

Draft Decision

**Australian Gas Networks (Victoria
and Albury)**

Access Arrangement 2023 to 2028

(1 July 2023 to 30 June 2028)

**Attachment 11
Non-tariff components**

December 2022

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Note

This attachment forms part of the AER’s draft decision on the access arrangement that will apply to Australian Gas Networks (Victoria and Albury) (AGN) for the 2023–28 access arrangement period. It should be read with all other parts of the draft decision.

The draft decision includes the following documents:

Overview

Attachment 1 – Services covered by the access arrangement

Attachment 2 – Capital base

Attachment 3 – Rate of return

Attachment 4 – Regulatory depreciation

Attachment 5 – Capital expenditure

Attachment 6 – Operating expenditure

Attachment 7 – Corporate income tax

Attachment 8 – Efficiency carryover mechanism

Attachment 9 – Reference tariff setting

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11 Non-tariff components

This attachment sets out our draft decision on the following non-tariff components of AGN's proposed access arrangement proposal for the 2023–28 access arrangement period:

- queuing requirements – a process or mechanism for establishing an order of priority between prospective users of spare and/or developable capacity
- extension and expansion requirements – the method for determining whether an extension or expansion is part of the covered pipeline and the effect this will have on tariffs
- capacity trading requirements – the arrangements for users to assign contracted capacity and change receipt and delivery points
- change of receipt or delivery point by the user – the process or mechanism for changing a user's receipt or delivery point
- the terms and conditions for the supply of reference services
- a review submission date and revision commencement date for the next access arrangement period.

Australian Gas Networks (AGN) and Multinet Gas Distribution Partnership (MGN) are part of the Australian Gas Infrastructure Group (AGIG) group of companies. AGN and MGN have proposed the same provisions in each of their access arrangements for these non-tariff components. Issues raised in submissions are common to both proposals. For that reason we have considered both here.

11.1 Draft decision

Our draft decision approves the majority of the non-tariff components of AGN's and MGN's proposed access arrangement for the 2023–28 period.

The proposed queuing, extension and expansion, and capacity trading requirements and proposed approach to changing users' receipt or delivery points are substantively unchanged from those approved for the current, 2018–22 period. We received no submissions on these elements of the proposed access arrangement. We remain satisfied that they meet the requirements of the National Gas Rules (NGR), and our draft decision is to accept them.

We have also accepted the proposed revision commencement date of 1 July 2028 for its next access arrangement period. The proposed review submission date of 1 July 2027 allows the minimum period of 12 months before the revision commencement date in which we can consult on and assess its proposed revisions to the access arrangement for the next period.¹

There are, however, a small number of elements of the proposed access arrangement around credit support, customer details, and calculation of distribution service charges that

¹ NGR, r. 50(2).

we have decided require further consideration by AGN and MGN in their revised proposals before we can accept them.

Since AGN and MGN submitted their proposals, the Australian Energy Market Commission (AEMC) has made the *National Gas Amendment (DWGM Distribution connected facilities) Rule 2022*. That rule amends the NGR to allow the participation of distribution connected facilities in the Victorian gas market. It contemplates a range of matters to be addressed, or managed, in accordance with the terms and conditions of a distributor's access arrangement. The final rule will come into effect on 1 May 2024, within the first year of the 2023-28 period. As the final rule was not made in time for these proposals, we expect to see the rule fully addressed in revised proposals.

We are mindful that there will be limited time for iterative engagement on options and solutions between submission of revised proposals in January 2023 and the close of stakeholder submissions in February 2023. We have therefore encouraged AGN and MGN to make full use of the time available between the publication of the final rule in September and January 2023 to engage on options and solutions with a view to presenting a revised proposal that has stakeholder support.

11.2 Queuing requirements

Queuing requirements establish a process or mechanism (or both) for establishing an order of priority between prospective users of spare or developable capacity (or both) in which all prospective users (whether associates of, or unrelated to, the service provider) are treated on a fair and equal basis.²

Clause 7.2 of the proposed access arrangements sets out the queuing arrangements applicable to requests for new Connections or modifications to existing Connections. These are unchanged from those approved for the current access arrangement period. We have received no submissions on these arrangements and remain satisfied that they satisfy the requirements of the NGR. Our draft decision is therefore to accept these elements of the proposed access arrangement.

11.3 Extension and expansion requirements

The extension and expansion requirements in an access arrangement specify the method for deciding whether an extension or expansion occurring during an access arrangement period will be treated as part of the covered pipeline and, if so, the impact this will have on reference tariffs. An 'extension' allows the pipeline to service new locations, while an 'expansion' increases the amount of gas an existing length of pipeline can carry.

The NGR requirements for extensions and expansions are in rule 104, which provides:

- the access arrangement may state whether it will apply to incremental services to be provided as a result of a particular extension to, or expansion of the capacity of, the pipeline, or outline how this may be dealt with at a later time: r. 104(1)

² NGR, r. 103(3).

- if an access arrangement is to apply to incremental services, the requirements must deal with the effect of the extension or expansion on tariffs: r. 104(2)
- the requirements cannot require the service provider to provide funds for extension or expansion works unless the service provider agrees: r. 104(3).

The proposed extensions and expansions requirements are set out in Part 8 of AGN's access arrangement. These are substantively unchanged from those approved for the current access arrangement period. We have received no submissions on these arrangements. We remain satisfied that they satisfy the requirements of the NGR. Our draft decision is therefore to accept these elements of the proposed access arrangement.

11.4 Capacity trading requirements and changing receipt and delivery points

A typical access arrangement must set out capacity trading requirements, which deal with the transfer of a user's contracted capacity to another user.³

However, capacity trading between users is not possible on AGN's or MGN's distribution network. Unlike a transmission pipeline, Network Users do not have reserved capacity within the Network. The capacity of the Network is determined by the capacity of the Receipt Points to accept gas into the Network and the capacity of the Delivery Points to deliver gas out of the Network.

The Victorian gas market is different to other Australian gas markets. Those other markets are based on bilateral arrangements between producers, major users and retailers linked together through pipeline hubs connecting gas fields to gas consumers. In Victoria, by comparison, the receipt points on a distribution network are 'system withdrawal points' for the purposes of the Declared Wholesale Gas Market (DWGM) rules which are set out in Part 19 of the NGR, and the capacity of those points is allocated in accordance with those rules.

Similarly, delivery points on the Victorian gas distribution networks are 'distribution supply points' for the purposes of the Victorian Retail Market Procedures, and can be transferred between network users in accordance with those procedures.

No changes were proposed to the existing clauses dealing with capacity trading and changing receipt/delivery points, which are in clauses 7.1 and 7.3 of AGN's access arrangement. These effectively provide that:

- network users in Victoria are not allocated contracted capacity within the network;
- the only receipt points on the network are custody transfer points between the network and other networks, making it unlikely the service provider would consent to a request to change a receipt point; and
- the arrangements for changing delivery points are set out in the Victorian Retail Market Procedures.

We received no submissions on this component of the access arrangement. We maintain our view that this approach is acceptable in the unique arrangements governing the Victorian gas

³ NGR, r. 48(1)(f).

market. Our draft decision is therefore to accept these elements of the proposed access arrangement.

11.5 Terms and conditions

The National Gas Rules (NGR) require an access arrangement to specify, in addition to the reference tariff, the other terms and conditions on which each reference service will be provided.⁴ These must be consistent with the National Gas Objective (NGO).⁵

In deciding whether the terms and conditions are appropriate, the AER must have regard to the risk-sharing arrangements implicit in the reference tariff.⁶ This requires us to assess and balance the competing interests of the service provider, network users and consumers, in particular:

- the allocation of risk, where we consider the NGO is generally best served where a risk is borne by the party best able to manage it; and
- the need to ensure clarity and certainty, while avoiding an unduly prescriptive approach on commercial matters.

AGN's and MGN's proposed terms and conditions are set out in the same terms in Annexure F to their proposed access arrangements. They have been amended from those approved for the current period to provide a number of drafting clarifications, and in places to continue the process of aligning terms and conditions across AGN's gas distribution networks in Victoria, Albury (NSW) and South Australia. For the 2023-28 period, this includes alignment with terms and conditions approved by the AER in our final decision⁷ on AGN's South Australian gas distribution access arrangement in April 2021, and of MGN's terms and conditions with AGN's.

As part of this alignment, and in response to retailer feedback, AGN has proposed amendments to its current access arrangement to remove the fixed charge related to disconnected sites that was previously levied on retailers. This approach was already taken by MGN and AusNet Gas Services (AusNet). It complies with the NGR and has been previously accepted for other businesses. Our draft decision accepts this change.

While other amendments are limited, submissions to this review have identified a number of areas of concern with the proposed terms and conditions and asked us to consider whether further amendments should be required. We discuss these in the sections below.

11.5.1 Annexure F clause 32.2 - Customer details

New clause 32.2 of the general terms and conditions requires that:

In particular, but without limitation, if the Network User is a Gas Retailer, then, if requested by AGN, the Network User will promptly provide AGN with any information about a Shared Customer which is held by the Network User and

⁴ NGR, r. 48(1)(d)(ii).

⁵ NGR, r. 100(1)(a).

⁶ NGR, r. 100(2).

⁷ AER - Final decision - AGN(SA) access arrangement 2021-26 - Attachment 11 - Non-tariff components - 30 April 2021.

required by AGN for a purpose or purposes relating to the operation, maintenance or management of the Network or the provision of Distribution Services or for other purposes permitted by law. If that information is provided to AGN, AGN must use it only for those purposes.

Submissions to the AER suggested that this is inappropriate because retailers subject to confidentiality and privacy provisions are restricted from handing over any information about customers. It was suggested that this clause needs to be amended to include provisions that clarify retailers are only required to provide this information ‘to the extent permitted by the law’.

We put this suggestion to AGN and MGN,⁸ and they responded that they are comfortable including this amendment. We have included this change in the revisions required by this draft decision.

11.5.2. Annexure F clauses 18.2 & 18.3 - Reconnection

New clause 18.3(a) of the general terms and conditions provides that:

If any User [Delivery Point] (or, if the Network User is a Gas Retailer, any User [Delivery Point] or any Shared Customer’s premises) has been disconnected from the Network and AGN/MGN obtains a meter reading showing that Gas has been taken through that User [Delivery Point] whilst it was disconnected, AGN/MGN may:

- (a) issue a service order or request to itself on behalf of the Network User requesting reconnection; and
- (b) act on that service order or request and re-connect that User [Delivery Point] (or those premises) to the Network.

AGN/MGN will notify the Network User that AGN has issued a service order or request requesting reconnection on behalf of the Network User.

The proposed clause reflects the process that MGN has followed in Victoria for the past 15 years, but is new to the AGN access arrangement.

Submissions suggested that for a distributor to issue a service order or request to itself on behalf of the Network User conflicts with the AEMO requirements in Participant Build Pack 1 Process Flow Table of Transactions, which only contemplate a Retailer reinstating supply after disconnection. We were asked to explore this matter with AGN and MGN and consider whether this clause requires amendment in light of this.

AGN and MGN provided an explanation of the origins of this clause, which were explored by AEMO and the Gas Retail Consultation Forum in September 2017, after both initial and

⁸ AGN - IR025 - AA non-tariff components - concerns raised in stakeholder submissions – 24 October 2022.

revised proposals for the current access arrangement period had been submitted and only 2 months before our final decisions on access arrangements for 2018-22 were made.⁹

Clause 18.3 seeks to address circumstances where consumption occurs at delivery points after those delivery points have been disconnected. Some retailers' billing systems do not recognise or bill for consumption at sites which have a market status of disconnected. In such cases, while AGN was recognising and recovering charges for consumption from retailers, affected retailers were not recognising nor recovering those charges from customers. The solution reflected in proposed clause 18.3 was put forward by a retailer as a solution. It allows a process by which the status of the site is changed from disconnected to connected, thereby allowing bills to be issued and the retailer to take action to try to recover charges.

We consider there are benefits to this option being available and, as submissions have not identified any harm arising from it, our draft decision is to accept new clause 18.3.

Submissions also noted that clauses 18.2 and 18.3 are both titled 'Reconnection', which may cause confusion. We asked AGN and MGN to consider this¹⁰, and they responded that in revised proposals the heading of clause 18.3 could be amended from "Reconnection" to "Reconnection Request". We have included this change in the revisions required by this draft decision.

11.5.3 Annexure F clause 20.4 - Distribution Service Charges – calculation of charges

Clause 20.4 of the terms and conditions (unchanged from the current period) provides that:

The Distribution Services Charges must be calculated from time to time in accordance with the Agreement and the Tariff Schedule applicable at the relevant time.

Submissions suggested that Distribution Service Charges must always be calculated in accordance with the Agreement and the Tariff Schedule applicable at the relevant time, so that the words 'from time to time' could be removed to avoid any confusion.

We asked AGN and MGN to consider this¹¹, and they advised that they are comfortable making this change in their revised proposals.

11.5.4 Access Arrangement clause 6.4; Annexure F clause 27 – credit support

There are no prescribed credit support arrangements for gas distribution networks and retailers in Victoria. That means that these arrangements are reviewed, proposed and decided upon solely in approved access arrangements.

In early engagement with the AER, and with AGN and MGN through their Retailer Reference Group, smaller retailers raised concerns that the credit support arrangements in AGN's

⁹ AEMO Paper IN035-12 Decommissioned Sites with Actual Reads – Findings and Issues for the GRCF to Consider

¹⁰ AGN - IR025 - AA non-tariff components - concerns raised in stakeholder submissions – 24 October 2022.

¹¹ AGN - IR025 - AA non-tariff components - concerns raised in stakeholder submissions – 24 October 2022.

access arrangement (now also proposed for MGN) are more onerous than those for electricity distributors in Victoria, and for gas and electricity distributors in other jurisdictions. These concerns were raised again in submissions to us as part of this review.

Comparisons have been drawn to:

- The prescribed retail support arrangements between retailers and distributors under Part 21 of the NGR, which apply in jurisdictions other than Victoria and limit the circumstances in which credit support can be requested to retailers with a history of default on payments. These provisions rely instead on a retailer insolvency cost pass through event with no materiality threshold to manage the risk of unexpected retailer failure. This reduces the costs that retailers (and therefore customers) will pay to manage the risk of retailer failure on an on-going basis.
- The current arrangements for Victorian electricity distributors, which pre-date the current NGR model, are considered to significantly limit the amount of credit support required to be provided relative to the current gas distribution arrangements, unless a retailer presents a high revenue and liquidity risk to the distributor.

The proposals largely maintain AGN's current arrangements.¹² A limited change to add a second source of credit rating to that which is currently available has been made, which does not appear to go to the concerns that have been raised. The proposals submitted that the current arrangements are simple to apply and have been in place for some time. AGN and MGN argued that it would not be appropriate for the AER in its access arrangement review, to look to rules in place in other jurisdictions but not adopted in Victoria as a model. AGN and MGN also noted that if Part 21 of the NGR was considered as a model for their access arrangements, related amendments to the retailer insolvency cost pass through event would also be needed, to remove the materiality threshold consistent with the equivalent NGR event.

Credit support arrangements for gas distribution networks and retailers in Victoria are within the scope of this review. Accordingly, we sought information from AGN in order to better understand how its credit support arrangements—which it now proposed to extend to MGN—have applied in practice over the current access arrangement period. We made similar enquiries of AusNet, which have provided a useful comparison of outcomes:

- AGN advised that the majority of retailers with which it has contracted in the last year have been required to provide credit support, some through bank guarantees and others through cash deposits. While AusNet's access arrangement includes criteria for requiring credit support in both equivalent, and wider terms than AGN's, AusNet has advised that at least since the commencement of the Victorian gas market in 2001 it has not drawn on the credit support provisions in its access arrangements or otherwise requested a gas retailer to supply a bank guarantee or other form of credit support.

¹² MGN's credit support requirements in the current period were more comparable to AusNet's, which we have considered in Attachment 11 to our draft decision on AusNet's proposed terms and conditions for the 2023-28 period.

- AGN’s proposed access arrangement allows it to require credit support “for an amount reasonably requested by AGN”.¹³ This is determined on the basis set out in section 6.4 of the Access Arrangement as equal to three months’ estimated charges, consistent with AusNet’s proposed access arrangement. Its proposed access arrangement reserves the right to request more but it has not done so. For Government-owned retailers it has made exceptions and required less or no credit support. The amount of credit support required is reviewed annually by AGN and adjusted up or down by AGN as that estimate changes. While not explicit in the proposed access arrangement (whereas it is in AusNet’s), AGN has suggested in its response to our information request that a retailer can also initiate the review process.
- In the current access arrangement period, there has only been one occasion on which AGN has actually drawn on credit support provided by a retailer.

The limited number of times that credit support has been drawn on should not be taken as an indication that robust protection against unpaid retailer charges is not required. It is not disputed that AGN and MGN should be allowed to take prudent steps to mitigate the risks unpaid distribution charges pose for its business. What it does suggest, particularly when compared to the number of retailers that have been required by AGN to provide and maintain credit support, is that the risk in question may be a low probability, potentially high impact, event.

In that context, we consider an alternative and more proportionate form of protection that manages that same risk at a lower upfront cost to retailers (and therefore to customers) is likely to sit better with the NGO, and better balance the competing interests of the service provider, network users and consumers in allocating that risk.

In their revised proposals, we therefore require AGN and MGN to consider and put forward an alternative credit support framework. That alternative—whether based on Part 21 of the NGR (including related amendments to the retailer insolvency cost pass through event), the credit support arrangements that apply to electricity distributors in Victoria, or another model—should seek to re-balance risk between AGN and MGN, retailers and customers by exploring ways to reduce the cost of pre-emptive, up-front risk management and balancing this with ex post recovery only where the risk is realised.

11.6 Review submission date and revision commencement date

Rule 49(1) of the NGR requires that a full access arrangement that is not voluntary must contain review submission and revision commencement dates and must not contain an expiry date.

Under the NGR:¹⁴

- a ‘review submission date’ means a date on or before which an access arrangement revision proposal is required to be submitted

¹³ Annexure F, 27.2

¹⁴ NGR, r. 3.

- a ‘revision commencement date’ means the date fixed in the access arrangement as the date on which revisions resulting from a review of an access arrangement are intended to take effect.

AGN and MGN have proposed a revision commencement date of 1 July 2028. This is consistent with the 5-year outlook adopted for its 2023-28 proposal and maintains the current cycle of 5-yearly access arrangement reviews.

The proposed review submission date is 1 July 2027. This allows a period of 12 months in which we can consult on and assess its proposed revisions to the access arrangement before its commencement. This is the minimum period required by the NGR.

Our draft decision is to accept both proposed dates. Under rule 50(2) of the NGR, we must approve the dates proposed if we are satisfied that those dates are consistent with the NGO and the revenue and pricing principles and if the proposed revision commencement date is not less than 12 months after the proposed review submission date.

AusNet’s proposed review submission date is 1 June 2027. This would allow a period of 13 months in which we can consult on and assess its proposed revisions to the access arrangement before its commencement. This is one month longer than the minimum period required by the NGR and provides valuable flexibility to our review process and the periods of time we will be able to allow for stakeholder submissions during that review.

While AGN and MGN have advised that their preference is to proceed with the minimum 12 months provided by a 1 July 2027 review submission date, we encourage them to give further consideration to earlier submission in line with AusNet’s.

11.7 Revisions

We require the following revisions to make the access arrangement proposal acceptable.

Table 11.1 Required revisions

Revision	Amendment
Revision 11.1	Make all amendments necessary to give full effect to the <i>National Gas Amendment (DWGM Distribution connected facilities) Rule 2022</i> from 1 May 2024.
Revision 11.2	Annexure F clause 32.2 - Customer details Revise clause 32.2 to add the underlined: In particular, but without limitation, if the Network User is a Gas Retailer, then, if requested by AGN, <u>to the extent permitted by law</u> the Network User will promptly provide AGN with any information about a Shared Customer which is held by the Network User and required by AGN for a purpose or purposes relating to the operation, maintenance or management of the Network or the provision of Distribution Services or for other purposes permitted by law. If that information is provided to AGN, AGN must use it only for those purposes.
Revision 11.3	Annexure F clauses 18.3 – Reconnection Change the title of this clause to ‘Reconnection request’.
Revision 11.4	Annexure F clause 20.4 - Distribution Service Charges – calculation of charges Revise clause 20.4 to remove the words ‘from time to time’: The Distribution Services Charges must be calculated from time to time in accordance with the Agreement and the Tariff Schedule applicable at the relevant time
Revision 11.5	Access Arrangement clause 6.4; Annexure F clause 27 – credit support

Revision	Amendment
	<p>Present an alternative credit support framework that re-balances risk between AGN, retailers and customers by reducing the cost of pre-emptive, up-front risk management and balancing this with ex post recovery only where the risk is realised.</p> <p>This alternative may be based on Part 21 of the NGR (including related amendments to the retailer insolvency cost pass through event), current credit support arrangements for Victorian electricity distributors, or another model.</p>

Glossary

Term	Definition
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
AGIG	Australian Gas Industry Group
AGN	Australian Gas Networks (Victoria and Albury)
AusNet	AusNet Gas Services Limited
DWGM	Declared Wholesale Gas Market
MGN	Multinet Gas Networks
NGL	National Gas Law
NGO	National Gas Objective
NGR	National Gas Rules