

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 CONNECTION) AMENDMENT RULES 2010

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1 Citation

These Rules may be cited as the *National Gas (Retail Connection) Amendment Rules 2010*.

2 Rules amended

These Rules amend the *National Gas Rules*.

3 Insertion of 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

A connection charge 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.

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).