

## Making of National Gas (National Energy Retail Law) Amendment Rule 2012

### National Gas Law – Section 294C

I, Tom Koutsantonis, Minister for Mineral Resources and Energy for the Crown in right of the State of South Australia, as the Minister administering the *National Gas (South Australia) Act 2012* of South Australia, hereby make the National Gas (National Energy Retail Law) Amendment Rule 2012 under section 294C(1) of the *National Gas (South Australia) Law* on the recommendation of the Ministerial Council on Energy.

These Rules have been signed by me for the purposes of identification as the National Gas (National Energy Retail Law) Amendment Rule 2012 and commence operation on 1 July 2012.



**Hon Tom Koutsantonis MP**  
Minister for Mineral Resources and Energy

27 June 2012

## **National Gas (National Energy Retail Law) Amendment Rule 2012**

### **1 Title of Rule**

This Rule is the *National Gas (National Energy Retail Law) Amendment Rule 2012*.

### **2 Commencement**

This Rule comes into operation on the day on which Schedule 1 of the *National Energy Retail Law (South Australia) Act 2011* (No 6 of 2011) comes into operation.

Note—This Rule does not apply in a participating jurisdiction until the *National Energy Retail Law* is applied in that jurisdiction as a law of that jurisdiction.

### **3 Amendment of the National Gas Rules**

The National Gas Rules are amended as set out in Schedule 1.

### **4 Savings and Transitional Amendments to the National Gas Rules**

The National Gas Rules are amended as set out in Schedule 2.

## Schedule 1            Amendment of the National Gas Rules

(Clause 3)

### [1] Rule 3                    Interpretation

Rule 3, insert (in alphabetical order):

***credit support*** means:

- (a) for the purposes of Part 19 – see rule 200.
- (b) for the purposes of Part 20 – see rule 364.
- (c) for the purposes of Part 21 – see rule 523.

***distributor*** means:

- (a) For the purposes of Part 12A – see rule 119A.
- (b) For the purposes of Part 15A – as set out in that Part.
- (c) For the purposes of Part 19 – see rule 200.
- (d) For the purposes of Part 20 – see the definition of STTM distributor in rule 364.
- (e) For the purposes of Part 21 – see rule 502.

***energy laws*** has the meaning given in section 2(1) of the NERL.

***insolvency official*** means a receiver, receiver and manager, administrator, provisional liquidator, liquidator, trustee in bankruptcy or person having a similar or analogous function.

***National Energy Retail Law*** means the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* of South Australia.

***National Energy Retail Rules*** has the same meaning as in the National Energy Retail Law.

***NERL*** means the National Energy Retail Law.

***NERR*** means the National Energy Retail Rules.

***retail customer*** has the same meaning as in the NGL.

***retailer*** has the same meaning as in the NGL.

***retailer insolvency event*** – see rule 531.

## [2] New Part 12A

The following Part is inserted after Part 12:

### Part 12A Gas connection for retail customers

#### Division 1 Definitions

##### 119A Definitions

In this Part:

**basic connection service** means a service involved in providing a connection between a distribution pipeline and a retail customer's premises where:

- (a) the provision of the service involves minimal or no extension to, or augmentation of, the distribution pipeline; and
- (b) a model standing offer has been approved by the AER for providing that service as a basic connection service.

**connection** means a physical link between a distribution pipeline and a retail customer's premises to allow the flow of natural gas.

**connection alteration** means an alteration to an existing connection including an addition, upgrade, extension, expansion, augmentation or any other kind of alteration.

**connection applicant** means an applicant for a connection service of 1 of the following categories:

- (a) retail customer;
- (b) retailer or other person acting on behalf of a retail customer;
- (c) real estate developer.

**connection application** means an application under rule 119R.

**connection assets** means the components of a distribution pipeline which are used to provide connection services.

**connection charge** means a charge imposed by a distributor for a connection service.

**connection charges criteria** – see rule 119M.

**connection contract** means a contract formed by the making and acceptance of a connection offer.

**connection offer** means an offer by a distributor to enter into a connection contract with:

- (a) a retail customer; or
- (b) a real estate developer.

**connection service** means either or both of the following:

- (a) a service relating to a new connection for premises;
- (b) a service relating to a connection alteration for premises.

**contestable** – a service is contestable if the laws of the participating jurisdiction in which the service is to be provided permit the service to be provided by more than one supplier as a contestable service or on a competitive basis.

**customer connection contract** – see section 67 of the NERL.

**distribution pipeline** means:

- (a) a covered pipeline classified under the NGL as a distribution pipeline; or
- (b) an uncovered pipeline for which a nominated distributor has been nominated to provide customer connection services.

**distributor** means:

- (a) for a distribution pipeline that is a covered pipeline – a service provider within the meaning of the Law who owns, operates or controls the pipeline; or
- (b) for a distribution pipeline that is an uncovered pipeline – a nominated distributor nominated to provide customer connection services in respect of the pipeline.

**enquiry** means a preliminary enquiry under rule 119Q.

**model standing offer** means a document approved by the AER as a model standing offer to provide basic connection services (see rule 119D) or as a model standing offer to provide standard connection services (see rule 119F).

**negotiated connection contract**—see rule 119I.

**new connection** means a connection established or to be established, in accordance with this Part and applicable energy laws, where there is no existing connection.

***nominated distributor*** – see section 8A of the NGL.

***real estate developer*** means a person who carries out a real estate development.

***real estate development*** means the commercial development of land including its development in 1 or more of the following ways:

- (a) subdivision;
- (b) the construction of commercial or industrial premises (or both);
- (c) the construction of multiple new residential premises.

***standard connection service*** means a connection service (other than a basic connection service) for a particular class of connection applicant and for which a model standing offer has been approved by the AER.

***supply service*** means a service (other than a connection service) relating to the supply of natural gas.

## **Division 2      Standardised offers to provide basic and standard connection services**

### **Subdivision 1   Basic connection services**

#### **119B      Obligation to have model standing offer to provide basic connection services**

- (1) A distributor must have a model standing offer to provide a basic connection service to retail customers.
- (2) A model standing offer may relate to all basic connection services available from the distributor or a particular class of basic connection services.
- (3) Basic connection services may be divided into classes if there is significant demand for each class of basic connection services within the area served by the relevant distribution pipeline.

#### **119C      Proposed model standing offer for basic connection services**

- (1) A distributor must submit for the AER's approval a proposed model standing offer to provide a basic connection service, or basic connection services of a particular class, on specified terms and conditions.
- (2) The terms and conditions of the model standing offer must cover:
  - (a) a description of the connection; and

- (b) timeframes for commencing and completing the work; and
  - (c) the qualifications required for carrying out the work involved in providing a contestable service (including reference to the jurisdictional or other legislation and statutory instruments under which the qualifications are required); and
  - (d) the safety and technical requirements (including reference to the jurisdictional or other legislation and statutory instruments under which the requirements are imposed) to be complied with by the provider of a contestable service or the retail customer (or both); and
  - (e) details of the connection charges (or the basis on which they will be calculated); and
  - (f) the manner in which connection charges are to be paid by the retail customer.
- (3) The distributor must submit to the AER, with its proposed model standing offer:
- (a) a declaration that the distributor considers its proposed connection charges to be consistent with the connection charges criteria; and
  - (b) details of the basis on which the distributor has applied the connection charges criteria, including details of any assumption made for the purposes of applying those criteria.

**119D Approval of terms and conditions of model standing offer to provide basic connection services**

- (1) The AER may approve a proposed model standing offer to provide a basic connection service, or basic connection service of a particular class, on specified terms and conditions if satisfied that:
- (a) the service, or class of services, is likely to be sought by a significant number of retail customers in the area served by the distribution pipeline; and
  - (b) the connection charges are consistent with the connection charges criteria; and
  - (c) the terms and conditions are fair and reasonable; and
  - (d) the terms and conditions comply with applicable requirements of the energy laws.
- (2) In deciding whether to approve a model standing offer to provide a basic connection service, or basic connection services of a particular class, on specified terms and conditions, the AER must have regard to:
- (a) the national gas objective; and

- (b) the basis on which the distributor has provided the relevant service, or services, in the past; and
  - (c) the geographical characteristics of the area served by the relevant distribution pipeline.
- (3) If the AER does not approve a proposed model standing offer to provide a basic connection service, or basic connection services of a particular class, on specified terms and conditions:
  - (a) the AER must give the distributor written reasons for its decision; and
  - (b) the distributor must re-submit the proposed model standing offer with appropriate amendments as soon as reasonably practicable.
- (4) The AER must deal expeditiously with a proposed model standing offer to provide a basic connection service or a class of basic connection services.

## **Subdivision 2 Standard connection services**

### **119E Standard connection services**

- (1) A distributor may submit for the AER's approval a proposed model standing offer to provide standard connection services on specified terms and conditions.
- (2) Different sets of terms and conditions may be submitted under this rule for different classes of connection services or different classes of retail customer.
- (3) The terms and conditions must cover:
  - (a) a description of the connection; and
  - (b) timeframes for commencing and completing the work; and
  - (c) the qualifications required for carrying out contestable work involved in providing the connection service (including reference to the jurisdictional or other legislation and statutory instruments under which the qualifications are required); and
  - (d) the safety and technical requirements (including reference to the jurisdictional or other legislation and statutory instruments under which the requirements are imposed) to be complied with by the provider of a contestable service or the retail customer (or both); and
  - (e) details of the connection charges or the basis on which they will be calculated; and
  - (f) the manner in which connection charges are to be paid by the retail customer.



- (4) The distributor must submit to the AER, with its proposed model standing offer:
  - (a) a declaration that the distributor considers its proposed connection charges to be consistent with the connection charges criteria; and
  - (b) details of the basis on which the distributor has applied the connection charges criteria, including details of any assumption made for the purposes of applying those criteria.

**119F Approval of model standing offer to provide standard connection services**

- (1) The AER may approve a proposed model standing offer to provide standard connection services on specified terms and conditions if satisfied that:
  - (a) the connection charges are consistent with the connection charges criteria; and
  - (b) the terms and conditions are fair and reasonable; and
  - (c) the terms and conditions comply with applicable requirements of the energy laws.
- (2) In deciding whether to approve a proposed model standing offer to provide standard connection services on specified terms and conditions, the AER must have regard to the national gas objective.
- (3) If the AER does not approve a proposed model standing offer to provide standard connection services on specified terms and conditions:
  - (a) the AER must give the distributor written reasons for its decision; and
  - (b) the distributor may re-submit the proposed standing offer with appropriate amendments.
- (4) The AER must deal expeditiously with a proposed model standing offer to provide standard connection services.

**Subdivision 3 Miscellaneous**

**119G Amendment etc of model standing offer**

- (1) A distributor may submit, for the AER's approval, a proposal:
  - (a) for the amendment or substitution of a model standing offer to provide a basic connection service; or
  - (b) for the amendment, substitution or revocation of a model standing offer to provide standard connection services.

- (2) In deciding whether to approve a proposal submitted for its approval under this rule, the AER must, so far as relevant, apply the same principles and have regard to the same matters as are relevant to the approval of a model standing offer to provide a basic connection service or a standard connection service.
- (3) The amendment, substitution or revocation of a model standing offer takes effect on the date of the AER's approval or a later date fixed by the AER in its approval.
- (4) If the AER does not approve a proposal submitted under subrule (1):
  - (a) the AER must give the distributor written reasons for its decision; and
  - (b) the distributor may re-submit the proposal with appropriate amendments.
- (5) The amendment, substitution or revocation of a model standing offer does not affect the validity or effect of:
  - (a) a connection offer made before the amendment, substitution or revocation takes effect; or
  - (b) a connection contract formed on the basis of such a connection offer.
- (6) The AER must deal expeditiously with a proposal for the amendment, substitution or revocation of a model standing offer.

#### **119H Publication of model standing offers**

A distributor must publish, on its website, each of its approved model standing offers to provide a basic connection service or a standard connection service.

### **Division 3 Negotiated connection**

#### **119I Negotiation of connection**

- (1) A connection applicant and a distributor may negotiate a connection contract (a ***negotiated connection contract***):
  - (a) where the connection service sought by the connection applicant is neither a basic connection service nor a standard connection service; or
  - (b) where the connection service sought by the connection applicant is a basic connection service or a standard connection service but the connection applicant elects to negotiate the terms and conditions on which the connection service is to be provided.
- (2) The negotiations may, if the connection applicant elects, extend to supply

services available from the distributor.

- (3) This Division sets out the requirements for negotiation referred to in the NERL.
- (4) When reading this Division in the context of the NERL:
  - (a) a reference to a connection applicant in this Division corresponds to a reference to a customer in the NERL; and
  - (b) this Division will be read subject to any further adaptations and modifications necessary to give effect to the intendment of the NERL.

#### **119J Process of negotiation**

A distributor and a connection applicant for a negotiated connection contract must negotiate in accordance with the negotiation framework set out in rule 119K.

#### **119K Negotiation framework**

- (1) The following rules (collectively described as the ***negotiation framework***) govern negotiations between a distributor and a connection applicant:
  - (a) each party must negotiate in good faith;
  - (b) the connection applicant must, at the request of the distributor, provide the distributor with information it reasonably requires in order to negotiate on an informed basis;

##### *Note*

*The information might (for example) include estimates of average and maximum demand for natural gas to be supplied through the connection.*

- (c) the distributor must provide the connection applicant with information the connection applicant reasonably requires in order to negotiate on an informed basis including:
  - (i) an estimate of the amount to be charged by the distributor for assessment of the application and the making of a connection offer for a negotiated connection contract; and
  - (ii) an estimate of connection charges; and
  - (iii) a statement of the basis on which connection charges are calculated (which must be consistent with the connection charges criteria); and
  - (iv) a statement of the assumptions made by the distributor in applying the connection charges criteria; and
  - (v) if the connection applicant has elected to extend the negotiations to cover supply services—an estimate of any

applicable charges for supply services and a statement of the basis of their calculation;

*Note*

*The distributor might, according to the circumstances of a particular case, need to provide further information to ensure the connection applicant is properly informed – for example, information about:*

*technical and safety requirements;*

*the types of connection that are technically feasible;*

*the capacity of the distribution pipeline at the proposed connection point;*

*possible strategies to reduce the cost of the connection.*

- (d) the distributor may consult with other users of the distribution pipeline who may be adversely affected by the proposed new connection or connection alteration;
- (e) in assessing the application, the distributor must determine:
  - (i) the technical requirements for the proposed new connection or connection alteration; and
  - (ii) the extent and costs of any necessary augmentation or extension; and
  - (iii) any possible material effect of the proposed connection or connection alteration on the capacity of the distribution pipeline (and any other distribution pipeline that might be affected) to meet existing and future demand;
- (f) the distributor must make reasonable endeavours to make a connection offer that complies with the connection applicant's reasonable requirements.

*Example*

*Reasonable requirements as to the location of the proposed connection point.*

- (2) The following supplementary rules apply:
  - (a) if a distributor requires information from a connection applicant in addition to the information provided in the application, a request for the additional information under subrule (1)(b) must (if practicable) be made within 20 business days after the distributor receives the relevant application;
  - (b) the distributor must provide the information required under subrule (1)(c) as soon as practicable after the distributor receives the connection applicant's application or, if the distributor requests additional information under subrule (1)(b), as soon as practicable after the distributor receives the relevant information.

- (3) Each party to the negotiations must maintain the confidentiality of confidential information disclosed by the other party in the course of the negotiations unless disclosure of the information is authorised:
  - (a) by the party to whom the duty of confidentiality is owed; or
  - (b) under:
    - (i) the Law; or
    - (ii) any other law.

**119L Fee to cover cost of negotiation**

- (1) A distributor may charge a connection applicant for a negotiated connection contract a reasonable fee to cover expenses directly and reasonably incurred by the distributor in assessing the connection applicant's application and making a connection offer.
- (2) A fee charged under subrule (1) is recoverable as a debt (whether or not the connection applicant accepts the connection offer).
- (3) To the extent the distributor's costs are reimbursed by a fee charged under subrule (1), the fee is not to be treated as operating expenditure for the purpose of Rule 76.

**Division 4 Connection charges**

**119M Connection charges criteria**

- (1) Connection charges (or the method for calculating connection charges) for a particular connection service must be consistent with the following criteria (the **connection charges criteria**):
  - (a) if the present value of the expected incremental revenue to be generated as a result of the distributor's capital expenditure for the relevant connection assets exceeds the present value of that capital expenditure, no connection charge may be imposed; and
  - (b) if paragraph (a) does not prevent the imposition of a connection charge, the connection charge must not exceed the amount by which the present value of the capital expenditure exceeds the present value of the expected incremental revenue.
- (2) For the purpose of applying the connection charges criteria:
  - (a) in determining the present value of expected incremental revenue, the requirements of rule 79(4) apply;
  - (b) the relevant connection assets are taken to include any augmentation of the distribution pipeline required to accommodate the new connection or connection alteration;

- (c) if the distributor's applicable access arrangement requires the use of assumptions about any 1 or more of the following matters:
  - (i) the connection assets required;
  - (ii) the discount rate;
  - (iii) the expected life of the connection;
  - (iv) the incremental cost of purchasing and installing the connection assets;
  - (v) the expected gas consumption and the tariffs applicable to supply services relating to the connection;
  - (vi) the expected incremental operating and maintenance costs;

the assumptions must be consistent with relevant provisions of the distributor's applicable access arrangement.

#### **119N Nature of connection charges**

The component of a connection charge that recovers capital expenditure paid to a distributor by or on behalf of a retail customer is taken to be a capital contribution for the purposes of rule 82.

#### **119O Payment of connection charges**

- (1) Connection charges payable in respect of a connection service must be paid to the distributor by the retail customer's retailer unless:
  - (a) the retailer did not apply for the connection service under Division 5, Subdivision 3 and the distributor has notified the retail customer that the customer must pay the connection charge directly; or
  - (b) the retail customer asks to pay the connection charge directly and the distributor agrees; or
  - (c) the distributor and the retailer agree that the distributor is to recover the connection charge from the retail customer.
- (2) If the retail customer pays, or is required to pay, a connection charge under subrule (1), the distributor must not recover that charge from the customer's retailer.
- (3) The distributor must separately identify each connection charge on its statement or invoice to the retailer.

#### *Note*

*Rule 25 of the National Energy Retail Rules requires the listing of connection charges that are passed through by a retailer to a retail customer in the customer's bill.*

## **Division 5      Application for connection service**

### **Subdivision 1    Information**

#### **119P      Publication of information**

A distributor must publish on its website the following:

- (a) an application form for a new connection or connection alteration; and
- (b) a description of how an application for a new connection or connection alteration is to be made (including a statement of the information required for a connection application); and
- (c) a description of the distributor's basic connection service and standard connection services and the classes of retail customer to which they apply; and
- (d) an explanation of the connection applicant's right to negotiate with the distributor for a negotiated connection contract and a description of the negotiation process; and
- (e) the requirements for an expedited connection; and
- (f) the basis for calculating connection charges.

### **Subdivision 2    Preliminary enquiry**

#### **119Q      Preliminary enquiry**

- (1) A distributor must, within 5 business days after receiving an enquiry about a connection service (or some other period agreed between the distributor and the enquirer), provide the enquirer with the information required to make an informed application.
- (2) The information must include:
  - (a) a description of the distributor's basic and standard connection services and the terms and conditions of the model standing offers to provide such services (including possible costs); and
  - (b) a description of the process, including a statement of the information required, for submission of a connection application including an application for an expedited connection; and
  - (c) a statement of a connection applicant's right to negotiate the terms of a connection contract and a description of the relevant process (including the types of possible costs and expenses); and
  - (d) an indication of whether any aspects of the proposed connection are

likely to be contestable; and

- (e) any additional information reasonably required by the enquirer.
- (3) A distributor that publishes any of the above information on its website complies with its obligation to disclose information under this rule if it refers the enquirer to the relevant part of the website.

Exception:

If the enquirer asks for a written reply to the enquiry or asks for specific advice about the enquirer's particular situation, the distributor must reply to the enquiry as soon as reasonably practicable and in writing if requested.

- (4) If an enquiry is made to a distributor about a connection within the area of another distributor, the distributor:
  - (a) must inform the enquirer of the identity, and contact details, of the responsible distributor; and
  - (b) on doing so, is released from further obligations in relation to the enquiry.

### **Subdivision 3 Applications**

#### **119R Application process**

- (1) An application for a connection service must be in the appropriate form determined by the distributor.
- (2) An application for a connection service may be made by:
  - (a) a retail customer for whom the connection service is sought; or
  - (b) a retailer or other person acting on behalf of a retail customer; or
  - (c) a real estate developer who seeks connection services for premises comprised in a real estate development.
- (3) If an application for a connection service is made in error to the wrong distributor, that distributor:
  - (a) must inform the connection applicant of the identity, and contact details, of the responsible distributor; and
  - (b) on doing so, is released from further obligations in relation to the application.
- (4) If an application is incomplete in a material respect, the distributor must advise the connection applicant of the deficiency and may require the connection applicant to complete the application and re-submit it.



- (5) If the distributor reasonably requires additional information to assess the application, it may require the connection applicant to provide the necessary information.
- (6) The distributor must, within 10 business days after receipt of a complete application for a connection service or if the applicant is required to provide additional information under subrule (5), within 10 business days after receipt of the information (or some other period agreed between the distributor and the connection applicant):
  - (a) advise the connection applicant whether the proposed connection service is a basic connection service, a standard connection service or neither; and
  - (b) if:
    - (i) the connection service is neither a basic connection service nor a standard connection service; or
    - (ii) the connection applicant elects for a negotiated connection contract even though the proposed connection service is a basic or standard connection service

advise the connection applicant of the negotiated connection process and of possible costs and expenses related to the negotiations.
- (7) A single application may relate to multiple connection services of the same or different kinds.

## **Division 6      Formation of connection contracts**

### **Subdivision 1   Offer and acceptance – basic and standard connection services**

#### **119S      Distributor's response to application**

- (1) If the connection service sought by a connection applicant is a basic connection service or a standard connection service (and the applicant does not elect to apply for a negotiated connection contract), the distributor must make a connection offer to the applicant within:
  - (a) 10 business days after receiving a properly completed application for the service and the additional information (if any) reasonably required under subrule 119R(5); or
  - (b) some other period agreed between the distributor and the connection applicant.
- (2) The connection offer must be in accordance with the relevant model standing offer and must include:

- (a) the date of the offer; and
  - (b) details of the connection service to be provided; and
  - (c) a statement of the connection charges payable by the connection applicant.
- (3) If requested by the connection applicant, the distributor must include in its connection offer the following information about the basis for calculation of connection charges:
  - (a) the distributor's assumptions about the future use of supply services by the relevant retail customer or group of retail customers supplied or to be supplied through the connection; and
  - (b) if a component of a connection charge relates to augmentation or extension of the distribution pipeline—the distributor's assumptions about the incremental increase or reduction in operating and maintenance costs.

**119T Acceptance of connection offer**

- (1) A connection offer to provide a basic or standard connection service remains open for acceptance for 45 business days from the date of the offer and, if not accepted within that period, lapses unless the period for acceptance is extended by agreement between the connection applicant and the distributor.
- (2) This clause does not apply if the connection application is for an expedited connection.

**119U Offer and acceptance – application for expedited connection**

- (1) If:
  - (a) a connection applicant requests an expedited connection in the connection application; and
  - (b) the distributor is satisfied that the connection application is for a basic or standard connection service that falls within the terms of the relevant model standing offer; and
  - (c) the connection applicant indicates in the connection application that a connection offer in terms of the relevant model standing offer would be acceptable to the applicant,

the distributor is taken to have made, and the connection applicant is taken to have accepted, a connection offer in terms of the relevant model standing offer on the date the distributor receives the application.

- (2) If a connection applicant applies for an expedited connection but the distributor does not agree that an offer in terms of any of the approved

model standing offers is appropriate, the distributor must notify the connection applicant accordingly and draw the applicant's attention to the provisions of these Rules dealing with negotiated connection.

## **Subdivision 2 Offer and acceptance – negotiated connection**

### **119V Negotiated connection offer**

- (1) A distributor must use its best endeavours to make a negotiated connection offer to the connection applicant within 65 business days after the date of the application for a connection service (but the time taken by the connection applicant to provide information reasonably sought by the distributor under rule 119K(1)(b) will not be counted).
- (2) A negotiated connection offer:
  - (a) must be in the form of an offer to enter into a contract in specified terms; and
  - (b) if the connection applicant elected to extend the scope of negotiations to cover supply services—contain terms and conditions relating to the relevant supply services.
- (3) A negotiated connection offer must not include a connection charge that is inconsistent with the connection charges criteria.
- (4) A negotiated connection offer remains open for acceptance for 20 business days from the date of the offer and then lapses unless the period for acceptance is extended by agreement between the distributor and the connection applicant.

## **Subdivision 3 Formation of contract**

### **119W Acceptance of connection offer**

- (1) If a connection offer to provide a connection service is accepted, the terms and conditions of the connection offer:
  - (a) become terms and conditions of a contract formed between the distributor and the connection applicant; and
  - (b) subject to rule 119X, are enforceable accordingly.
- (2) The distributor must, at the request of a connection applicant, provide a copy of:
  - (a) the contract formed under subrule (1); or
  - (b) if that contract has been integrated with, and forms part of, a customer connection contract arising under the NERL—the integrated contract.

## **Subdivision 4 Contractual performance**

### **119X Carrying out connection work**

- (1) A distributor must use its best endeavours to ensure that connection work is carried out within the applicable time limits fixed by the relevant provisions of the connection contract.
- (2) However, a distributor is not obliged to commence or continue with connection work if the connection applicant fails to comply with conditions that are to be complied with by the connection applicant.

#### *Examples*

The connection applicant fails to pay connection charges.

The connection applicant fails to comply with technical or safety requirements.

The connection applicant fails to complete work that is to be carried out on the connection applicant's premises.

The connection applicant fails to comply with the distributor's reasonable request to allow the distributor safe and unhindered access to the connection applicant's premises.

### **119XX Retailer required for energisation where new connection**

A distributor is not required to energise a new connection unless a request to energise the new connection is submitted by a retailer, or the distributor is otherwise satisfied that there is a relevant contract with a retailer in relation to the premises.

## **Division 7 Dispute resolution between distributors and retail customers**

### **119Y Relevant disputes**

- (1) In this Division:

***customer*** means:

- (a) a retail customer; or
- (b) a real estate developer.

***relevant dispute*** is:

- (a) a dispute between a distributor and a customer about:
  - (i) the terms and conditions on which a basic connection service or a standard connection service is to be offered; or
  - (ii) the proposed or actual terms and conditions of a negotiated connection contract; or

- (b) a dispute between a distributor and a customer about connection charges.
- (2) A relevant dispute is an access dispute for the purposes of Chapter 6 of the NGL.

**119Z Determination of dispute**

- (1) In determining a relevant dispute, the AER must apply:
  - (a) in relation to connection charges – the connection charges criteria; and
  - (b) in relation to other terms and conditions:
    - (i) this Part and any other applicable regulatory instrument; and
    - (ii) the relevant model standing offer, as approved by the AER, to provide a basic or standard connection service.
- (2) In determining a relevant dispute, the AER may also:
  - (a) have regard to other matters the AER considers relevant; and
  - (b) hear evidence or receive submissions from the distributor and the customer; and
  - (c) if the dispute relates to a negotiated connection contract – have regard to the negotiation framework set out in rule 119K.

**119ZA Termination of proceedings**

- (1) If the AER considers that a relevant dispute could be effectively resolved by some means other than an access determination, the AER may give the parties to the dispute notice of the alternative means of resolving the dispute.

**Example**

The AER might give such a notice if of the opinion that a particular dispute could be dealt with more efficiently, and with less expense, by a jurisdictional ombudsman.

- (2) The giving of such a notice is a specified dispute termination circumstance for the purposes of section 186(3) of the NGL.

**Note**

It follows that the AER may exercise its power to terminate the dispute without making an access determination (See section 186(1)(d) of the NGL).

**[3] Rule 135A (Participation in declared wholesale gas market of adoptive jurisdiction)**

Rule 135A(k), omit, substitute:

(k) Registrable capacity: Market Participant – Retailer

A retailer that sells natural gas that has been transported through the declared transmission system.

**[4] Rule 135AB (Retail market participation)**

(1) Rule 135AB(1)(b), omit, substitute:

(b) Registrable capacity: user

A user or non-scheme pipeline user that is a retailer.

(2) Rule 135AB(1)(c)(iii), omit, substitute:

(iii) is not a retailer.

(3) Rule 135AB(2)(b), omit, substitute:

(b) Registrable capacity: retailer

A user or non-scheme pipeline user that is a retailer.

(4) Rule 135AB(2)(c), omit, substitute:

(iii) is not a retailer.

(5) Rule 135AB(3)(c), omit, substitute:

(c) Registrable capacity: user

A user or non-scheme pipeline user that is a retailer.

(6) Rule 135AB(3)(d)(iii), omit, substitute:

(iii) is not a retailer.

(7) Rule 135AB(4)(c), omit, substitute:

(c) Registrable capacity: market participant – retailer

(i) A retailer that is a user of a declared distribution system.

(ii) A retailer that is a user or non-scheme pipeline user of a distribution pipeline in Victoria, that does not form part of a declared distribution system.

(iii) A retailer that is a user of the Albury gas distribution system.

**[5] Rule 135EA (Matters about which Procedures may be made)**

(1) Rule 135EA(1)(g), omit, substitute:

- (g) implementation of a *ROLR scheme*;
- (2) Rule 135EA(1)(p), omit, substitute:
  - (p) lost retail customers;

## **[6] Rule 135EB (Preconditions for making Procedures)**

After rule 135EB(3) insert:

- (4) This rule does not apply in relation to Procedures that AEMO makes, or proposes to make, under section 144 of the NERL.

## **[7] Rule 137 (Maintenance of confidentiality)**

Rule 137(3)(c), omit, substitute:

- (c) disclosure or use of relevant confidential information:
    - (i) as required or authorised by or under the NGL, the NERL, or related rules or procedures; or
- Note
- This would include (for example) the disclosures required under a RoLR scheme under Part 6 of the NERL.
- (ii) as required or authorised by or under the law of a participating jurisdiction; or
  - (iii) in order to comply with an order of a court or tribunal; or
  - (iv) as required by the listing rules of a recognised stock exchange.

## **[8] Rule 138A (General confidentiality obligation of Registered participant)**

After rule 138A(5)(h), insert:

- (ha) the use or disclosure of confidential information as required or authorised by or under the NGL, the NERL, or related rules or procedures; or

Note

This would include (for example) the disclosures required under a RoLR scheme (as defined in Part 6 of the NERL).

## **[9] Rule 200 (Definitions)**

- (1) Omit the definition of 'declared host retailer'.
- (2) Omit the definition of 'Retailer of last resort process', and substitute (in alphabetical order):

**RoLR process** means the process for transferring retail customers to a RoLR.

- (3) Insert (in alphabetical order) the following new definitions:

**RoLR** has the same meaning as in the NERL.

**RoLR scheme** has the same meaning as in the NERL.

### **[10] Rule 251 (Payment default procedure)**

- (1) Rule 251(1)(a), omit, substitute:

(a) the Market Participant does not pay money due for payment by it to AEMO under this Part by the appointed time on the due date;

- (2) Rule 251(1)(l), omit “, or any action is taken to appoint any such person”.

- (3) Rule 251(1)(m), omit, substitute:

(m) an order is made, or a resolution is passed, for winding up the Market Participant, or a provider of credit support for the Market Participant;

### **[11] Rule 260 (Suspension of Market Participant)**

Rule 260(8), omit, substitute:

- (8) If AEMO issues a suspension notice to a Market Participant which is a Retailer, AEMO must immediately initiate the RoLR process and immediately notify Participants and the AER of the initiation of that process.

### **[12] Rule 292 (Responsibility for metering installation)**

Rule 292(2)(e), omit “declared host retailer”, substitute “local area retailer (as defined in the National Energy Retail Law)”

### **[13] Rule 364 (Definitions)**

- (1) Omit the definition of retailer of last resort.

- (2) Insert (in alphabetical order) the following new definition:

**RoLR** has the same meaning as in the NERL.

### **[14] Rule 428 (Administered price cap state)**

Rule 428(1)(d), omit from line 1 “retailer of last resort”, substitute “RoLR”



**[15] Rule 430 (Market administered scheduling state)**

Rule 430(4), omit from line 5 “retailer of last resort”, and substitute “RoLR”.

**[16] Rule 431 (Market administered settlement state)**

Rule 431(1)(a), omit from line 1 “retailer of last resort”, substitute “RoLR”

**[17] Rule 486 (Default events)**

(1) Rule 486(1)(a), omit, substitute:

- (a) the Trading Participant does not pay an amount due for payment by it to AEMO under this Part by the appointed time on the due date;

(2) Rule 486(1)(l), omit “, or any action is taken to appoint any such person”.

(3) Rule 486(1)(m), omit, substitute:

- (m) an order is made, or a resolution is passed, for winding up the Trading Participant, or a provider of credit support for the Trading Participant;

**[18] Rule 488 (Suspension of a Trading Participant)**

(1) Rule 488(8), omit, substitute:

- (8) If AEMO issues a suspension notice to an STTM User that is a Retailer, AEMO must immediately notify the AER.

(2) Rule 488(9), omit, “retailer of last resort”, substitute “RoLR”.

**[19] New Part 21**

After Part 20, insert the following new Part and Schedules:

**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.

*This rule is a conduct provision for the purpose of the NGL.*

### 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

*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.
- (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:

**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 regime**

*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      Definitions**

In this Division:

**credit allowance**—see rule 518.

**distribution service charges liability** (or **DSCL**)—see rule 517.

**maximum credit allowance**—see rule 519.

**required credit support amount** means the amount by which the distribution service charges liability exceeds the credit allowance of the retailer.

### **515      Distributor may require credit support**

- (1) A distributor may require a retailer to provide credit support, but only in accordance with the credit support rules.
- (2) A distributor may only require a retailer to provide credit support up to the required credit support amount.

### **516      Determining required credit support amount**

- (1) A distributor must calculate the amount by which the distribution service charges liability of a retailer exceeds the credit allowance of that retailer, to determine the required credit support amount, in accordance with the credit support rules.
- (2) A distributor must include in a request to a retailer for credit support, a statement setting out the basis upon which the distributor has determined the required credit support amount.

## 517 Determining a retailer's DSCL

- (1) A distributor must estimate the amount of a retailer's average billed and unbilled distribution service charges liability in accordance with the following formula:

$$DSCL = \sum DSCL_c$$

where  $DSCL_c$  means the forecast distribution service charges (determined as an average daily amount for a *retail billing period*) relating to those shared customers of the retailer for which the maximum days outstanding (**MDO**) is the same, multiplied by that MDO where MDO for those customers is calculated as:

$$MDO = FCCP/2 + RBP/2 + IPPL$$

where:

**FCCP** (final customer consumption period) is the number of days in the average period of consumption covered in a statement of charges issued by the distributor to the retailer in respect of those customers' consumption of gas; and

**RBP** (retail billing period) is the number of days in the retail billing period applicable to the retailer; and

**IPPL** (invoice preparation and payment lag) is the number of days between the end of a retail billing period covered by a statement of charges and the date of issue of the statement, plus the number of days allowed for payment of the distribution service charges by the retailer.

- (2) A distributor must estimate the distribution service charges liability of a retailer:
  - (a) as at the date the distributor requests credit support from the retailer; or
  - (b) on the date the distributor recalculates the required credit support amount under the credit support rules.

## 518 Calculating retailer credit allowance

- (1) A distributor must determine a retailer's credit allowance as set out in this Division.
- (2) A retailer's credit allowance is calculated as follows:

$$CA = MCA \times CA\%$$

where:

**CA** means the credit allowance for a retailer;



**MCA** means the maximum credit allowance for that distributor—see rule 519;

**CA%** (the credit allowance percentage for a retailer) is the figure expressed as the applicable percentage in the Table in Schedule 1 to this Part (which corresponds to the credit rating applicable to the retailer) or, where either rule 520(3) or rule 522 applies, is zero.

#### **519 Distributor's maximum credit allowance**

- (1) For the purpose of determining a retailer's credit allowance, a distributor must calculate its maximum credit allowance as follows:

$$\text{MCA} = \text{TARC} \times 25\%$$

where:

**MCA** means the maximum credit allowance for that distributor;

**TARC** or **total annual retailer charges** means the total annual amount of distribution service charges billed by the distributor to all retailers as most recently reported by the distributor to the AER.

- (2) A distributor must report the TARC to the AER, and the AER must publish on its website the TARC for each distributor.

#### **520 Credit rating for retailer**

- (1) In determining a retailer's credit allowance, a distributor may use a credit rating advised by the retailer.
- (2) Unless the retailer provides its guarantor's credit rating under rule 521, a retailer must advise a distributor of its credit rating which may be:
  - (a) a Standard & Poor's, Fitch or Moody's credit rating; or
  - (b) where a retailer does not have such a rating, a Dun and Bradstreet dynamic risk score.
- (3) A retailer must advise a distributor of any change to its credit rating immediately on becoming aware of that change.
- (4) A distributor may obtain relevant credit rating information about a retailer and monitor any ongoing changes to the retailer's credit rating.
- (5) If a retailer does not have a credit rating of the type described in subrule (2) then its credit allowance percentage is zero.

#### **521 Calculating credit allowance where guarantor**

- (1) This clause applies in determining a retailer's credit allowance where a person (**the guarantor**) provides the distributor with an unconditional written guarantee of the retailer's financial obligations to the distributor.

- (2) A retailer relying on a guarantor must advise a distributor of its guarantor's credit rating, which may be:
  - (a) a Standard & Poor's, Fitch or Moody's credit rating; or
  - (b) where a guarantor does not have such a rating, a Dun and Bradstreet dynamic risk score.
- (3) A retailer must advise a distributor of any change to the credit rating of its guarantor immediately on becoming aware of that change.
- (4) A distributor may obtain relevant credit rating information about a retailer's guarantor and monitor ongoing changes to the guarantor's credit rating.
- (5) If the guarantor of a retailer provides a guarantee to more than one retailer, the guarantor must advise the distributor:
  - (a) as to how the guarantor's credit allowance is divided among the retailers on behalf of whom the guarantor provides a guarantee; and
  - (b) the proportion of the guarantor's credit allowance allocated to the retailer; andthe guarantor's credit allowance must be calculated in accordance with rule 518 as though the guarantor were a retailer.

**522 When no credit allowance will be extended to a retailer**

- (1) No credit allowance will be granted to a retailer if, at the time of the distributor's request, any of the following apply:
  - (a) within the previous 12 months, the retailer has failed to pay in full:
    - (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 25 business days of the due date for payment; or
  - (b) AEMO makes a claim on any credit support held by AEMO in respect of the retailer's obligations to AEMO under these Rules.
- (2) 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.
- (3) A retailer must notify a distributor within 1 business day if it is not to be

granted any credit allowance because of the operation of subrule (1)(b).

**523      Retailer to provide credit support**

- (1) A retailer must, on request by a distributor, 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 the required credit support amount calculated in accordance with the credit support rules; and
  - (b) provided within 10 business days of the distributor's request; and
  - (c) an acceptable form of credit support in favour of the distributor (see rule 524).

**524      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.

**525      Provision of credit support where dispute arises**

- (1) A retailer must provide credit support requested by a distributor by the due date even though:
  - (a) the retailer disputes the distributor's entitlement to the credit support (in whole or in part); and
  - (b) the dispute remains unresolved.
- (2) Where a Dispute resolution panel appointed under Part 15C determines that a distributor was not entitled to the credit support provided by the retailer in whole or in part, the distributor must:
  - (a) reimburse the retailer for any costs incurred to procure the credit support (including the costs of funding any cash collateral provided to the issuer of credit support), in excess of the costs that the retailer would have incurred if the correct amount had been requested; and

- (b) pay the retailer interest at the default interest rate on the amount of those excess costs.

**526 Top up of credit support**

- (1) 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 515, adjusted as required in accordance with a request under subrule (2).
- (2) If at any time the aggregate amount of uncalled credit support held by a distributor is less than 90% of the required credit support amount, the distributor may require a retailer to increase the amount of the credit support to an amount not exceeding the required credit support amount, and the retailer must comply with that requirement within 10 business days.

**527 Reduction of credit support**

If the aggregate amount of uncalled credit support held by a distributor is more than 110% of the required credit support amount, the distributor must on request by a retailer and in conjunction with the retailer, do all things necessary to reduce the aggregate amount of uncalled credit support held by the distributor to the required credit support amount.

**528 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.

**529 Return of credit support**

- (1) This rule applies if:
  - (a) a distributor and a retailer no longer have any shared customers; or
  - (b) the required credit support amount of a retailer is zero.
- (2) A distributor must pay, cancel or return to a retailer as appropriate, any balance of credit support outstanding after payment of all amounts owing by the retailer to the distributor.

**530 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 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.

**531 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 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 costs of providing reference services that the distributor has incurred and is likely to incur until the end of the applicable access arrangement period solely as a consequence of the retailer insolvency event, but does not include:
- (i) any amount recovered or recoverable from a retailer or a guarantor of a retailer under this Part; or
  - (ii) any costs that are recoverable under a RoLR cost recovery scheme distributor payment determination.

- (4) In this rule:

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

**Schedule 1 to Part 21**

(Rule 518)

**Credit support allowance percentages**

<b>Standard and Poor's / Fitch Rating</b>	<b>Moody's Rating</b>	<b>Dun and Bradstreet dynamic risk score</b>	<b>Credit allowance (% of Maximum)</b>
AAA	Aaa		100.0%
AA+, AA, AA-	Aa1, Aa2, Aa3	Minimal	100.0%
A+, A, A-	A1, A2, A3	Very Low	100.0%
BBB+	Baa1	Low	52.9%
BBB	Baa2	Average	37.5%
BBB-	Baa3		22.0%
BB+	Ba1		17.0%
BB	Ba2	Moderate	11.0%
BB-	Ba3	High	6.7%
B+	B1	Very High	3.3%
B	B2		1.4%
B-	B3	Severe	0.9%
CCC/CC	Caa, Ca, C		0.3%

## Schedule 2 to Part 21

(Rule 524)

### 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.....



## **Schedule 2            Savings and Transitional Amendments to the National Gas Rules**

(Clause 4)

### **[1] Insertion of new Schedule 3**

After Schedule 2 insert:

## **Schedule 3            Transitional Provisions for implementation of National Retail Framework**

### **Part 1                Interim gas connection rules for NSW**

#### **1                    Application**

- (1) During the transition period:
  - (a) Part 12A applies to, and in relation to, a NSW gas distributor, subject to the exclusions, qualifications and modification prescribed by this Part; and
  - (b) Part 21 does not apply in NSW.
- (2) However, Part 12A and Part 21 operate without the exclusions, qualifications and modifications prescribed by this Part insofar as they relate to a period beyond the transition period.

Example

A NSW gas distributor is required to submit model standing offers in accordance with Part 12A for the period that follows on the distributor's transition period and is bound by the relevant provisions in Part 12A (without exclusion, qualification or modification) in relation to the model standing offers even though the proposals are submitted during the transition period.

#### **2                    Definitions**

In this Part:

**access arrangement** has the same meaning as in the NGL.

**current access arrangement** means an access arrangement applying to a NSW gas distributor with respect to pipelines located in NSW and which is in force on the start date.

**expiry date** means the date when the current access arrangement no longer applies.

**interim NSW gas connection rules** means the rules prescribed in this Part.

**NSW gas distributor** means a service provider within the meaning of the NGL that holds a reticulator's authorisation under the *Gas Supply Act 1996 of New South Wales* in respect of a pipeline located in NSW, excluding ActewAGL Distribution (partnership of ACTEW Distribution Ltd ACN 073 025 224 and Jemena Networks (ACT) Pty Ltd ACN 008 552 663).

**reference services agreement** means a contract between a user and a NSW gas distributor, under the relevant current access arrangement, whether described as:

- (a) a reference service agreement;
- (b) a standard user agreement;
- (c) a service agreement; or
- (d) a gas transportation agreement.

**start date** means the date when these interim NSW gas connection rules come into operation.

**transition period** means the period from the start date to the expiry date.

### **3 Gas connection for retail customers—modifications to definitions in Part 12A**

- (1) During the transition period, the definitions in rule 119A are replaced with the following definitions:

**basic connection service** means a service involved in providing a connection between a distribution pipeline and a retail customer's premises where the provision of the service involves minimal or no extension to, or augmentation of, the distribution pipeline.

**connection applicant** means an applicant for a connection service by 1 of the following categories

- (a) a retailer for or on behalf of a retail customer;
- (b) a licensed plumber;
- (c) a licensed builder;
- (d) a real estate developer.

**connection charges criteria** – see rule 7.

**connection offer** means an offer by a NSW gas distributor to enter into a connection contract with:

- (a) a retailer for or on behalf of a retail customer;
- (b) a licensed plumber;

- (c) a licensed builder; or
- (d) a real estate developer.

**model standing offer** means a document prepared by the NSW gas distributor as a model standing offer to provide basic connection services or as a model standing offer to provide standard connection services.

**standard connection service** means a connection service (other than a basic connection service) for a particular class of connection applicant.

- (2) Unless modified under this rule 3, terms used in this Part have the same meaning as in Part 12A.

#### **4 Approval of terms and conditions of model standing offer to provide basic connection services**

During the transition period:

- (1) subrules 119C(1), 119C(3) and 119D do not apply to a model standing offer for basic connection services; and
- (2) subrules 119E(1), 119E(2), 119E(4) and 119F do not apply to a model standing offer for standard connection services; and
- (3) a NSW gas distributor may prepare different sets of terms and conditions for different classes of standard connection services or different classes of retail customers.

#### **5 Amendment of model standing offer**

During the transition period:

- (1) rule 119G does not apply to a model standing offer for basic connection services or standard connection services; and
- (2) a NSW gas distributor may amend a model standing offer to provide basic connection services or standard connection services; and
- (3) the amendment of a model standing offer under subrule (2) does not affect the validity or effect of:
  - (a) a connection offer made before the amendment takes effect; or
  - (b) a connection contract formed on the basis of such a connection offer.

#### **6 Publication of model standing offer**

During the transition period, rule 119H does not apply, but a NSW gas distributor must publish on its website, each of its model standing offers to provide a basic connection service or a standard connection service.

**7 Connection charges**

During the transition period, Division 4 of Part 12A does not apply, but connection charges imposed under Part 12A must be consistent with the NSW gas distributor's current access arrangement and any applicable reference services agreement.

**8 Application process**

During the transition period, subrule 119R(2) does not apply, and an application for a connection service may be made by a connection applicant.

**9 Acceptance of connection offer**

During the transition period, subrule 119W(2)(b) does not apply.

**10 Dispute resolution**

During the transition period:

- (1) for the purposes of Division 7 of Part 12A, the definition of customer does not apply; and
- (2) the term 'customer' is replaced by 'connection applicant'; and
- (2) subrule 119Z(1)(b)(ii) is modified to omit the words 'as approved by the AER'.

**11 Transitional arrangements after expiry date**

A transaction commenced by or with a NSW gas distributor during the transition period may be continued and completed after the transition period without regard to changes to the rules governing the transaction, that take effect after the expiry date.

**Part 2 Interim gas connection rules for the Australian Capital Territory**

**1 Application**

- (1) During the transition period, Part 12A applies to, and in relation to, the ACT gas distributor, subject to the exclusions, qualifications and modification prescribed by this Part.
- (2) However, Part 12A operates without the exclusions, qualifications and modifications prescribed by this Part insofar as they relate to a period beyond the transition period.

Example

The ACT gas distributor is required to submit model standing offers in accordance with Part 12A for the period that follows on the distributor's transition period and is bound by the relevant provisions in Part 12A (without exclusion, qualification or modification) in relation to the model standing offers even though the proposals are submitted during the transition period.

## 2 Definitions

In this Part:

**access arrangement** has the same meaning as in the NGL.

**ACT gas distributor** means ActewAGL Distribution (partnership of ACTEW Distribution Ltd ACN 073 025 224 and Jemena Networks (ACT) Pty Ltd ACN 008 552 663).

**current access arrangement** means an access arrangement applying to the ACT gas distributor which is in force on the start date.

**expiry date** means the date when the current access arrangement no longer applies.

**interim ACT gas connection rules** means the rules prescribed in this Part.

**start date** means the date when these interim ACT gas connection rules come into operation.

**transition period** means the period from the start date to the expiry date.

**Transport Services Agreement** has the same meaning as in the current access arrangement.

## 3 Gas connection for retail customers—modifications to definitions in Part 12A

- (1) During the transition period, the definitions in rule 119A are replaced with the following definitions:

**basic connection service** means a service involved in providing a connection between a distribution pipeline and a retail customer's premises where the provision of the service involves minimal or no extension to, or augmentation of, the distribution pipeline.

**connection applicant** means an applicant for a connection service by 1 of the following categories:

- (a) a retailer for or on behalf of a retail customer; or
- (b) a real estate developer.

**connection charges criteria** – see rule 7.

**connection offer** means an offer by the ACT gas distributor to enter into a connection contract with:

- (a) a retailer for or on behalf of a retail customer; or
- (b) a real estate developer.

**model standing offer** means a document prepared by the ACT gas distributor as a model standing offer to provide basic connection services or as a model standing offer to provide standard connection services.

**standard connection service** means a connection service (other than a basic connection service) for a particular class of connection applicant.

- (2) Unless modified under rule 3, terms used in this Part have the same meaning as in Part 12A.

#### **4 Approval of terms and conditions of model standing offer to provide basic connection services**

During the transition period:

- (1) subrules 119C(1), 119C(3) and rule 119D do not apply to a model standing offer for basic connection services; and
- (2) subrules 119E(1), 119E(2), 119E(4) and rule 119F do not apply to a model standing offer for standard connection services; and
- (3) the ACT gas distributor may prepare different sets of terms and conditions for different classes of standard connection services or different classes of retail customers.

#### **5 Amendment of model standing offer**

During the transition period:

- (1) rule 119G does not apply to a model standing offer for basic connection services or standard connection services; and
- (2) the ACT gas distributor may amend a model standing offer to provide basic connection services or standard connection services; and
- (3) the amendment of a model standing offer under subrule (2) does not affect the validity or effect of:
  - (a) a connection offer made before the amendment takes effect;
  - (b) a connection contract formed on the basis of such a connection offer.

**6 Publication of model standing offer**

During the transition period, rule 119H does not apply, but the ACT gas distributor must publish on its website, each of its model standing offers to provide a basic connection service or a standard connection service.

**7 Connection charges**

During the transition period, Division 4 of Part 12A does not apply, but connection charges imposed under Part 12A must be consistent with:

- (1) the ACT gas distributor's current access arrangement;
- (2) the Gas Network Capital Contributions Code determined by the Independent Competition and Regulatory Commission under section 58 of the *Utilities Act 2000 (ACT)*; and
- (3) any applicable Transport Services Agreement.

**8 Application process**

During the transition period, subrule 119R(2) does not apply, and an application for a connection service may be made by a connection applicant.

**9 Acceptance of connection offer**

During the transition period, subrule 119W(2)(b) does not apply.

**10 Dispute resolution**

During the transition period, subrule 119Z(1)(b)(ii) is modified to omit the words 'as approved by the AER'.

**11 Transitional arrangements after expiry date**

A transaction commenced by or with the ACT gas distributor during the transition period may be continued and completed after the transition period without regard to changes to the rules governing the transaction, that take effect after the expiry date.

**Part 3 Interim rules for Retail Market Procedures  
(Victoria)**

**1 Application**

This Part applies in Victoria.

## **2 Definitions**

In this Part:

**declared distribution system** has the same meaning as in the *National Gas (Victoria) Act 2008*.

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

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

**gas RoLR event** has the same meaning as in the NERL, to the extent that event:

- (a) applies to gas; and
- (b) affects customers in Victoria.

**local area retailer** has the same meaning as in the NERL.

**Victorian procedures** means the Retail Market Procedures made by AEMO under Part 15B and entitled 'Retail Market Procedures (Victoria)'.

## **2 Victorian procedures apply subject to this Part**

The Victorian procedures apply subject to this Part if a gas RoLR event occurs on or before 30 June 2013.

## **3 Where customers of failed retailer not connected to a declared distribution system**

If the customers of a failed retailer include customers not connected to a declared distribution system, AEMO, the designated RoLR and the distributor must use reasonable endeavours to deliver information or data in relation to those customers within the periods required by Chapter 6 of the Victorian procedures.

## **4 Where failed retailer is a local area retailer**

If the failed retailer is a local area retailer, AEMO, the designated RoLR and the distributor must use reasonable endeavours to deliver information or data within the periods required by Chapter 6 of the Victorian procedures.

## **Part 4 Miscellaneous transitional rules**

### **1 Update of Delivery Point Registry**

- (1) This clause applies in respect of a default RoLR appointed by the AER under Part 6 of the NERL for gas customers located in the ACT.



- (2) Despite clause 8.1 of the 'Retail Market Procedures (NSW and ACT)', AEMO may update standing data for all delivery points in the ACT, and include this data in the delivery point registry as required by Part B of the Procedures.

## **2 Extension of time period for AER to consider certain pass through applications**

- (1) This clause applies—
  - (a) to an application from a distributor for pass through of costs arising from the commencement of the National Energy Retail Law, the National Energy Retail Rules, the National Energy Retail Regulations and associated amendments to the energy laws as they apply in the State or Territory in which that distributor operates; and
  - (b) despite anything to the contrary in an access arrangement.
- (2) The time limit for the making of a determination by the AER is 100 business days from the date when the AER receives a complete application.

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[END OF RULE]

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