



## **Customer Information**

# **Connecting to gas distribution networks and resolving connection disputes**

**September 2013**

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# 1 Introduction

This paper provides:

- General information about the service obligations that your gas distribution service provider (distributor) has in responding to your connection request
- Information about what you can do if you are not satisfied with your distributor's offers

**The information in this paper does not apply to Registered Participants, such as gas producers, gas storage providers, or gas retailers.**

In this paper "you" means the new customer of a gas distribution network. "We" means the Australian Energy Regulator (AER) as the economic regulator of gas distribution networks.

## 1.1 Application of this information paper

This information paper outlines chapter 12A of the National Gas Rules (NGR), which sets out the process for connecting to a gas distribution network. The NGR are part of the National Energy Customer Framework (NECF) and therefore only apply in states or territories where the NECF has commenced.

Jurisdictions that have enacted NECF to date are:

- Australian Capital Territory
- New South Wales
- South Australia
- Tasmania (however, there are no regulated gas distribution networks in Tasmania).

**While chapter 12A of the NGR is not yet applicable to customers in Victoria and Queensland, the information and processes in this paper are still largely applicable to them.<sup>1</sup>**

## **1.2 Your relationship with the distributor under energy regulation**

Your relationship with your distributor is defined by:

- New customer connection offer: an individual contract (in the form of an offer by the distributor and acceptance by you) setting out the terms and conditions for potential new customers for connection to the network. This contract typically only deals with the construction of the connection assets, however, some distributors may also include the ongoing relationship between the distributor and you.
- Ongoing relationship contract: Under the *National Energy Retail Rules* (NERR), all customers are deemed to have a contractual relationship with the distributor, known as "deemed connection contracts". While this contract is known as "connection contracts", it mainly sets out the ongoing obligations of the distributor to you and vice versa, as well as the technical and safety requirements that must be observed by you.
  - For small customers [those consuming less than 1000GJ of gas per year], all essential contract terms are prescribed by the NERR. Distributors may only modify the terms to include things like its business name and address etc. If there is any inconsistency between the NERR model standard connection contract terms and a distributor's published model ongoing relationship contract for small customers, the terms provided by the NERR will prevail.
  - For large customers (those consuming more than 1000GJ of gas per year):<sup>2</sup> Your distributor may request that we approve their standard connection contracts. Approval is subject to us being satisfied that the terms and conditions are fair and reasonable, and not inconsistent with the energy rules.

## **1.3 Types of new connection offers**

### **Common types of connections**

There are two common types of connection offers:

- Basic connection offer: for those new connections that do not require the distributor to undertake significant alternation to its existing network.

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<sup>1</sup> The connection charge calculation method specified by NGR part 12A mirrors the existing capital expenditure rule (r.83), which allows gas distributors to recover the amount of "non-conforming capex" above "conforming capex" as a surcharge to customers. Conforming capex (r.79, NGR) refers to where incremental cost (capital plus incremental O&M) is equal to or less than incremental revenue. Under r.83(4), the AER must not approve a surcharge unless satisfied that the amount to be recovered from the surcharge does not exceed (in present value terms) the amount of the non-conforming capital expenditure that would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of providing services.

<sup>2</sup> As specified by s7 of the National Energy Retail Regulations.

- Standard connection offer: for those new connections that result in the distributor making some alterations such as adding a new length of gas pipe in your street.

The model terms of these offers have been pre-approved by us.<sup>3</sup>

### **Negotiated connection**

There is a third, less common type of connection offer, for those who do not fit into the above categories, called "negotiated connection". These offers often relate to non-standard connection that are neither a basic nor standard connections. There are no standard terms and conditions for such connection offers, however the offers must be fair and reasonable.

Also, if you are not satisfied with the model terms and conditions of your distributor's basic and standard connection offers, you may seek to negotiate a site-specific connection contract with your distributor, even if you fit into either a basic or standard connection category. However, your distributor is allowed to recover its cost for negotiating a non-standard contract with you.

## **1.4 Connection disputes**

Connection disputes arise when you seek connection to a gas distribution network, but cannot reach agreement with your distributor on the terms and conditions of the connection offer. We are responsible for resolving your customer connection disputes under Chapter 6 of the *National Gas Law*. This paper focuses primarily on our typical process for resolving these types of disputes.

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<sup>3</sup> Except for the initial period of NECF introduction, where our approval is not required.

## 2 Gas distributors' obligations

### 2.1 Publish necessary information

Your distributor must publish on its website:

- relevant application forms for new connections and connection alterations
- a description of the process (including what information you must provide for submission of a connection application)
- how to seek an expedited connection
- the basis on which they calculate connection charges.

### 2.2 Distributors' obligations in response to connection enquiries

#### 2.2.1 Preliminary enquires

You can make a preliminary enquiry to your distributor about a connection service. Your distributor is required to provide you with the following information within five business days of your enquiry:

- a. a description of the distributor's basic and standard connection services, and the terms and conditions of the model standing offers to provide such services (including possible costs)
- b. a description of the process, including a statement of the information required, for submission of a connection application including an application for an expedited connection
- c. a statement of a connection applicant's right to negotiate the terms of a connection contract and a description of the relevant process (including the types of possible costs and expenses)
- d. an indication of whether any aspects of the proposed connection are likely to be contestable;<sup>4</sup> any additional information reasonably required by the enquirer.

If this information is published on your distributor's website, it can simply refer you to the relevant part of their website. However, you can ask for a written reply, or for specific advice about your situation. If so, your distributor must reply as soon as reasonably practicable, and in writing (if requested).

#### 2.2.2 Formal application for connection

You can apply directly to you distributor or through your chosen energy retailer. Your distributor is required to:

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<sup>4</sup> A network service is contestable if the laws of the jurisdiction, in which the service is to be provided, permit the service to be provided by more than one supplier as a contestable service or on a competitive basis (r.119A of NGR).

- Within 10 business days after receipt of your application for a connection service, advise you whether the proposed connection service is a basic connection service, a standard connection service or neither.
- If the connection service is neither a basic connection service nor a standard connection service; or you elect for a negotiated connection contract even though the proposed connection service fits the definition of a basic or standard connection service—advise you of the negotiated connection process and of possible costs and expenses related to the negotiations.
- If the application is incomplete in a material respect, advise you of the deficiency and whether you need to complete the application form again and re-submit.
- If the distributor reasonably requires additional information to assess the application, it may require you to provide the necessary information within 10 business days after receipt of your application.

#### **For basic and standard connections**

If the connection service you have requested is a basic connection service or a standard connection service (and you do not elect to apply for a negotiated connection contract), the distributor must make a connection offer to you within:

- 10 business days after receiving a properly completed application; or
- some other period agreed between you and the distributor.

The connection offer must be in accordance with the relevant model standing offer and must include:

- the date of the offer
- details of the connection service to be provided
- a statement of the connection charges payable by you.

If requested by you, your distributor must include in its connection offer the following information about the basis for calculation of connection charges:

- The distributor's assumptions about your future gas consumption
- If a component of a connection charge relates to augmentation or extension of the distribution pipeline—the distributor's assumptions about the incremental increase or reduction in operating and maintenance costs.

## **2.3 Validity of connection offer**

A connection offer to provide a basic or standard connection service remains open for acceptance for 45 business days from the date of the offer and, if not accepted within that period, lapses unless the period for acceptance is extended by agreement between the connection applicant and the distributor.



## **2.4 Negotiated connection**

The process and timeframe for this type of connection is not always straightforward. Please refer to your distributor's published connection policy document for more information.

### 3 Rules about connection charges

Under rule 119M of the NGR, your distributor cannot impose a connection charge unless the cost of connecting you is higher than the extra revenue they will earn from you being connected to the network. Your connection charge should be the difference between the distributor's additional cost less the expected additional revenue that the distributor will receive.

The relevant network tariff should be used to calculate the expected revenue, based on a reasonable assumption of annual gas consumption. It should be noted that the revenue your distributor receives is less than what you pay to your gas retailer. Only the network charges portion of the retail tariff is used for the calculation.

## 4 What if you do not agree with your distributor's connection offer

If you believe your connection charge is too high, or that you cannot connect to a gas distribution network on fair and reasonable terms, you should contact your distributor as soon as possible. You should explain your problem to your distributor and the outcome you want.

In many cases a phone call can fix your problem. Be clear, persistent, calm and polite. It's a good idea to keep a note of the phone call, including the date and name of the person you spoke to. If the person you spoke to can't help you, ask to speak to a supervisor or more senior person.

If the problem or complaint has not been resolved, you should ask to speak with a senior officer or manager. You should discuss what options are available. Write down the name of the person you spoke to and what you discussed and agreed.

You may consider putting your complaint in writing at this point if it remains unresolved.

Make sure you:

- put your complaint in writing
- address your letter to the manager or the company's head office
- outline your complaint and the outcome you want
- ask for a response from the distributor within a specified time
- include copies of any relevant supporting information and keep the original and a copy of any letters or emails you send.

### 4.1 What you should do before raising a dispute with us

We only investigate a connection dispute where you have received a formal connection offer by the distributor. While we may, in some instances, provide comments regarding indicative prices provided by your distributor. We do not undertake formal investigation on indicative quotes by your distributor.

In addition, you must have attempted to resolve the issue with the distributor. If you have not done so, we will refer you back to the distributor.

### 4.2 What can you dispute?

You can complain about either:

- the connection charge your distributor wants to impose on you, or
- the non-price terms and conditions of your distributor's connection offer.

We generally do not investigate disputes on the non-price terms and conditions of Basic and Standard Connection Offers by your distributors as they have been approved by us.

### **4.3 How can you make a complaint?**

Complaints should be in writing and must provide your specific reasons for disputing the connection offer. Complaints can be sent via:

- Email: [AERinquiry@ aer.gov.au](mailto:AERinquiry@ aer.gov.au)
- Post: Australian Energy Regulator, GPO BOX 520, Melbourne VIC 3001
- Fax: (03) 9290 1457.

### **4.4 Independent negotiation with your distributor during our investigation period**

We generally do not interfere in any negotiations between you and your distributor. If you reach a resolution with your distributor (before we make a final decision), we usually allow you to withdraw your dispute. However, we have discretion to make a decision even if a resolution has been reached. We may consider it appropriate to make a decision, regardless of a commercial resolution, where the connection dispute related to a serious matter or indicated a systemic issue.

If you and your distributor agree to try to work out a negotiated outcome, we can act as the mediator to facilitate the process.

## 5 The AER's role and charges in resolving gas customer connection disputes

### 5.1 Our role

We are responsible for resolving retail customer connection disputes. Section 6 of this paper explains the approach we take in resolving access disputes regarding:

- the costs of connection
- the non-price terms and conditions of your distributor's connection offer.

A diagram depicting our retail customer connection dispute resolution process is included at the end of this paper.

### 5.2 Fee for raising an access dispute

Only large consumers using more than 1 tera-joule (or 1000 Mega-joule) of gas per year are required to pay a fee. For these customers, the fee is \$2,750 as prescribed in the *National Gas Rules* (reg. Schedule 5, clause 6).

### 5.3 The AER may charge for its costs under exceptional circumstances

We do not usually charge our cost for resolving disputes. However, under exceptional circumstances we may:

- charge for certain costs in relation to a connection dispute resolution process<sup>5</sup>
- order a party to pay all or part of the costs of another party in the dispute.<sup>6</sup>

Examples of such circumstances include:

- where a party's actions caused unnecessary or unreasonable delays in our dispute resolution process
- where a complainant makes repeated claim/complaint and has sought that we make a formal determination on matters that are (1) trivial, misconceived or lacking in substance; or (2) vexatious in nature.<sup>7</sup>

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<sup>5</sup> s216 of NGL and s9 of *National Gas (South Australia) Regulations*

<sup>6</sup> s206 of NGL

<sup>7</sup> s186 of NGL provides that the AER "may at any time terminate an access dispute (without making an access determination) if the dispute resolution body considers that— (a) the notification of the access dispute was vexatious; or (b) the subject matter of the dispute is trivial, misconceived or lacking in substance;..."

## 6 Our connection complaint and dispute assessment process

Connection disputes can be broadly classified as disputes regarding the costs of connection, or disputes regarding the non-price terms and conditions of a connection offer.

### 6.1 Complaints regarding costs of connection

For complaints involving the costs of connection, we will first undertake a preliminary assessment of the matter to see if a resolution can be achieved.

The aim of the preliminary assessment stage is to provide you with a preliminary indication of our view of the connection dispute. As you may not be fully aware of network construction costs, at the preliminary assessment stage we aim to inform you of these costs.

If, after the preliminary assessment stage your dispute is unresolved, we will undertake a formal assessment process.

#### 6.1.1 AER's preliminary assessment

As part of our preliminary assessment, we will consider how your distributor's connection charges compare with similar published cost elements and whether its calculation is consistent with the *National Gas Rules'* connection charge criteria (explained in section 3). After assessing this, and any other relevant information, we will advise you of our findings. These are only initial findings and are not binding on us or you.

Following our preliminary assessment, if you decide to proceed to a formal assessment of the connection dispute under Chapter 6 of the National Gas Law, you will need to provide us, in writing, with the specific grounds for disputing the connection. You must address the matters we identified and conclusions we reached in our preliminary assessment findings.

It is important to note that at any time you can elect to skip the preliminary assessment stage and have the matter assessed by us immediately under Chapter 6 of the *National Gas Law*, as outlined under section 6.3 of this paper.

#### 6.1.2 Formal assessment of connection disputes

If after the preliminary assessment stage the dispute is not resolved between the parties, we will undertake a formal assessment as outlined in section 6.3 of this paper.

### 6.2 Disputes regarding non-price terms and conditions of your connection policy

For disputes regarding non-price terms and conditions of a connection offer, we will first undertake a preliminary assessment and examine any applicable laws and instruments to determine what issues are relevant to the dispute. If, after this assessment, you advise us that you wish to seek a formal assessment, we will commence an access dispute process under chapter 6 of the *National Gas Law*.

Our preliminary assessment stage aims to provide you with a preliminary indication of:

- our view of the connection dispute, and
- further information on the relevant gas rules and regulations.

At any time, you can elect to skip the preliminary assessment stage and have the matter assessed immediately under Chapter 6 of the *National Gas Law* by the AER, as outlined in section 6.3 of this paper.

### **6.2.1 Formal assessment of connection disputes**

Following AER staff's preliminary assessment, if you decide to seek a formal assessment of the connection dispute under Chapter 6 of the *National Gas Law*, you should provide us in writing with the specific grounds for disputing the connection. You should address the matters identified and conclusions reached in our preliminary assessment findings. We will undertake an assessment as outlined in section 6.3 of this paper.

## **6.3 Dispute resolution process under Chapter 6 of the National Gas Law**

If after the preliminary assessment stage under (described in sections 6.1.1 and 6.2.1 of this paper), or at any time, you advise us that you want a formal assessment, dispute proceedings under Chapter 6 of the *National Gas Law* can be commenced. We will undertake a formal assessment and consultation process, and will issue a draft and final decision.

While we aim to deal with your complaint within 6 months from the date you give us notice of the dispute, this timeframe is only indicative. It may change, taking into consideration the complexity of your issues.

In making a draft decision, we will ask you and your distributor to provide us with submissions (and replies to these submissions) on the context and basis of the dispute. We will seek information such as:

- details of the connection offer,
- the reasons your distributor considers the connection offer to be fair and reasonable, and
- the reasons you do not consider the connection offer to be fair and reasonable.

You and your distributor will generally be given at least 10 business days but no more than 20 business days to provide submissions on the context and basis of the dispute, and at least a further 10 business days to reply to each other's initial submissions. These indicative timeframes may vary depending on the complexity of the issues involved in the particular dispute.

After receiving and considering these submissions we will issue a draft determination and a supporting statement of reasons for comment to you and your distributor. You will both be invited to comment in writing on the draft decision and supporting statement of reasons. We generally provide between 10 and 20 business days for you to submit a written comment.

Again these timeframes are indicative and may be altered on a case-by-case basis as required.

After receiving and considering any submissions you and your distributor make on the draft decision, we will make a final decision (including a supporting statement of reasons) on the fairness and reasonableness of the disputed terms and conditions of the connection offer.

Once we have issued our final decision and provided it to both of you, the dispute process is concluded.

### **6.3.1 Enforcement of AER's determinations**

Determinations made by us under Chapter 6 are not subject to appeal and are enforceable by court order. The court may make all or any of the following orders in relation to a contravention, or proposed contravention of a determination under Chapter 6 (section 271 of the National Gas Law):

- (a) an order granting an injunction on such terms as the Court thinks appropriate —
  - (i) restraining the other party from engaging in the conduct; or
  - (ii) requiring a person to do a specific thing.
- (b) an order directing the other party to compensate the applicant for loss or damage suffered as a result of the contravention
- (c) any other order that the Court thinks appropriate.

### **6.3.2 Indicative timeframe of AER investigations of a connection dispute**

Our investigations of a connection dispute may take between 18 and 24 weeks. The indicative timeframe (including timing for submissions) is:

- Initial assessment: 7 weeks
- Draft consultation and determination: 5 weeks
- Consultation on draft determination: 5 weeks
- Final determination after close of consultation: 5 weeks.



## Contact Details

### AER contact details

**By phone to ACCC/AER Infocentre: 1300 302 502**

**By email to: [AERinquiry@aer.gov.au](mailto:AERinquiry@aer.gov.au)**

**By mail to:**

**Australian Energy Regulator**

**GPO Box 520**

**Melbourne VIC 3001**

**By fax to: (03) 9290 1457**

## AER's connection dispute resolution process flow chart

