

Revised Final Plan Attachment 15.3

Response to Draft Decision: Network Access

August 2017

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1. Response to Draft Decision on Network Access

1.1 Introduction

This attachment sets out Australian Gas Networks Limited's (AGN's) response to the Australian Energy Regulator's (AER's) Draft Decision on our proposed terms of access to our Victorian and Albury gas distribution networks over the next (2018 to 2022) Access Arrangement (AA) period.

A key part of our relationship with network users is a contractual agreement between the parties that governs the conditions (or terms) of access to our networks, which agreement is commonly referred to as a 'Haulage Agreement'.¹ The terms and conditions of the Haulage Agreement typically reflect the AER approved terms that are set out in our AA Document², unless otherwise agreed by the parties.

The AER has made only minor amendments to our terms and conditions and extensions and expansions requirements proposed for our Victoria and Albury networks over the next AA period.³ The AER consulted with us as part of their development of the Draft Decision and we have accepted these amendments in our AA Document. Attachment 15.4, provides a marked-up version of our AA Document including these amendments.

1.2 Stakeholder Engagement

In preparing this Revised Final Plan we have continued to engage with stakeholders, including meeting with our Reference Groups and through the submissions to the AER on our Final Plan.

Our terms and conditions have been subject to considerable stakeholder consultation through a number of successive AA review processes, and consequently, have been amended over time to take into account feedback we have received from stakeholders and decisions made by the AER. Both the AER in the Draft Decision and the Consumer Challenge Panel (CCP11) found that we have engaged extensively with stakeholders and presented an AA underpinned by effective stakeholder engagement.^{4, 5}

General feedback from our July RRG meeting was that the group was satisfied with the terms in our Revised Final Plan (which are consistent with the AER Draft Decision).⁶ We appreciate the commitment shown by the RRG to engage with us to develop our revised terms.

There were two stakeholder submissions which referred to the terms and conditions proposed in our Final Plan (see Table 1.1). Attachment 15.5, sets out our detailed response to retailer feedback, including how we have incorporated their feedback into our proposed terms and conditions.

¹ Network users are primarily gas retailers or self-contracting users of our networks.

² The AA Document has been submitted by Australian Gas Networks Limited (AGN) to the AER as part of this Revised Final Plan.

³ AER, *Attachment 12 – Non tariff components / Draft decision - AGN Victoria and Albury gas access arrangement 2018–22*, July 2017, page 12-5.

⁴ *Ibid*, page 12-6.

⁵ AER Consumer Challenge Panel Sub-Panel 11, *Australian Gas Networks (AGN), AusNet Services and Multinet*, 3 March 2017, page 16-22.

⁶ Discussion from the 25 July 2017 RRG meeting. See Attachment 5.13 for meeting minutes.

Table 1.1: Consideration of Stakeholder Feedback on Network Access

Stakeholder Feedback on the Final Plan	Our Response to Feedback on the Final Plan
<p>Origin Energy (Origin) in their submission to the AER supported the merging of the Victorian and Albury terms and conditions:</p> <p><i>"AGN's merging of its Victorian and Albury terms and conditions for access and use of its distribution network supported and will reduce administrative and legal costs for both distributors and retailers over the forthcoming access arrangement period."</i>⁷</p>	<p>As stated in our Final Plan we applied to the AER to consolidate the two AA Documents into a single AA Document with a view to reducing administrative costs and improving stakeholder engagement.</p>
<p>Origin in their submission to the AER agreed with our views on the terms and conditions:</p> <p><i>"We agree with the distributors' views that terms and conditions have evolved over the previous access arrangement periods and support their continued engagement and willingness to negotiate minor elements of these as required."</i>⁸</p>	<p>The terms and conditions are consistent with those outlined throughout our engagement including that set out in our Final Plan. We will continue to engage and negotiate with the retailers as appropriate.</p> <p>We have accepted the changes as requested by the AER in the Draft Decision.</p>
<p>AGL Energy Ltd (AGL) in their submission to the AER requested the insertion of <i>"use best endeavours"</i> in clause 17.7. This change was requested as AGL stated they cannot control the actions of third parties.⁹</p>	<p>We have accepted AGL's comments as it is broadly in line with the retailer's obligation under Victoria's Gas Distribution Code.</p>
<p>AGL in their submission to the AER commented on the following clauses:</p> <ul style="list-style-type: none"> • Warranty of Title of Gas (16.1); • No Refunds (28.6); and • User's Insurance (34.1, 34.4, 34.5 and 34.6).¹⁰ 	<p>We have accepted AGL's comments in line with our approach of standardising our terms and conditions across all jurisdictions where appropriate.</p>
<p>AGL in their submission to the AER requested the insertion of the clause on disclosure to related body corporate (36.6).¹¹</p>	<p>We have accepted AGL's comments.</p> <p>We have provided detail explanations on our response in Attachment 15.5.</p>
<p>AGL in their submission to the AER raised the issue of performance reporting:</p> <p><i>"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."</i>¹²</p>	<p>We believe any performance reporting should be coordinated between all gas distribution businesses and Retailers, and should provide for performance indicators for retailers and gas distributors. Presently, all the Victorian gas distribution businesses report performance indicators to Energy Safety Victoria (ESV) and the AER on a quarterly and annual basis.</p>

⁷ Origin Energy, *Victorian Gas Access Arrangement Review 2018-22 Response to Gas Distribution Business' Proposal*, 17 February 2017, page 5.

⁸ *Ibid.*

⁹ AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

<p>AGL in their submission to the AER proposed the following wording relating to commercial agreements in their submission:</p> <p><i>“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.”</i>¹³</p>	<p>We believe we have demonstrated throughout the Victorian and Albury engagement process that we are willing to negotiate our terms and conditions with Retailers. This is a continuation of the same principles applied in our recent South Australian gas distribution network review.</p> <p>We support the AER’s position in this Draft Decision that the clause is unnecessary, which is consistent with the AER’s recent decision for our South Australian terms and conditions.¹⁴</p>
<p>AGL in their submission to the AER commented on the following clauses:</p> <ul style="list-style-type: none"> • Liable for network charges where there is no shared customer (3.2, 3.3, 20.2 and 42.1); • Reconnection (18.2); • Time limits for adjustments of Distribution Service Charges (22.3); • Delivered quantities (24.1); • Termination by AGN (28.2); • Limitation Period (29.5); and • Access to premises (35.5).¹⁵ 	<p>We have provided detailed information throughout our engagement process on these clauses. In line with our approach of standardising our terms and conditions across all jurisdictions, where appropriate we have the applied the terms and conditions approved for our South Australian network.</p> <p>We have provided detailed explanations on our responses to the individual clauses in Attachment 15.5.</p> <p>We support the AER’s position in the Draft Decision to accept our proposed drafting of the clauses rather than the amendments suggested by AGL.¹⁶</p>
<p>AGL in their submission to the AER commented on the following clauses:</p> <ul style="list-style-type: none"> • Indemnity (16.3); • Service Providers Liability (29.1 and 29.2); and • User’s Indemnities (33.2, 33.3, 33.4, 33.5, 33.6, and 33.7).¹⁷ 	<p>We had not proposed any material changes to these clauses. Our detailed explanations on the individual clauses are detailed in Attachment 15.5.</p> <p>We support the AER’s position in the Draft Decision to accept our proposed drafting of the clauses rather than the amendments suggested by AGL.</p>

Note: In this ‘traffic light’ table, green shading represents no change from the Final Plan, orange represents a modification of the position outlined in the Final Plan and red shading represents a change from the Final Plan.

¹³ AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

¹⁴ AER, *Attachment 12 – Non tariff components | Draft decision - AGN Victoria and Albury gas access arrangement 2018–22*, July 2017.

¹⁵ AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

¹⁶ AER, *Attachment 12 – Non tariff components | Draft decision - AGN Victoria and Albury gas access arrangement 2018–22*, July 2017.

¹⁷ AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

1.3 AER Draft Decision

The AER noted in the Draft Decision that our proposed terms and conditions include very few changes to those in place during our current AA period. The AER reviewed a number of clauses of our terms and conditions raised in the AGL submission. The AER stated:

“AGL, while acknowledging AGN’s extensive and comprehensive engagement process, sets out alternative drafting for a number of the terms and conditions. We have given consideration to all of AGL’s suggested amendments.”¹⁸

The AER also assessed our AA Document and proposed changes to the extensions and expansions clauses. They accepted our proposed provisions relating to capacity trading, receipt and delivery point changes and review submissions/revision commencement dates.¹⁹ (see Table 1.2).

Table 1.2: Summary of AER’s Draft Decision on Network Access

	AER Draft Decision	AER Comment
Terms and conditions	One Minor Modification	Accepted AGN’s proposed drafting for clauses 3.3, 16.1, 16.3, 20.2, 22.3, 24.1, 28.6, 29.2, 33, 34, 35.5, 36 and 42.1. Required an amendment to clause 17.7 (Assistance) to insert ‘use its best endeavours to’ to align with the retailer obligation under the Gas System Distribution Code. See Table 12-1 of the AER Draft Decision for further details. ²⁰
Extensions and expansions	Minor Modification	Proposed some stylistic changes to produce greater consistency with the other Victorian distributors. See Table 12-1 of the AER Draft Decision for further details. ²¹
Capacity trading and receipt/delivery points	Accept	Maintained the view that our approach is acceptable in the unique circumstances of the Victorian gas market arrangements. ²²
Revision submission and commencement	Accept	Accepted our proposed review submission date of 1 December 2021 and a revision commencement date of 1 January 2023. ²³

Note: In this ‘traffic light’ table, green shading represents the AER’s acceptance of AGN’s Final Plan, orange represents the AER’s modification of AGN’s Final Plan and red shading represents the AER’s rejection of AGN’s Final Plan.

¹⁸ AER, *Attachment 12 – Non tariff components / Draft decision - AGN Victoria and Albury gas access arrangement 2018–22*, July 2017, page 12-6.

¹⁹ *Ibid*, page 12-5.

²⁰ *Ibid*.

²¹ *Ibid*, page 12-11.

²² *Ibid*, page 12-12.

²³ *Ibid*, page 12-13.

1.4 AGN Response to the Draft Decision

We have accepted the AER's Draft Decision on our terms and conditions (see Table 1.3).

Table 1.3: Summary of AGN's Response to the AER's Draft Decision on Network Access

	AER Draft Decision	AGN Response	AGN Comment
Terms and conditions	One Minor Modification	Accept	<p>We have accepted the AER's Draft Decision.</p> <p>As noted in the AER's Draft Decision we have no concerns in adopting the wording proposed by AGL for clause 17.7 of our terms and conditions.</p> <p>Attachment 15.4 provides a marked-up version of our AA Document and proposed terms and conditions.</p>
Extensions and expansions	Minor Modification	Accept	<p>We have accepted the AER's Draft Decision.</p> <p>As noted in the AER's Draft Decision we are prepared to adopt the wording changes proposed by the AER to provide greater alignment with the other Victorian gas distributors.</p> <p>Attachment 15.4 provides a marked-up version of our AA Document including the extensions and expansions section.</p>
Capacity trading and receipt/delivery points	Accept	Accept	<p>We have accepted the AER's Draft Decision.</p> <p>Maintain existing sections in our AA Document.</p>
Revision submission and commencement	Accept	Accept	<p>We have accepted the AER's Draft Decision.</p> <p>Maintain review submission date of 1 December 2021 and a revision commencement date of 1 January 2023.</p>

Note: In this 'traffic light' table, green shading represents the acceptance, orange represents a modification and red shading represents a rejection.

1.5 Summary

As noted earlier, the AA Document sets out the proposed terms and conditions under which we offer access to our networks. The format of the proposed AA Document remains largely unchanged from the current period AA Document.

We have revised the AA Document and terms and conditions to reflect the amendments requested by the AER, as described in this Attachment. The revised AA Document (in mark-up) accompanies this Revised Final Plan (see Attachment 15.4).