



26 November 2010

Chris Pattas
General Manager
Network Regulation South Branch
Australian Energy Regulator

Email: qldsagas@aer.gov.au

Dear Mr Pattas,

Access Arrangement proposal: Envestra Limited's SA gas network

AGL Energy Limited (AGL) welcomes the opportunity to comment on the Access Arrangement proposal released by the Australian Energy Regulator (AER) for Envestra Limited's SA gas network for the period 1 July 2011 to 30 June 2016.

AGL is concerned that the Access Arrangement transfers responsibilities from Envestra to Service Providers. Envestra's responsibility to manage faulty network assets and to question or investigate suspected unauthorised usage on its own network has been removed. The liabilities and responsibilities of Network Users, however, have been extended. AGL considers that the charging provisions provide Envestra with excessive power, as they effectively allow Envestra to unilaterally decide what a reasonable charge is and permit Envestra to cease supplying a Network User unless they agree to pay these charges.

In addition to issues in relation to the Terms and Conditions, AGL has concerns around some key components of the Access Arrangement;

- Envestra's proposal to continue invoicing in advance for distribution reference services.
- The proposed increase in expenditure on mains renewals is a significant contributor to the 53.1% increase in Envestra's required revenue.
- Declining average consumptions and its impact on the capital expenditure program.

Further detail on the above points is provided in Attachment A. Attachment B is a table with specific responses to the Terms and Conditions.

Should you have any queries in relation to our submission, please contact myself on (03) 8633 6026 or Monique Smith via email at MSmith@agl.com.au or on (03) 8633 7935.

Yours sincerely,

Alex Cruickshank
Head of Energy Regulation

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ATTACHMENT A

AGL Submission: Envestra Limited SA Gas Access Arrangement 2011– 2016

Network Invoicing

Envestra proposes to continue invoicing in advance for distribution reference services, as set out in clause 20 of their General Terms and Conditions. AGL does not support Envestra invoicing in advance and requests the AER to remove this term. We do not believe that pre-invoicing serves the National Gas Objective, specifically the efficient operation of gas services. This practice is furthermore not in keeping with network billing standards and practices we see elsewhere.

AGL understands that the prepayment arrangement was put in place to provide Envestra with working capital during the initial months of its establishment. There is no further need for this arrangement to be in place as working capital requirements should be included in Envestra's overall submission on the efficient costs of providing reference services.

Prior invoicing is an inefficient mechanism to provide working capital to Envestra as it creates an unnecessary administrative burden. The administrative burden comes about because, for each month of charges, two estimates are made and paid against and two wash-ups are subsequently required. There is a flurry of accounting activity which results in costs to both parties, for little appreciable gain. This needs to be compared with network billing in arrears, which is the normal practice — it requires one invoice, one reconciliation, and one payment.

AGL sees no benefit to justify this arrangement and requests that it be removed in the coming regulatory period. Furthermore, we ask the AER to note that retailers are required to bill in arrears. We see no reason why our suppliers cannot adopt similar billing practices. Envestra may well claim that a change to invoicing arrangements may have, apart from cash flow implications to them, implications for credit support arrangements. AGL has no difficulty with the credit support arrangements proposed in 6.4 of the Access Arrangement proposal — this policy is in line with Envestra's arrangements in Victoria whereby objective benchmarks for credit worthiness are posted and participants who fall outside that may be called upon to provide some form of support.

Haulage Reference Services

AGL considers that Envestra's proposal redefines what a Demand customer is. It introduces variances which are inconsistent with the Retail Market Procedures (Procedures). We seek clarification and justification as to why this has been included. It is our view that the amendment to the definition of a 'Demand DP' would place an unnecessary burden and would argue that it is not in the interests of Network Users and end-use consumers to amend the definition of a Demand DP.

Mains replacement

Envestra's proposed Capex of \$506.9m over the coming regulatory period is dominated by expenditure on mains replacement of \$226.5m. The justification for this is put forth as the amendments in relation to unaccounted for gas to the Gas Distribution Code, published on 17 September 2010 and effective from 1 July 2011. When ESCOSA were consulting on changes to the Gas distribution Code in mid-2010, AGL submitted to the following effect in relation to the initial proposal and to the Draft Decision:

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“We consider introducing a mandatory UAFG standard, however framed, would be inconsistent with the framework of economic regulation. In addition, it would also encroach on the AER’s role in managing Envestra’s access arrangements. Such a mandated approach would need to be tied in with capital expenditure approval in the access arrangement for a mains renewal program. As we also consider this to be within AER’s scope, we do not believe it should be addressed as part of this review.”

However, ESCOSA’s Final Decision did not reflect AGL’s concerns. The particular amendment to the Gas Distribution Code in relation to unaccounted for gas, clause 2.1.1(f), places the following obligation on Envestra in operating the distribution system:

“use its best endeavours to achieve:

- (i) a level of unaccounted for gas for the distribution system of 4% by the end of 2016;*
- and*
- (ii) annual reductions in levels of unaccounted for gas for the distribution system in each year up to and including 2016.”*

Whilst AGL accepts that there is a new obligation to apply from 1 July 2011, we note that the objective is to achieve a 4% unaccounted for gas level by 2016 using best endeavours. We very much question whether the inclusion of \$227m in the mains renewal program is achievable from a practical perspective. This is a significant step-up in the expenditure program and would require a considerable level of skilled resources which may not be available. In the event that this program is under-spent, we will have had 5 years of higher than necessary network tariffs.

We also question the proposed spending of \$227m in a compressed period of time for the purpose of achieving reductions in UAG is necessarily the most efficient approach, particularly when the leakage is principally associated with cast iron mains (according to Envestra’s own presentation at the public forum in Adelaide on 29 October 2010). Cast iron mains operate at the lower end of the pressure range, and leaks associated with them do not constitute a safety hazard in most instances. The smell of gas (or mercaptan) in the air might be unpleasant but is not life-threatening as a rule.

AGL is not averse to spending on leaking mains, but our position is that this needs to be effected in a manner that is economically responsible. A safer and more reliable network is a worthwhile objective but should not come at any cost.

Demand forecasts

Envestra’s Access Arrangement Information makes frequent references to declining average consumptions and to new customers using less than existing customers. Envestra assert that demand forecasts need to be approved at a “realistic level”. If this is indeed the case, then AGL trusts that the proposed capital expenditures to connect even more new customers has adequate allowances for customer surcharges to allow this non-conforming expenditure to take place. Otherwise, we will see a continuous increase in reference tariffs to shore up the new connections which do not provide the minimum returns. Rule 83 of the NGR is quite explicit about the treatment of non-conforming capital expenditure.

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ATTACHMENT B – Envestra Limited SA Gas Access Arrangement Terms & Conditions

Current Section	Proposal	Issue	AGL's Proposed Approach and suggested rewording of a specific Clause
2 Haulage Reference Services			
2.2	Obligation to Deliver	Subject to the terms of the Agreement, Envestra will deliver Gas through each User DP as and when Gas is taken through that DP (whether by the Network User or the Network User's Customer or by someone else).	<p>AGL does not support the inclusion of these clauses.</p> <p>AGL considers that if the clauses are to be included, that they are amended so that Envestra has the responsibility to reasonably mitigate any losses caused to the Network Users for any Gas that is taken without authority, due to illegal access to Envestra's own equipment and assets.</p>
2.3	Delivery to Network User	As between Envestra and the Network User, all Gas taken or delivered through any User DP will be taken to have been delivered to or for the account of the Network User.	
2.4	No Obligation to Enquire	Envestra will have no responsibility to enquire as to the authority of any person who takes Gas through any User DP.	
2.5	No Liability for Gas Delivered	Envestra will have no liability to the Network User for any Gas that is taken through any User DP by someone other than the Network User or a Network User's Customer.	
2.8	Compliance with Law	The Network User will ensure that it holds whatever licences or other authorisations it requires to sell or consume Gas delivered	
		<p>These are new clauses which appear to absolve Envestra of all responsibility to manage unauthorised usage or any gas being taken without authority.</p> <p>If a person is illegally accessing equipment and assets belonging to Envestra, AGL considers that Envestra should shoulder some responsibility for preventing this behaviour. Envestra should not be able to absolve itself of liability by wilfully declining to enquire as to the authority of any person taking gas through any User DP. Envestra should have a positive duty to restrict illegal access to its own equipment and assets.</p> <p>Envestra has proposed new clause 27.4 which requires Network Users to use reasonable endeavours to mitigate claims it may have against Envestra. AGL therefore considers that reciprocal rights for the Network User should be included within the Access Arrangement.</p>	

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		through the Network and will comply with all applicable laws from time to time.		
6A. Temporary Increase of MDQ				
6A.2	Request for Temporary Increase in MDQ	Requests for an increase in MDQ pursuant to the previous sub-clause must be submitted to Envestra at least 28 days before the increase is required. An administration fee of \$200 will apply for each request. In addition, if engineering analysis is required, the costs of that analysis shall be borne by the Network User, but will be agreed in advance with the Network User, based on an hourly rate of \$100 per person per hour.	The administration fee has increased 33.3% from a price of \$150 to \$200. The hourly rate for an engineering analysis has increased 17.6% from a price of \$85 to \$100. These increases appear to be excessive and no justification has been provided for the increase.	Clarification is required on the justification behind the significant increases in the price of the administration fee and the hourly rate of an engineering analysis.
6B. Reduction in MDQ				
6B.2	Request for reduction in MDQ	Subject to clauses 7.6 and 7.7, if: (a) the Customer to whom Gas is supplied at a Demand DP experiences a permanent, material reduction in its requirements for Gas at that Demand DP such that its daily Gas requirements are at least 10% less than the MDQ then applicable to that Demand DP;	AGL is unable to ascertain why Envestra has removed the requirements that daily Gas requirements are 'significantly less than the MDQ' and replaced this with a requirement that they be 'at least 10% less' than the MDQ.	Clarification is required on the justification behind changing the qualification from 'significantly less' to 'at least 10%.' Clarification is also required upon how the figure of at least 10% was reached.

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8. Metering Equipment				
8.3	Maintenance	<p>Envestra will ensure that all Metering Equipment is maintained in reasonable condition throughout the Term. Where the Metering Equipment at a DP includes equipment for telemetry or interval metering and that equipment is no longer required by law to be used at that DP, then the Network User will bear the costs of removal of that equipment.</p>	<p>Additions to this clause imply that the Network User is to be responsible for bearing the costs of removal of telemetry and interval equipment in all situations where it is no longer required by law.</p> <p>AGL considers that the removal of faulty or time expired meters should remain the responsibility of Envestra, however notes that no provision has been made for the removal of these meters within this clause.</p> <p>In addition, the costs of meter removal have already been factored into the tariffs charged by Envestra. To then require another party to meet the costs of meter removal is effectively double dipping.</p>	<p>AGL requests that all text after the first sentence is removed from this clause.</p> <p>The Network User should not be responsible for cost of meter removal where this cost has already been recovered by Envestra through tariffs. The Network User should also not be liable to pay costs for removing faulty or time expired meters, which should form part of Envestra’s asset replacement policy and responsibility.</p>
9. Meter Accuracy				
9.6	Inaccurate meters	<p>Subject to the Agreement, if any test of Metering equipment pursuant to the Agreement shows that the measurements taken by that Metering Equipment are outside a margin of</p>	<p>The terminology previously stated that the amount was ‘outside a margin of plus or minus 2% - now it says ‘outside a margin permitted by law’ – if the law allows a</p> <p>We seek clarification on which law Envestra is referencing in this clause. If this law allows a greater margin then this will be a detrimental change and we seek justification</p>	

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	<p>accuracy that is permitted by law (in the case of Metering Equipment at a User DP) or plus or minus 1% (in the case of Metering Equipment at a User Receipt Point) of the Volume of Gas delivered through that Metering Equipment (the allowable margin of accuracy):</p> <p>(a) the party responsible for that Metering Equipment must adjust or repair that Metering Equipment as soon as is practicable so that the measurements it takes are within the allowable margin of accuracy or replace that Metering Equipment with Metering Equipment that takes measurements within the allowable margin of accuracy; and</p> <p>(b) in the case of a DP, Envestra must correct previous readings taken from that Metering Equipment to reflect the actual Gas delivered (or a reasonable estimate of the Gas delivered) since the date of the last reading taken from that Metering Equipment or, if later, the last date on which that Metering Equipment was tested and the measurements found to be within the allowable margin of accuracy.</p>	greater margin then this is a detrimental change.	for this change.
12 Receipt Pressures			
12.2	No Unfair Discrimination	Envestra may not specify different pressures for Receipt Points pursuant to clause 13.1 other than:	AGL understands and acknowledges the reasons that Envestra has sought the inclusion of these new clauses. We are extremely concerned, however, that these
12.3	Failure to Comply		AGL does not support the inclusion of these clauses, in particular clause 13.4. AGL does not consider that Network Users

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	<p>(a) on grounds that relate to the technical, physical or practical limitations of that Receipt Point or any other Receipt Point or the Network (or any part of it); or</p> <p>(b) on grounds that relate to the safe and efficient operation of the Network (or any part of it); or</p> <p>(c) on grounds that relate to the operational integrity of the Network (including, but without limitation, the need for Envestra to maintain pressures at any DP in order to comply with its obligations under any law or contract or in order to maintain deliveries of Gas at any DP).</p> <p>13.3 Pressure Management</p> <p>If the pressure of Gas delivered at any Receipt Point (whether a User Receipt Point or not) is not within the limits specified for that Receipt Point by Envestra, Envestra may curtail or interrupt deliveries through any Receipt Point or any DP, or flare or release Gas in the Network or take whatever other steps Envestra considers necessary or desirable to increase or reduce the pressure of Gas at any Receipt Point or any DP or at any other point within the Network or to avoid any threat to any person or property.</p> <p>13.4 Other Users</p> <p>Envestra will have no liability to the Network User for any loss, cost, expense or damage the Network User might suffer or incur because Gas</p>	<p>clauses essentially absolve Envestra from any liability to keep their network secure.</p> <p>AGL considers that Envestra has a responsibility to secure its own network and to ensure that gas delivered at Receipt Points is done so at a pressure inside the limits required by the Agreement. AGL is unable to understand why a Network User should bear any loss, costs, expense or damage incurred because of the pressure the gas was delivered at. If the gas pressure is incorrect, Envestra should bear the burden and seek redress from the entity that delivered the gas.</p>	<p>should be liable for any losses incurred due to gas being supplied at a pressure outside of the agreed limits, regardless of who supplied it.</p> <p>We request Envestra provides justification and the basis for the inclusion of the new clauses listed in section 13.</p>

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	is delivered at any Receipt Point (by someone other than Envestra) at a pressure which is outside the limits required by the Agreement.			
Ancillary Reference Services				
18.1	Standards	<p>18.1 Standards</p> <p>Envestra will undertake Disconnection and Reconnection of DPs and carry out Special Meter Readings in accordance with the Retail Market Procedures and all other applicable laws.</p>	<p>This clause has been amended to state that Envestra will ‘undertake’ disconnections and reconnections rather than they <u>will</u> disconnection/reconnect.</p> <p>AGL has concerns with this change in terminology as we have previously been charged for disconnection requests that have not been actioned by Envestra, which we do consider to be unreasonable. Including ‘undertake’ within this clause could potentially extend to instances where disconnection and reconnection requests are unsuccessful. It potentially introduces the ability for Envestra to introduce charges as Other Services which Envestra has submitted in this Access Arrangement that they will not seek approval for new charges via the AER.</p>	<p>AGL seeks clarification on the definition of ‘undertake’ and the justification behind the inclusion of this word within the clause.</p> <p>AGL requests that the word ‘undertake’ is removed from this clause.</p>
18.2	Payment of Charges	Envestra will have no obligation to carry out an Ancillary Reference Service at the request of the Network User if the Network User has not paid (or, where permitted by Envestra, agreed	<p>AGL interprets this clause as stating that Envestra doesn’t have to carry out an Ancillary Reference Service until a Network</p>	AGL does not support the inclusion of this clause.

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	to pay) Envestra the Charge for that Service as set out in the then most recent Tariff Schedule.	<p>User has paid or agreed to pay for it.</p> <p>Clause 19 additionally states that for other services, the Network User will be liable to pay charges that have been reasonably determined by Envestra themselves, in the absence of an agreement with the Network User.</p> <p>Clause 25.3 then gives Envestra the right to cease providing a service to the Network User if any amount due has not been paid. The Network User will only regain the right for Envestra to provide them with services after having paid off the full amount of the debt plus interest.</p> <p>AGL is extremely concerned as these clauses effectively allow Envestra to charge what they unilaterally consider to be ‘reasonable.’ If we fail to pay these ‘reasonable’ charges, Envestra has the right to withdraw services to us.</p> <p>We do not note that previously, Envestra has applied new charges that did not appear to be specific to the Reference Service, nor were they been approved by the AER. We consider that by widening the scope of Envestra’s power to change or create charges and to enforce their payment is grossly unfair.</p>	<p>AGL considers that the benefits that would flow to Envestra would be grossly disproportionate to the detriment that would suffer by Network Users as a consequence.</p>
19. Other Services			

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	Envestra may provide the Network User with other services requested by the Network User from time to time. In consideration for those other services, the Network User will pay Envestra the Charges agreed between the Network User and Envestra or, in the absence of agreement, the Charges previously notified by Envestra or reasonably determined by Envestra.	AGL notes that the title has been changed to Other Services of which Ancillary Reference Services are just a sub set. This section now also includes ‘Other Services’. Given that Ancillary Services are the AER approved ones, AGL considers that including ‘Other’ seems to extend the scope of Envestra’s ability to charge retailers.	AGL does not support the inclusion of this clause. AGL considers that Envestra’s ability to charge retailers should be limited to only charging for Ancillary Services. We are extremely concerned that the changes associated with the other services will not be approved by the AER.
19. Invoicing and Payment of Charges for Reference Services			
19.2	First Payment	Prior to or on execution of the agreement, Envestra will give the Network User a tax invoice for an amount equal to the Charges which Envestra reasonably estimates are likely to become payable by the Network User under the Agreement (including any GST payable in respect of any taxable supply to which those Charges relate) in respect of the period commencing on the Start Date and ending on the last day of the second calendar month to end after the Start Date. (For example, if the Start Date is in June, the Charges will be for	AGL does not support Envestra invoicing in advance and requests the AER to remove this term. We do not believe that pre-invoicing serves the National Gas Objective, specifically the efficient operation of gas services. This practice is furthermore not in keeping with network billing standards and practices we see elsewhere. AGL sees no benefit to justify this arrangement and requests that it be removed in the coming regulatory period. Furthermore, we ask
			AGL does not support Envestra being able to invoice in advance and seeks removal of this clause.

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	the period up until the end of July.)	the AER to note that retailers are required to bill in arrears. We see no reason why our suppliers cannot adopt similar billing practices.	
19.5	Payment of Invoices	The Network User must pay the amount shown in any valid tax invoice (issued pursuant to clause 20) to Envestra within 14 days after the Network User has received that invoice.	AGL seeks to define the word ‘valid,’ particularly in light of our comments regarding clause 19.2. In circumstances where Envestra simply submits an invoice, they may consider this to be valid merely by the fact of its submission.
20 Correction of Billing Errors			
	If the Network User notifies Envestra of an error in an invoice issued by Envestra pursuant to the Agreement, Envestra will determine within 28 days whether an error has occurred. If Envestra agrees that an error has occurred, then the error will be corrected in the next invoice issued after determination of the error. No claim for an adjustment will be made by the Network User after the expiration of the period mentioned in clause 27.5 or, in any event, more than eleven months after the date of the invoice.	AGL notes that the current timeframe for correction of billing errors is 11 months. However, we are concerned that this timeframe means that even if Envestra have overcharged a customer, they have no obligation to refund the amount to the customer unless the overcharge occurred within the past year. This appears to conflict with the Network User’s requirement to refund a customer for any overcharged amounts, regardless of the period of the overcharge. AGL is concerned as the Network User could end up bearing the costs of the overcharge,	We seek clarification as to whether Envestra is only liable to reimburse customers for an overcharge that occurred within the past year. If this limit does apply, AGL recommends that the limit is removed, as Envestra should be required to make adjustments following its own billing errors for a period of time equal to that required of Network Users.

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		despite it occurring due to a fault of Envestra.	
21 Quantities Delivered			
21.1	Basis for determination	Whenever Envestra prepares an invoice for a given month, the Quantity of Gas shown in that invoice to have been delivered (or estimated to have been delivered or expected to be delivered) will be determined by Envestra in accordance with the Agreement.	<p>The wording has been amended to say that the quantity of gas in the invoice or estimate ‘or is expected to be delivered.’</p> <p>AGL is unclear whether this additional text has been included to account for accruals, or for another purpose. If it is intended that this clause includes accruals, this should be specifically stated. It is also not clear who the entity that expects the gas to be delivered is.</p>
21.7	Determinations Conclusive	Envestra will determine on a reasonable basis the Quantities of Gas delivered (or expected to be delivered) to any DP for the account of the Network User during any period. Such determination will be conclusive and binding on the Network User, unless proven incorrect.	<p>The wording has been amended to say that the quantity of gas in the invoice or estimate ‘or is expected to be delivered.’</p> <p>AGL is unclear whether this additional text has been included to account for accruals, or for another purpose. If it is intended that this clause includes accruals, this should be specifically stated. It is also not clear the entity that expects the gas to be delivered is.</p>
22 Method of Payment			

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22.2	No set off	Subject to the Network User's rights under clause 22, payment by the Network User will be made in full without setoff, counterclaim or deduction, or withholding on any account whatsoever (other than any deduction or withholding of taxes required by law).	<p>AGL considers that where Envestra has been afforded a right, Network Users should be afforded reciprocal rights. This clause does not allow Network Users to offset against a payment, despite clause 25.2 specifically allowing Envestra to.</p> <p>AGL considers that both parties should have the same rights with regard to set offs, especially given the large powers that Envestra is proposing that it will hold relating to the creation and variation of charges.</p>	AGL does not support the inclusion of this clause as the same rights should be afforded to Envestra and Network Users alike.
23 Failure to Pay				
23.1	Overdue Interest	If the Network User fails to pay any amount by the date on which that amount is due, then the Network User will pay Envestra interest on the unpaid amount to the extent that it remains unpaid from time to time. Interest will be calculated on a daily basis and will accrue at a rate which is two per cent higher than the Interest Rate. Accrued interest is payable to Envestra on demand. Interest not paid in the month in which it accrues will be capitalised and will itself bear interest in accordance with this clause. This clause will survive the termination of the Agreement.	AGL acknowledges Envestra’s intention in including this clause within the Agreement. However, we consider that we need to further define ‘any’ in order to define the types of payment that are captured by this clause.	We seek clarification as to which types of payment and for which services will fall within the definition of ‘any’ amount.

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23.2	Right to set off unpaid amounts	If the Network User does not pay any amount due to Envestra under the Agreement, then Envestra may withhold and set off payment of any amounts due or owing by Envestra to the Network User against any and all amounts due or owing by the Network User to Envestra. This clause will survive the termination of the Agreement.	AGL acknowledges Envestra's intention in including this clause within the Agreement. However, we consider that we need to further define 'any' in order to define the types of payment that are captured by this clause.	We seek clarification as to which types of payment and for which services will fall within the definition of 'any' amount. AGL strongly recommends the inclusion of <i>'other than an amount which the Network User in good faith disputes under clause X or which is the subject of a legal challenge or other legitimate dispute resolution process initiated by the Network User'</i> within this clause.
23.3	Right to suspend services	If the Network User does not pay any amount due to Envestra under the Agreement, or under any Related Haulage Agreement, then Envestra may cease delivering Gas through any DP to or for the account of the Network User, and may cease performing any of its other obligations under the Agreement, until such time as the Network User has paid in full all unpaid amounts due to Envestra together with any interest accrued on those amounts.	AGL seeks to define the word 'any amount due,' particularly in light of our comments regarding clause 23.2. In circumstances where Envestra simply submits an invoice, they may consider this to be for 'any amount' due merely by the fact of its submission. As with our comments under clause 20.6 above, the 'all unpaid amounts' should be limited to those that are valid, meaning they are entitled to them under law. Simply submitting an invoice does not make an invoice valid, but technically there will be an 'unpaid amount' regardless of its validity.	We seek clarification as to which types of payment and for which services will fall within the definition of 'any' amount.
27 Force Majeure				

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27.3	Payment Obligations	Nothing in this clause will relieve Envestra or the Network User from non-performance of an obligation to pay money (including, without limitation, an obligation to pay the Charges or an obligation to pay money under an indemnity in the Agreement).	<p>AGL is concerned with amendments to this clause as all references to a Force Majeure event have been removed.</p> <p>This has the effect of making both Envestra and the Network User’s obligations unlimited, notwithstanding that the obligation didn’t arise during, or as a result of a Force Majeure event.</p>	AGL does not support the amendment of this clause and recommends that the current version is retained.
34 Notices				
34.1	Notices	<p>Unless otherwise specified or agreed, notice given by any Party under the Agreement will be given in writing and will be considered as having been given if delivered:</p> <p>(a) personally by being left at the address of the Party to whom the notice is given between the hours of 9:00am and 5:00pm on any Business Day;</p> <p>(b) by facsimile; or</p> <p>(c) by mail with all postage and charges prepaid to either the Network User or Envestra (as the case may be) at the address for notices specified in the Agreement.</p> <p>Any communications sent by facsimile will be deemed to have been received on the date of</p>	We consider that email is able to be tracked and audited and is an effective tool for communication. We seek clarification that email falls within the definition of ‘electronic communication.’	<p>We seek clarification that email falls within the definition of ‘electronic communication.’</p> <p>If it does not, AGL requests the addition of a subclause allowing for notice to be provided by email. We recommend that the rules applying to the sending of a facsimile would also be applicable to the sending of e-mails.</p>

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	<p>dispatch if a transmission report from the sending facsimile machine indicates that the facsimile was sent in its entirety to the facsimile number of the addressee. If a notice is sent by facsimile after 5pm in the place to which the notice is sent, then the notice will be deemed to be received on the next Business Day.</p> <p>Any communications by mail will be deemed to have been received on the third Business Day following the date of mailing. Normal operating instructions may be made by telephone, electronic media or facsimile.</p>		
36. Amendment of Agreement			
36.2	Automatic Amendments	<p>Whenever the terms and conditions set out in Annexure G to the Access Arrangement are amended in accordance with the National Gas Law, then the Agreement will be amended in the same manner and to the same extent, with effect from the date on which those terms and conditions are amended, except to the extent that Envestra otherwise notifies the Network User.</p>	<p>AGL notes that adding the words ‘except to the extent that Envestra otherwise notifies the Network User,’ could arguably mean that changes to the Access Agreement resulting from a change to the National Gas Law may not be replicated, if Envestra notifies us that it will not make those changes.</p> <p>AGL does not consider that Envestra should be able to unilaterally decide not to accept changes to the Access Agreement. Wherever changes to the National Gas Law result in a change detrimental to Envestra’s interests, it would have the ability to ignore this, simply by virtue of</p>

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			<p>notifying us that they are not going to accept the changes.</p> <p>AGL strongly disagrees with Envestra having the power to accept/deny changes to the Access Agreement without having to consult with another party to that agreement.</p>	
New Clauses				
New Clause 10.8	Maximum Correction	Envestra will not have to correct the readings taken from any Metering Equipment more than one year prior to the date of the relevant test unless Envestra is required to do so by law.	AGL notes that the current timeframe for correction of billing errors is 11 months. However, we are concerned that this timeframe means that even if Envestra have overcharged a customer, they have no obligation to refund the amount to the customer unless the overcharge occurred within the past year. This appears to conflict with the Network User’s requirement to refund a customer for any overcharged amounts, regardless of the period of the overcharge. AGL is concerned as the Network User could end up bearing the costs of the overcharge, despite it occurring due to a fault of Envestra.	<p>AGL does not support the inclusion of this clause.</p> <p>Envestra should be required to make adjustments that are required due to its own billing errors for a period of time equal to that required of Network Users.</p>
New Clause 12.5	Other users	Envestra will have no liability to the Network User for any loss, cost, damage or expense the Network User might suffer or incur because	AGL considers that Envestra has a responsibility to secure its own network and to ensure that gas delivered at	<p>AGL does not support the inclusion of this clause.</p> <p>AGL does not consider that Network Users</p>

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		someone (other than Envestra) delivers Gas into the Network that does not comply with the specifications required by the Agreement.	Receipt Points is done so at a pressure inside the limits required by the Agreement. AGL is unable to understand why a Network User should bear any loss, costs, expense or damage incurred because of the pressure the gas was delivered at. If the gas pressure is incorrect, Envestra should bear the burden and seek redress from the entity that delivered the gas.	should be liable for any losses incurred due to gas being supplied at a pressure outside of the agreed limits, regardless of who supplied it.
New Clause 14.2	Exclusion of Liability	<p>Envestra will not breach its obligations under clause 14.1 where its failure to comply with that clause is due to:</p> <p>(a) the technical, practical and physical limitations of the Network;</p> <p>(b) the fact that insufficient Gas is delivered into the Network; or</p> <p>(c) the fact that Gas is delivered into the Network (whether by or for the account of the Network User or by or for the account of any other person) at pressures outside the limits required by the Agreement whether or not Envestra knew, or ought to have known, of those facts or matters at any time before, on or after the Start Date.</p>	<p>It says that Envestra are not liable for pressure issues that are caused by Network Users or any other person, which could result in Envestra not being held liable for acts/omissions of even their own contractors or agents. AGL seeks justification for this lack of liability on Envestra's behalf.</p> <p>AGL considers that if Envestra is aware, or should have been aware, of any matters that caused the breach, that they should have a positive duty to mitigate losses.</p>	<p>AGL does not support the inclusion of this clause.</p> <p>AGL seeks justification for removing Envestra's liability in relation to acts committed by its own contractors and agents.</p>
New Clause 26.8	Holding Over	If Gas continues to be delivered after the end of the Term (except if the Term ends as a result of the termination of the Agreement by Envestra pursuant to clause 26.2 or the Network User	This is a new clause and we have interpreted this to mean that the Network User remains responsible, even when the flow of Gas is due to Envestra. It is our	AGL seeks clarification on the intent of this clause.

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		<p>pursuant to clause 26.3 of the General Terms and Conditions) through any DP in respect of which the Network User is the current user (as that term is defined in the Retail Market Procedures), Envestra and the Network User will be taken to have entered into a new agreement for the delivery of Gas through that DP on the same terms as the Agreement, except that the expiry date of that agreement will be:</p> <p>(a) the date on which Envestra and the Network User enter into a new agreement in respect of the DP which terminates or supersedes that agreement;</p> <p>(b) the date on which that DP is disconnected so that it is not possible to deliver Gas through that DP; and</p> <p>(c) the date on which the Network User ceases to be the current user for that DP, whichever is earlier.</p> <p>This clause will survive the termination or expiration of the Agreement.</p>	<p>view that it would enable Envestra to recover the costs associated with Gas, notwithstanding that the loss was due to an act or omission by Envestra.</p>	
New Clause 27.4	Mitigation	<p>The Network User must use reasonable endeavours to mitigate every Claim it might have against Envestra.</p>	<p>This is a new clause and it says we have to mitigate every claim made against Envestra. AGL considers this new clause could be interpreted as stating that Network Users effectively act with the same responsibilities towards Envestra as Envestra’s Agents.</p>	<p>AGL seeks clarification and justification with regard to the inclusion of this clause.</p> <p>AGL also seeks clarification as to how Network Users are expected to use reasonable endeavours to mitigate every potential claim.</p>

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			<p>AGL seeks clarification and justification with regard to the inclusion of this clause.</p> <p>AGL also seeks clarification as to how Network Users are expected to use reasonable endeavours to mitigate every potential claim.</p>	
New Clause 40.3	Contra Proferens	In the interpretation of the Agreement, no presumption will be made against any party on the grounds that the Agreement or any provision of it was drafted by that party or its counsel.	<p>This is a new clause and it essentially reverses the onus of the normal 'contra proferentum' rule of interpretation, which means that a clause is interpreted against the person who seeks to rely on it.</p> <p>If this clause was to be included, then despite Envestra having drafted this agreement, the clauses will not be interpreted against their favour.</p> <p>AGL is extremely concerned about the inclusion of this provision. Given the fact that this is largely a 'take it or leave it' contract and we have no real right to negotiate with Envestra, we do not consider it fair that the Agreement should be interpreted in Envestra's favour.</p> <p>Envestra drafted the agreement, and if they seek to rely on an ambiguous clause, it should be interpreted against their interests.</p>	AGL does not support the inclusion of this clause and strongly recommends its removal.
New Clause 40.4	Entire Agreement	The Agreement constitutes the entire agreement between the Network User and Envestra in relation to its subject matter. It	AGL does not consider that 'All implied warranties, terms and conditions are excluded to the extent permitted by law' is	AGL recommends removing the final sentence of this clause.

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		supersedes all prior agreements, representations and understandings (except that, where Envestra and the Network User have agreed on terms in relation to a single specific User Delivery Point, those terms will continue to apply to the extent that they are inconsistent with the Agreement). All implied warranties, terms and conditions are excluded to the extent permitted by law.	necessary within this clause.	

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