

Drafting Note—These Rules have been approved by the Ministerial Council on Energy and will be made by the South Australian Minister shortly before the application by the first participating jurisdiction of the Schedule to the National Energy Retail Law (South Australia) Act 2010. These Rules will commence on the same date and at the same time as the application of that Schedule in that jurisdiction.

NATIONAL GAS (RETAIL SUPPORT) AMENDMENT RULES 2010

1 Citation

This Rule may be cited as the *National Gas (Retail Support) Amendment Rules 2010*.

2 Rules amended

This Rule amends the *National Gas Rules*.

3 Amendment of Rule 3

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.
- (b) for the purposes of Part 21 – See rule 523.

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

retailer insolvency event – See rule 531.

4 Insertion of 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;

default rate means the interest rate referred to in rule 203 plus two percentage points per annum.

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 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 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 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

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 daily distribution service charges 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:
- as at the date the distributor requests credit support from the retailer; or
 - 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

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.

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; and

the 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 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 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

Standard and Poor's / Fitch Rating	Moody's Rating	Dun and Bradstreet dynamic risk score	Credit allowance (% of Maximum)
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 of20.....