

Attachment 17.3

Response to Draft Decision:
Non-Tariff Components

**2016/17 to 2020/21 Access
Arrangement Information
Response to Draft Decision**

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1 Response to Draft Decision on Non-Tariff Components

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 the key policies and terms and conditions governing access to AGN's South Australian natural gas distribution network over the next (2016/17 to 2020/21) Access Arrangement (AA) period.

AGN specified changes to these policies and terms and conditions following considerable stakeholder engagement, with a view to reflecting stakeholder feedback (as appropriate), standardising with our other networks, reflecting the introduction of the National Energy Customer Framework (NECF) and reflecting our recent name change from Envestra Limited to Australian Gas Networks Limited.

The AER assessed AGN's proposal against the National Gas Objective (NGO), the National Gas Law (NGL) and the National Gas Rules (NGR). In its Draft Decision, the AER accepted the majority of our proposal, but outlined 12 amendments that were considered necessary to better reflect the NGO, NGL and NGR.

AGN has considered the AER's Draft Decision and has accepted the majority of the amendments. Where amendments have not been accepted, AGN has provided further reasoning, which is set out in this Attachment.

1.2 AER Draft Decision

The AER assessed each term and condition in AGN's proposal as well as other aspects of our AA for consistency with the NGO, the NGR and the NGL. Submissions from stakeholders were also closely considered.

The AER acknowledged that the Terms and Conditions proposed by AGN were "*similar to those approved in the 2011-16 access arrangement determination*"¹, highlighting that its review sought to:

"... [balance] the competing interests of AGN, users and consumers by considering whether the terms and conditions:

- *appropriately allocate risk between AGN, users and consumers*
- *are clear and legally certain*
- *are consistent with the relevant requirements in the NGL, NGR, the National Energy Retail Law (NERL), the National Energy Retail Rules (NERR) and the relevant procedures in force.*"²

As a result of its initial review, the AER's Draft Decision outlined eight amendments to AGN's proposed Terms and Conditions and four amendments to the wider AA. A summary of the Draft Decision is provided in Table 1.1.

¹ AER 2015, "Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21", November 2015, pg. 12-8.

² AER 2015, "Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21", November 2015, pg. 12-9.

TABLE 1.1: SUMMARY OF AER'S DRAFT DECISION ON NON-TARIFF COMPONENTS

	AER Draft Decision	AER Comment
Terms and Conditions	Modify AGN proposal	To ensure consistency with the NGO, NGL and NER, AGN should make eight amendments to the proposed terms and conditions, specifically to sub-clause 3.3, 20.2, 35.4, 35.5, 28.2(a), 28.4, clause 15 and the glossary.
Queuing requirements	Accept AGN proposal	AGN's proposal is consistent with the current and previous AAs. There is ample capacity in the network so queues are unlikely to form. No stakeholder submissions were received on the matter.
Extension and expansion requirements	Accept AGN proposal	AGN's proposal is consistent with the current AA and complies with Rule 104 of the NGR.
Capacity trading requirements	Reject AGN proposal	AGN should amend the AA to clearly identify the user requirements for any transfer of contracted capacity with or without the service providers consent to comply with Rule 105 of the NGR and to better promote the NGO.
Changing receipt or delivery points	Reject AGN proposal	AGN should reinstate sub-clause 7.5 of the current AA to ensure users are aware of how to seek and obtain AGN consent to change a receipt or delivery point.
Revise submission date	Reject AGN proposal	AGN should make an amendment to the AA to reflect a fixed submission date as opposed to the range ("on or before 1 July 2020") outlined in AGN's proposal.
Revise commencement date	Reject AGN proposal	AGN should make an amendment to the AA to reflect a single commencement date of 1 July 2021, as opposed to the possibility of a range outlined in AGN's proposal.

1.3 AGN Response to the Draft Decision

AGN acknowledges that the AER has accepted a large portion of our proposed non-tariff components. This likely reflects AGN's approach of:

- engaging with retailers on the Terms and Conditions prior to proposal submission; and
- retaining consistency with previous AAs (including those in other jurisdictions) to the maximum extent possible.

As outlined in Table 1.2, of the 12 amendments outlined by the AER in the Draft Decision, AGN has accepted the seven of the amendments and will respond to five. AGN's position with respect to each amendment is provided in Sections 1.3.1 through 1.3.4.

TABLE 1.2: SUMMARY OF AGN'S RESPONSE TO THE AER DRAFT DECISION ON NON-TARIFF COMPONENTS

	AER Draft Decision	AGN Response	AGN Comment
Terms and Conditions	Modify AGN proposal	Respond to Draft Decision	Accept five Draft Decision amendments (1, 3, 5, 6 and 7). Respond to three Draft Decision amendments (2 – recovery of charges, 4 – access to premises and 8 – possession and control of gas) with a view to ensuring the terms and conditions are clear, efficient and compliant with the NGO, NGR and NGL.
Queuing requirements	Accept AGN proposal	Accept Draft Decision	No comment.
Extension and expansion requirements	Accept AGN proposal	Accept Draft Decision	No comment.
Capacity trading requirements	Reject AGN proposal	Respond to Draft Decision	AGN does not feel the AER's amendment is necessary as our original proposal is compliant with Rule 105 of the NGR.
Changing receipt or delivery points	Reject AGN proposal	Respond to Draft Decision	AGN does not feel the AER's amendment is necessary given this information is provided in the South Australian Retail Market Procedures.
Revise submission date and revision commencement date	Reject AGN proposal	Accept Draft Decision	No comment.

1.3.1 Terms and Conditions

1.3.1.1 Recovery of Charges – Sub-clauses 3.3 and 20.2

Amendments 1 and 2 of the AER's Draft Decision require AGN to update sub-clauses 3.3 and 20.2 of the Terms and Conditions by striking out the text in red as follows:

“3.3 Fixed Component of Haulage Service Charges

*The Network User will remain responsible to pay Haulage Service Charges in respect of each User DP [Delivery Point] for so long as the Network User remains the current user for that User DP (within the meaning of the Retail Market Procedures)(and, in particular, for so long as the Network User is the current user 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, ~~whether or not there is any Shared Customer in respect of that User DP~~).*³

and

“20.2 Liability for Charges

Subject to sub-clause 20.3, the Distribution Services Charges for which the Network User is liable in respect of a User DP or Shared Customer include the Distribution Service Charges which accrue, in respect of any User DP, whilst the Network User is registered under the Retail Market Procedures as the current user in relation to that User DP. Subject to sub-clause 22.1, if the Network User is a Gas Retailer, the Network User is liable for those

³ AER 2015, “Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21”, November 2015, pg. 12-31.

*Distribution Services Charges ~~whether or not the Shared Customer pays those Distribution Services Charges, or any other amount, to the Network User.~~*⁴

The AER requires these amendments because it considers that “... both clauses would benefit from clarification to avoid the perception that they seek to override the application of rule 508”⁵.

Furthermore, the AER states that the required changes “will remove the perceived requirement that a retailer pay charges to AGN that the retailer is not permitted to recover from a shared customer.”⁶

AGN agrees with the AER that this issue is a matter of perception. As a matter of law, the Terms and Conditions cannot override Rule 508 of the NGR. If there were any inconsistency with Rule 508 (or any other rule within Part 21 of the NGR), Rule 501 states that Part 21 prevails over any inconsistent provisions in a distributor’s AA or gas service agreement.

Moreover, in the case of sub-clause 20.2, the sub-clause is expressly stated to be subject to sub-clause 22.1 of the Terms and Conditions and so, on any interpretation, sub-clause 20.2 cannot be inconsistent with sub-clause 22.1. Sub-clause 22.1 replicates Rule 508 and states:

*“If the Network User is a Gas Retailer and the Network User is not permitted to recover Distribution Service Charges from a Shared Customer under the NERL or the NERR, then neither is AGN permitted to recover those Distribution Service Charges from the Network User.”*⁷

There can be no perception that sub-clause 20.2 operates inconsistently with Rule 508 because sub-clause 20.2 is expressly subject to sub-clause 22.1 and sub-clause 22.1 replicates Rule 508.

That said, AGN proposes to accept the AER’s required changes to sub-clauses 3.3 and 20.2 and has amended both sub-clauses to be consistent with the AER’s Draft Decision.

In the case of sub-clause 20.2, AGN believes that the deletion of the words at the end of the clause makes some issues less clear and, therefore, open to dispute between AGN and Network Users. In order to avoid this outcome, in addition to the AER’s proposed amendment to sub-clause 20.2, AGN proposes some additional amendments to sub-clause 20.2, as follows in red text:

“20.2 Liability for Charges

Subject to sub-clause 20.3, the Distribution Services Charges for which the Network User is liable in respect of a User DP or Shared Customer include the Distribution Service Charges which accrue, in respect of any User DP, whilst the Network User is registered under the Retail Market Procedures as the current user in relation to that User DP. ~~Subject to sub-clause 22.1, if~~ the Network User is a Gas Retailer,

- (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;*
- (b) if there is a Shared Customer in respect of a User DP and the Network User is not permitted to recover Distribution Service Charges from that Shared Customer under the NERL or NERR, clause 22.1 applies and AGN is not permitted to recover those Distribution Service Charges from the Network User; and*

⁴ AER 2015, “Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21”, November 2015, pg. 12-32.

⁵ AER 2015, “Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21”, November 2015, pg. 12-12.

⁶ Ibid.

⁷ AGN 2015, “Attachment 17.1 – Access Arrangement Information for Australian Gas networks’ South Australian Natural Gas Distribution Network”, July 2015, pg. 21.

(c) *unless clause 22.1 applies, if there is a Shared Customer in respect of a User DP, the Network User is liable for ~~those~~ Distribution Services Charges which accrue in respect of that User DP, even if the Shared Customer has not paid, or does not pay, those Distribution Service Charges to the Network User. ~~whether or not the Shared Customer pays those Distribution Services Charges, or any other amount, to the Network User.~~*

Proposed paragraph (a) underlines the fact that there are components of the Distribution Service Charges which accrue when a Network User remains the 'current user' for a User DP, even when there is no Shared Customer at that User DP (e.g., an unoccupied house or abandoned business premises). It is noteworthy that in this circumstance (i.e. where there is no Shared Customer) Rule 508 of the NGR does not apply. Hence there is no inconsistency between paragraph (a) and Rule 508.

The primary example of this is the Base Charge within the residential and commercial tariffs (see the Tariff Schedule in Annexure B to the AA). The Base Charge accrues on a daily basis, whether or not gas is taken through the relevant User DP, and continues to accrue if there is no Shared Customer.

AGN is entitled to recover these charges from a Network User, even though there is no gas consumer from whom the Network User can recover the charges. If there is no Shared Customer and the Network User has no reason to pay the charges to maintain the User DP, the Network User is able to request decommissioning of the User DP.

Proposed paragraph (b) cross-refers to sub-clause 22.1 and also replicates the terms of Rule 508. This makes it entirely clear that there is no inconsistency between sub-clause 20.2 and Rule 508 and removes any possible perception of inconsistency between sub-clause 20.2 and Rule 508.

Proposed paragraph (c) underlines the fact that, where there are Shared Customers, it is the Network User that is liable to AGN for the Distribution Service Charges⁸ and the Network User is responsible to AGN for those Distribution Service Charges even if Shared Customers have not paid, or do not pay, the Network User.

From AGN's perspective, paragraphs (a) and (c) are important because the AER's proposed amendment arguably makes the terms and conditions less clear on these two key issues. These are the key points which AGN intended to capture through the words which the AER has required AGN to delete from the second sentence of sub-clause 20.2.

1.3.1.2 Access to Premises – Sub-clause 35.4

Amendment 3 of the AER's Draft Decision requires AGN to update sub-clause 35.4 of the Terms and Conditions by adding the text in red as follows:

"The Network User must ~~use reasonable endeavours~~ give reasonable assistance to ensure that AGN (and its officers, servants, agents or contractors) are given safe, reasonable and unhindered access whenever they require to any premises owned or occupied by the Network User (or, if the Network User is a Gas Retailer, any Shared Customer) for the purposes of:

(a) performing the Agreement; or

*(b) exercising any right given to AGN under the Agreement."*⁹

AGN has amended the terms and conditions to reflect the AER's Draft Decision on sub-clause 35.4.

⁸ In the absence of a "direct billing arrangement" under Rule 504, National Gas Rules.

⁹ AER 2015, "Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21", November 2015, pp. 12-31 to 12-32.

1.3.1.3 Access to Premises – Sub-clause 35.5

Amendment 4 of the AER's Draft Decision requires AGN to delete sub-clause 35.5 of the Terms and Conditions. In the Draft Decision, by way of explanation of this required amendment, the AER stated that it does "... not consider AGN can remove all responsibility where it is unable to gain access to a shared customer's premises"¹⁰ (emphasis added). AGN requests the AER to re-consider this required amendment.

There are various obligations imposed on AGN under the Terms and Conditions which AGN cannot perform without access to the premises of a Shared Customer. These obligations are as follows:

- Clause 9 - AGN's obligations to provide and maintain a Metering Installation at each User DP;
- Clause 10 – AGN's obligations to test the accuracy of Metering Installations; and
- Clause 11 – AGN's obligations to read the meter.

AGN's ability to comply with these obligations depends on whether it is able to access Metering Installations located on the premises of Shared Customers. If AGN cannot gain access to the premises, then:

- AGN might be unable to perform its obligations under the relevant clauses;
- if AGN is unable to perform its obligations under the relevant clauses, AGN will breach the Terms and Conditions; and
- if AGN breaches the Terms and Conditions, AGN will be liable to retailers for loss which retailers suffer as a result of the breach.

The purpose of clause 35.5 is to make it clear that AGN will not breach the relevant clauses where AGN is unable to perform its obligations because AGN could not obtain access to the premises of a Shared Customer.

Clause 35.5 does not relieve AGN of all responsibility, as stated in the AER's Draft Decision. Rather, clause 35.5 relieves AGN of responsibility only where AGN has used 'reasonable endeavours' to obtain safe, reasonable and unhindered access. If AGN has not used 'reasonable endeavours' to obtain access, then clause 35.5 does not relieve AGN of responsibility.

In AGN's view, clause 35.5 strikes a reasonable and appropriate balance between the interests of AGN and the interests of Network Users. More specifically, AGN is not relieved of responsibility unless it has used reasonable endeavours to obtain access.

In effect, if clause 35.5 is deleted, then the AER has decided that AGN should be liable for a failure to perform its obligations under the relevant clauses even when AGN has made all 'reasonable endeavours' to gain access to the premises of a Shared Customer. AGN believes this would be a perverse and unreasonable outcome.

1.3.1.4 Definition of "Claim"

Amendment 5 of the AER's Draft Decision requires AGN to include a definition of 'Claim' in the Glossary to the AA in the following terms:

"Claim' means any claim under or pursuant to an indemnity in the Agreement (or any other contract) or as a result of any breach of the Agreement (or any other contract) or in tort as a

¹⁰ AER 2015, "Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21", November 2015, pg. 12-14.

result of any negligence or any breach of any duty or as a result of any breach of any statutory duty or obligation or any other duty or obligation.”¹¹

AGN has amended the Glossary to include the definition of ‘Claim’ as required by the AER’s Draft Decision.

1.3.1.5 Termination – Sub-clauses 28.2 and 28.4

Amendments 6 and 7 of the AER’s Draft Decision requires AGN to update sub-clauses 28.2 and 28.4 of the Terms and Conditions as follows in red text:

“28.2 Termination by AGN

AGN may terminate the Agreement by seven days’ notice given to the Network User at any time, in the event that:

*(a) **subject to clause 28.4**, 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;”¹²*

and

“28.4 Disputed Right of Termination

AGN may not give notice of termination under clause 28.2(a) or (b) for an alleged breach of an obligation by the Network User if the Network User, in good faith, disputes the alleged breach and gives AGN notice of that dispute in accordance with clause 37 within 14 days after the Network User receives notice of the alleged breach. This clause will not apply in any case where it has been determined that the Network User is in breach of an obligation (either by the Independent Expert appointed to resolve the dispute or by a court of law).”¹³

AGN has amended the terms and conditions to reflect the AER’s Draft Decision on sub-clauses 28.2(a) and 28.4.

1.3.1.6 Possession and Control of Gas – clause 15.1

Amendment 8 of the AER’s Draft Decision requires AGN to update sub-clause 15.1(b) of the Terms and Conditions as follows in red text:

“15.1

...

*(b) the Network User will be in control and possession of Gas after its delivery out of the Network **at any User DP to or for the account of the Network User; and”¹⁴***

¹¹ AER 2015, “Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21”, November 2015, pg. 12-33.

¹² AER 2015, “Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21”, November 2015, pg. 12-31 to 12-33.

¹³ Ibid.

¹⁴ AER 2015, “Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21”, November 2015, pg. 12-33 to 12-34.

The AER has stated that it considers the original drafting to be clearer and, therefore, preferable and, for this reason, the AER requires AGN to amend clause 15.1(b) to reinstate the former wording. AGN would like the AER to re-consider this required amendment.

Clause 15.1(b) defines who has possession and control of gas and, therefore, who is responsible for that gas. AGN does not believe that there is any debate about the fundamental principle. AGN believes that the AER and Network Users would accept that gas is within AGN's possession and control whilst it is in the Network and not within AGN's possession and control after it is delivered out of AGN's network. Once the gas is delivered out of the network it is within the possession and control of Network Users.

AGN does not perceive that the issue with clause 15.1(b) is about that fundamental principle. Rather AGN believes the issue with clause 15.1(b) is how the clause identifies which one of multiple Network Users has possession and control of gas when it is delivered out of the network.

AGN's preference is to define the Network User by reference to the User DP. The Glossary to the AA defines 'User DP' to mean each DP identified as a User DP in or by reference to the Specific Terms and Conditions. These are the DPs at which gas is delivered under the agreement between AGN and the Network User. Usually, the Specific Terms and Conditions will define these DPs as the DPs for which the Network User is registered as the current user under the Retail Market Procedures¹⁵.

AGN's preferred approach is precise and certain and not open to interpretation or dispute. If any one wishes to know which Network User is responsible for possession and control of gas, they simply need to refer to the Australian Energy Market Operator's (AEMO's) records to identify which Network User is or was registered as the 'current user' for the given DP at a given time. If a Network User is registered as the 'current user' of a DP then any gas delivered through that DP is within the possession and control of that Network User.

The original wording of clause 15.1(b) identifies the Network User by reference to the question of whether the gas has been delivered "to or for the account of that Network User"¹⁶. AGN has stepped away from this phraseology because it is not precise or certain.

The phrase "delivery out of the Network to or for the account of the Network User" reads as though Gas has to be either:

- delivered "to ... the Network User"; or
- delivered "... for the account of the Network User".

Of course, most Network Users are gas retailers and not gas consumers so, on one interpretation, there is no physical delivery of gas to a Network User at a DP. Physically, the gas is delivered to the gas consumer (or, in fact, to be more precise, taken by the gas consumer).

Similarly, the phrase "delivery ... for the account of the Network User" is also ambiguous. The phrase suggests that, at the time of delivery, there is some mechanism by which gas is allocated to "the account of the Network User". However, in reality, this does not happen when gas is delivered. It only happens later, when AEMO has gathered all of the metering data and is able to reconcile gas injections into the Network and gas withdrawals and AEMO then allocates gas amongst Network Users.

As we have explained, none of these issues of interpretation exist in AGN's preferred formulation of clause 15.1(b). Gas simply passes into the Network User's possession and control (and, therefore, becomes the Network User's responsibility) once it is delivered or taken through the DPs which are the subject of the particular agreement between AGN and the relevant Network User.

¹⁵ See the Specific Terms and Conditions in Annexure F to the Access Arrangement.

¹⁶ AGN 2015, "Attachment 17.1 – Access Arrangement Information for Australian Gas networks' South Australian Natural Gas Distribution Network", July 2015, pg.15.

Clause 15.1(b) was amended because it was recognised that the original drafting was less certain and open to interpretation.

The AER referred to some points made by Origin about clause 15.1(b) and AGN believes it is desirable to address these points for the sake of completeness.

AGN understands from the Draft Decision that Origin believes clause 15.1(b) is inconsistent with Rules 222, 227 and 307 of the Retail Market Procedures. AGN believes that this is incorrect. Rules 222, 227 and 307 do not say anything about when possession or control of gas passes from a distribution network operator to a network user or to which network user possession or control passes.

Rule 222 simply provides for the calculation of the “*user’s interval metered withdrawals*”. The “*user’s interval metered withdrawals*” defines the aggregate quantity of gas deemed to have been delivered to a user’s customers through interval-metered DPs. This quantity can change over time because, for any given gas day, it is calculated by reference to the “*latest version ... of interval-metered withdrawals ... provided to AEMO under clause 158(1)(b)*.”

Rule 227 provides for the calculation of the “*user’s estimated basic-metered withdrawals*”. The “*user’s estimated basic-metered withdrawals*” is an estimate of the aggregate quantity of gas deemed to have been delivered to a user’s customers through delivery points that do not have interval meters.

The subject-matter and purpose of Rules 222 and 227 have nothing to do with the issue of which Network User has possession and control of the particular gas which is delivered through a particular DP at a particular time. This is the issue which clause 15.1(b) is designed to address and clause 15.1(b) is not inconsistent with either of those rules.

Rule 307 states that Chapter 5 of the Retail Market Procedures governs how gas is allocated between users and how users must reconcile differences between the gas that is injected into a sub-network and the gas withdrawn from a sub-network. There is nothing in clause 15.1(b) which is inconsistent with this rule or with any other rule in Chapter 5.

Origin has also submitted that clause 15.1(b) could be read to allow one user to lay claim to gas delivered at another user’s DP. This is simply incorrect. On AGN’s drafting, clause 15.1(b) states that a Network User will be in control and possession of gas after its delivery out of the Network at any User DP. The User DP’s are the DPs at which gas is delivered for the particular Network User under the agreement between AGN and the Network User. Under the Retail Market Procedures, there is only one Network User who is the current user of a DP at any given time. The clause does not allow another Network User to lay claim to gas which is delivered at the User DP’s of another Network User.

1.3.2 Capacity Trading Requirements

Amendment 9 of the AER’s Draft Decision requires AGN to update clause 7.1 of the AA by inserting new clauses 7.1A and 7.1B in the following terms:

“[7.1A] Transfers without consent

A Network User is permitted to transfer or assign all or part of its Contracted Capacity without the consent of AGN if:

- the Network User’s obligations under the Agreement related to that Contracted Capacity remain in full force and effect after the transfer or assignment; and*
- the terms of that Agreement are not altered as a result of the transfer or assignment.*

Prior to using any Contracted Capacity that is the subject of such transfer, the transferor must notify AGN of the nature of the Contracted Capacity that is subject to such transfer. The transferor must notify AGN of:

- the subcontract and its likely duration;*
- the identity of the transferee; and*

- the amount of contracted capacity transferred.

[7.1B] Other Transfers

A Network User is permitted to transfer or assign all or part of its Contracted Capacity (other than by way of a transfer pursuant to clause 7.2 above) with the prior written consent of AGN, where the transfer or assignment is commercially and technically reasonable. Following such a transfer, the transferor's rights against, and obligations to AGN are terminated or modified in accordance with these capacity trading requirements. A contract then arises between the transferee and AGN on terms and conditions in accordance with the capacity trading requirements.

AGN may withhold its consent only on reasonable commercial and technical grounds, and may make its consent subject to conditions, but only if they are reasonable on commercial and technical grounds.”¹⁷

In the Draft Decision, the AER has expressed the view that, without the inclusion of these new clauses, AGN's AA will not comply with the requirements of Rules 105(2), 105(4) and 105(6) of the NGR.

AGN's view is that the AER has misinterpreted Rule 105 and, consequently, AGN requests the AER to re-consider this required amendment.

Rule 105(1) of the NGR states that

“(1) Capacity trading requirements must provide for transfer of capacity:

- (a) if the service provider is registered as a participant in a particular gas market – in accordance with rules or Procedures governing the relevant gas market; or*
- (b) if the service provider is not so registered, or the relevant rules or Procedures do not deal with capacity trading – in accordance with this rule.”*

AGN is registered as a participant in a particular gas market and, consequently, Rule 105(1) requires the capacity trading requirement to provide for the transfer of capacity in accordance with the rules or Procedures governing the relevant gas market.

In the case of the South Australian AA, Rule 105(1) requires AGN's capacity trading requirements to provide for the transfer of capacity in accordance with the South Australian Retail Gas Market Procedures.

AGN's view is that Rules 105(2) to 105(4) and 105(6) do not apply. By virtue of Rule 105(1)(b), those rules only apply if:

- AGN is not registered as a participant in a particular gas market; or
- the rules or Procedures governing the relevant gas market do not deal with capacity trading.

Rule 105(1)(b) has no application in the context of the South Australian retail gas market, where AGN is registered as a participant and the South Australian Gas Market Procedures deal with capacity trading.

Clause 7.1 of AGN's AA, as submitted to the AER, complies with Rule 105 in that it provides for transfer of capacity in accordance with the rules or Procedures which govern the South Australian retail gas market, namely the Retail Market Procedures – see Rule 105(1)(a).

¹⁷ AER 2015, “Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21”, November 2015, pg. 12-34.

1.3.3 Changing Receipt of Delivery Points

Amendment 10 of the AER's Draft Decision requires AGN to update clause 7.2 of the AA by inserting a new clause 7.2B in the following terms:

"[7.2B] Procedure

The following procedure is to be followed in relation to transfers or assignments of Contracted Capacity (other than by way of a transfer pursuant to clause 7.2 above) and changes to Delivery and/or Receipt Points:

- the party requesting the transfer/assignment or a change to a Delivery Point/Receipt Point shall submit a written request to AGN, setting out the applicable details. A fee of \$100, payable at the time of the request, will apply to each request.

- AGN will complete an analysis to determine whether the request is technically and commercially feasible and reasonable. The cost of completing this analysis will be borne by the party that makes the request. Charges for the analysis may be made in relation to Demand Delivery Points only, and may vary depending on the complexity of analysing the request, but will be agreed in advance with the party making the request. Costs will be based on an hourly rate of \$100 per person per hour for each hour after the first hour.

AGN will reply to requests for a transfer (other than a transfer pursuant to clause 7.2 above) or for a change in Receipt Point or Delivery Point, within 14 Business Days of receiving the request, provided the request is accompanied by information which is reasonably necessary to enable AGN to consider the request.

If, at the time the request is made, the Network User informs AGN that, due to hardship, the Network User requires an urgent reply to its request, AGN will use reasonable endeavours to respond to the request within two Business Days of receiving the request, provided the request is accompanied by information which is reasonably necessary to enable AGN to consider the request."¹⁸

In the Draft Decision, the AER has noted that this clause is included in AGN's current AA and has been deleted by AGN from the proposed AA. The AER has stated that it considers the retention of the sub-clause is preferable, "... as it makes clear to a user how it may seek to obtain AGN's consent to a change of receipt point or delivery point, and identifies the conditions for that consent."¹⁹

AGN acknowledges that clause 7.2B appears in its current AA. AGN deleted the clause from its proposed AA in order to simplify clause 7 and better align the clause with Rules 105 and 106 of the NGR.

As noted above, Rule 105 of the NGR deals with capacity trading requirements. In the case of the South Australian network, the effect of Rule 105(1) is that the South Australian AA must provide for capacity trading in accordance with the South Australian Retail Market Procedures.

Clause 7.2B sets out a procedure for transfers of capacity which is not contemplated by the South Australian Retail Market Procedures. The procedure is not "in accordance with the South Australian Retail Market Procedures" as required by Rule 105(1) of the NGR and, consequently AGN's view is that it would be inappropriate to include clause 7.2B, as required by the AER, without removing the references to capacity trading.

Rule 106 of the NGR deals with changes in delivery points and receipt points. Insofar as changes in delivery points are concerned, it is relevant to refer to Part 3.3 of the South Australian Retail Market Procedures.

¹⁸ AER 2015, "Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21", November 2015, pg. 12-34 to 12-35.

¹⁹ AER 2015, "Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21", November 2015, pg. 12-30.

Under the Retail Market Procedures, a network user changes DPs by lodging a transfer request with AEMO. The transfer request is the mechanism by which a network user becomes registered as the current user for a DP.

In the case of a transfer request (other than a move-in), Rule 86 allows a network operator to object to the transfer request but only on the ground that the incoming user has not entered into a haulage contract with the network operator²⁰.

AGN notes that, in the case of changes in DPs, there appear to be aspects of the AER's proposed clause 7.2B which are inconsistent with the Retail Market Procedures (e.g. proposed clause 7.2B allows AGN 14 days to reply to a request, whereas Rule 86 gives AGN no more than two business days to object).

AGN is not aware of any rules which regulate changes in receipt points.

Given these considerations, if the AER requires AGN to expand on section 7.2 of the proposed AA and include a clause which explains to a user how it may seek and obtain AGN's consent to a change in DPs or Receipt Points, then AGN suggests the following modified version of clause 7.2B for incorporation into the AA:

“(a) Change of Delivery Points

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

“(b) Change of Receipt Points

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

AGN will reply to requests for a change in Receipt Point, within 14 Business Days of receiving the request, provided the request is accompanied by information which is reasonably necessary to enable AGN to consider the request.”

AGN also invites the AER to discuss this issue with AGN and its lawyers should the AER require elaboration in respect of the operation of the Retail Market Procedures.

Notwithstanding the above, AGN notes that a change of Receipt Points has little practical application for a network, i.e. unlike for a transmission pipeline, AGN has never received such a request.

1.3.4 Submission and Commencement Date Revisions

Amendments 11 and 12 of the AER's Draft Decision requires AGN to update clause 9.1 of the AA as follows:

“9.1 Revisions Submission Date

AGN will submit revisions to this Access Arrangement to the Regulator on ~~or before~~ 1 July 2020.”²¹

²⁰ See Rule 88(d), Retail Market Procedures (South Australia).

and

“9.2 Revisions Commencement Date

The revisions to this Access Arrangement referred to in section 9.1 will commence on ~~the later of 1 July 2021 and the date on which their approval takes effect under the NGR.~~”²²

AGN has amended the AA to reflect the AER’s Draft Decision.

1.4 Summary

The AA and Terms and Conditions more specifically are a key part of the relationship between AGN and Network Users. Having consideration for the AER’s Draft Decision, AGN has revised the AA and Terms and Conditions to reflect the amendments described in this Attachment.

A revised AA (in mark-up) accompanies this Revised Proposal. Attachment 17.1A specifically highlights (in mark-up) the amendments made to the Terms and Conditions.

²¹ AER 2015, “Attachment 12 – Non-tariff components | Draft decision: Australian Gas Networks Access Arrangement 2016-21”, November 2015, pg. 12-35.

²² Ibid.