



## **National Gas Amendment (Retailer-Distributor Credit Support Requirements) Rule 2017 No. 1**

under the National Gas Law to the extent applied by:

- (a) the National Gas (South Australia) Act 2008 of South Australia;
- (b) the National Gas (ACT) Act 2008 of the Australian Capital Territory;
- (c) the National Gas (New South Wales) Act 2008 of New South Wales;
- (d) the National Gas (Queensland) Act 2008 of Queensland;
- (e) the National Gas (Tasmania) Act 2008 of Tasmania;
- (f) the National Gas (Victoria) Act 2008 of Victoria; and
- (g) the National Gas (Northern Territory) Act 2008 of Northern Territory;
- (h) the Australian Energy Market Act 2004 of the Commonwealth.

The Australian Energy Market Commission makes the following Rule under the National Gas Law.

John Pierce  
Chairman  
Australian Energy Market Commission

## **National Gas Amendment (Retailer-Distributor Credit Support Requirements) Rule 2017 No. 1**

### **1 Title of Rule**

This Rule is the *National Gas Amendment (Retailer-Distributor Credit Support Requirements) Rule 2017 No. 1*.

### **2 Commencement**

This Rule commences operation on 9 February 2017.

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

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

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

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

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

The National Gas Rules are amended as set out in Schedule 3.

## Schedule 1            Amendment to the National Gas Rules

(Clause 3)

### [1] Division 4            Credit support regime

Omit Division 4 of Part 21 in its entirety and the heading and substitute:

#### 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*.

## [2] Schedule 1 to Part 21

Omit Schedule 1 to Part 21 and substitute "[Deleted]".

## [3] Schedule 2 to Part 21

In Schedule 2 to Part 21 omit "(Rule524)" and substitute "(Rule 516)".

## **Schedule 2          Amendment to the National Gas Rules**

(Clause 4)

### **[1] Part 1                  Substituted definition**

In Part 1, substitute the following definition:

*retailer insolvency event* – see rule 520.



## **Schedule 3            Savings and Transitional Amendments to the National Gas Rules**

(Clause 5)

### **[1] Schedule 1            Transitional Provisions**

After Part 8 insert:

## **Part 9                    Transitional provisions consequent on the National Gas Amendment (Retailer Distributor Credit Support Requirements) Rule 2017 No. 1**

### **47            Definitions**

For the purposes of this Part 9:

**Amending Rule** means the National Gas Amendment (Retailer Distributor Credit Support Requirements) Rule 2017 No. 1.

**effective date** means 9 February 2017.

**new Division 4 of Part 21** means Division 4 of Part 21 of the National Gas Rules and all related definitions in the National Gas Rules as in force immediately before the effective date.

**old Division 4 of Part 21** means Division 4 of Part 21 of the National Gas Rules and all related definitions in the National Gas Rules as in force immediately before the effective date.

### **48            Continued operation of old Division 4 of Part 21**

The *credit support* rules in old Division 4 of Part 21 continue to apply to any *credit support* held by a *distributor* immediately before the effective date.

### **49            Interaction with rule 520**

- (a) For the purposes of 520(2)(c) of the Amending Rule, *credit support* means where the context requires:
- (1) any *credit support* held by a *distributor* under the old Division 4 of Part 21; and/or
  - (2) any *credit support* held by a *distributor* under new Division 4 of Part 21.

**50            Application of new Division 4 of Part 21**

For the avoidance of doubt, “the previous 12 months” referred to in rule 514(1) of new Division 4 of Part 21 may include months prior to the effective date.

[END OF RULE AS MADE]

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