

Final decision

Multinet Gas Networks
Gas distribution access arrangement
1 July 2023 to 30 June 2028

Attachment 11 – Non tariff components

June 2023

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11 Non tariff components

This attachment sets out our final decision on the following non-tariff components of Multinet Gas Distribution Partnership’s (MGN) proposed access arrangement 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 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 Final decision

As in our draft decision, our final decision approves the majority of the non-tariff components of AGN and MGN’s proposed access arrangements for the 2023–28 period including:

- proposed queuing¹, extension and expansion², and capacity trading requirements³
- the proposed approach to changing users’ receipt or delivery points⁴
- the new proposed review submission date (the date by which AGN and MGN must submit their next access arrangement proposals) of 1 June 2027.⁵ In response to the suggestion in our draft decision, this is now one month earlier than the latest date for submission required under the National Gas Rules (NGR).
- the proposed revision commencement date (the date on which AGN and MGN’s next access arrangement period will commence) of 1 July 2028.⁶

¹ NGR, rr. 68D.

² NGR, rr. 48(1)(g), 68E.

³ NGR, rr. 48(1)(f), 68F.

⁴ NGR, rr. 48(1)(h), 68G.

⁵ NGR, rr. 48(1)(i), 49

⁶ NGR, rr. 48(1)(i), 49.

We have also accepted AGN and MGN’s assessment and conclusion that the proposed access arrangements do not require amendment or revision to give effect to the *National Gas Amendment (Declared Wholesale Gas Market (DWGM) Distribution connected facilities) Rule 2022* when it takes effect from 1 May 2024.

In response to stakeholder submissions, our draft decision set out a small number of elements of the terms and conditions set out in the proposed access arrangements that required revision. AGN and MGN’s revised proposals have now largely addressed the required amendments. The exception is proposed revisions to retailer credit support requirements.

Concerns were raised prior to, and in submissions on, AGN and MGN’s initial proposals that AGN’s current credit support arrangements (which were proposed to apply to both networks going forward) were unduly onerous, and out of step with those of other gas distributors in Australia and of electricity distributors in Victoria. Our draft decisions therefore required AGN and MGN to consider and put forward an alternative to the proposed current credit support framework, to re-balance the risk of a retailer failing to pay AGN’s charges between AGN and MGN, retailers and customers. We suggested AGN and MGN rely less on pre-emptive, up-front risk management and balance this with ex post recovery only where the risk is realised.

In their revised proposals, AGN and MGN maintained their preference that any changes to the credit support requirements in their access arrangements be made through a rule change, and should not be treated the same way as other terms and conditions which are proposed, assessed and subject to revision as part of this access arrangement review. However, in response to our draft decisions, their revised proposals did include proposed amendments to their access arrangements should our final decision require this. The proposed amendments were based on the credit support model in Part 21 of the NGR, which applies to retailers and gas distributors in other jurisdictions, including AGN’s South Australian gas distribution network. Our final decision accepts this approach as an appropriate solution to the revisions required by our draft decision. However, we have made a number of additional drafting revisions to achieve the intended alignment more consistently in different parts of the access arrangement. We discuss this further below.

11.2 Reasons for final decision

Our final decision is to accept AGN and MGN’s proposed queuing, extension and expansion, and capacity trading requirements, and their proposed approach to changing users’ receipt or delivery points is consistent with our draft decisions. These elements of the proposed access arrangement are, with the exception of the transition of access arrangement periods from calendar year to financial year cycles required by the *National Gas (Victoria) Act 2008*, substantively unchanged from those approved for the current, 2018–22 period. We received no submissions on these elements of the proposed access arrangement. For the reasons already set out in our draft decisions, we remain satisfied that they meet the requirements of the NGR and National Gas Law (NGL).⁷

⁷ AER - AGN 2023-28 - Draft Decision - Attachment 11 - Non-tariff components - December 2022, sections 11.2-11.4.

In their revised proposals, AGN and MGN have now proposed the same 1 June 2027 review submission date for their next access arrangement proposals as fellow Victorian gas distributor, AusNet Gas Services (AusNet), instead of the 1 July 2027 date in their initial proposals. Our draft decision encouraged AGN and MGN to consider this⁸, and our final decision accepts this earlier date.

Our draft decision recognised that the *National Gas Amendment (DWGM Distribution connected facilities) Rule 2022* will come into effect on 1 May 2024. That rule was not made in time for AGN and MGN's initial proposals. It identified a number of things that are to be addressed, or managed, in accordance with the terms and conditions of a distributor's access arrangement. We have reviewed and are satisfied with the assessment and conclusion in AGN and MGN's revised proposals⁹ that their proposed access arrangements are already adequate to address the requirements of the new rule and do not require amendment. We received no submissions on this aspect of our draft decision or AGN and MGN's revised proposals.

11.2.1 Terms and conditions

Our draft decision also sought revision of a small number of elements of the terms and conditions regarding customer details and calculation of distribution service charges, set out in Annexure F of AGN and MGN's proposed access arrangements.¹⁰ We are satisfied that AGN and MGN have now addressed the required amendments in their revised proposals:

Table 11.1 Response to revisions required by the draft decision

Required revision	Revised proposal
<p>Annexure F clause 32.2 - Customer details</p> <p>Revise clause 32.2 to add the underlined:</p> <p>In particular, but without limitation, if the Network User is a Gas Retailer, then, if requested by MGN, <u>to the extent permitted by law</u> the Network User will promptly provide MGN with any information about a Shared Customer which is held by the Network User and required by MGN 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 MGN, MGN must use it only for those purposes.</p>	<p>New clause 32.2 of Annexure F now includes this qualification.</p>
<p>Annexure F clauses 18.3 – Reconnection</p> <p>Change the title of this clause to 'Reconnection request'.</p>	<p>New clause 18.3 of Annexure F has been renamed to distinguish it from existing clause 18.2 (Reconnection).</p>

⁸ AER - AGN 2023-28 - Draft Decision - Attachment 11 - Non-tariff components - December 2022, section 11.6.

⁹ AGN - Revised Final Plan 2023-28 - Attachment 15.4 - Response on Network Access – January 2023, pp. 9-11; MGN - Revised final plan - Access Arrangement 2023–28 - Attachment 15.4 - Response on network access – January 2023, pp.9-10.

¹⁰ AER - AGN 2023-28 - Draft Decision - Attachment 11 - Non-tariff components - December 2022, section 11.5.

Required revision	Revised proposal
<p>Annexure F clause 20.4 - Distribution Service Charges – calculation of charges</p> <p>Revise clause 20.4 to remove the words ‘from time to time’:</p> <p>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</p>	<p>Clause 20.4 of Annexure F has been amended to remove these words.</p>

Source: AGN - *Victoria and Albury Access Arrangement 2023-2028 - Annexure F GTCs_MARK UP* – January 2023; AGN - *Revised Final Plan 2023-28 - Attachment 15.4 - Response on Network Access* – January 2023; MGN - *Revised Final Plan 2023-28 - Attachment 15.4 - Response on Network Access* – January 2023; MGN - *Revised Final Plan 2023-28 - Access Arrangement - MARK UP - Annexure F GTCs* – January 2023

We received no further submissions on these elements of the access arrangements. We remain satisfied that, with these revisions, these elements of the terms and conditions now meet the requirements of the NGR. For the reasons already set out in our draft decision, our final decision is to accept them.

Our draft decisions required more substantive revisions to proposed retailer credit support arrangements.¹¹

Unlike other jurisdictions, there are no prescribed credit support arrangements for gas distribution networks and retailers in Victoria. That means that where credit support requirements are proposed as part of an access arrangement, they fall within the scope of our assessment and must be reviewed and decided upon as part of the 5-yearly access arrangement review.

Both AGN and MGN proposed to apply AGN’s current credit support arrangements for the 2023-28 period. They maintained this preference in their revised proposals.

As we set out in our draft decision, in assessing the terms and conditions on which reference services are provided we look for consistency with the National Gas Objective (NGO):¹²

to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.¹³

In deciding whether the terms and conditions are appropriate, we also have regard to the risk-sharing arrangements implicit in the reference tariff.¹⁴ This requires us to assess and balance the competing interests of the service provider, network users and consumers, in particular:

¹¹ AER - *AGN 2023-28 - Draft Decision - Attachment 11 - Non-tariff components* - December 2022, section 11.5.4.

¹² We are required to do this under NGR, r. 68B(1)(a).

¹³ NGL, s. 23.

¹⁴ We are required to have regard to these arrangements under NGR, r. 68B(2).

- 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.

Our draft decision recognised concerns raised by retailers that AGN’s current credit support requirements were more onerous than those applied by gas distributors in other jurisdictions, and also more onerous than those applied by AusNet and other electricity distribution businesses in Victoria. We considered an alternative, more proportionate form of protection that manages the risks unpaid distribution charges pose for AGN and MGN at a lower upfront cost to retailers (and therefore to consumers) was 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.

We therefore required AGN and MGN to consider and put forward an alternative credit support framework. We specified that the alternative—which could be based on Part 21 of the NGR (which applies to retailers and gas distributors in other jurisdictions, including AGN’s South Australian gas distribution network), the credit support arrangements that apply to electricity distributors in Victoria, or another model—should seek to re-balance risk between 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.

AGN and MGN did not address the re-balancing of risk in their revised proposals. They reiterated their view that the current arrangements are appropriate, because:¹⁵

- credit support arrangements in Victoria and Albury are governed by the access arrangements and not prescribed under the NGR
 - given Victoria has not adopted the credit support rules in the NGR, AGN and MGN argued that if a change to the credit support arrangements in the access arrangements was to be made, it should be done by way of a change to the NGR rather than through an amendment to the access arrangements.
- AGN and MGN consider the current arrangements are simple to apply and have been in place for some time, and that it remains important for them to be maintained, particularly in light of recent market pressures.

These are not new arguments from AGN and MGN. They do not change our view that it is *because* their credit support requirements are governed by their access arrangements that it is open to us to require change to what is proposed in order to better serve the NGO, and better balance risk between networks, retailers and customers. We are not constrained in our exploration of alternative models for such change, and our draft decision put multiple options to AGN and MGN for their consideration.¹⁶ Our draft decision did not dispute that AGN and

¹⁵ AGN - Revised Final Plan 2023-28 - Attachment 15.4 - Response on Network Access – January 2023, pp. 8-9; MGN - Revised final plan - Access Arrangement 2023–28 - Attachment 15.4 - Response on network access - January 2023, p. 8.

¹⁶ AER - AGN 2023-28 - Draft Decision - Attachment 11 - Non-tariff components - December 2022, section 11.7

MGN should be allowed to take prudent steps to mitigate the risks unpaid distribution charges pose for their businesses.¹⁷ We asked only that they consider an alternative and more proportionate form of protection against that risk.¹⁸

While not their preferred position, in their revised proposals AGN and MGN did include proposed amendments in clause 6.5 of their access arrangements and to the related clause 27 in Annexure F to the access arrangements. AGN and MGN submitted these amendments sought to replicate the effect of Division 4 of Part 21 of the NGR.¹⁹ Our final decision accepts this approach, which was the option most preferred by retailers in submissions on AGN and MGN’s initial proposals²⁰, and was also supported in AGL’s submission on our draft decision and AGN and MGN’s revised proposals.²¹ This option will also align credit support requirements for AGN and MGN in Victoria with those that already apply to AGN’s South Australian gas distribution network under Part 21 of the NGR. Their application should therefore be familiar, and processes should already be in place within AGIG to support their implementation in Victoria.

We have, however, made a number of additional drafting changes which we consider are necessary to give consistent effect to the intended replication across different parts of the access arrangement. These revisions are listed in Table 11.2 below, and marked the approved access arrangement published with this final decision:

- We have added a definition of credit support to the access arrangement that is non-exhaustive in terms of the form in which credit support can be required or provided, and removed references throughout to credit support being required or provided specifically “in the form of bank guarantee, financial undertaking or similar instrument”.
- We have amended clause 27.2(a) of Annexure F, to make it consistent with the amendments to clause 6.5.1(b) of the access arrangement. These limit the amount of credit support that can be required of a retailer to an amount equal to the charges contained in the most recent statement of charges that gave rise to the requirement for the retailer to provide credit support. We have made corresponding changes to clause 27.6 to make clear that the same constraints apply to any variation to the amount of credit support over time.
- We have removed the proposed requirement in 6.5.1 (c) that, in addition to payment of credit support where required under clause 6.5.1(a), a retailer that is a subsidiary of a corporate group must also provide a further guarantee from the parent entity as to the performance of the subsidiary retailer, including amounts payable to AGN or MGN by the subsidiary retailer. We consider the proposed requirement for an additional financial

¹⁷ AER - AGN 2023-28 - Draft Decision - Attachment 11 - Non-tariff components - December 2022, p. 8.

¹⁸ AER - AGN 2023-28 - Draft Decision - Attachment 11 - Non-tariff components - December 2022, p. 8.

¹⁹ AGN - Revised Final Plan 2023-28 - Attachment 15.4 - Response on Network Access – January 2023, p. 9; MGN - Revised final plan - Access Arrangement 2023–28 - Attachment 15.4 - Response on network access – January 2023, pp. 8-9.

²⁰ Simply Energy - Victorian gas distribution access arrangement proposals 2023-28 - October 2022, p. 1; Sumo, 1st Energy and Energy Locals - Victorian gas distributor access arrangements 2023–28 - September 2022, p. 2.

²¹ AGL - Victorian Gas Distribution Access Arrangements 2023 - 2028: Draft Decisions and Revised Proposals - February 2023, p. 2.

guarantee is inconsistent with the constraints on credit support added elsewhere in the access arrangement. We have, however, included a parent guarantee as an example of the form that credit support may take. This makes it an option AGN/MGN and a retailer can agree to where pre-requisites for the requirement of credit support are met, rather than something AGN or MGN can require.

- We have amended clause 27.4 of Annexure F, which requires that a network user must pay credit support to AGN or MGN where there is an unresolved dispute as to whether credit support can be required, so that it no longer applies to gas retailers. We consider this provision is no longer necessary for gas retailers given the clearer, more prescriptive and less discretionary criteria for credit support for gas retailers under the amended access arrangement. These criteria reduce the scope for dispute on matters of judgement relative to the current arrangements. Our preference and expectation is that any dispute as to whether these criteria have been met will be resolved before credit support is required or provided.
- We have amended the proposed circumstances in which credit support must be returned to the retailer, so that clause 27.8 of Annexure F now reflects the more specific triggers for return in Part 21 of the NGR. The proposed reliance on return of credit support “as and when required by law” does not achieve sufficient clarity given the absence of prescribed arrangements under law in Victoria.

We have made other, less substantive changes to improve consistency in language between the access arrangements and the equivalent provisions in Part 21 of the NGR, and between clause 6.5 of the access arrangements and clause 27 of Annexure F, so that use of inconsistent terminology is less likely to raise unintended issues of alternative interpretations.

Table 11.2 AER’s final decision revisions

Clause	Required revision
Access Arrangement, section 10 - Glossary	Add the following definition: <u>"credit support" means any form of credit support, including (without limitation) a financial guarantee, undertaking, parent company guarantee or cash deposit or any other form of credit support which is an acceptable form of credit support within the meaning of clause 27.3 of the General Terms and Conditions.</u>
Access Arrangement, clause 6.5.1(a)	a) MGN will not require any Gas Retailer to provide credit support to MGN including, without limitation, in the form of a bank guarantee, financial undertaking or similar instrument unless within the previous 12 months, the Gas Retailer has failed to pay in full: <ul style="list-style-type: none"> (i) the charges contained in 3 statements of charges by the due date for payment; or (ii) the charges contained in 2 consecutive statements of charges by the due date for payment; or (iii) the charges contained in 1 statement of charges within 15 business days of the due date for payment.
Access Arrangement, clause 6.5.1(b)	b) If MGN is permitted to require credit support pursuant to section 6.5.1(a), MGN may only require the Gas Retailer to provide <u>credit support</u> a bank guarantee, financial undertaking or similar instrument up to an amount equal to the charges contained in the most recent statement of charges that

Clause	Required revision
	gave rise to the requirement for the retailer to provide credit support <u>under clause 6.5.1(a)</u> .
Access Arrangement, clause 6.5.1(c)	Delete proposed clause 6.5.1(c): If a retailer is a subsidiary within a corporate group then the retailer must provide a guarantee from the parent entity of that group in form and substance satisfactory to AGN under which the parent entity guarantees the performance of that retailer, including the payment of all amounts payable to AGN by the retailer.
Access Arrangement, clause 6.5.1(d)	Delete proposed clause 6.5.1(d): AGN will not require a retailer to provide any other form of credit support otherwise than in accordance with this section.
Access Arrangement, clause 6.5.1(f)	f) If a retailer is required to provide credit support <u>in accordance with clause 6.5.1(a)</u> : (i) the credit support must be provided within 5 business days of MGN's request; (ii) the credit support must be an acceptable form of credit support in favour of the distributor in a form acceptable to AGN <u>(an acceptable form of credit support is defined in clause 27.3 of the General Terms and Conditions)</u> ; (iii) the retailer must ensure that at all times the aggregate undrawn amount of the credit support is not less than the amount requested by MGN in accordance with section 6.5b <u>6.5.1(b)</u> .
Annexure F, cl. 27.1	Network user to provide credit support The Network User must, on request by MGN, provide credit support to MGN in accordance with the law or, if not required by law, in accordance with this clause <u>and the Access Arrangement</u> .
Annexure F, 27.2	Credit support The credit support provided by the Network User must be: (a) for an amount reasonably requested by MGN <u>and not exceeding that specified in the Access Arrangement</u> ; (b) provided within five Business Days of MGN's request; and (c) an acceptable form of <u>credit</u> support in favour of MGN.
Annexure F, 27.3	Acceptable form of credit support If the Network User is requested <u>required</u> to provide credit support <u>pursuant to this clause 27</u> , the Network User must provide credit support in an acceptable form. An acceptable form of credit support is: (a) a form of credit support that the Network User agrees to provide, and MGN agrees to accept; or (b) an undertaking: (i) substantially in the form set out in Appendix 2; and

Clause	Required revision
	(ii) issued by a financial institution acceptable to MGN.
Annexure F, 27.4	<p>Provision of credit support where Dispute arises</p> <p>If the Network User is not a Gas Retailer, the The Network User must provide credit support <u>required under the Access Arrangement requested by AGN</u> even though:</p> <ul style="list-style-type: none"> (a) the Network User disputes MGN's entitlement to the credit support (in whole or in part); and (b) the dispute remains unresolved.
Annexure F, 27.6	<p>Increasing or decreasing credit support</p> <p>The amount of credit support provided by the Network User will be increased or decreased in accordance with the law, or <u>the Access Arrangement as determined by AGN (acting reasonably)</u>.</p>
Annexure F, 27.8	<p>Return of credit support</p> <p>AGN must pay, cancel or return to the Network User as appropriate, any balance of credit support outstanding as and when required by law.</p> <p><u>If the Network User is a Gas Retailer and the Network User has provided MGN with credit support:</u></p> <ul style="list-style-type: none"> (a) <u>MGN and the Network User no longer have any shared customers; or</u> (b) <u>in the 12 months since the credit support was provided, the Network User has paid in full the charges contained in each statement of charges issued in that 12 month period by the due date for payment,</u> <p><u>MGN must pay, cancel or return to the Network User as appropriate, any balance of credit support outstanding after payment of all amounts owing by the Network User to MGN."</u></p>

With these final revisions, we are satisfied that the revised retailer credit support requirements are consistent with the requirements of the NGL and NGR for the non-tariff terms and conditions of an access arrangement, and will better serve the NGO than those applied in the current period. We are also satisfied that they are an appropriate complement to the related revisions to the retailer insolvency event we discuss in attachment 10 to this final decision.

Glossary

Term	Definition
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
AGIG	Australian Gas Infrastructure Group
AGN	Australian Gas Networks
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