



10 August 2015

Mr Warwick Anderson
General Manager - Network Finance and Reporting
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

by email: AGN2015GAAR@aer.gov.au

Dear Mr Anderson,

Re: Australian Gas Networks (South Australia): Access Arrangement Proposal 2016-21

AGL Energy Ltd (AGL) welcomes this opportunity to submit to the Australian Energy Regulator (AER) on the Australian Gas Networks' Access Arrangement proposal (AGN Proposal) for its gas distribution network in South Australia.

AGL operates nationally across the energy supply chain and has investments in coal-fired, gas-fired, renewable and embedded electricity generation. AGL is a significant retailer of energy with more than 3 million electricity and gas customers. As one of the largest energy retailers in Australia, AGL is well placed to comment on issues in the industry.

AGL is encouraged by the various draft, preliminary and final regulatory decisions made by the AER in the last 18 months and believes that these principles and approaches should be maintained when accessing the AGN Proposal. This includes the AER's holistic view of the decision rather than forensic analysis of individual components whilst ensuring that the constituent components comply with the National Gas Law (NGL) and National Gas Rules (NGR).

With regard to the AGN Proposal, AGL would acknowledge that the stakeholder engagement program implemented by AGN has been well resourced and pro-active and AGL agrees that its proposal is well-informed from this engagement process. However, this does not infer that AGL's recommendations have been summarily included in the AGN Proposal and this submission highlight a number of further issues with the terms and conditions.

Furthermore, AGL has now reviewed the cost components in the AGN Proposal and notes that it has proposed real network price decreases in 2016-17 followed by significant annual price increases. AGL would question some of the constituent cost components and the stated reasoning for the proposed expenditures and believes further cost mitigation and efficiencies are achievable.

Cost Components

Although AGL does not have the resources nor expertise to analyse the extensive information included with the AGN Proposal, the level and treatment of some of the cost components raises the following questions.

1) Capital Expenditure

AGL notes that AGN has proposed material increases in capital expenditure over the next period. This is directly attributable to a replacement program for its cast iron, unprotected steel and high density polyethylene mains over the next 5 years which makes up 60 per cent of the planned capital expenditure. AGN attributes this to the need for:

- increasing network capacity by replacing low pressure mains with high pressure mains;
- increased safety and reliability including a reduction in leaks; and
- lower unaccounted for gas levels.

Although AGL accepts these are drivers of mains replacement, the need for an accelerated mains replacements program for long lived assets (+60 years) contrasts sharply with the ongoing and forecast reduction in gas customer numbers and gas consumption. Indeed, the AGN Proposal highlights that the '*decline in gas usage puts at risk the ability for AGN to efficiently recover the value of the RAB...*'. AGL therefore queries this significant planned capital investment on further long-lived assets.

All new customer connections are already included in the growth capital expenditure in the AGN Proposal (i.e. 16 per cent of the total capital spend proposed) so an accelerated mains replacement program would be both costly for South Australian gas consumers and would carry a high investment risk.

AGN notes the endorsement by the Office of the Technical Regulator (OTR) for South Australia of the need for mains replacement but it is unclear regarding the timetable for the program to be completed in. Given that any deferment of the program or parts of the capital program, even by a year or two, greatly reduces the cost to consumers and risk to AGN, AGL recommend the AER analyse the prudence of this expenditure.

2) Rate of Return

As stated previously, AGL fully support the AER's use of its Rate of Return Guideline for determining a rate of return which balances the interests of the distribution networks and energy consumers.

Indeed, the equity beta provided by the AER guideline can be considered generous given the regulated framework ensures distribution networks' revenue recovery.

3) Depreciation Adjustment

AGL notes the depreciation or index adjustment contained in the AGN Proposal that AGN deems necessary if the AER applies a rate of return in line with other regulated network decisions. This depreciation adjustment is justified to retain AGN's credit rating.

AGL queries this "NPV-neutral" adjustment. Table 5.1 of the Access Arrangement Information in the AGN Proposal shows that it would require a significantly lower tariff reduction in year one to accommodate this cash flow requirement. The following 4 years show an unchanged price path of CPI + 5 per cent. Given this price path is supposed to mirror asset base increases it is unclear how the increased cash flow in year one is balanced, if ever, by network price reductions for gas customers in the future.

If the AER is to consider any such adjustment, AGL submit that the AER use a process that is more transparent and accountable such as mitigating the price reduction in year one through network price smoothing.

4) Unaccounted for Gas

Unaccounted for gas is currently included in the operating expenditure allowance for the AGN Proposal. AGL would highlight that AGN has been working closely with retailers and AEMO on the issue of changing how UAG is brought into the network.

The process development is still at a high level but a new mechanism for UAG provision may be implemented in July 2017 whereby retailers will provide the cost of UAG.

5) Sharing schemes

AGL recommends the AER review the efficiency sharing schemes in the AGN Proposal and whether they are sufficiently transparent, enforceable and equitable to avoid consumers paying for a poorly designed framework before it consider them in its determination

Terms and Conditions

Under the gas regulatory framework, the scope and quality of gas retail services are regulated under the National Energy Consumer Framework (NECF), however, the provision of network services by gas distribution networks to retailers and end-use customers is almost solely dependent on the terms and conditions provided by the Access Arrangement. It is therefore important for the service quality of the distribution network business to be aligned with the NECF and this has not been accomplished to date.

1) Commercial Agreements

AGL considers that customer service levels are constrained by an operating model that does not allow for flexibility in providing services to customers. There is no penalty if a Network performance drops and negatively impacts end users nor is there ability to change service provider under the current model.

There is the opportunity for third party providers to be engaged to perform ancillary services such as special meter reads, disconnections and reconnections. These services are all pass through costs and there is a real opportunity to improve the delivery of these as well as provide new services and opportunities for engagement with customers. In a competitive market, retailers need to be able to act quickly to bring out new services to customers, however, the ability to introduce these services is hampered by retailers' inability to form commercial agreements with Networks.

AGL understands that the AER view is that the Network and the retailer can negotiate terms and conditions that differ to those specified in the Access Arrangement and is permitted by the NGL. However, AGL has experienced difficulty in incentivising networks to prioritise the negotiation of commercial agreements. Some Networks have expressed concern that there is no regulatory mechanism to allow such agreements and so are unwilling to enter into discussions.

AGL submits a new clause should be included in the terms and conditions of the Access Arrangement to facilitate the creation of commercial agreements. Proposed wording for such a clause is set out below:

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 that 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.

2) National Energy Customer Framework

NECF was introduced in South Australia in 2011. It was introduced to provide a consistent national approach to the sale of electricity and gas. The new regulatory framework has introduced a direct relationship between the Network and the Customer so the retailer is no longer solely responsible for the relationship with the customer. Accordingly, there is now a joint responsibility between the Network and retailer in the performance of their respective obligations.

As such, changes need to be made to the General Terms and Conditions in the AGN Proposal to reflect the changes to regulatory obligations. Clauses that are in conflict with regulatory requirements are set out in Annexure A below along with proposed amendments to better align the clause with the regulatory requirements.

3) Time Limitations

AGN is responsible for the provision of meter data in this network but errors frequently occur because a range of reasons including system issues or incorrect readings. These are

errors that retailers have no ability to control, mitigate or remedy. The way the terms and conditions have currently been drafted require the retailer to financially bear the cost of such errors. AGL submits that these terms should be revised to better reflect the responsibilities of each party and apportion risk fairly to the appropriate party. The specific clauses and remedies are also set out in Annexure A.

AGL believes the AER decisions to date have more effectively accounted for the industry changes and economic environment than the networks' regulatory proposals themselves and have also provided a better balance between the efficient investment, operation and use of network services and the long term interests of consumers. AGL encourage the AER to persist with its approach in assessing the AGN Proposal.

Yours sincerely



Elizabeth Molyneux
Manager Structured Pricing

Annexure A: AGL Comments on the Access Arrangement Annexure G: General Terms and Conditions

Clause	Proposed Wording	AGL Comment
National Energy Retail Rules		
3.3	<p>Fixed Component of Haulage Service Charges</p> <p>The Network User will remain responsible to pay Haulage Service Charges in respect of each User DP for so long as the Network User remains the current user for that User DP (within the meaning of the Retail Market Procedures)(and, in particular, for so long as the Network User is the current user for a User DP, the Network User will remain liable to pay any part of the Haulage Service Charges that is payable under the Tariff Schedule, irrespective of the Quantity of Gas delivered through that User DP, whether or not there is any Shared Customer in respect of that User DP).</p>	<p>These clauses contradict s.508 of the National Gas Rules that states where a retailer is not permitted to recover charges from a shared customer under the NERL or NERR, then neither is the distributor permitted to recover those charges from the retailer.</p> <p>If a meter is disconnected, there is no customer and AGL is not able to recover Haulage Service Charges and so AGN is not permitted to recover from AGL. A customer is defined (s.5, NERL 2011) as a person to whom energy is sold by a retailer or who proposes to purchase energy from a retailer – if a site is disconnected it cannot be argued that the person proposes to purchase energy and so there is no customer. AGL has no grounds to attempt to recover from the resident at that site.</p>
20.2	<p>Liability for Charges</p> <p>Subject to sub-clause 20.3, the Distribution Services Charges for which the Network User is liable in respect of a User DP or Shared Customer include the Distribution Service Charges which accrue, in respect of any User DP, whilst the Network User is registered under the Retail Market Procedures as the current user in relation to that User DP. Subject to sub-clause 22.1, if the Network User is a Gas Retailer, the Network User is liable for those Distribution Services Charges whether or not the Shared Customer pays those Distribution Services Charges, or any other amount, to the Network User.</p>	<p>Accordingly, the struck through text should be deleted to align with the NGR.</p>
35.4	<p>Network User’s Obligation</p> <p>The Network User must use reasonable endeavours <u>give reasonable assistance</u> to ensure that AGN (and its officers, servants, agents or contractors) are given safe, reasonable and unhindered access whenever they require to any premises owned or occupied by the Network User (or, if the Network User is a Gas Retailer, any Shared Customer) for the purposes of:</p> <ul style="list-style-type: none"> (a) performing the Agreement; or (b) exercising any right given to AGN under the Agreement. 	<p>AGL considers that the wording should be “<u>given reasonable assistance</u> use reasonable endeavours to ensure that AGN are given safe, ...”</p> <p>Under NECF, the Network now has a direct relationship with the customer and the retailer is no longer solely responsible for the Network gaining access to the site. The retailer instead must give reasonable assistance (Rule 94, NERR), the wording should be changed to reflect this.</p>

Clause	Proposed Wording	AGL Comment
35.5	<p>Failure to Provide Access</p> <p>AGN will have no liability to the Network User for any failure to perform the Agreement to the extent that AGN is unable to perform the Agreement because it could not obtain safe, reasonable and unhindered access to any premises or place at the time or times it required, after exercising its reasonable endeavours to do so (provided that reasonable endeavours will not require AGN or any of its officers, servants, agents or contractors:</p> <p>(a) to enter, or attempt to enter, any premises by force or to take any steps that might involve damage, or the risk of damage, to any property; or</p> <p>(b) to take any steps that might involve a reasonable risk of physical injury or harm or a risk to the safety of any person.</p>	<p>AGL disagrees that AGN should have no liability when they are unable to gain access to a meter. With the introduction of NECF there is now a joint responsibility between the retailer and the network.</p> <p>It is no longer the duty of the retailer to provide access but to provide reasonable assistance, it is unreasonable for AGN to have no liability to the Network User.</p> <p>Furthermore the meter is the asset of AGN and AGN should take an element of responsibility for its own property.</p> <p>This clause should be deleted.</p>
Time Limitations		
22.2	<p>Adjustments</p> <p>Subject to sub-clause 22.1, the Distribution Service Charges contained in a statement of charges may be adjusted to account for:</p> <p>(a) differences between estimated meter readings used for the purposes of a statement and metering data obtained after the issue of a statement; and</p> <p>(b) any error in, or correction or substitution of:</p> <p>(i) metering data; or</p> <p>(ii) any other amount or factor that affects the calculation of the Distribution Service Charges.</p> <p>An adjustment may be made by AGN by including, in a subsequent statement of charges, the amount required to be paid by, or credited to, the Network User together with an explanation of the adjustment.</p>	<p>Rule 31 of the NERR states that if a customer is overcharged the retailer must repay that amount, there is no time period limitation and the retailer must go back as far as the overcharging occurred. If the overcharge is as a result of the error in the metering data or estimation provided by the distributor it is unreasonable that the retailer should have to repay monies as a result of an error that it has no ability to mitigate or to reclaim those monies from the party at fault.</p> <p>Accordingly, no time limitations should apply to this clause.</p>
22.3	<p>Time Limit</p> <p>(a) Subject to clause 22.3(b), the Network User may not make any claim for an adjustment of the Distribution Service Charges in a statement of charges:</p>	<p>The time limitation does not reflect the realities of the market. Issues are often not discovered within 11 months and where issues are due to a network fault, AGL should not have to bear the financial consequences when they have no ability to prevent the issue.</p>

Clause	Proposed Wording	AGL Comment
	<p>(i) unless full particulars of that claim are given by the Network User to AGN within three months after the claim becomes known (or should have become known) to the Network User (or its officers, servants, agents or contractors);</p> <p>(ii) in any event, more than eleven months after the date of the relevant statement of charges.</p> <p>(b) If the Network User is a retailer, clause 22.3(a) will not limit any claim, or the time for any claim, which the Network User is required by law to make or pursue on behalf of a Shared Customer.</p>	<p>NECF results in a shared relationship between the distributor and retailer and the customer. Therefore the distributor should not be able to impose limitations on its responsibilities through time limitation clauses. For example, large customer's bills are able to be disputed up to 6 years in the past because only the Statute of Limitations applies.</p> <p>The Network is responsible for the meter and meter data and if there is an error it is unreasonable that the retailer have to take responsibility.</p> <p>AGL submits the clause in its entirety should be deleted but at a minimum, the words "(or should have become known)" and "(ii) in any event more than eleven months after date of the relevant statement of charges." should be deleted.</p>
29.5	<p>Limitation Period</p> <p>To the extent permitted by law, AGN will have no liability to the Network User, for or in respect of any Claim, unless full particulars of that Claim are given by the Network User to AGN within three months after that Claim becomes known to the Network User (or its officers, servants, agents or contractors) or should have become known to the Network User (or its officers, servants, agents or contractors) (whichever is earlier). This sub-clause will survive the termination of the Agreement.</p>	<p>AGL submits that the struck through text should be deleted because the time frame is too short. The nature of the industry is that issues often are not identified within three months and can take time to investigate. It is unreasonable for the retailer to suffer the financial burden of Network errors.</p> <p>AGL submits that "within three months" and "or should have become known" be deleted (shown in struck through text).</p>
General Comments		
18.2	<p>Reconnection</p> <p>If any User DP (or if the Network User is a Gas Retailer, any User DP or any Shared Customer's premises) is disconnected from the Network, AGN will re-connect that User DP (or those premises) to the Network as and when required by law.</p>	<p>A requirement should be included that the Network notify the current retailer when reconnecting a User DP. This is particularly an issue when another retailer requests a reconnection because the customer is churning but the transfer is cancelled.</p> <p>The incumbent retailer is not advised by the network that the meter status should be switched from "inactive" to "active" and the network starts billing the retailer for consumption. If the retailer was advised at this stage that the meter status was active then the retailer would try and make contact with the customer to set up an account.</p> <p>Additional wording should be included, such as the following:</p> <p><i>Following the reconnection of any User DP, the incumbent retailer shall be notified by AGN.</i></p>

Clause	Proposed Wording	AGL Comment
28.2	<p>Termination</p> <p>AGN may terminate the Agreement by seven days' notice given to the Network User at any time, in the event that:</p> <p>(c) the Network User fails to pay any amount due to AGN on time in the manner required by the Agreement or any Related Haulage Agreement (other than where permitted by law (including clause 23)) and the Network User fails to pay the amount due within 14 days after it receives a written notice to specifying the amount that is due;</p>	<p>The additional amendment is strict.</p> <p>It does not seem appropriate grounds to terminate an agreement of this nature particularly if there were a dispute over charges.</p> <p>Terms of payment should align with the National Gas Rules and the B2B requirements administered by AEMO.</p>