

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