

## Part 21 Retail support obligations between distributors and retailers

### Division 1 Application and definitions

#### 501 Application of this Part

This Part:

- (a) applies to a *distributor* and a *retailer* who have shared customers; and
- (b) prevails over any inconsistent provisions in a *distributor's* access arrangement or in a gas service agreement.

#### 502 Definitions

In this Part:

**date of issue** of a statement of charges means the date on which the *distributor* sends the statement to the *retailer*.

**distribution service charges** means charges of a *distributor* for distribution services in respect of shared customers.

**Note:**

Distribution service charges may be charges for distribution pipeline services and charges for customer connection services.

**distributor** means a service provider who owns, operates or controls a distribution pipeline that is a covered pipeline.

**due date for payment** means 10 business days from the date of issue specified on a statement of charges.

**gas service agreement** means a contract, arrangement or understanding (however described) between a *distributor* and a *retailer* for the transportation of gas to the premises of shared customers whether pursuant to an access arrangement or otherwise.

**retail billing period** means a calendar month or any other period agreed between a *distributor* and a *retailer*.

**shared customer** has the same meaning as in the *NERL*.

**statement of charges**—see rule 506.

### Division 2 Billing and payment rules

#### 503 Obligation to pay

Subject to this Part, a *retailer* must pay to a *distributor* the distribution service charges payable in respect of each shared customer by the due date for payment.

**Note:**

This rule is classified as a conduct provision under the National Gas (South Australia) Regulations. See clause 7 and Schedule 4 of the National Gas (South Australia) Regulations.

## 504 Distributor to inform retailer of direct customer billing

- (1) Where a *distributor* and a shared customer agree that the customer will be responsible for paying distribution service charges directly to the *distributor* (a **direct billing arrangement**), the *distributor* may issue a bill to that customer for the services provided to that customer's premises.
- (2) The *distributor* must notify the *retailer* of the direct billing arrangement as soon as reasonably practicable after commencement of that arrangement.
- (3) A *retailer* has no liability to pay distribution service charges that have been, or are to be, billed to the shared customer under a direct billing arrangement.

## 505 Calculating distribution service charges

Distribution service charges must be calculated in accordance with the applicable access arrangement or gas service agreement.

## 506 Statement of charges

- (1) A *distributor* must provide a statement of distribution service charges (a **statement of charges**) to a *retailer* as agreed between the parties but no *later* than the 10th business day of the retail billing period next following the retail billing period to which the charges relate.
- (2) The statement of charges must include:
  - (a) the distribution service charges, separately identified, in respect of each shared customer's premises for which metering data was received, or a service request was completed, during that retail billing period; and
  - (b) the date of issue of the statement of charges, and the due date for payment; and
  - (c) where applicable, the metering data or estimated meter readings for each shared customer's premises; and
  - (d) any adjustments to distribution service charges from previous retail billing periods; and
- (3) Subject to these Rules and the Retail Market Procedures, the format of the statement of charges must be as agreed between the *retailer* and *distributor* or, in default of agreement, as reasonably determined by the *distributor*.
- (4) In this rule:

**Note:**

see Rule 508.

- (e) where applicable, any credits for GSL payments that the *distributor* is required to make in respect of a shared customer's premises.

**GSL payment** means a payment by a *distributor* in respect of non-compliance with a distribution service standard or distribution reliability standard.

**service request** means a request by a *retailer* to a *distributor* for a distribution service.

### **507 Time and manner of payment**

- (1) Subject to rule 510, a *retailer* must, by the due date for payment, pay the full amount specified in a statement of charges without set-off.
- (2) Payment must be made into the *distributor's* nominated bank account.

## **Division 3 Other general billing and payment matters**

### **508 Adjustment of distribution service charges**

- (1) If a *retailer* is not permitted to recover distribution service charges from a shared customer under the *NERL* or the *NERR*, then neither is the *distributor* permitted to recover those charges from the *retailer*.
- (2) Subject to subrule (1), distribution service charges contained in a statement of charges may be adjusted to account for:
  - (a) differences between estimated meter readings used for the purposes of a statement and metering data obtained after the issue of the statement; and
  - (b) any error in, or correction or substitution of:
    - (i) metering data; or
    - (ii) any other amount or factor that affects the calculation of the distribution service charges.
- (3) An adjustment under subrule (2) may be made by a *distributor* by including, in a subsequent statement of charges, the amount required to be paid by, or credited to, the *retailer* together with an explanation of the adjustment.

**Note:**

see also Rule 510.

### **509 Tariff reassignment**

- (1) A *retailer*:
  - (a) must, if a shared customer informs the *retailer* of a change in use of gas consumption at the customer's premises as a result of which the *retailer* reasonably considers that the existing tariff applying to the customer should no longer apply; and
  - (b) may, for any other reason, but not more than once in any 12 month period in respect of the same premises,  
request the *distributor* to review the tariff assigned to the customer.
- (2) The request is to include:
  - (a) the reasons for the request; and

- (b) any relevant information provided by the customer; and
  - (c) the tariff proposed by the *retailer*.
- (3) On receipt of the request, the *distributor* must decide whether the tariff should be changed.
- (4) The *distributor* must inform the *retailer* of its *decision* and, if the *decision* is not to change the tariff or to assign a tariff other than that proposed by the *retailer*, the *distributor* must also inform the *retailer* of its reasons for the *decision*.
- (5) If the *distributor* decides to change the tariff, it must make the change in accordance with:
- (a) the requirements of the *NERL* and the *NERR*; and
  - (b) any provisions of the *distributor's* access arrangement or a gas service agreement governing the assignment or re-assignment of *retail customers* to tariff classes; and
  - (c) the applicable Retail Market Procedures.

## 510 Disputed statements of charges

If a *retailer* disputes an amount (the **disputed amount**) set out in a statement of charges, the following provisions apply:

- (a) the *retailer* must give written notice to the *distributor* of the disputed amount and the reasons for disputing payment;

**Note:**

A *retailer* may also give notice pursuant to this rule if it seeks an adjustment under rule 508 or where it disputes an adjustment made under that rule.

- (b) payment by the *retailer* of all or part of an amount set out in a statement of charges does not affect the right of the *retailer* to dispute the amount;
- (c) if the *retailer* has given notice under paragraph (a) and payment of the charges to which the statement relates has not yet been made, the *retailer* must pay the *distributor* by the due date for payment (unless the *distributor* agrees otherwise) the greater of:
  - (i) the undisputed component of the statement of charges; or
  - (ii) 80% of the total amount due under the disputed statement of charges;
- (d) the *retailer* must, if the dispute is not resolved by agreement of the parties within 10 business days after the date the *retailer* gave notice under paragraph (a), immediately submit the dispute for resolution or determination in accordance with Part 15C;
- (e) if the *retailer* fails to submit the dispute for resolution or determination in accordance with paragraph (d), the *distributor* may submit the dispute for resolution or determination in accordance with Part 15C;
- (f) subject to any determination of the Dispute resolution panel, if, following resolution or determination of the dispute, the amount due to the *distributor* is:

- (i) more than the amount already paid by the *retailer*, the *retailer* must pay the difference to the *distributor* within 3 business days of the resolution or determination of the dispute, together with interest on the amount of the difference at the *default interest rate* for each day from the original due date for payment to the actual date of payment; or
- (ii) less than the amount already paid by the *retailer*, the *distributor* must pay the difference to the *retailer* within 3 business days of the resolution or determination of the dispute, together with interest on the amount of the difference at the *default interest rate* for each day from the date the *retailer* made overpayment to the *distributor* to the actual date of repayment of the amount of the excess by the *distributor*.

## 511 Interest

If requested, a *distributor* and a *retailer* must pay interest at the *default interest rate* on any amount due to the other under this Part that remains unpaid after the due date for payment, until the date on which that amount is paid in full.

## 512 Notification of changes to distribution service charges

- (1) A *distributor* must notify a *retailer* of:
  - (a) any proposed changes to its reference tariffs (preliminary information) no *later* than 2 business days after the date on which the changes are notified to the AER under these Rules; and
  - (b) any changes to the level of reference tariffs approved by the AER no *later* than 2 business days after the date on which the AER notifies the *distributor* of the approval; and
  - (c) any change in the level of other distribution service charges as soon as reasonably practicable after the *distributor* becomes aware of that change and, if the change requires the approval of the AER under an access arrangement or under these Rules, no *later* than 2 business days after the AER advises the *distributor* that the change (or the resulting charge) is approved by the AER.
- (2) A *retailer* must treat preliminary information notified under subrule (1)(a) as confidential information.
- (3) A *distributor* has no liability where proposed changes contained in preliminary information provided under subrule (1)(a) are subsequently not approved, or are modified, by the AER.

## Division 4 Credit support required for late payment

### Note:

The *credit support* rules set out in Division 4 are conduct provisions for the purpose of the *NGL*.

## 513 Application of Division 4

This Division (to be known as the *credit support rules*) applies to a *distributor* and a *retailer*:

- (a) in respect of shared customers;
- (b) in respect of charges for services for which the *retailer* pays the *distributor* in arrears in accordance with a statement of charges under rule 506.

#### **514 Distributor may require credit support in limited circumstances**

- (1) 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:
  - (a) the charges contained in 3 statements of charges by the due date for payment; or
  - (b) the charges contained in 2 consecutive statements of charges by the due date for payment; or
  - (c) the charges contained in 1 statement of charges within 15 business days of the due date for payment.and then only in accordance with the *credit support* rules.
- (2) 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* under rule 514(1).
- (3) 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 requirements of rule 510 in respect of the dispute, 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*.

#### **515 Retailer to provide credit support**

- (1) A *retailer* must, on request by a *distributor* under rule 514(1), provide *credit support* to a distributor in accordance with the *credit support* rules.
- (2) The *credit support* provided by a *retailer* must be:
  - (a) 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* under rule 514(1); and
  - (b) provided within 5 business days of the *distributor's* request; and
  - (c) an acceptable form of *credit support* in favour of the *distributor* (see rule 516).
- (3) A *retailer* must ensure that at all times the aggregate undrawn amount of the *credit support* is not less than the amount requested by a *distributor* in accordance with rule 514(1).

## 516 Acceptable form of credit support

- (1) A *retailer* required to provide *credit support* under these rules must provide the *credit support* in an acceptable form.
- (2) An acceptable form of *credit support* is:
  - (a) a form of *credit support* that the *retailer* agrees to provide, and the *distributor* agrees to accept; or
  - (b) an undertaking:
    - (i) substantially in the form set out in Schedule 2 to this Part; and
    - (ii) issued by a financial institution acceptable to the *distributor*.

## 517 Application of credit support

A *distributor* may only apply or draw on the *credit support* if:

- (a) 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
- (b) there is no unresolved dispute under rule 510 about the *retailer's* liability to pay that amount.

## 518 Return of credit support

- (1) If:
  - (a) a *distributor* and a *retailer* no longer have any shared customers; or
  - (b) 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*.

## 519 Other retailer obligations

- (1) A *retailer* must not take any steps to restrain (by injunction or otherwise):
  - (a) 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
  - (b) the *distributor* from making a claim on the *credit support* in accordance with the *credit support* rules; or
  - (c) the *distributor* from using the money obtained by calling on the *credit support*.
- (2) A *distributor* may also disclose to its financiers, the AER or AEMO that it has required or called on *credit support* provided by the *retailer* under the *credit support* rules.

## 520 Pass through of unpaid distribution service charges

- (1) If a *retailer insolvency event* occurs, a *distributor* may apply to the AER for approval to vary one or more reference tariffs by a retailer insolvency pass through amount in accordance with this rule.
- (2) To apply for approval to vary a reference tariff under subrule (1), a *distributor* must submit to the AER, within 90 business days of the occurrence of a *retailer insolvency event*, a written statement including:
  - (a) the *distributor's* proposed *retailer insolvency* pass through amount, showing the calculation of that amount taking into account the matters in subrule (3); and
  - (b) the portion of that amount that the *distributor* proposes to pass through to end users in each year of the applicable *access arrangement period* and how each reference tariff would be varied to achieve that pass through; and
  - (c) evidence of:
    - (i) the actual and likely increase in *retailer insolvency costs* referred to in subrule (3); and
    - (ii) the amount to which the *distributor* is entitled under any relevant *credit support*; and
    - (iii) the maximum amount of *credit support* (if any) that the *distributor* was entitled to request the *retailer* to provide under the *credit support* rules; and
    - (iv) any amount that the *distributor* is likely to receive on a winding-up of the *retailer*.
- (3) The *distributor* must propose, and the AER must 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*, but does not include:
  - (a) any amount recovered or recoverable from a *retailer* or a guarantor of a *retailer* under this Part; or
  - (b) any costs that are recoverable under a RoLR cost recovery scheme distributor payment determination.
- (4) In the event that a *retailer insolvency event* has occurred and the AER approves a *retailer insolvency* pass through amount under subrule (3) in respect of that event, the *distributor's* access arrangement is taken to be amended so that:
  - (a) the *retailer insolvency event* is taken to be an approved cost pass through event under that access arrangement; and
  - (b) the *retailer insolvency* pass through amount determined under subrule (3) is taken to be an approved cost pass through amount under that access arrangement, allowing variation of the *distributor's* reference tariffs.
- (5) In this rule 520:



**failed retailer** has the same meaning as in the *NERL*.

**billed but unpaid charges** means, in respect of a *distributor*, distribution service charges that have been billed to a *failed retailer* by the *distributor*, but that the *failed retailer* has not yet paid (whether before or after the relevant due date for payment).

**retailer insolvency costs** means in respect of a *distributor*:

- (a) billed but unpaid charges;
- (b) the actual amount of unbilled distribution service charges accrued by a *failed retailer*; and
- (c) other costs that the *distributor* has incurred or is likely to incur as a result of a *retailer insolvency event*.

**retailer insolvency event** means the failure of a *retailer* during an *access arrangement period*, to pay a *distributor* an amount to which the service provider is entitled for the provision of reference services, if:

- (a) an *insolvency official* has been appointed in respect of that *retailer*; and
- (b) the *distributor* is not entitled to payment of those charges in full under the terms of any *credit support* provided in respect of that *retailer*.

**RoLR cost of recovery scheme distributor payment determination** has the same meaning as in the *NERL*.

## Schedule 1 to Part 21

[Deleted].

## Schedule 2 to Part 21

(Rule 516)

### Prescribed Form of unconditional undertaking for credit support

In this deed:

- (a) ABC Ltd (ACN ... ..) is the *retailer*; and
- (b) DEF Ltd (ACN ... ..) is the *distributor*; and
- (c) GHI Ltd (ACN ... ..) is the Financial Institution.

The Financial Institution unconditionally undertakes to pay, on demand by the *distributor*, to the *distributor* any sum or sums up to a maximum aggregate of \$.....

The payment or payments are to be made forthwith and unconditionally, without reference to the *retailer*, and despite any instruction from the *retailer* not to make the payment or payments.

A demand for payment under this deed is to be made on behalf of the *distributor* by .....[*name of person authorised to act on behalf of the distributor*]

This deed is terminated if:

- (a) the *distributor* notifies the Financial Institution that it no longer requires the Financial Institution's undertaking; or
- (b) the Financial Institution pays to the *distributor* a sum or sums amounting to its maximum aggregate liability under this deed; or
- (c) the parties agree to terminate it.

Executed as a deed at ..... this ..... day of ..... 20 .....