



27 April 2011

Mr Warwick Anderson
General Manager
Network Regulation Branch
Australian Energy Regulator

Email: qldsagas@aer.gov.au

Dear Mr Anderson,

Envestra South Australia revised Access Arrangement proposal

AGL Energy Limited (**AGL**) welcomes the opportunity to comment on the Draft Decision Envestra Ltd Access Arrangement proposal for the South Australia gas network (**Draft Decision**) published by the Australia Energy Regulator (**AER**) and the Envestra South Australia revised Access Arrangement proposal (**Access Arrangement**) for the period 1 July 2011 to 30 June 2016.

As noted in our previous submission¹, AGL is concerned that Envestra has proposed to continue invoicing in advance for distribution reference services. The process of payment of invoices in advance is not a process undertaken in any other jurisdiction and we see that there is an opportunity to have an approach that is consistent nationally.

Envestra has proposed to alter the definition of a Demand Customer. The definition of a Demand Customer has been expended to now be based upon usage or a Maximum Daily Quantity (**MDQ**). It is our view that the amendment to the definition of a Demand Customer would place an unnecessary burden and AGL would argue that it is not in the interest of Network Users and end-use consumers to amend the definition and request that the reference to a MDQ is removed.

We acknowledge that expenditure relating to mains replacement has been reduced to \$182.11m for the period of the revised Access Arrangement. However, this is still a significant increase in expenditure, compared to the previous period, for a mains replacement program which 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

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 questions in relation to this submission, please contact Sallie Proctor, Manager Regulatory Compliance and Advice on (03) 8633 7871 or at sproctor@agl.com.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alex Cruickshank'.

Alex Cruickshank
Head of Energy Regulations

¹ AGL Access Arrangement proposal Envestra SA submission dated 26 November 2011

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Attachment A

Envestra SA revised Access Arrangement proposal

Haulage Reference Services

Envestra advised² that the concept of 50GJ/day criterion for a Demand Customer existed previously however the definition in the current Envestra SA Access Arrangement does not include any reference to a daily quantity and is:

A DP is a Demand DP at a given time if:

- (a) that DP is not a Domestic DP at that time; and*
- (b) the Quantity of Gas delivered through that DP during the then most recent Metering Year was equal to or greater than 10TJ.*

Historically in South Australia the trigger for the site to receive an interval meter is based upon the annual consumption of the site and not a MDQ level. There are established protocols within the Retail Market Procedures (**Procedures**) to request the amendment from Interval to Basic meter and vice versa based upon annual consumption levels. AGL seeks greater clarity around the mechanism and procedures for the implementation of this arrangement.

Whilst Envestra has proposed criteria for delivery points that might qualify for this tariff, there are potential implementation issues to be resolved, such as:

- There are no existing protocols within the Procedures to request the amendment from Interval to Basic meter and vice versa based upon MDQ; and
- It introduces the complexity that a domestic customer with a MDQ greater than 50GJ per day will now be classified as a Demand Customer

We note that Envestra advised that the criterion of a Maximum Hourly Quantity (MHQ) is included in the definition for a Demand DP (Tariff D) in Victoria and we acknowledge that the concept does exist. It is our view that the concept of a hourly figure is vastly different to the concept of a daily figure as is referenced in the Envestra's Victorian Distribution System Access Arrangement Part B which shown below:

Tariff D will be assigned to a DSP at a given time if either the Quantity of Gas delivered at that DSP:

- exceeds 10 TJ in the preceding 12-month period (of if less than 12 months of data is available, the Quantity of Gas delivered pro-rata for 365 days); or*
- exceeds 10 GJ in any hour in the preceding 12-month period.*

Furthermore, and consistent with the above definition, distributors charge on the basis of MHQ rather than on annual volume.

It is our view that the amendment to the definition of a Demand Customer would place an unnecessary burden and AGL would argue that it is not in the interest of Network Users and end-use consumers to amend the definition and request that the reference to a MDQ is removed.

Mains Replacement

The AER considered that Envestra's proposed capex on mains replacement, meter replacement, augmentation, replacement of hazardous services (inlets) and sleeved railway crossings was not consistent with r. 79(2)(c) of the NGR and required Envestra to make the amendments set out in section 3.8 of the draft decision. We acknowledge that expenditure relating to mains replacement has reduced to \$182.11m for the period of the

² Envestra response to AGL SA submission dated 20 December 2010

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revised Access Arrangement. Whilst AGL acknowledges the recent amendment to the Gas Distribution Code by ESCOSA's Final Decision amending the unaccounted for gas level, we again question whether the inclusion of \$182.11m in the mains renewal program is achievable from a practical perspective. This is a significant increase in expenditure for a mains replacement program which 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.

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Attachment B

Matter	Description of terms and conditions, submissions and AER's consideration	Amendment required	AGL comments
<i>Part 1: Terms and conditions for which Envestra has proposed revisions</i>			
Delivery of gas (clauses 2.4, 2.5 and 16.6)	The AER does not consider that Envestra has satisfactorily justified inclusion of these new terms and conditions. To the extent that Envestra is in a position to manage the risk of the illegal access to a delivery point, it should be required to do so. The AER requires Envestra to amend clauses 2.5 and 16.6 to the effect that Envestra must use reasonable endeavours to mitigate any loss to users.	Amendments 13.1 and 13.2.	AGL is unable identify the amendments required by the AER to clauses 2.5 and 16.6. AGL requests that the AER reviews the requirements and confirm that the appropriate amendments are reflected.
Gas specification: Other users (clause 12.5) Receipt pressures: Other users (clause 13.4)	The AER considers that if Envestra becomes aware of non-specification gas entering its network and to the extent can take action to prevent it, Envestra should do so. Envestra is required to amend its terms and conditions to take reasonable endeavours to mitigate any loss to users as a consequence of non-specification gas entering the network. Envestra is also required to make a similar amendment with respect to clause 13.4 (receipt pressures).	Amendments 13.3 and 13.4.	AGL accepts the consideration and acknowledges the amendment of clause 12.5 and the new clause, clause 12.6. At this point in time AGL has no additional comment on this item.
Reduction in MDQ (clause 7)	The AER agrees with AGL and considers that it is appropriate for Envestra to respond in a timely manner. Envestra is required to amend its terms and conditions to the effect that it will provide an explanation as soon as practicable.	Amendments 13.5 to 13.8.	Clause 7.5 has been amended with 'as soon as is reasonably practicable'. Noting that the AER requested 'as soon as practicable', we request the removal of 'reasonably' from clause 7.5
Request for temporary increase in MDQ (clause 8.2)	The AER considers that the fees are reasonable, given that this is the first increase in five years and the fees will not increase during the access arrangement period. The AER does not require an amendment.	None.	AGL accepts the AER's consideration that the fees are reasonable. At this point in time AGL has no additional comment on this item.
Maintenance and renewal of metering	While the AER notes Envestra's submission, Envestra has not provided details to the AER of what the costs are and has provided no evidence that they are excluded from the costs that	Amendment 13.9	AGL requests that Envestra amends clause 9.3 to reflect the AER's consideration. We

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equipment (clause 9.3)	are recovered by reference tariffs. In the absence of evidence to the contrary the AER considers that the costs are likely to be factored into reference tariffs. Therefore, Envestra is required to delete this part of clause 9.3. However, when making its final decision the AER will reconsider this matter if Envestra provides evidence that the costs are not included in the costs recovered through reference tariffs.		note that the AER requested the deletion from clause 9.3 of <i>'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 the DP, then the Network User will bear the cost of the removal of that equipment'</i> and this has not occurred.
Inaccurate meters (clause 10.6)	The AER considers that Envestra has not provided sufficient justification for the proposed change and that the proposed change is unclear in terms of what the margin is. The AER requires Envestra to retain the margin of accuracy of plus or minus 2 per cent if no margin of accuracy is prescribed by law. However, when making its final decision the AER will reconsider this matter if Envestra provides further evidence of the new terms that Envestra submits are to be applied consistently in South Australia and Queensland.	Amendment 13.10.	AGL accepts the consideration and acknowledges the amendment of clause 10.6. At this point in time AGL has no additional comment on this item.
Ancillary reference services: Standards (clause 18.1) Payment of charges (clause 18.2)	The AER notes that the words 'Disconnect' and 'Reconnect' are not defined terms in Envestra's glossary, whereas 'Disconnection' and 'Reconnection' are. ²⁴ The AER considers that the proposed change merely reflects this and the meaning of the clauses is unchanged. The AER does not consider that the word 'undertake' extends to instances where the work is not performed. The AER does not require an amendment. It is not clear to the AER that the benefits to Envestra and the detriment to users would be 'grossly disproportionate', as submitted by AGL. ²⁶ Nevertheless, Envestra has provided no reasons why it needs to be paid for these services prior to carrying them out. As Envestra has provided no justification for the revision, the AER rejects it and requires clause 18.2 to be amended accordingly.	Amendment 13.11.	AGL accepts the AER's consideration in relation to the words 'Disconnect' and 'Reconnect'. At this point in time AGL has no further comment on this item. AGL accepts the consideration and acknowledges the amendment of clause 18.2. At this point in time AGL has no additional comment on this item.

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Other services (clause 19)	It is unclear to the AER what Envestra contemplates as other services and why this provision is included in the terms and conditions, rather than the services policy. The services policy already includes a negotiated service. It is unclear how the 'other services' in the terms and conditions fit with the 'negotiated service' in the services policy. Given this uncertainty the AER requires clause 19 to be deleted	Amendment 13.12.	AGL accepts the consideration and acknowledges the deletion of clause 19. At this point in time AGL has no further comment on this item.
Delivered quantities (clauses 23.1 and 23.7)	The AER accepts the explanation provided by Envestra in its response to AGL's submission and does not require an amendment.	None.	In response to AGL's submission, Envestra SA submitted that these proposed revisions reflect that invoicing is in advance. AGL does not support this concept and request the AER consider a national approach to payment of invoices.
Holding over (clause 26.8)	The AER understands the intent of the new provisions and considers that they have merit. However, the AER shares the concerns expressed by AGL and Origin. The AER does not consider that users should continue to pay for gas that is not required, but continues to be delivered due to the negligent act or omission on the part of Envestra (or Envestra's officers, servants, agents or contractors). Envestra is required to amend clause 26.8 accordingly.	Amendment 13.14.	AGL is unable identify the amendment required by the AER to clause 26.8 and request that the AER ensures that the amendment required in the consideration is reflected.
Mitigation (clause 27.4)	The AER understands that mitigation clauses are common in commercial contracts. The AER does not require an amendment.	None.	AGL accepts the AER's consideration that mitigation clauses are common in commercial contracts. At this point in time AGL has no additional comment on this item.

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Force majeure: Payment obligations (clause 29.3)	The AER does not understand AGL's submission that Envestra's proposed revision means that Envestra's and the user's obligations are unlimited. Unless it can be shown that the clause is likely to pose problems in practice, the AER does not require an amendment.	None.	AGL accepts the AER's consideration and at point in time AGL has no additional comment on this item.
Automatic amendments (clause 38.2)	The AER does not consider that Envestra has addressed the concern raised by AGL that the proposed revision would give Envestra the ability to unilaterally make this decisions without reference to the user. The NGL (section 322) provides for service providers and users to negotiate terms and conditions different to those contained in an access arrangement. In the event that the terms and conditions of an access arrangement change, the parties should be permitted to determine whether or not the terms and conditions of their existing access agreement should also change. The AER does not consider, however, that it is reasonable for a service provider to have sole discretion to determine this. Therefore, the AER does not approve Envestra's proposed revision and Envestra is required to amend its terms and conditions accordingly.	Amendment 13.15.	AGL accepts the consideration and acknowledges the deletion of clause 38.2. At this point in time AGL has no comment on this item.
Contra Proferens (clause 40.3)	The AER does not agree with AGL's submission. The provision is concerned with who drafts the agreement and is not concerned with who seeks to rely on the terms and conditions. The AER considers that clause 40.3 is appropriate given that AGL and other interested parties have the opportunity to make submissions to the AER on Envestra's proposed terms and conditions. In making its decision on the proposed terms and conditions the AER takes into accounts the issues raised in submissions. The AER does not require an amendment.	None.	AGL accepts the AER's consideration in relation to clause 40.3 and at this point in time AGL has no comment on this item.
Entire agreement (clause 40.4)	AGL submitted that the provision excluding all implied warranties, terms and conditions is unnecessary and should be removed. The AER understands that this is a common clause in contracts and does not require an amendment.	None.	AGL accepts the AER's consideration in relation to clause 40.4 and at this point in time AGL has no comment on this item.

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<i>Part 2: Terms and conditions for which Envestra has not proposed revisions</i>			
Delivery pressure (clauses 14.1 and 14.2)	The AER agrees with Envestra's response to AGL's submission and considers that the clause reflects matters that are outside Envestra's control.	Amendment 13.18 in reference to Origin's submission None -AGL	AGL accepts the AER's consideration in relation to clauses 14.1 and 14.2. At this point in time AGL has no additional comment on this item.
Invoicing (clause 20.3)	The AER notes the submissions. However, the AER does not consider that payment in advance is unreasonable, particularly in the absence of evidence that the arrangements are significantly costly to administer and inefficient compared with alternatives. The AER does not require an amendment.	None.	AGL does not support this concept and request the AER consider a national approach to payment of invoices. The processing of each invoice requires additional time of 20 minutes per invoice. It is our view that this is an unnecessary burden that could be removed with a consistent approach.
Payment of invoices (clause 20.6)	In its response to AGL's submission, Envestra submitted that it doesn't understand the issue, but that it is willing to delete the word 'valid'. The AER considers that the provisions are clear and no amendment is required.	None.	AGL accepts the AER's consideration in relation to clause 20.6 and at this point in time AGL has no comment on this item.
Correction of billing errors (clause 21)	The AER agrees with AGL's and Origin's submissions. The AER considers it appropriate that any claims that a user is required to pursue by law should not be subject to the 11 month time period. Envestra is required to amend clause 21 to exempt any claim a user is required to make by law on behalf of a customer.	Amendment 13.20.	AGL accepts the consideration and acknowledges the amendment within clause 21. At this point in time AGL has no additional comment on this item.
Set off arrangements: No set off (clause 24.2) Right to set off	The AER agrees with AGL's submission and considers that it is reasonable for set off arrangements to be reciprocal. While the AER notes Envestra's submission that payments are from a user to Envestra, there may be occasions when Envestra owes money to a user (for example, as a result of an overpayment).	Amendments 13.22 and 13.23.	AGL accepts the consideration and acknowledges the deletion of clause 24.2. AGL accepts the consideration and acknowledges the amendment

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<p>unpaid amounts (clause 25.2)</p>	<p>Envestra is required to amend its terms and conditions accordingly. The AER notes that clause 25.2 refers to 'any amount due to Envestra under the Agreement'. The AER considers that the meaning and intent of clause 25.2 are clear and is not convinced by AGL's submission that an amendment is required. AGL further submitted that amounts subject to dispute should not be captured by clause 24.2 (refer to discussion below concerning clause 25.3 (Right to suspend services)).</p>		<p>within clause 25.2. At this point in time AGL has no additional comment on this item.</p>
<p>Overdue interest (clause 25.1)</p>	<p>Clauses 25.2 (right to set off unpaid amounts) and 25.3 (right to suspend services) refer to 'any amount due to Envestra under the Agreement', but clause 25.1 does not. The AER considers that the same words should be inserted into clause 25.1 for clarity. Envestra is required to amend its terms and conditions accordingly.</p>	<p>Amendment 13.24.</p>	<p>AGL accepts the consideration and acknowledges the amendment within clause 25.1. At this point in time AGL has no additional comment on this item.</p>
<p>Right to suspend services (clause 25.3)</p>	<p>The AER considers that the meaning and intent of clause 25.3 are clear. The AER considers, however, that an amendment to clause 25.3 is warranted to exclude amounts in dispute. The AER considers that it would be unreasonable for services to be suspended because of non-payment of amounts in dispute, particularly as the terms and conditions provide for a user to withhold payments in dispute (clause 22.1). Therefore, Envestra is required to amend its clause 25.3 to exclude payments in dispute and also make consequential amendments to clause 25.1 (overdue interest) and clause 26.2(a) (termination by Envestra).</p>	<p>Amendments 13.25 to 13.27.</p>	<p>AGL accepts the consideration and acknowledges the amendment within clause 25.3 to exclude amounts in dispute. At this point in time AGL has no additional comment on this item. AGL accepts the consideration and acknowledges the amendment within clause 26.2(a) in relation to termination by Envestra. AGL is not satisfied that Envestra has made the consequential amendments to clause 25.1 relating to overdue interest.</p>

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Notices (clause 36.1)	Given that Envestra has agreed to amend its terms and conditions the AER requires an amendment to give effect to this.	Amendment 13.40	AGL accepts the consideration and acknowledges the amendment within clause 36.1. At this point in time AGL has no additional comment on this item.
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