NERL, the NERR and Parts 12A and 21 of the NGR.

¹⁶ 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.

¹⁷ 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. 5.

¹⁸ AGL, *Re: AER Draft Decision on the Australian Gas Networks (South Australia) - Access Arrangement 2016–21*, 4 February 2016

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

- the NGR rule 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 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.¹⁹

We do not agree with AGL's submission on this issue. Part 21 of the NGR (which includes rules 503 and 508) applies where a distributor and a retailer have shared customers. Part 12 or Part 12A of the NGR, which concern access disputes and connections for retail customers, do not provide guidance on the intended operation of rule 508. It follows that we do not believe AGN's additions to clause 20.2 are inconsistent with rule 508(1).

Possession and control of gas

Clause 15.1 describes when each party is in possession and control of gas. Our draft decision required AGN to restore the version of this clause used in the 2011-2016 access arrangement which we considered clearer. AGN did not amend clause 15.1, submitting that its preferred approach of defining the person in possession or control after delivery by reference to the user delivery point is unambiguous, as only one user will be registered as the current user for a delivery point at a given time.²⁰

We are satisfied with AGN's response to our draft decision and we have incorporated its preferred version of clause 15.1 in the approved access arrangement.

12.3 Changing receipt or delivery points

We approve the provisions for the change of receipt or delivery points in AGN's revised access arrangement proposal.

Our assessment approach is set out in our draft decision.²¹ We have used the same approach in this final decision.

Our draft decision required AGN to restore clauses from the 2011–2016 access arrangement setting out the procedure for changes to delivery or receipt points. In

¹⁹ AGL, *Re: AER Draft Decision on the Australian Gas Networks (South Australia) - Access Arrangement 2016–21*, 4 February 2016

²⁰ 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, pp. 8–9.

²¹ AER, *Draft Decision, Australian Gas Networks Access Arrangement 2016 to 2021, Attachment 12 - Non-tariff components*, November 2015, p. 12.27.

response, AGN did not incorporate the required amendment but included the following alternative:²²

In accordance with rule 106 of the NGR, a Network User may change a Delivery Point and/or Receipt Point.

(a) Change of Delivery Points. If a Network User wishes to change Delivery Points, the Network User should refer to the Retail Market Procedures (South Australia), which detail how Network Users become registered as "current users" of Delivery Points. Part 3.3 of the Retail Market Procedures provides details of the procedures which Network Users should follow to transfer Delivery Points and the circumstances in, and grounds on which, AGN may object to a transfer request.

(b) Change of Receipt Points. If a Network User wishes to change Receipt Points, the Network User should submit a written request to AGN, setting out the application details. A fee of \$100, payable at the time of the request, will apply to each request. On receipt of the written request and the fee, AGN will complete an analysis to determine whether the request is technically and commercial feasible and reasonable.

We are satisfied with AGN's proposed clause. We consider the opening words, 'in accordance with rule 106' ensure that the procedures set out in the rest of the clause are to operate subject to the principles in rule 106, in particular:

- a user may, with the service provider's consent, change the user's receipt or delivery point, and
- the service provider must not withhold its consent unless it has reasonable technical or commercial for doing so.

12.4 Capacity trading requirements

AGN's access arrangement proposal deals with capacity trading as follows:

7.1 Transactions subject to Retail Market Procedures

Transfers of Contracted Capacity will be undertaken:

(a) where AGN is registered as a participant in a gas market that includes the Network - in accordance with the rules or procedures governing that gas market; or

(b) if AGN is not so registered - in accordance with rule 105 of the NGR, and this part 7.

As at the date of this Access Arrangement, the Network is the subject of the retail gas market of South Australia and, as the holder of a gas distribution licence under the Gas Act 1997 (SA), AGN is registered as a participant in that market in accordance with sub-rule 135AB(3)(a) of the NGR.

²² AGN, *Access Arrangement for AGN's South Australian Distribution Network 1 July 2016–30 June 2021*, January 2016, cl. 7.2.

As at the date of this Access Arrangement, the rules or Procedures which govern the South Australian retail gas market are the Retail Market Procedures for South Australia. A copy of the Retail Market Procedures is available at www.aemo.com.au.

The previous access arrangement (for the 2011 to 2016 access arrangement period) had additional provisions setting out in detail the processes for various types of capacity transfers. AGN did not include these in its proposal for the 2016 to 2021 access arrangement. Our draft decision required amendments to make clear to users the requirements for any transfer of capacity.²³ AGN did not make this amendment, on the basis that its preferred clause is simpler and the SA market procedures deal appropriately with capacity trading in the operating context of the SA distribution network. Having considered AGN's submissions, we are satisfied that leaving out the additional capacity transfer processes would not affect the services provided or the operation of the network, and on that basis we approve the capacity trading requirements in AGN's revised access arrangement proposal.

12.5 Other non-tariff components

We accept the clauses in AGN's revised access arrangement proposal concerning the review submission date and revision commencement date. Our draft decision required amendments to these clauses to specify single fixed dates. AGN's revised proposal incorporates this change.

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

- queuing requirements
- extension and expansion requirements

Our draft decision approved AGN's proposals on 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 did not receive any submissions on these components, and for the reasons set out in our draft decision we maintain our position to approve AGN's proposals in this final decision.

²³ AER, *Draft Decision, Australian Gas Networks Access Arrangement 2016 to 2021, Attachment 12 - Non-tariff components*, November 2015, p. 12-27.