30 September 2022

Arek Gulbenkoglu
General Manager Network Expenditure
Australian Energy Regulator

By email: VICGAAR2023@aer.gov.au

Dear Mr Gulbenkoglu

Victorian gas distributor access arrangements 2023–28

Sumo, 1st Energy and Energy Locals are small energy retailers operating, or intending to operate, in the Victorian gas market. Collectively we have around 50,000 gas customers in Victoria. We make this joint submission to the Australian Energy Regulator on the 2023-28 access arrangement proposals submitted by Multinet Gas, Australian Gas Networks and AusNet Services.

We participated in the engagement process run by Multinet Gas, Australian Gas Networks and AusNet Services. In that engagement process, we articulated our concerns with the existing retailer credit support requirements set out in the access terms and conditions and proposed changes to those credit support arrangements.

We submit that the AER should include in its determination that the distributors adopt changes to the credit support arrangements in their access terms and conditions, as detailed below.

Relevant background

The Victorian gas distribution terms and conditions for Multinet Gas, Australian Gas Networks and AusNet Services under the current access arrangements entitle each distributor to demand credit support from a retailer in the form of a bank guarantee if the retailer cannot demonstrate it has an acceptable credit rating (at least S&P BBB-, Moody's Baa3 or Fitch BBB-). The amount of the bank guarantee is to be determined by the gas distributor, and is not to exceed the distributor's reasonable estimate of three months average network charges payable by the retailer.

These requirements are considerably more onerous than the credit support obligations that apply to Victorian electricity retailers, and those that apply to electricity and gas retailers in all other NEM jurisdictions.

In February 2017 the AEMC made a rule change that removed the credit support requirements for electricity and gas retailers in NECF jurisdictions (except in circumstances where the retailer misses its network payments), and at the same time enhanced the mechanism for distributors to recover retailer insolvency costs. In making this decision, the AEMC concluded that the removal of the credit support requirements and reliance on the cost pass-through mechanism minimises the costs that customers will pay on an on-going basis. The AEMC's Final Rule Determination on retailer-distributor credit support requirements can be found here: https://www.aemc.gov.au/rule-changes/retailer-distributor-credit-support-requirements

There are alternate arrangements for Victorian electricity distributors which pre-date the 2017 AEMC rule change. Victorian electricity distributors may request credit support when the retailer's 'network charges liability' exceeds its 'credit allowance'. The mechanism for calculating a retailer's credit allowance and network charges liability significantly limits the amount of credit support required to be provided, except in respect of a retailer that presents a high revenue and liquidity risk to the distributor.

The AEMC rule change did not apply in Victoria because Victoria has not adopted the National Energy Customer Framework.

Proposed changes

We propose that:

- the Victorian gas distributors adopt the credit support arrangements set out in Division 4 of Part 21 of the National Gas Rules (summarised in the Annexure to this letter); and
- Victorian gas distributors be permitted to apply for cost pass through for retailer insolvency (also summarised in the Annexure to this letter).

Our proposal would bring consistency with credit support arrangements in New South Wales, ACT, South Australia, Queensland and Tasmania. The Victorian gas distributors already operate in these other jurisdictions and so are familiar with these arrangements.

The AEMC has already assessed the NGR credit support arrangements as being in the best interests of consumers. The AEMC considered that the proposed changes better address the revenue risk faced by distributors from retailer default, and that distributors are best placed to manage the liquidity risk arising from retailer default. More importantly, the AEMC considered that the proposed credit support arrangements minimise the costs customers will pay on an on-going basis.

Our proposal would extend these benefits to Victorian gas consumers.

Distributor position

Multinet Gas, Australian Gas Networks and AusNet Services each propose to retain the existing credit support arrangements.

AusNet's position is that it would be supportive of a change to the credit support arrangements to align with NERL jurisdictions if the cost recovery provision also aligns with NERL jurisdictions and provided the threshold for a cost pass through event for a retailer failure is zero, in order to adequately mitigate the commercial risk to the network of retailer failure. This position is sensible and is consistent with the NERL. A zero threshold for cost pass-through ensures the distributor can recover its costs if a retailer fails.

Multinet Gas and Australian Gas Networks note that there are pros and cons to the existing and proposed credit support arrangements.

Each of the distributors has put forward the view that a change to the credit support arrangements should not be done by way of an amendment to the access arrangements. However, we note that the AER does have the power to make a determination with respect to the access terms and conditions and the pass-through mechanism. It is our position that the access arrangement determinations are the most appropriate place to decide on changes to the credit support arrangements and pass-through mechanism. If a decision is not made until after the new access arrangements are finalised, any subsequent decision will impact those access arrangements, and at a minimum will require further changes to the access terms and conditions. It would also delay the consumer benefits articulated by the AEMC.

We would welcome a further discussion about these matters.

Yours sincerely

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Managing Director, Sumo

Liam Foden
Managing Director, 1st Energy

Adrian Merrick
CEO, Energy Locals

Annuxure – Summary of the National gas credit support regime – Division 4 of Part 21 of the National Gas Rules

- A distributor may only require a retailer to provide credit support if, within the previous 12 months, the retailer has failed to pay in full:
  - the charges contained in 3 statements of charges by the due date for payment; or
  - the charges contained in 2 consecutive statements of charges by the due date for payment; or
  - the charges contained in 1 statement of charges within 15 business days of the due date for payment.
- A distributor may only require a retailer to provide credit support up 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.
- If the retailer fails to pay charges contained in a statement of charges, but the charges are disputed, and the retailer has complied with the relevant dispute resolution requirements, the retailer will not be considered in default in payment of the disputed charges and the distributor will not be entitled to require the retailer to provide credit support.
- A retailer must, on receiving a valid request by a distributor, provide credit support to the distributor in accordance with the credit support rules. The credit support provided by the retailer must be:
  - for an amount requested by the distributor, not exceeding 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; and
  - provided within 5 business days of the distributor's request; and
  - an acceptable form of credit support in favour of the distributor.
- A retailer must ensure that at all times the aggregate undrawn amount of the credit support is not less than the amount properly requested by the distributor.
- A retailer required to provide credit support under these rules must provide the credit support in an acceptable form. An acceptable form of credit support is:
  - a form of credit support that the retailer agrees to provide, and the distributor agrees to accept; or
  - an undertaking:
    - substantially in the prescribed form; and
    - issued by a financial institution acceptable to the distributor.
- A distributor may only apply or draw on the credit support if:
  - the distributor has given not less than 3 business days' notice to a retailer that it intends to apply or draw on the credit support in respect of an amount due and payable by the retailer to the distributor, and that amount remains outstanding; and
  - there is no unresolved dispute about the retailer's liability to pay that amount.
- If a distributor and a retailer no longer have any shared customers, or in the 12 months since the credit support was provided, a retailer has paid in full the charges contained in each statement of charges issued in that 12 month period by the due date for payment, the distributor must pay, cancel or return to the retailer as appropriate, any balance of credit support outstanding after payment of all amounts owing by the retailer to the distributor.
- A retailer must not take any steps to restrain (by injunction or otherwise):
  - an issuer of credit support from paying out, or otherwise satisfying, a claim properly made by the distributor under the terms of the credit support; or
  - the distributor from making a claim on the credit support in accordance with the credit support rules; or
  - the distributor from using the money obtained by calling on the credit support.
- If a retailer insolvency event occurs, a distributor may, within 90 business days, apply to the AER for approval to vary one or more reference tariffs by a retailer insolvency pass through amount. The AER will then determine a retailer insolvency pass through amount that reflects

the increase in the retailer insolvency costs that the distributor has incurred and is likely to incur in providing reference services until the end of the applicable access arrangement period solely as a consequence of the retailer insolvency event. Such amount does not include any amount recovered or recoverable from a retailer or a guarantor of a retailer or any costs that are recoverable under a RoLR cost recovery scheme distributor payment determination. If the AER approves a retailer insolvency pass through amount, the distributor's access arrangement is taken to be amended so that:

- the retailer insolvency event is taken to be an approved cost pass through event under that access arrangement; and
- the retailer insolvency pass through amount is taken to be an approved cost pass through amount under that access arrangement, allowing variation of the distributor's reference tariffs.