

A few  
words.

**21 March 2017**

Mr Chris Pattas  
General Manager, Network Regulation  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001



**by email:** [VicGAAR2018-22@aer.gov.au](mailto:VicGAAR2018-22@aer.gov.au)

Dear Mr Pattas,

**Re: Victorian GAAR proposals**

AGL Energy Ltd (AGL) welcomes this opportunity to provide comments on the proposals of Multinet Gas, Ausnet Services, and Australian Gas Networks - Victoria and Albury (AGN) as part of the Victorian Gas Access Arrangement Review (GAAR) for the period 2018-2022.

AGL operates nationally across the energy supply chain and has investments in coal-fired, gas-fired, renewable and embedded electricity generation. AGL is Australia's largest private owner, operator, and developer of renewable generation in Australia, and is also a significant retailer of energy with around 3 million electricity and gas customers. As one of the largest energy retailers in Australia, AGL is well placed to comment on issues in the industry.

This submission makes the following general comments on issues regarding the Victorian GAAR proposals.

**Regulatory Approach**

AGL strongly supports a price cap mechanism for regulated businesses. Whilst acknowledging that a price cap methodology can increase the variation and uncertainty in a regulated business's revenue because of the need to forecast consumption, setting a price cap brings more price certainty for users and customers and better aligns the incentives for capital and operating expenditure with network utilisation. In addition, AGL believes that the purpose of regulating monopoly businesses is to provide a price to customers that competitive circumstances would otherwise provide, rather than guaranteeing revenue.

AGL notes that Multinet is proposing to change its reference tariff variation mechanism from a price cap to a revenue cap. AGN and Ausnet Services propose to retain the price cap methodology. AGL would prefer that only one mechanism be used within a jurisdiction to aid consistency in analysis and pricing and supports the price cap mechanism.

**Marketing allowance**

AGL notes that all three gas distribution businesses have proposed a combined marketing program with operating expenditure to encourage gas penetration in the small customers' market. AGL supports this marketing allowance as it should, over time, drive more efficient use of the network. This aligns with the incentives of price cap regulation.

**Performance Reporting**

AGL would highlight that the Statutes Amendment (*National Electricity and Gas Laws—Information Collection and Publication*) Act 2016 (Act) came into operation on the 8 December 2016.



The amendments introduced by the Act clarify AER's powers with respect to performance reporting for states under the National Energy Consumer Framework (NECF). This includes annual benchmarking reports and allows the AER to now report on network service providers' efficiency which will facilitate greater transparency surrounding network performance.

It is AGL's view that increased transparency will drive performance levels and improve the efficiency of gas networks in providing certain services and maintaining service standards. AGL therefore seeks clarification from the AER on whether the AER will utilise this increased capacity to provide more robust reporting on the performance of individual gas networks.

AGL supports the AER expanding the current reporting framework in the NECF states and recommends that performance reporting (service levels) and benchmarking is included in the proposed Victorian Access Arrangements to align with the AER's revised reporting framework. There are currently no direct obligations on networks to provide information on their performance of regulated obligations, and the inclusion of performance reporting to monitor service standards will ensure that regulated participants are meeting their obligations to customers and retailers. In addition, this will facilitate alignment of reporting between the NECF states and Victoria.

At a minimum AGL submits that the inclusion of a clause requiring the Network to enter good faith discussions with Retailers to develop performance reporting and key performance indicators is required.

### **Commercial Agreements**

AGL considers that the level of customer service being provided to gas customers is being constrained by a historical operating model that does not allow for flexibility in providing services to customers.

There is no penalty for a distribution network if its performance drops and negatively impacts end-users nor is there ability to change service provider in the current model. In Australia there is a shift in the electricity industry to competitive metering and while this has not yet occurred for gas, there exists the opportunity for third party providers to be engaged to perform ancillary services such as special meter reads, disconnections, and reconnections. These services are all pass through costs and there is a real opportunity to improve the delivery of these current services as well as provide new services and opportunities for engagement with customers. In a competitive market, retailers must be able to act quickly to bring out new services to customers. However, the ability to introduce new services is hampered by retailers' inability to form commercial agreements with distribution networks.

AGL understands the AER view has been that a retailer can negotiate with distribution networks to obtain terms and conditions that differ to those specified in the Access Arrangement. The National Gas Law permits this. However, in AGL attempts to negotiate commercial agreements we have experienced difficulty in incentivising networks to progress any negotiations. Indeed, some networks have expressed that there is no regulatory mechanism to allow such agreements and are therefore unwillingly to even enter discussions.

AGL submits a new clause should be included in the terms and conditions of the proposed Access Arrangements to facilitate the creation of commercial agreements.

AGL acknowledges that networks may be concerned about potential risk to themselves regarding commercial arrangements which allows a retailer to carry out a service that lies within the network's current responsibilities; any such risk should be appropriately mitigated through the commercial agreement. Proposed wording for such a clause is set out below:

*The Service Provider must exercise best endeavours to enter into a commercial arrangement with a User in a timely manner where the user can demonstrate that the agreement would provide benefits to the end customer and the agreement can mitigate risk to the Service Provider and be provided in a fair and equitable format to all Users.*

### **Ancillary Reference Services**

As previously raised with industry, AGL has requested an additional reference service be made available by gas distribution networks, namely an 'Installation of a second service valve in a pit and disconnect gas supply'. As the AER is aware, where the network cannot gain access to a meter to carry out a disconnection, retailers can request a street disconnection be performed. The reconnection of a site following a street disconnection



however is considerably more complex. AGL is seeking the provision of an additional service by networks to facilitate an alternative disconnection in the street. The provision of such a service would facilitate the timely reconnection of supply with minimal disruption following disconnection of a site, and would therefore lessen the impact on customers, both current and move-in.

AGL notes that Multinet Gas have included such a service in Schedule 1 – Ancillary Reference Services of Part A – Principal Arrangements 23 December 2016. AGL would request that AGN and Ausnet Services consider inclusion of a similar service which will ultimately benefit customers and the industry alike.

### **Access Arrangement Consultation**

AGL would also take this opportunity to highlight the extensive consultation process undertaken by AGN which was a comprehensive process that ensured all stakeholders were clear around the principles used by AGN in making its Access Arrangement decisions. It was highly informative and answered many queries AGL had regarding the economic basis for its regulatory proposal.

Multinet had similarly frank and open consultation and varied its regulatory proposal to accommodate several industry suggestions. AGL appreciated the open consultation.

That does not mean that all AGL's issues with the Access Arrangement proposals were accepted by the networks and the attached tables list specific comments and wording revisions that AGL proposes for the terms and conditions of each business's access arrangement.

AGL is especially concerned about AGN's terms and conditions with regard to:

- *Delivered Quantities and Billing:* AGN currently bills on a forward estimate basis in Queensland and South Australia and this process creates significant cost to AGL because of the billing rework required every month, AGL is concerned that AGN, through amendment of Clause 24.1, is intending to use a similar methodology in Victoria; and
- *Time Limitations on charge adjustments:* The network is responsible for the provision of meter data and errors frequently occur with data because a system issues or incorrect readings. Retailers have no ability to control, mitigate or remedy these errors yet time limitations through the terms and conditions will require the retailer to bear the financial cost. AGL submits that these terms should be revised to better reflect the responsibilities of each party and apportion risk fairly to the appropriate party.

AGL's looks forward to reviewing the revised Victorian network proposals.

Should you have any questions with regard to this submission or in relation to AGL's position on other aspects of the Victorian networks' Regulatory Proposals then please contact me on (03) 8633 6207 or Patrick Whish-Wilson on (07) 3023 2426.

Yours sincerely,

A solid black rectangular box used to redact the signature of Elizabeth Molyneux.

Elizabeth Molyneux

Head of Energy Markets Regulation

**Table 1: AGL Comments on Victoria and Albury Access Arrangement Annexure F - General Terms and Conditions**

Clause	Proposed Wording	AGL Comment
<b>Haulage Service Charges</b>		
3.2	<p><b>Calculation of Haulage Service Charges</b></p> <p><i>The Haulage Service Charges will be calculated from time to time for each DP in accordance with the Agreement and the Tariff Schedule applicable at the relevant time.</i></p>	<p>AGL maintains its position that Retailers should not be liable to discharge network charges levied for a DP where there is no customer contract. AGL therefore seeks to amend clause 3.2 to include the following sentence:</p> <p><i>“The Network User is not responsible for settling the account relating to, and will not pay any Haulage Service Charges (neither Fixed Charges nor Charges for the Quantity of Gas delivered) associated with, any DP for which the Network User does not have a Shared Customer.”</i></p>
3.3	<p><b>Fixed Component of Haulage Service Charges</b></p> <p><i>The Network User will remain responsible to pay Haulage Service Charges in respect of each User DP for so long as the Network User remains the FRO for that User DP (within the meaning of the Retail Market Procedures) (and, in particular, for so long as the Network User is the FRO for a User DP, the Network User will remain liable to pay any part of the Haulage Service Charges that is payable under the Tariff Schedule, irrespective of the Quantity of Gas delivered through that User DP).</i></p>	<p>AGL maintains its position that Retailers should not be liable to discharge network charges levied for a DP where there is no customer contract. AGL seeks the following change:</p> <p><i>“If the Network User requests disconnection of a User DP (or, if the Network User is a Gas Retailer, any Shared Customer’s premises), and AGN is entitled to disconnect the User DP in accordance with sub-clause 18.1, the Network User will cease to have a Shared Customer in relation to that User DP, and will not be responsible to pay Haulage Service Charges in respect of that User DP, from the date the Network User ceases to have a customer contract for that User DP in place.”</i></p>
<b>Warranties and Title to Gas</b>		
16.1	<p><b>Warranty of Title to Gas</b></p> <p><i>The Network User warrants that the Network User has good title to all Gas supplied to AGN at each Receipt Point by or for the account of the Network User, free and clear of all mortgages, charges and other encumbrances and all other third party rights and claims in and to any Gas (other than any floating charge that has not become a fixed charge and that permits the Network User to sell or supply that Gas). The Network User also warrants that the Network User has the right to supply Gas at each Receipt Point for transportation by AGN under the Agreement.</i></p>	<p>AGL seeks to amend clause 16.1 to read as follows:</p> <p><i>“The Network User warrants that the Network User has good title to all Gas supplied to AGN at each Receipt Point by or for the account of the Network User. The Network User also warrants that the Network User has the right to supply Gas at each Receipt Point for transportation by AGN under the Agreement.”</i></p> <p>This amendment was accepted by AGN in Qld.</p>
16.3	<p><b>Indemnity</b></p> <p><i>The Network User will indemnify AGN against any loss, cost, expense or damage arising from or out of any breach by the Network User of any warranty made or deemed to be made by the Network User under the Agreement.</i></p>	<p>AGL seeks to amend clause 16.3 as follows:</p> <p><i>“Subject to any exclusion or limitation arising under sub-clauses 29.6 and 29.7, the Network User will indemnify AGN against any loss, cost, expense or damage arising from or out of any breach by the Network User of any warranty made or deemed to be made under clause 16.1, or 16.2, by the Network User under the Agreement.”</i></p>

Clause	Proposed Wording	AGL Comment
<b>Supply Curtailment</b>		
<b>17.7</b>	<p><b>Assistance</b></p> <p><i>The Network User must give AGN whatever assistance AGN reasonably requests from time to time to interrupt or curtail deliveries of Gas at any User DP.</i></p> <p><i>If the Network User is a Gas Retailer, the Network User must cause or procure each Shared Customer to give AGN whatever assistance AGN reasonably requests from time to time to interrupt or curtail deliveries of Gas at any User DP.</i></p>	<p>AGL seeks to amend clause 17.7 as follows:</p> <p><i>“If the Network User is a Gas Retailer, the Network User must use best endeavours to cause or procure each Shared Customer to give AGN whatever assistance AGN reasonably requests from time to time to interrupt or curtail deliveries of Gas at any User DP.”</i></p> <p>This puts a significant burden on Retailers. AGL will commit to using its best endeavours but it cannot control the actions of third parties. While this may be a common term in other agreements AGN has AGL does not believe it is a term that should apply in its current standing for the reason stated. This also requires no process change from AGN to implement.</p>
<b>Disconnection and Reconnection</b>		
<b>18.2</b>	<p><b>Reconnection</b></p> <p><i>If any User DP (or if the Network User is a Gas Retailer, any User DP or any Shared Customer’s premises) is disconnected from the Network, AGN will re-connect that User DP (or those premises) to the Network as and when required by law.</i></p>	<p>AGL submits that a requirement should be included that when the Network reconnects a User DP they notify the current retailer. This is particularly an issue when another retailer requests a reconnection because the customer is churning but the transfer is cancelled.</p> <p>The incumbent retailer is not advised by the network that the meter status should be switched from “inactive” to “active” and the network starts billing the retailer for consumption. If the retailer was advised at this stage that the meter status was active then the retailer would know to bill and contact the customer to set up an account. If this advice is not provided the retailer has no way of knowing that the site should be billed.</p> <p>Additional wording should be included, such as the following:</p> <p><i>“Following the reconnection of any User DP, the incumbent retailer shall be notified by AGN.”</i></p>
<b>Distribution Service Charge</b>		
<b>20.2</b>	<p><b>Liability for Charges</b></p> <p><i>(a) the Network User is liable for any component of the Distribution Service Charges which accrues in relation to a User DP whilst there is no Shared Customer in respect of that User DP;</i></p>	<p>AGL seeks deletion of clause 20.2(a).</p> <p>This is in line with AGL’s comments on Clause 3.</p>

Clause	Proposed Wording	AGL Comment
<b>Adjustment of Charges</b>		
<p><b>22.3</b></p>	<p><b>Time Limit</b></p> <p><i>(a) Subject to sub-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></p> <p><i>(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</i></p> <p><i>(ii) in any event, more than eleven months after the date of the relevant statement of charges.</i></p> <p><i>(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.</i></p> <p><i>(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.</i></p>	<p>The time limitation is unrealistic. Issues are often not discovered within 11 months and some issues are due to an AGN fault – AGL should not have to bear the financial consequences of AGN’s errors when they have no ability to prevent or rectify the issue. AGL proposes the following changes to the clause.</p> <p><b>22.3 Time Limit</b></p> <p><i>(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></p> <p><i>(i) unless full particulars of that claim are given by the Network User to AGN within <del>three</del> six months after the claim becomes known (<del>or should have become known</del>) to the Network User (or its officers, servants, agents or contractors);</i></p> <p><i>(ii) in any event, more than <del>eleven months</del> three years after the date of the relevant statement of charges.</i></p> <p><i>(b) If the Network User is a retailer, clause 22.3(a) will not limit any claim, or the time for any claim, which the Network User is required or permitted by law to make or pursue on behalf of a Shared Customer.</i></p> <p><del><i>(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.</i></del></p> <p>We note that part (c) was not included in the QLD General Terms and conditions and AGL requests its deletion.</p>
<b>DELIVERED QUANTITIES</b>		
<p><b>24.1</b></p>	<p><b>Basis for Determination</b></p> <p><i>Whenever AGN prepares a statement of charges for a given Billing Period, the Quantity of Gas shown in that statement of charges to have been delivered (or estimated to have been delivered <del>or expected to be delivered</del>) will be determined by AGN:</i></p> <p><i>(a) in the manner required by law; ...</i></p>	<p>AGL requests deletion of ‘or expected to be delivered’ noting that this phrase was not included in Clause 24.1 of the 2013-17 Access Arrangement. AGN currently utilises monthly forward estimate billing in QLD and SA but does not forward estimate bills in Victoria. AGN is the only Network that bills in this manner (both NECF and Victoria) and estimate quantities that are expected to be delivered as a BAU practice. AGL submits that the inclusion of ‘or expected to be delivered’ is a precursor to commencing forward estimated billing in Victoria. This process is financially detrimental to AGL and results in considerable rework every month. AGL therefore requests this phrase be deleted.</p>

Clause	Proposed Wording	AGL Comment
<b>Termination</b>		
<b>28.2</b>	<p><b>Termination by AGN</b></p> <p><i>AGN may terminate the Agreement by seven days' notice given to the Network User at any time, in the event that:</i></p> <p>(a) <i>the Network User fails to pay any amount due to AGN on time in the manner required by the Agreement or any Related Haulage Agreement (other than where permitted by law (including clause 23)) and the Network User fails to pay the amount due within 14 days after it receives a written notice to specifying the amount that is due;</i></p>	<p>AGL submits that "14 days" should be replaced with "28 days" as the time frame is too short.</p> <p>In addition, this does not seem to be appropriate grounds to terminate an agreement of this nature, particularly if there were a dispute over charges. Terms of payment should align with the National Gas Rules and the B2B requirements administered by AEMO.</p>
<b>28.6</b>	<p><b>No Refunds</b></p> <p><i>AGN will have no obligation to refund or repay any amount paid by the Network User to AGN on account of Distribution Service Charges to become payable under the Agreement.</i></p>	<p>AGL seeks deletion of this clause.</p> <p>Deletion of this clause was accepted by AGN in Qld.</p>
<b>Service Providers Liability</b>		
<b>29.1</b>	<p><b>Indemnity against Property Damage and Personal Injury</b></p> <p><i>Subject to the other terms of the Agreement, AGN will indemnify the Network User against:</i></p> <p>(a) <i>any damage that is caused to property of the Network User (or, if the Network User is a Gas Retailer, a Shared Customer); or</i></p> <p>(b) <i>injury caused to an officer, servant, agent or contractor of the Network User (or, if the Network User is a Gas Retailer, a Shared Customer),</i></p> <p><i>as a result of any negligent act or omission on the part of AGN or its officers, servants or agents in connection with the provision to the Network User of Distribution Services pursuant to the Agreement or the operation, maintenance, repair, administration or management of the Network or any part of it.</i></p>	<p>AGL requests the inclusion of the following change to clause 29.</p> <p><del>as a result</del> <i>arising out of any negligent act or omission on the part of AGN or its officers, servants or agents, or contractors in connection with the provision to the Network User of Distribution Services pursuant to the Agreement or the operation, maintenance, repair, administration or management of the Network or any part of it.</i></p> <p>Currently, contractors are not explicitly mentioned while they are explicitly mentioned in clause (b) and this would resolve the inconsistency.</p>
<b>29.2</b>	<p><b>Contribution</b></p> <p><i>AGN's obligation to indemnify the Network User under this clause will be reduced in proportion to the extent that the damage or injury has been caused by an act or omission on the part of any of the following:</i></p> <p>.....</p>	<p>AGL seeks the following amendment:</p> <p><i>AGN's obligation to indemnify the Network User under this clause will be reduced in proportion to the extent that the damage or injury has been caused by <u>any negligent or wrongful</u> act or omission on the part of any of the following:</i></p>

Clause	Proposed Wording	AGL Comment
29.5	<p><b>Limitation Period</b></p> <p><i>To the extent permitted by law, AGN will have no liability to the Network User, for or in respect of any Claim, unless full particulars of that Claim are given by the Network User to AGN within three months after that Claim becomes known to the Network User (or its officers, servants, agents or contractors) or should have become known to the Network User (or its officers, servants, agents or contractors)(whichever is earlier). This sub-clause will survive the termination of the Agreement.</i></p>	<p>AGL seeks the following amendment:</p> <p><i>To the extent permitted by law, AGN will have no liability to the Network User, for or in respect of any Claim, unless full particulars of that Claim are given by the Network User to AGN within three <del>months</del> years after that Claim becomes known to the Network User (or its officers, servants, agents or contractors) <del>or should have become known</del> to the Network User (or its officers, servants, agents or contractors) (whichever is earlier). This sub-clause will survive the termination of the Agreement.</i></p> <p>AGL submits that the proposed time frames were unrealistic. The nature of the industry is that issues often are not identified within three months and can take time to investigate. Further it is unreasonable for the retailer to suffer the financial burden of Network errors.</p>
<b>User's Indemnities (Clause 33)</b>		
	<p><b>33.2 Network Damage</b></p> <p><i>The Network User will indemnify AGN against all loss, cost, expense or damage which AGN might suffer or incur in relation to any Receipt Point, Metering Installation or the operation, administration, maintenance, repair or management of the Network (other than those associated with any curtailment or interruption of the delivery of Gas referred to in sub-clause 33.5) that is caused by any of the following:</i></p> <p>(a) <i>the Network User or any of its officers, servants, agents, contractors or invitees; or</i></p> <p>(b) <i>if the Network User is a Gas Retailer, any Shared Customer or any officer, servant, agent, contractor or invitee of any Shared Customer, arising out of:</i></p> <p>(c) <i>any negligence or wrongful act or omission by the Network User or, if the Network User is a Gas Retailer, any Shared Customer, or any of their respective officers, servants, agents, contractors or invitees; or</i></p> <p>(d) <i>any breach of this Agreement by the Network User.</i></p>	<p>AGL seeks the following amendments:</p> <p><b>33.2 Network Damage</b></p> <p><i><u>Subject to any exclusion or limitation arising under sub-clauses <b>Error! Reference source not found.</b> and <b>Error! Reference source not found.</b></u> the Network User will indemnify AGN against all loss, cost, expense or damage which AGN might suffer or incur in relation to any Receipt Point, Metering Installation or the operation, administration, maintenance, repair or management of the Network (other than those associated with any curtailment or interruption of the delivery of Gas referred to in sub-clause 33.5) that is caused by any of the following:</i></p> <p>(a) <i>the Network User or any of its officers, servants, agents, contractors or invitees; or</i></p> <p>(b) <i>if the Network User is a Gas Retailer, any Shared Customer or any officer, servant, agent, contractor or invitee of any Shared Customer, arising out of:</i></p> <p>(c) <i>any negligence or wrongful act or omission by the Network User or, if the Network User is a Gas Retailer, any Shared Customer, or any of their respective officers, servants, agents, contractors or invitees; or</i></p> <p>(d) <i>any breach of this Agreement by the Network User.</i></p>



Clause	Proposed Wording	AGL Comment
	<p><b>33.3 Death and Personal Injury</b>  <i>The Network User will indemnify AGN against the death or injury of any servant, agent or contractor or invitee of AGN that is caused by any negligent act or omission on the part of the Network User or any of its officers, servants or agents in connection with the provision to the Network User of Distribution Services or the operation, maintenance, repair, administration or management of the Network or any part of it.</i></p> <p><b>33.4 Service Indemnity</b>  <i>Subject to sub-clause 33.6, the Network User will indemnify AGN against all loss, cost, expense or damage which AGN might suffer as a result of any negligent or wrongful act or omission on the part of the Network User (or, if the Network User is a Gas Retailer, on the part of any Shared Customer) in connection with, or in relation to, any Service provided by AGN to the Network User pursuant to the Agreement (including, in particular (but without limitation), in connection with or in relation to the Disconnection or Reconnection of any User DP pursuant to the Agreement).</i></p> <p><b>33.5 Curtailment Indemnity</b>  <i>Subject to sub-clause 33.6, the Network User will indemnify AGN against all loss, cost, expense or damage which AGN might suffer or incur in connection with, or in relation to any curtailment or interruption of the delivery of Gas as a result of any negligent or wrongful act or omission on the part of a Network User or, if the Network User is a Gas Retailer, a Shared Customer, or any of their respective officers, servants, agents, contractors or invitees.</i></p> <p><b>33.6 Indemnity Qualification</b>  <i>The Network User's obligation to indemnify AGN under this clause will be reduced in proportion to the extent that any negligent or wrongful act or omission of AGN contributes to the loss or liability.</i></p>	<p><b>33.3 Death and Personal Injury</b>  <u>Subject to any exclusion or limitation arising under sub-clauses <b>Error! Reference source not found.</b> and <b>Error! Reference source not found.</b>, the Network User will indemnify AGN against the death or injury of any servant, agent or contractor or invitee of AGN that is caused by any negligent act or omission on the part of the Network User or any of its officers, servants or agents in connection with the provision to the Network User of Distribution Services or the operation, maintenance, repair, administration or management of the Network or any part of it.</u></p> <p><b>33.4 Service Indemnity</b>  <u>Subject to any exclusion or limitation arising under sub-clauses <b>Error! Reference source not found.</b> and <b>Error! Reference source not found.</b>, and <del>Subject to sub-clause 33.6</del>, the Network User will indemnify AGN against all loss, cost, expense or damage which AGN might suffer as a result of any negligent or wrongful act or omission on the part of the Network User (or, if the Network User is a Gas Retailer, on the part of any Shared Customer) in connection with, or in relation to, any Service provided by AGN to the Network User pursuant to the Agreement (including, in particular (but without limitation), in connection with or in relation to the Disconnection or Reconnection of any User DP pursuant to the Agreement).</u></p> <p><b>33.5 Curtailment Indemnity</b>  <u>Subject to any exclusion or limitation arising under sub-clauses <b>Error! Reference source not found.</b> and <b>Error! Reference source not found.</b>, and <del>Subject to sub-clause 33.6</del>, the Network User will indemnify AGN against all loss, cost, expense or damage which AGN might suffer or incur in connection with, or in relation to any curtailment or interruption of the delivery of Gas as a result of any negligent or wrongful act or omission on the part of a Network User or, if the Network User is a Gas Retailer, a Shared Customer, or any of their respective officers, servants, agents, contractors or invitees.</u></p> <p><b>33.6 Indemnity Qualification</b>  <i>The Network User's obligation to indemnify AGN under this clause will be reduced in proportion to the extent that any negligent or wrongful act or omission of AGN (including, but without limitation, any breach by AGN of its</i></p>

Clause	Proposed Wording	AGL Comment
		<p><i>obligations under the Agreement), or any of its officers, servants, agents or contractors, contributes to the loss or liability.</i></p> <p>AGL also request insertion of the limitation period applicable to a claim by AGL under Clause 29. If amendment to period in Clause 29 is not accepted, the accepted period should be mirrored in the below.</p> <p><b><u>33.7 Limitation Period</u></b>  <i>To the extent permitted by law, Network User will have no liability to AGN, for or in respect of any Claim, unless full particulars of that Claim are given by AGN to the Network User within three years after that Claim becomes known to AGN (or its officers, servants, agents or contractors) or should have become known to AGN (or its officers, servants, agents or contractors), whichever is earlier. This sub-clause will survive the termination of the Agreement.</i></p>
<b>Users Insurance</b>		
34	<p><b>34.1 Insurance Required</b>  <i>The Network User must obtain and maintain insurance throughout the Term against whatever risks a person carrying on a business of retailing gas would prudently insure, with reputable insurers approved by AGN (which approval shall not be unreasonably withheld).</i></p> <p><b>34.4 Claims Enforcement</b>  <i>Whenever a claim arises, or might have arisen, in relation to the Network under any insurance which the Network User maintains under the Agreement, the Network User must take whatever steps AGN reasonably requires to make and enforce or settle that claim.</i></p> <p><b>34.5 Claims Settlement</b>  <i>If AGN requires, the Network User must not settle or compromise a claim in relation to the Network under any insurance which the Network User maintains under the Agreement, except with the consent of AGN, which consent shall not be unreasonably withheld.</i></p>	<p>AGL seeks the following amendments:</p> <p><b>Clause 34.1</b>  Delete `approved by AGN (which approval shall not be unreasonably withheld)`  Deletion of this phrase was accepted by AGN in Qld.</p> <p><b>Clause 34.4</b>  Delete `or might have arisen`, cannot settle a maybe claim.  Deletion of this clause was accepted by AGN in Qld.</p> <p><b>Clause 34.5</b>  Delete Clause 34.5, AGN not party to Retailer’s insurance and cannot have input into reasonableness of settlement discussion.  Deletion of this clause was accepted by AGN in Qld.</p> <p><b>Clause 34.6</b></p>

Clause	Proposed Wording	AGL Comment
	<p><b>34.6 Failure to Insure</b>  <i>The Network User must promptly notify AGN if the Network User fails to obtain or maintain any insurance required under the Agreement.</i></p>	<p>Delete Clause 34.6 - If AGN seeks additional insurance to be obtained then these should be listed.  Deletion of this clause was accepted by AGN in Qld.</p>
<b>Access to premises</b>		
<p><b>35.5</b></p>	<p><b>Failure to Provide Access</b>  <i>AGN will have no liability to the Network User for any failure to perform the Agreement to the extent that AGN is unable to perform the Agreement because it could not obtain safe, reasonable and unhindered access to any premises or place at the time or times it required, after exercising its reasonable endeavours to do so (provided that reasonable endeavours will not require AGN or any of its officers, servants, agents or contractors:</i></p> <p><i>(a) to enter, or attempt to enter, any premises by force or to take any steps that might involve damage, or the risk of damage, to any property; or</i></p> <p><i>(b) to take any steps that might involve a reasonable risk of physical injury or harm or a risk to the safety of any person.</i></p> <p><i>This clause 35.5 will not apply after the National Energy Retail Law applies to the Network (but without prejudice to its operation in relation to the period prior to that time).</i></p>	<p>AGL disagrees that AGN should have no liability when they are unable to gain access to a meter.  The meter is the asset of AGN and AGN should take an element of responsibility for its own property.</p> <p>This clause should be deleted.</p>
<b>Confidentiality</b>		
<p><b>36</b></p>		<p>AGL proposes the following inclusion:  <i>"Each party may disclose Confidential Information to any body corporate that is its related body corporate (within the meaning of the Corporations Act). However, the party must ensure that its related body corporate does not disclose the Confidential Information to any person to whom the party could not make disclosure pursuant to the Agreement."</i></p>
<p><b>42.1</b></p>	<p><b>42.1 Interpretation</b>  <i>In interpreting these terms and conditions or the Agreement, unless the context otherwise requires:</i></p> <p><i>(d) a reference to Distribution Service Charges payable in respect of a Shared Customer includes a reference to Distribution Service</i></p>	<p>AGL proposes the following change  <i>(d) a reference to Distribution Service Charges payable in respect of a Shared Customer includes a reference to Distribution Service Charges that accrue, in relation to a User DP, whilst the Network User is the FRO for that <u>has a retail</u></i></p>

Clause	Proposed Wording	AGL Comment
	<p><i>Charges that accrue, in relation to a User DP, whilst the Network User is the FRO for that User DP under the Retail Market Procedures;</i></p>	<p><u>contract with the Shared customer for that User DP under the Retail Market Procedures;</u>  This is to align with AGL's proposed amendments to Clause 3.</p>

**Table 2: AGL Comments on Multinet Gas Access Arrangement Part C - Terms and Conditions**

Clause	Proposed Wording	AGL Comment
<b>Distribution Services</b>		
4.8	<p><b>Title to Gas</b></p> <p><i>At all times, the User must ensure it has good title to Gas it causes to be injected into the Distribution System free and clear of all liens, encumbrances and claims of a nature inconsistent with the Service Provider's operation of the Distribution System and the User indemnifies the Service Provider and holds it harmless against any loss, liability, damage, claim, action, proceeding, cost and expense suffered or incurred by or made or brought against the Service Provider in consequence of any breach by the User of this condition.</i></p>	<p>AGL seeks to amend clause 4.8 to read as follows:</p> <p><i>"The User warrants that the Network User has good title to all Gas injected into the Distribution System by or for the account of the Network User. The Network User also warrants that the Network User has the right to supply Gas to the Distribution System for transportation by the Service Provider under the Agreement."</i></p>
<b>Disconnection and Interruption of Customer</b>		
6.4	<p><b>Reconnection or restoration of Supply</b></p> <p><i>(a) Subject to clause 6.4(b), the Service Provider must reconnect and restore Supply to the affected Distribution Supply Point:</i></p> <p><i>(1) when required to do so under the Regulatory Instruments, following Disconnection, Curtailment or Interruption; and</i></p> <p><i>(2) when requested by the User in a form reasonably required by the Service Provider, following Disconnection at the request of the User.</i></p>	<p>AGL submits that a requirement should be included that when the Service Provider reconnects a Distribution Supply Point they notify the User.</p> <p>This is particularly an issue when another retailer requests a reconnection because the customer is churning but the transfer is cancelled. The incumbent retailer is not advised by the network that the meter status should be switched from "inactive" to "active" and the network starts billing the retailer for consumption. If the retailer was advised that the meter status was active then the retailer would know to bill and make contact with the customer to set up an account. If this advice is not provided the retailer has no way of knowing that the site should be billed.</p> <p>Additional wording such as the following should be included:</p> <p><i>Following the reconnection of any Distribution Supply Point in accordance with Clause 6.4(a)(1), the incumbent User shall be notified by the Service Provider.</i></p>
<b>Payment and Invoicing for Services</b>		
7.4	<p><b>Distribution Services - Invoicing, Payment and Interest</b></p> <p><i>(b) The Service Provider may at any time render invoices for Distribution Services provided to the User at any time while a person was a Customer if the Distribution Services were obtained as a result of the Customer's or the User's fraud or the use of Gas otherwise than in accordance with the Regulatory Instruments.</i></p>	<p>AGL seeks the following inclusion given the Network is the owner of the asset and has a reasonable responsibility to maintain the integrity of that asset.</p> <p><i>"Where Distribution Services were obtained as a result of a Customer's fraud or the use of gas was otherwise than in accordance with the Regulatory Instruments, the User will not be liable for Distribution Charges from the date the Service Provider became aware or should reasonably have become aware of the fraudulent use by the Customer."</i></p>

Clause	Proposed Wording	AGL Comment
<b>Liabilities and Indemnities</b>		
<b>13.2</b>	<p><b>Liability for supply</b></p> <p><i>(b) The Service Provider shall indemnify the User against any Claim against the User by a Customer for breach by the User of:</i></p> <p><i>(1) any guarantee which arises between the User and that Customer under Division 1 of Part 3-2 of the Australian Consumer Law; or</i></p> <p><i>(2) implied conditions, warranties or terms (of a type equivalent to the guarantees set out in Division 1 of Part 3-2) implied under State legislation, which Claim arises in respect of the Supply by the Service Provider in relation to that Customer:</i></p> <p><i>(3) but only to the extent that the breach of the guarantee, condition, warranty or terms has not occurred as a result of the acts or omissions of the User;</i></p>	<p>AGL seeks the following amendment:</p> <p><i>(3) but only to the extent that the breach of the guarantee, condition, warranty or terms has not occurred as a result of <u>the negligent or wrongful acts</u> or omissions of the User;</i></p> <p>The act being negligent or wrongful is implied however should be stated to ensure clarity.</p>
<b>Dispute Resolution</b>		
<b>14.8</b>	<p><b>Obligations Continuing</b></p> <p><i>Notwithstanding a reference of a dispute to the dispute resolution procedure in this clause 0:</i></p> <p><i>(a) the parties shall, so far as it is reasonably practicable, continue to perform and comply with their respective obligations under this Agreement to the extent that such obligations are not the subject of that dispute; and</i></p> <p><i>(b) the parties are not precluded by this clause 0 from exercising their rights of termination in accordance with clause 0 (term and termination).</i></p>	<p>Clause requires update to reference 'Clause 14' not 'Clause 0'.</p>
<b>Confidentiality</b>		
<b>17.3</b>	<p><b>Conditions on disclosure</b></p> <p><i>...(b) If a party is permitted to disclose any confidential information in accordance with this clause 16.5(a), the party proposing to disclose shall use reasonable endeavours to limit the disclosure to those matters which reasonably need to be disclosed in order to accomplish that purpose.</i></p>	<p>Clause 17.3(b) requires update to reference 'Clause 17' not 'Clause 16.5(a)'.</p>

**Table 3: AGL Comments on Ausnet Services Access Arrangement Part C – Terms and Conditions**

Clause	Proposed Wording	AGL Comment
<b>Disconnection, Interruption, and Curtailment of Customers</b>		
4.8	<p><b>Title to Gas</b></p> <p><i>At all times, the User must ensure it has good title to Gas it causes to be injected into the Distribution System free and clear of all liens, encumbrances and claims of a nature inconsistent with the Service Provider’s operation of the Distribution System and the User indemnifies the Service Provider and holds it harmless against any loss, liability, damage, claim, action, proceeding, cost and expense suffered or incurred by or made or brought against the Service Provider in consequence of any breach by the User of this condition.</i></p>	<p>AGL seeks to amend clause 4.8 to read as follows:</p> <p><i>“The User warrants that the Network User has good title to all Gas injected into the Distribution System by or for the account of the Network User. The Network User also warrants that the Network User has the right to supply Gas to the Distribution System for transportation by the Service Provider under the Agreement.”</i></p>
<b>Disconnection and Interruption of Customer</b>		
6.4	<p><b>Reconnection or restoration of Supply</b></p> <p><i>(a) Subject to clause 6.4(b), the Service Provider must reconnect and restore Supply to the affected Distribution Supply Point:</i></p> <p><i>(1) when required to do so under the Regulatory Instruments, following Disconnection, Curtailment or Interruption; and</i></p> <p><i>(2) when requested by the User in a form reasonably required by the Service Provider, following Disconnection at the request of the User.</i></p>	<p>AGL submits that a requirement should be included that when the Service Provider reconnects a Distribution Supply Point they notify the User.</p> <p>This is particularly an issue when another retailer requests a reconnection because the customer is churning but the transfer is cancelled. The incumbent retailer is not advised by the network that the meter status should be switched from “inactive” to “active” and the network starts billing the retailer for consumption. If the retailer was advised at this stage that the meter status was active then the retailer would know to bill make contact with the customer to set up an account. If this advice is not provided the retailer has no way of knowing that the site should be billed.</p> <p>Additional wording should be included, such as the following:</p> <p><i>“Following the reconnection of any Distribution Supply Point in accordance with Clause 6.4(a) (1) the incumbent User shall be notified by the Service Provider.”</i></p>
<b>Payment and Invoicing for Services</b>		
7.4	<p><b>Distribution Services - Invoicing, Payment and Interest</b></p> <p><i>(b) The Service Provider may at any time render invoices for Distribution Services provided to the User at any time while a person was a Customer if the Distribution Services were obtained as a result of the Customer’s or the User’s fraud or the use of Gas otherwise than in accordance with the Regulatory Instruments.</i></p>	<p>AGL seeks the following inclusion given the Network is the owner of the asset and has a reasonable responsibility to maintain the integrity of that asset.</p> <p><i>“Where Distribution Services were obtained as a result of a Customer’s fraud or the use of gas was otherwise than in accordance with the Regulatory Instruments, the User will not be liable for Distribution Charges from the date the Service Provider became aware or should reasonably have become aware of the fraudulent use by the Customer.”</i></p>

<b>Communications Regarding Customers and System Data</b>		
<b>9.4</b>		<p>AGL requests addition of the (d) and (e) to Clause 9.4.</p> <p>AGL cannot be held liable for inaccuracy in information provided where AGL has exercised reasonable due diligence. In addition, the use of the information received under clause 9 should be limited.</p> <p><i>(d) The User is not liable for an inaccuracy in information provided by the User to the Service Provider under this clause 9.4 or under clause 9.5 where the User demonstrates that the inaccuracy was not caused by the User's failure to use due diligence, in accordance with good industry practice, to ensure the information was accurate.</i></p> <p><i>(e) The Service Provider may only use information disclosed to it under clause 9.4 or clause 9.5 for purposes relating to the operation, maintenance and management of the Distribution System, the provision of Distribution Services and the Supply of Gas to End-Users and for such other purposes as permitted by Regulatory Instruments.</i></p>
<b>Liabilities and Indemnities</b>		
<b>13.2</b>	<p><b>Liability for supply</b></p> <p><i>(b)(3) but only to the extent that the breach of the guarantee, condition, warranty or terms has not occurred as a result of the acts or omissions of the User;</i></p>	<p>AGL seeks the following amendment:</p> <p><i>(3) but only to the extent that the breach of the guarantee, condition, warranty or terms has not occurred as a result of the <u>negligent or wrongful</u> acts or omissions of the User;</i></p> <p>The act being negligent or wrongful is implied however should be stated to ensure clarity.</p>