



27 April 2011

Mr Warwick Anderson
General Manager
Network Regulation Branch
Australian Energy Regulator

Email: qldsagas@aer.gov.au

Dear Mr Anderson,

Envestra Queensland revised Access Arrangement proposal

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

As noted in our previous submission¹ Envestra had proposed:

- to alter the definition of a Demand Customer; and
- the creation of two tariff classes, tariff R and tariff C, in place of the current tariff V.

The proposed tariff R represents a significant increase on network charges applying to residential customers. The first 0.2 GJ per day under the current tariffs approved by the AER is \$15.185; under Envestra's proposal, those same residential sites in the Brisbane and Riverview zones will be paying \$43.12 for the first 0.0277 GJ and an effective \$51.66 for the first 0.2G GJ per day, an increase of 240%.

By contrast, the C component of tariff V is looking at a 21.6% increase in rates for the first 0.2 GJ per day. There is little evidence furnished to underpin such a dramatic increase in tariffs applying to residential supply points, other than a vague statement to the effect that R and C have "different usage profiles" and no acknowledgment of the price shock to Users and customers and how that might be managed.

The AER listed required amendments in relation to the above items within chapter 11 of the Draft Decision. AGL would like to advise that we have been unable to locate any additional justification that were sought by the AER. On the basis that Envestra has provided no additional justification within the Access Arrangement we request that the current definition of a Demand Customer be retained and tariff V remain.

Comments in response to some of the key amendments to the Terms and Conditions are provided in Attachment A.

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 Envestra Qld Access Arrangement submission dated 26 November 2010

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Attachment A

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.
Maximum hourly quantity: (clause 4.2)	No other references to MHQ (other than clause 4.2) occurs in the terms and conditions in annexure G of the access arrangement. Moreover, there is no reference to MHQ in the specific terms and conditions (specific to individual users). Only the maximum daily quantity (MDQ) is required to be agreed to between Envestra and the user. Therefore, the AER does not understand why this provision is included in the terms and conditions. The AER also agrees with AGL's submission and considers that it is unclear how a user's MHQ is determined. In light of this, Envestra is required to delete clause 4.2 from its terms and conditions.	Amendment 13.5.	AGL notes that clause 4.2 is still listed in the General Terms and Conditions and has not been deleted by Envestra. AGL requests that clause 4.2 is deleted as required by the AER.

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Quantities received (clause 4.5)	In its response to AGL's submission, Envestra submitted that with the advent of REMCo and more recently AEMO, Envestra no longer needs to determine injection allocations. Envestra submitted that the clause covers any location or circumstances where it might be necessary. The AER accepts AGL's explanation in response to AGL's submission and does not require an amendment.	None.	AGL notes that within the consideration the AER has accepted AGL's explanation and would like to advise that this should read 'The AER accepts Envestra's explanation' At this point in time AGL has no additional comment on this item.
Daily overruns: MDQ increase (clauses 5.4 and 5.5)	In its response to AGL's submission, Envestra submitted that 'telemetered' is an outdated term, related to a time when all demand delivery points were not telemetered. Envestra submitted that since all demand delivery points are now telemetered, it is not necessary to identify such points as telemetered demand delivery points. The AER accepts AGL's explanation in response AGL's submission and does not require an amendment.	None.	AGL notes that within the consideration the AER has accepted AGL's explanation and would like to advise that this should read 'The AER accepts Envestra's explanation' 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 amendment its terms and conditions to the effect that it will provide an explanation as soon as practicable.	Amendments 13.6 to 13.9.	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
Temporary increase in MDQ: Demand delivery Points (clause 8.1)	In its response to AGL's submission, Envestra submitted that existing communication protocols (email, letter etc) will continue.	None.	AGL notes that Envestra has submitted that existing communication protocols will continue.
Request for temporary increase in MDQ (clause 8.2)	Envestra's proposed fees are the same as those Envestra proposed for its South Australia network. In that case fees are already in place and Envestra proposed increases (\$150 to \$200 for the administration fee and \$85 to \$100 per hour for the engineering fee). In its response to AGL's submission, Envestra submitted the level of these fees stem from the access	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.

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	arrangement submission in 2005 (for its South Australian network) and analysis of movements in engineering labour costs justifies the proposed increases. Envestra noted that the fees will be in place until mid 2016. The AER approves Envestra's proposed fees for its South Australian network. Given that the work involved is likely to be similar for its Queensland network, the AER also approves Envestra's proposed fees for that network and does not require an amendment.		
Maintenance and renewal of metering equipment (clause 9.3)	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 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.	Amendment 13.10	AGL requests that Envestra amends clause 9.3 to reflect the AER's consideration. We 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 13.11	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.
Delivery pressure (clause 14.1)	In its response to AGL's submission, Envestra submitted that the delivery of 1.13 kpa is obsolete as some areas	None.	AGL notes that additional information provided by

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	are now being reticulated at higher pressures. The AER accepts Envestra's explanation in response to AGL's submission and does not require an amendment.		Envestra. At this point in time AGL has no additional comment on this item.
Supply curtailment: Notice of Curtailment (clause 17.2)	In its response to AGL's submission, Envestra submitted that curtailment requirements are set out in various jurisdictional codes (soon to be replaced by the NECF framework/obligations) and replicating them is unnecessary and results in inconsistencies. Envestra's proposed revision will align clause 17.2 with the equivalent provision in its current access arrangement for its South Australian network. The AER accepts Envestra's explanation in response to AGL's submission and does not require an amendment.	None.	AGL notes that Envestra has submitted further information surrounding this item. At this point in time AGL has no additional comment.
Order of priority (clause 17.3)	In its response to AGL's submission, Envestra submitted that the words are unnecessary as Envestra is obliged not to discriminate in all its dealings. It is not clear to the AER to what Envestra is referring when it states it is obliged not to discriminate in all its dealings. The AER considers that it is appropriate that Envestra should not discriminate by setting the order based on the identity of the relevant users. Envestra is required to amend its terms and conditions to retain this provision.	Amendment 13.12.	AGL acknowledges that clause 17.3 has been amended, retaining the provision surrounding non-discrimination.
Ancillary reference services: Standards (clause 18.1)	The AER notes that the words 'Disconnect' and 'Reconnect' are not defined terms in Envestra's glossary, whereas 'Disconnection' and 'Reconnection' are. 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.	None.	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.
Payment of charges (clause 18.2)	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. Nevertheless, Envestra has provided no reasons why it needs to be	Amendment 13.13.	AGL accepts the consideration and acknowledges the amendment of clause 18.2. At this point in time AGL has no

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	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.		additional comment on this item.
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, which 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 13.14.	AGL accepts the consideration and acknowledges the deletion of clause 19. At this point in time AGL has no further comment on this item.
Correction of billing errors (clause 21)	The AER does not consider that the reduction from 12 months to 11 months is significant and accepts Envestra's revision. The revision is in line with the 11 months period in Envestra's current and proposed terms and conditions for its South Australian network (clauses 20 and 21 respectively). 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 13.15	AGL accepts the consideration and acknowledges the amendment within clause 21. At this point in time AGL has no additional comment on this item.
Delivered quantities (clause 23)	Unlike its South Australian network, Envestra does not invoice in advance for its Queensland network. While the additional words 'expected to be delivered' are consistent with the access arrangement for Envestra's South Australian network, they are inconsistent with the access arrangement for its Queensland network. In light of this the AER requires their deletion. The AER requires an amendment to clarify that Envestra's estimation or allocation must be on a reasonable basis. Envestra is required to make an amendment by replacing 'on whatever basis Envestra considers reasonable' to 'on a reasonable	Amendments 13.16 and 13.17.	AGL accepts the consideration and acknowledges the amendments within clause 23. At this point in time AGL has no additional comment on this item.

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	basis'. This is consistent with clause 4.5(c) (quantities received) and 10.7(c) (basis for corrections) which use the terminology 'on a reasonable basis'.		
Method of payment (clause 24.1)	Envestra did not address this issue in its response to AGL's submission. Envestra's proposed revision will align clause 17.3 with the equivalent provision in its current access arrangement for its South Australian network. The AER considers that clause 24.1 allows for payment by electronic funds transfer, if agreed between Envestra and the User	None.	AGL accepts the AER's consideration in relation to clause 24.1. At this point in time AGL has no additional comment on this item.
Failure to pay: Right to set off unpaid amounts (clause 25.2) Right to suspend Services (clause 25.3)	AGL submitted that it seeks the reasoning behind the removal of the relevant text. Envestra did not address this issue in its response to AGL's submission. 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). In relation to clause 25.2, AGL submitted that the types of payment that fall within the definition of 'any amount' need to be clarified. In its response to AGL's submission, Envestra submitted that the clause is a generic one used in contracts. 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.	Amendments 13.18 to 13.20.	AGL accepts the consideration and acknowledges the amendment within clause 25.3 to exclude amounts in dispute. We acknowledge that Envestra has made consequential amendments to clause 25.1 and clause 26.2(a). At this point in time AGL has no additional comment on this item.
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	Amendment 13.21.	AGL is unable identify the amendments required by the AER to clause 26.8. AGL requests that the AER reviews the requirements and confirm that

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	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.		the appropriate amendment is reflected.
Service provider's liability: Contributions (clause 27.2)	The AER understands that terms and conditions of this nature limiting a party's liability is common in commercial contracts. The AER considers that it is reasonable for one party's liability to be reduced because of the acts or omissions of the other party. The AER does not require an amendment.	None.	AGL accepts the AER's consideration in relation to clause 27.2 and at this point in time AGL has no additional comment on this item.
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.
Force majeure: Consequences of force majeure (clause 29.2)	Envestra's proposed revision will align clause 29.2 with the equivalent provision in its current access arrangement for its South Australian network. The AER considers that it is reasonable to expect that both parties will take whatever action they reasonably can to limit the impact of a force majeure event. The AER accepts Envestra's explanation in response to AGL's submission and 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.
Notice of entry (clause 33.2)	In its response to AGL's submission, Envestra submitted that what constitutes reasonable notice is whatever is reasonable in the circumstances. Envestra's proposed revision will align clause 33.2 with the equivalent provision in its current access arrangement for its South Australian network. The AER accepts Envestra's explanation in response to AGL's submission and does not require an amendment.	None.	AGL notes the additional information provided by Envestra. AGL accepts the AER's consideration and at point in time and has no additional comment on this item.
Dispute resolution: Selection of expert	In its response to AGL's submission, Envestra submitted that it considers that the AER would be more familiar	Amendment 12.22.	AGL accepts the AER's consideration in relation to clause

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(clause 35.5)	with the issues. The AER does not consider that it has the authority under the NGL to assume this role. Envestra is required to amend clause 35.5 by replacing 'Regulator' with 'Institute of Arbitrators'.		35.5 and note that the appropriate amendment has been reflected.
Automatic amendments (clause 38.2)	In response to AGL's submission, Envestra submitted that a user's agreement may contain specific terms and conditions that have the effect of varying a standard term approved by the regulator. Subsequent amendments to standard terms therefore would not be applicable to the user's agreement. 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 arrangement accordingly.	Amendment 13.23.	AGL accepts the consideration and acknowledges the deletion of clause 38.2. At this point in time AGL has no further comment on this item.
<i>Part 2: Terms and conditions for which Envestra has not proposed revisions</i>			
Invoicing and payment (clause 20)	AGL submitted that it does not support invoicing in advance. In its response to AGL's submission, Envestra submitted that it doesn't invoice in advance for its Queensland network. In light of this, 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.
Payment of Invoices (clause 20.6)	The AER considers that the provisions are clear and no amendment is required.	None.	AGL accepts the AER's consideration and at point in time AGL has no additional comment on this item.
Set off arrangements: No set off (clause 24.2)	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	Amendments 13.26 and 13.27.	AGL accepts the consideration and acknowledges the deletion of clause 24.2. At this point in time

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	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). Envestra is required to amend its terms and conditions accordingly.		AGL has no further comment on this item.
Overdue interest (clause 25.1)	The AER notes that Clauses 25.2 (right to set off unpaid amounts) and 25.3 (right to suspend services) clauses 25.2 and 25.3 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.	Amendment 13.28.	AGL accepts the consideration and acknowledges the deletion of clause 25.1. At this point in time AGL has no further comment on this item.
No notice (clause 33.3)	The AER notes AGL's submission. However, it is not clear to the AER why routine meter replacement should be treated any differently to routine reading of meters. The AER is not convinced by AGL's submission and does not require an amendment.	None.	At this point in time AGL has no further comment on this item.
Notices (clause 36.1)	In response to AGL's submission with respect to Envestra's South Australian network, 110 Envestra indicated that it is willing to amend clause 36.1 of the terms and conditions for that network to provide for email. 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 deletion of clause 36.1. At this point in time AGL has no further comment on this item.
Entire agreement (clause 40.4)	The AER understands that this is a common clause in contracts and 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.

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