



**DRAFT DECISION**  
**Australian Gas Networks**  
**Victoria and Albury gas access**  
**arrangement**  
**2018 to 2022**

**Attachment 12 – Non tariff**  
**components**

July 2017

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## Note

This attachment forms part of the AER's draft decision on the access arrangement for AGN's Victoria and Albury gas distribution networks for 2018-22. 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 - Value of imputation credits

Attachment 5 - Regulatory depreciation

Attachment 6 - Capital expenditure

Attachment 7 - Operating expenditure

Attachment 8 - Corporate income tax

Attachment 9 - Efficiency carryover mechanism

Attachment 10 - Reference tariff setting

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Attachment 12 - Non-tariff components

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## Shortened forms

Shortened form	Extended form
AER	Australian Energy Regulator
ATO	Australian Tax Office
capex	capital expenditure
CAPM	capital asset pricing model
CESS	Capital Expenditure Sharing Scheme
CPI	consumer price index
DRP	debt risk premium
ECM	(Opex) Efficiency Carryover Mechanism
ERP	equity risk premium
Expenditure Guideline	Expenditure Forecast Assessment Guideline
gamma	Value of Imputation Credits
MRP	market risk premium
NGL	National Gas Law
NGO	national gas objective
NGR	National Gas Rules
NPV	net present value
opex	operating expenditure
PTRM	post-tax revenue model
RBA	Reserve Bank of Australia
RFM	roll forward model
RIN	regulatory information notice
RPP	revenue and pricing principles
SLCAPM	Sharpe-Lintner capital asset pricing model
STTM	Short Term Trading Market
TAB	Tax asset base
UAFG	Unaccounted for gas
WACC	weighted average cost of capital
WPI	Wage Price Index

## 12 Non-tariff components

This attachment contains our draft decision and reasons on the non-tariff components of AGN's access arrangement proposal.

The non-tariff components are as follows:

- the terms and conditions for the supply of reference services
- extension and expansion requirements—the method for determining whether an extension or expansion is a 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 delivery and receipt points
- provisions for receipt and delivery point changes, and
- a review submission date and a revision commencement date.<sup>1</sup>

### 12.1 Draft decision

Our draft decision is to accept AGN's provisions relating to capacity trading, receipt and delivery point changes and review submissions/revision commencement dates.

We require minor amendments to AGN's terms and conditions and extensions and expansions requirements. We have consulted AGN and understand it has no concerns with these amendments.

### 12.2 Terms and conditions

The NGR requires an access arrangement to specify the terms and conditions on which each reference service will be provided.<sup>2</sup> These must be consistent with the NGO.<sup>3</sup> 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.

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<sup>1</sup> Although not required in the present case, all transmission pipelines and some distribution pipelines are also required to set out how any spare or developable capacity will be allocated among prospective users ('queuing requirements' - see NGR r. 103.

<sup>2</sup> NGR, r. 48(1)(d)(ii).

<sup>3</sup> NGR, r. 100.

AGN's proposed terms and conditions include very few changes to the current terms and conditions. AGN appears to have engaged extensively with stakeholders, a view supported by the Consumer Challenge Panel's (CCP11) finding that AGN has presented an access arrangement which has been underpinned by effective stakeholder engagement.<sup>4</sup> AGN provided us with a detailed account of its engagement with its retailer reference group, setting out how it has responded to retailer feedback on its proposed terms and conditions.<sup>5</sup> On the basis of those responses, we are largely satisfied with the amendments AGN has proposed to its terms and conditions and the reasons it has provided.

We received a late submission from AGL which we have considered in the making of this draft decision. AGL, while acknowledging AGN's extensive and comprehensive engagement process, sets out alternative drafting for a number of the terms and conditions.<sup>6</sup> We have given consideration to all of AGL's suggested amendments.

We note that in many cases AGL seeks changes to existing clauses, or draws comparisons with the terms and conditions applying to AGN's Queensland pipelines<sup>7</sup>, without providing any explanation that might justify the suggested amendment. Our draft decision is to accept AGN's proposed drafting for clauses 16.1, 16.3, 28.6, 29.2, 33, 34, 36 and 42.1 rather than the amendments suggested by AGL.

### 12.2.1 Duty to negotiate

AGL submitted that an amendment is needed to better facilitate the creation of commercial agreements differing from the terms and conditions in the access arrangement. It states that distributors are reluctant to negotiate and this is hampering the introduction of new services by retailers. AGL acknowledges the NGL already provides for commercial negotiation, but states it has experienced difficulty in progressing negotiations. AGL's proposed clause is:<sup>8</sup>

The Service Provider must exercise best endeavours to enter into a commercial arrangement with a User in a timely manner where the user can demonstrate the agreement would provide benefits to the end customer and the agreement can mitigate risk to the service provider and be provided in a fair and equitable format to all Users.

We recently rejected AGL's request for the same clause to be included in AGN's access arrangement for its South Australian distribution network. We considered the clause to be unnecessary given the processes in the NGL and the NGR for negotiating

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<sup>4</sup> AER Consumer Challenge Panel Sub-Panel 11, *Australian gas Networks (AGN), AusNet Services and Multinet*, 3 March 2017, pp. 16-22.

<sup>5</sup> AGN, *Final Plan, Attachment 15.1 - Engagement with the AGN Retailer Reference Group on the Proposed Terms and Conditions*, December 2016.

<sup>6</sup> AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

<sup>7</sup> AGN's Queensland gas distribution network is no longer subject to an approved access arrangement.

<sup>8</sup> AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

access and resolving disputes.<sup>9</sup> We stated that we expect that both the service providers and users will negotiate in good faith, and in a timely manner, on such matters. We remain of the view that AGL's proposed negotiation clause is unnecessary.

We note that the COAG Energy Council has tasked the AEMC to review Parts 8-12 of the NGR, and to consider amendments to ensure pipeline operators with regulated transmission pipelines are unable to exercise market power on unregulated services.<sup>10</sup> We consider the AEMC's review is the appropriate path for addressing any issues regarding the accessibility of the dispute resolution mechanism in the NGL and NGR.

### 12.2.2 Charges for disconnected sites

Clauses 3.3 and 20.2 of AGN's proposed terms and conditions provide that a retailer will be liable for the fixed component of the haulage and distribution charges whilst the retailer is the registered financially responsible organisation for the delivery point in question. This would include situations where there is no end customer for the retailer to pass these charges onto, such as where a site is disconnected.

AGL opposes these clauses and proposed amendments removing the retailer's liability for these charges where there is no shared customer.<sup>11</sup>

We recently approved similar clauses for AGN's South Australian distribution network. Our decision noted that a retailer could cease to be the registered user for any particular delivery point to avoid being liable for these charges. In the same way, we consider a retailer using AGN's Victorian and Albury network can decide whether it wishes to remain financially responsible for the base charges or alternatively whether it wishes to request the decommissioning of the supply point. Consistent with our previous decision, our draft decision is to accept AGN's proposed clauses 3.3 and 20.2.

### 12.2.3 Assistance to distributor

AGN's proposed clause 17.7 requires shippers to cause or procure shared customers to give whatever assistance it reasonably requires to interrupt or curtail deliveries at any user delivery point. AGL submits the shipper's obligation should instead be to use 'best endeavours' to cause or procure customer assistance as it cannot control the action of third parties.

The suggested amendment is reasonable given AGL's submission, and is broadly in line with the retailer's obligation under Victoria's Gas Distribution Code. Section 9.7(c) of the Code provides that a retailer must use 'reasonable endeavours' to ensure its

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<sup>9</sup> AER, *Draft Decision, Australian Gas Networks Access Arrangement 2016–21 Attachment 12 - Non-tariff components*, November 2015, p. 12-21.

<sup>10</sup> COAG Energy Council, *Communique – Gas Market Reform Package*, 19 August 2016, measure 5.

<sup>11</sup> AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017, cl 3.2, 3.3 and 20.1.



customers comply with any requirements of a distributor in relation to an interruption of supply at a delivery point. Our draft decision is to require an amendment to clause 17.7 requiring a shipper to use 'best endeavours' to ensure customers provide the relevant assistance to the service provider. AGN has advised us that it would have no concerns in adopting the wording proposed by AGL.<sup>12</sup>

## 12.2.4 Time limits

Clause 22.3 imposes time limits on claims for an adjustment of a distribution service charge. The relevant limits are:<sup>13</sup>

- three months after the claim became known, or should have become known, to the network user, and
- in any case, 11 months after the date of the relevant statement of charges.

A new clause (clause 22.3(c)) defines the phrase 'should have become known' by reference to what the network user would have known had it exercised reasonable care and acted in a diligent and prudent manner.

AGL submits the time limits are unrealistic and should be extended to six months and three years respectively. AGL also requests deletion of clause 22.3(c) but does so without any explanation as to why, beyond observing that it is new.

During AGN's pre-submission engagement, Origin submitted that the retailer should not be limited from recovering where its own exposure to a billing re-adjustment under the relevant Rules and Code extends beyond 11 months and this is attributable to the network. Origin also requested greater clarity around the phrase 'should become known'.

We consider AGN dealt adequately with these concerns in its pre-submission engagement. AGN responded that the three month limit is not unreasonable since it runs from the time at which a user becomes aware of the claims. AGN also noted that the 11 month limit is broadly consistent with similar limits in the Energy Retail Code.<sup>14</sup>

AGN also noted that clause 22.3 does not prevent a retailer from pursuing any claim which it is required by law to pursue on behalf of a customer. This is expressly provided for by clause 22.3(b).

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<sup>12</sup> AGN, Response to Information Request 17, 4 May 2017.

<sup>13</sup> Clause 22.3(a).

<sup>14</sup> AGN, *Final Plan, Attachment 15.1 – Engagement with the AGN Retailer Reference Group on the Proposed Terms and Conditions*, December 2016, p.5. Specifically: 12 months in clause 3E for issues about explicit informed consent; rules 19(2) and 23 dealing with meter reads (12 months); rule 30(2) imposing a nine month limit on recovery of charges by retailers; and 31(5) imposing a 12 month limit on refunds to a customer where the customer is at fault.

Similar arguments were raised in response to AGN's access arrangement proposal for its South Australia distribution network.

We consider that a user will not be disadvantaged by these sub-clauses where they discover an error after the time limit for adjustments has expired. In such circumstances they could use the dispute resolution mechanism in clause 23.

Consistent with our position on AGN's access arrangement for its South Australian Distribution System,<sup>15</sup> our draft decision is to accept AGN's proposed clause 22.3.

### 12.2.5 Delivered quantities

Clause 24.1 states how AGN will determine the quantity of gas delivered in a billing period when preparing a statement of charges. It differs from the corresponding clause in AGN's current access arrangement as follows:

Whenever AGN prepares a statement of charges for a given Billing Period, the Quantity of Gas shown in that statement of charges to have been delivered (or estimated to have been delivered, or expected to be delivered) will be determined by AGN:

(a) in the manner required by law;

(b) (to the extent permitted by law) in the manner required by any relevant rules or agreement that bind AGN and the Network User; and

(c) to the extent not otherwise required by paragraph (a) or (b)), on a reasonable basis.

AGL requested deletion of the phrase 'expected to be delivered' as it believes it is a precursor to AGN commencing forward estimated billing in Victoria. AGL argues this process results in considerable rework each month and is financially detrimental to it.<sup>16</sup>

Red Energy and Lumo Energy sought clarification of this phrase during AGN's pre-submission consultation, suggesting it could allow AGN to bill for future consumption. AGN responded that quantities must be determined first and foremost in the manner required by law and any rules or agreements binding AGN and the network user, and thereafter on a reasonable basis. AGN further stated:

*Annexure C – Calculation of Charges for Delivery Points to the Victorian Access Arrangement for 2013–2017* page 36, details that, in some circumstances, the charges for new Demand Delivery Points are calculated on the basis of the quantity of gas "expected to be delivered" over a calendar year.

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<sup>15</sup> AER, *Draft Decision, Australian Gas Networks Access Arrangement 2016–21, Attachment 12 – Non-tariff components*, November 2015 p. 12-15.

<sup>16</sup> AGL Energy Limited, *Victorian gas access arrangement proposals*, 21 March 2017.

These charges are based on the expected capacity usage (“expected to be withdrawn”) and do not allow AGN to bill for future consumption.<sup>17</sup>

The proposed method for calculating charges in Annexure C is unchanged from the current access arrangement. It states that the estimated annual demand for certain billing periods is, relevantly:

... in the case of any Demand DP which was connected to the Network during Calendar Year, the highest Quantity of Gas (in GJ) which AGN reasonably expects will be withdrawn at that Demand DP in any period of 60 minutes during the Calendar Year.

We understand from its response to Red Energy and Lumo Energy that AGN intends the phrase ‘expected to be delivered’ to align clause 24.1 with Annexure C which, as set out above, utilises an estimate of gas usage in limited circumstances. We consider this provides an adequate explanation for introducing the new phrase into clause 24.1.

It follows that we do not accept AGL’s submission that the phrase ‘expected to be delivered’ portends or requires the introduction of forward estimate billing in Victoria. Our draft decision is to accept AGN’s proposed clause 24.1, and to reject AGL’s request to delete the phrase ‘expected to be delivered’.

In reaching this position we express no view on the desirability or otherwise of forward estimate billing as opposed to other methods.

## 12.2.6 Access to premises

Clause 35.5 provides that AGN will not be liable to users for failing to perform the agreement where, despite its reasonable endeavours, it could not obtain access to premises. AGL submitted this clause should be deleted on the basis that the meter is an asset of AGN, and it should therefore take an element of responsibility for its own property.

We rejected a similar clause for AGN’s South Australian distribution network in 2016 because the National Energy Retail Law (NERL) applying in that jurisdiction gives both the distributor and the retailer the right to enter customer premises.<sup>18</sup> However, the relevant provisions of the NERL do not apply in Victoria, and AGN’s clause 35.5 is drafted to cease to operate should those provisions be adopted in Victoria. We are unaware of any other legal mechanism by which AGN currently has an equivalent right of access to customer premises on its Victorian and Albury networks in the circumstances contemplated by clause 35.5. In the present circumstances, our draft decision is to accept clause 35.5 as proposed by AGN.

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<sup>17</sup> AGN, *Final Plan, Attachment 15.1 – Engagement with the AGN Retailer Reference Group on the Proposed Terms and Conditions*, December 2016, p. 6.

<sup>18</sup> AER, *Final Decision, Australian Gas Networks Access Arrangement 2016–21, Attachment 12 – Non-tariff components*, May 2016, p. 12-8.

## 12.3 Extensions and expansions

These provisions 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.<sup>19</sup> 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)
- 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 extensions and expansions clauses proposed by the three Victorian gas distribution businesses are similar to one another and to the existing provisions in the current access arrangements. We have proposed some stylistic changes to produce yet greater consistency with the other Victorian distributors. AGN has advised it is prepared to adopt these.<sup>20</sup> These are set out in table 12.1 below.

The proposal also includes a clause dealing with extensions to un-reticulated townships, which among other things provides that capital expenditure on such extensions will reduce the carry-over of cost-related efficiencies to the next access arrangement period.<sup>21</sup> This clause is in the current and was included in past access arrangements. It was intended to ensure that capital expenditure on such projects would not prejudice the carryover of efficiency gains against capital expenditure benchmarks under the efficiency carryover scheme which then applied to the network.

While that scheme no longer applies, AGN has proposed a new Capital Expenditure Sharing Scheme (CESS) for the coming access arrangement and submits that this clause should be retained. We have indicated elsewhere that we intend to accept the proposed CESS scheme,<sup>22</sup> and we see no difficulty in retaining clause 8.4(d).

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<sup>19</sup> Rule 48(1)(g) for full access arrangements, r. 45(1)(f) for limited access arrangements for light regulation services, r. 129(1)(f) for international pipelines, and r. 24(2)(c)(v) for CTP access arrangements.

<sup>20</sup> AGN response to AER Information Request 6, 22 February 2017.

<sup>21</sup> AGN, *Access Arrangement for our Victorian and Albury natural gas distribution networks 2018–22*, December 2016, cl. 8.4(d).

<sup>22</sup> See Attachment 14 to this draft decision.

## 12.4 Capacity trading and receipt/delivery points

An access arrangement must set out capacity trading requirements, which deal with the transfer of a user's contracted capacity to another user.<sup>23</sup> It must also state the terms and conditions for changing receipt and delivery points.<sup>24</sup>

However capacity trading between users is not possible on AGN's Victorian and Albury distribution network. As AGN states:<sup>25</sup>

Unlike a transmission pipeline, the Network is a gas distribution network in a competitive gas market and, consequently, 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 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 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.

AGN proposes no changes to the existing clauses dealing with capacity trading and receipt/delivery points, which 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 maintain our view that this approach is acceptable in the unique circumstances of the Victorian gas market arrangements.

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<sup>23</sup> NGR, r. 48(1)(f).

<sup>24</sup> NGR, r. 48(1)(h).

<sup>25</sup> AGN, *Access Arrangement for our Victorian and Albury natural gas distribution networks 2018–22*, December 2016, cl. 7.1.

## 12.5 Revision submission and commencement

Rule 49(1) of the NGR requires that a full access arrangement that is not voluntary must contain a review submission date and a revision commencement date and must not contain an expiry date. The NGR provides that, as a general rule:<sup>26</sup>

- a review submission date will fall four years after the access arrangement took effect or the last revision commencement date; and
- a revision commencement date will fall five years after the access arrangement took effect or the last revision commencement date.

The AER is required to accept a service provider's proposed review submission and commencement dates if these are made in accordance with this general rule.

AGN proposes a review submission date of 1 December 2021 and a revision commencement date of 1 January 2023. Our draft decision is to accept both of these dates.

While the review submission date is one month earlier than contemplated by the general rule, this would ease the administrative challenges of receiving AGN's review submission on 1 January 2022. We invited the other Victorian service providers to consider changing their review submission dates to 1 December 2021. AusNet agreed to this suggestion, but APA and Multinet have elected not to bring their review submission date forward. To ensure AGN is not disadvantaged by having to submit its revisions earlier than the others, we will be receptive if AGN seeks to change its revisions submission date to 1 January 2022 in response to this draft decision.

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<sup>51</sup> NGR, r. 50.

## 12.6 Revisions

Our draft decision is to approve the non-tariff components of AGN’s proposed access arrangement, subject to the following revisions.

**Table 12-1 Revisions to non-tariff components of AGN’s proposed access arrangement**

Clause	Revisions
8.1	<p><del>New Network Sections</del> <u>High pressure extensions</u></p> <p>a. If AGN proposes a <del>new network section as an Extension to the Network then</del> <u>high pressure pipeline extension of the covered pipeline</u>, subject to Section 8.1d<del>c</del>, AGN must apply to the Regulator in writing to decide whether this Access Arrangement will apply to incremental services to be provided by the proposed extension. The application must include the information required by Section 8.1e <del>b</del>.</p> <p><del>b For the purposes of this Section 8, a new network section means an Extension to the Network which is connected directly to a transmission pipeline and which provides gas by way of reticulation to a new development or to an existing development which has not previously been serviced by gas reticulation. A transmission pipeline is a pipeline which has a maximum allowable operating pressure of greater than 1,050kPa gauge.</del></p> <p><del>e b</del> A notification given by AGN under this Section 8.1 must:</p> <ul style="list-style-type: none"> <li>i be in writing;</li> <li>ii state whether AGN intends for this Access Arrangement to apply to the incremental services to be provided by means of the proposed extension;</li> <li>iii describe the proposed extension and describe why the proposed extension is being undertaken; and</li> <li>iv be given to the AER before the proposed extension comes into service.</li> </ul> <p><del>d c</del> AGN is not required to notify the AER under this Section 8.1 to the extent that the cost of the proposed extension has already been included and approved by the Regulator in the calculation of Reference Tariffs, in which case, this Access Arrangement applies to incremental services to be provided by means of the proposed extension.</p> <p><del>E d</del> After considering AGN’s application, and undertaking such consultation as the Regulator considers appropriate, the Regulator will inform AGN of its decision on AGN’s proposed coverage approach for the new network section.</p> <p><del>f e</del> The Regulator’s decision referred to above may be made on such reasonable conditions as determined by the Regulator and will have the effect stated in the decision.</p>
8.2	<p>Other extensions and expansions</p> <p><del>a Subject to Section 8.2b, this Access Arrangement will apply to Incremental Reference Services to be provided as a result of any extensions to the Network, and</del></p>

Clause	Revisions
	<p>expansions of the capacity of the Network, which are not new network sections within the meaning of Section 8.1b.</p> <p>b Subject to Section 8.2c, AGN may notify the Regulator that this Access Arrangement will not apply to an extension to the Network, or expansion of the capacity of the Network, which would otherwise fall within Section 8.2a. A notification under this Section 8.2b must be given in writing to the Regulator before the extension or expansion is commissioned.</p> <p>c AGN may not give a notice to the Regulator under Section 8.2b in relation to any extension or expansion to the extent that the cost of the extension or expansion has already been included in the calculation of the Reference Tariffs.</p> <p><u>a Any extensions to the Network which are not high pressure pipeline extensions within the meaning of this clause will be covered by this Access Arrangement. Any expansions to the Network will be covered by this Access Arrangement.</u></p> <p><u>b For the purposes of this clause, high pressure means 1050kPa.</u></p>

**Annexure F – General Terms and Conditions**

17.7	<p><b>Assistance</b></p> <p>The Network User must give AGN whatever assistance AGN reasonably requests from time to time to interrupt or curtail deliveries of Gas at any User DP.</p> <p>If the Network user is a Gas Retailer, the Network User must <u>use its best endeavours to cause</u> or procure each Shared Customer to give AGN whatever assistance AGN reasonably requests from time to time to interrupt or curtail deliveries of Gas at any User DP.</p>
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