

**ActewAGL response to National
Energy Customer Framework
Second Exposure Draft**

**Submission to Ministerial Council on Energy
Standing Committee of Officials**

26 February 2010



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Overview of ActewAGL's Submission

ActewAGL is Australia's first multi-utility to offer electricity, natural gas, water and wastewater services. ActewAGL's electricity network connects to approximately 156 000 customers in the ACT. The gas network connects to around 110 000 customers in the ACT and the surrounding region. ActewAGL Retail also sells energy to customers in the ACT and southern New South Wales.

ActewAGL supports the development of the National Energy Customer Framework (NECF) and National Connections Framework. These national frameworks, however, must appropriately support legitimate and unavoidable jurisdictional and business differences that arise both as a result of the different markets that they serve, and because of existing legislative and regulatory approaches that may be in place. It is important to ensure that in the move to nationally consistent arrangements, for example in relation to small customer price regulation, important principles underpinning the reforms, such as the need to streamline regulation and increase retail competition, are not undermined.

ActewAGL does not consider that the NECF2 package strikes an appropriate balance between achieving consistent arrangements and accommodating legitimate differences between the electricity and gas sectors, and between the jurisdictions.

It is important that the organisational principles adopted in establishing the Australian Energy Regulator (AER), the Australian Energy Market Commission (AEMC) are not undermined in the NECF2 package. ActewAGL considers that the important separation between rule-making and regulation should be maintained in the new national frameworks, and does not support the proposal to allow the AER to develop binding guidelines as this is inconsistent with this separation. In addition, the important role of the National Energy Retail Objective in guiding the actions of the AER and AEMC under the National Energy Retail Law (NERL) and National Energy Retail Rules (NERR) must be maintained.

ActewAGL observes that the NECF2 package as drafted imposes a net increase in regulation on all retailers and distributors, and a very significant increase in regulation for ActewAGL operating in the ACT and NSW. Instead of seeking to streamline regulation and ensure that obligations are necessary and appropriate, the outcome involves an approach whereby it can be argued that more intrusive, costly and invasive regulation is proposed as the national standard in this reform package. Examples abound including liability arrangements, hardship provisions, standing offer requirements, payment plans, marketing arrangements and information provisions.

ActewAGL is disappointed that there does not appear to have been investigation into the underlying rationale for regulation before including these obligations in the national framework. Investigation could have been made, for example into arrangements in jurisdictions that have not adopted as intrusive or onerous requirements, and considering whether in those cases there has been a regulatory or market failure. ActewAGL observes that the ACT has a vibrant

competitive electricity and gas market without many of the obligations included in the NECF2 package.

The NECF2 legislative package must also work alongside the recently reformed access regimes for electricity and gas. ActewAGL has identified a number of areas where the proposed customer and connections frameworks are inconsistent with existing access regimes, and require amendment. The NECF2 package also includes new Retailer of Last Resort (ROLR) arrangements. ActewAGL has a number of concerns with the proposed arrangements, which we consider add an unnecessary layer of complexity and uncertainty in a ROLR event, which is not appropriate given the risks associated with ROLR events and their potential impact on the market.

Appropriate transitional arrangements are an essential part of the legislative package. It is not possible to effectively comment on the proposed national framework without clarity on how existing jurisdictional arrangements will change under the national regime, the timing of those changes, and arrangements that will govern the move to the national arrangements. The potential for significant parts of the framework to be “held back” in some jurisdictions opens the potential for businesses to be subject to a complex hybrid of national and jurisdictional arrangements whereby jurisdictions select arrangements to best meet their needs and circumstances that differ.

ActewAGL considers that it is essential that the national framework recognise and accommodate jurisdictional difference. It would significantly undermine the framework if the outcome of not accommodating legitimate jurisdictional differences in the national framework was the partial implementation of the framework in some jurisdictions. Such an approach would not achieve the overarching aims of streamlining and simplifying regulation through the adoption of a national framework to distribution and retail regulation, and instead further complicate arrangements, impeding competition and undermining customer outcomes.

1. Introduction

1.1 ActewAGL's structure and submission approach

ActewAGL is Australia's first multi-utility to offer electricity, natural gas, water and wastewater services. ActewAGL's electricity network connects to approximately 156 000 customers in the ACT. The gas network connects to around 110 000 customers in the ACT and the surrounding region. ActewAGL Retail also sells energy to customers in the ACT and southern New South Wales.

ActewAGL is a joint venture between two partnerships:

- a Retail Partnership, between ACTEW Retail Limited and AGL ACT Retail Investment Pty Ltd; and
- a Distribution Partnership, between ACTEW Distribution Ltd and Jemena Networks (ACT) Pty Ltd.

This submission is made by ActewAGL on behalf of both partnerships. Most comments in this submission are on behalf of both partnerships but in some instances viewpoints of the partnerships differ and that is made clear by explicit attribution.

The remaining sections of this submission cover:

- Legal framework – section 2
- Retailer obligations and provision of services – section 3
- Distributor obligations and provision of services – section 4
- Liability arrangements – section 5
- Retailer of last resort – section 6
- National connections framework – section 7; and
- Implementation of the national framework – section 8.

ActewAGL also attaches a table of detailed comments on the NECF2 legislative package which supplement and reinforce comments set out in this submission.

1.2 Development of legislative package and consultation

ActewAGL supports the development of the National Energy Customer Framework (NECF) and National Connections Framework. At this stage, however, ActewAGL is unable to support the package as presented due to the lack of clarity and information over:

1. The intended operation of the frameworks, including objectives and policy drivers for particular approaches, for example in relation to the changes to the definition of services provided between distributors, customers and retailers. Without this information, ActewAGL cannot adequately comment on the appropriateness of policy objectives and whether these have been achieved through drafting.

ActewAGL requests the MCE SCO release a detailed explanatory document in relation to the NECF2 package that sets out policy objectives, considerations and conclusions reached by policy makers, including responses to issues raised in submissions. Similar documents have been released for earlier legislative packages such as the National Electricity Law and National Gas Law.

2. The relationship between the proposed frameworks and existing access and other market regulation in the electricity and gas sectors, for example in relation to the connections framework negotiation arrangements and the specific transitional arrangements applying in the ACT in the current electricity network price determination. Without this information, ActewAGL cannot adequately comment on the extent to which inconsistencies between the proposed frameworks and those currently in place are recognised or intended, and how these inconsistencies may be addressed when the framework is implemented with consequential amendments.

Clarity would be improved through the preparation of tables or diagrams to categorise, classify and explain relationships between various parts and components of the framework, released with the detailed information on policy intent as discussed above.

3. The intended application of the frameworks in individual jurisdictions. Without this information ActewAGL cannot discern the shape of the complete package of legislation and rules that will apply in each jurisdiction, to allow assessment of potential gaps, duplicative arrangements or inconsistencies that require consideration or amendment in the national framework.

ActewAGL seeks further information on the expected implementation of the frameworks in each jurisdiction, along with information on expected changes to existing jurisdictional laws, rules and guidelines.

ActewAGL does not consider that the NECF2 package strikes an appropriate balance between achieving consistent arrangements and accommodating legitimate differences between the electricity and gas sectors, and between the jurisdictions. ActewAGL also considers that in many instances the case for additional regulation has not been made, and the NECF2 package will unnecessarily drive up costs without delivering benefits to customers. Examples where ActewAGL considers that this is the case are set out in this submission.

2. Legal framework

2.1 National Energy Retail Objective

2.1.1 Application to consumer protection provisions for small customers

ActewAGL supports the policy decision of the MCE to apply an objective focused on consumer interests as the ultimate goal within an efficiency framework.¹ ActewAGL therefore supports the National Energy Retail Objective included in subsection 113(1) the NERL as providing appropriate guidance to the AER, AEMC, review bodies and regulated parties as to the intent and future development of the Law and Rules. The MCE SCO noted in its June 2008 Policy Response Paper in respect to the adoption of the objectives in the NEL and NGL, that:

In the SCO's view this will drive the best outcome, giving to the AEMC when exercising its rule making function, appropriately balanced guidance between the objectives of protecting consumers and minimising the cost and burden of regulation.²

This position is supported by ActewAGL and was reflected in the first exposure draft of the NERL, but appears to have been undermined in the second exposure draft by the inclusion of subsection 113(2) as follows:

The national energy retail objective should not be taken to prevent or restrict the development and application of consumer protections for hardship customers and other small customers, including the development, approval and application of customer hardship policies.

ActewAGL considers that this clause has the effect of undermining the National Energy Retail Objective by effectively excluding from the Objective provisions related to consumer protection for small customers. ActewAGL considers that this is contrary to the policy intent described in the Explanatory Memorandum, and undermines the MCE SCO policy decision in respect of the Objective to apply under the NECF.

The Explanatory Memorandum states that clause 113(2) was included in the NERL:

To avoid any unintended diminution of specific consumer protection measures such as hardship policies, where those policies may be interpreted as conflicting with the economically efficient operation of energy markets.³

¹ Ministerial Council on Energy (MCE) Standing Committee of Officials (SCO) *National Energy Customer Framework Second Exposure Draft: Explanatory Material*, November 2009, p 7

² MCE SCO *A National Framework for Regulating Electricity and Gas (Energy) Distribution and Retail Services to Customers: Policy Response Paper*, June 2008, pp106-7

³ MCE SCO *National Energy Customer Framework Second Exposure Draft: Explanatory Material*, November 2009, p 7

ActewAGL notes, however, that the clause is not limited to specific consumer protections, but spreads to all consumer protections under the Law and Rules related to small customers. This appears broader than the intent described in the Explanatory Memorandum.

ActewAGL also notes comments by officials at the stakeholder forum held in Melbourne on 3 and 4 February 2010 that the clause is intended to be clarificatory – to ensure that efficiency under the objective is construed broadly to include the protection of customers. ActewAGL does not consider that the clause acts in this way, and instead acts to exclude the application of the Objective to provisions that could be considered to be related to consumer protection of small customers.

This change impacts both the AER when it exercises its discretion in relation to regulatory functions and powers, and the AEMC in making decisions in relation to Rule changes. In addition to the uncertainty it creates in the scope of the AER's discretion, it creates a vacuum for AEMC rule change decisions made in respect of consumer protection provisions for small customers.

As such, ActewAGL considers that subsection 113(2) should be deleted from the NERL. If the MCE SCO considers that further clarification of the appropriate interpretation of the objective may be beneficial, guidance may be incorporated into the second reading speech for the introduction of the legislation in the South Australian Parliament. ActewAGL notes that this approach was adopted in respect of the National Gas Objective, where similar interpretive issues required clarification.

2.1.2 AER discretion under the National Energy Retail Objective

Section 802(2) states that in exercising an AER function or power, the AER may give any such weight to any aspect of the National Energy Retail Objective. ActewAGL notes that a similar objective applies under the National Gas Law and National Electricity Law applying to the AER's regulatory functions and powers, however there is no equivalent clause in those laws to that in section 802(2) regarding how the AER should balance competing parts of the objective. As such, the AER must apply its discretion in determining the balance between parts of the objective, but that all parts of the objective must be considered and weighed.

ActewAGL is concerned that clause 802(2) undermines the AER's accountability in considering the potentially competing parts of the National Energy Retail Objective, effectively allowing the AER to disregard parts of the objective in exercising its discretion with respect to a regulatory function or power. This appears to undermine the intent and operation of the objective in guiding the AER to consider the long term interests of consumers in respect of price, quality, safety, reliability and security of supply considered together, and allow the AER to focus on short term price outcomes without consideration of longer term issues related to investment and supporting competition.

ActewAGL considers that subsection 802(2) should be deleted from the NERL and notes that this would be consistent with the operation of the objectives under both the National Gas Law and National Electricity Law.

2.2 Role and content of guidelines

2.2.1 Imposition of obligations through guidelines

The NERL includes provision for the AER to make a number of guidelines to govern certain processes. ActewAGL outlined in its previous submission responding to the first exposure draft that it considered that the use of guidelines under the NERL was inconsistent with the governance framework established by MCE in establishing the AER, AEMC and MCE. The MCE has not addressed this issue, and instead guidelines have proliferated under the second exposure draft to number eight, established under both the NERL and the National Electricity Rules (NER). These are:

- AER Retail Pricing Information Guidelines;
- AER Retailer Authorisation Guidelines;
- AER Compliance Procedures and Guidelines;
- AER Performance Reporting Procedures and Guidelines;
- AER Exempt Selling Guidelines;
- AER Multiple ROLR Appointment Guidelines (Default ROLR Failure);
- AER Multiple ROLR Appointment Guidelines (Non-Default ROLR Failure); and
- Connection charge guidelines.

In the case of at least five of the guidelines established under the NERL⁴, regulated businesses' compliance with the guideline is compulsory, meaning that the AER is effectively developing rules under these guidelines that have the force of law, which it is then responsible for enforcing. This conflicts with one of the main policy decisions and drivers for the national reform agenda under the Council of Australian Governments, which was to improve governance arrangements in the Australian Energy Market through the separation of rule making and regulation:

... one of the critical elements of these reforms is the improvement of the governance arrangements that apply in relation to the Australian energy market, through separating policy making, rule-making and energy market development, and economic regulation and market rule enforcement.⁵

It was this policy decision that led to the development of the AEM) and AER in July 2005, to unpick the complex, overlapping and potentially conflicted roles of the then National Electricity Code Administrator and the Australian Competition and Consumer Commission. The MCE

⁴ AER Retail Pricing Information Guideline, AER Retailer Authorisation Guideline, AER Compliance Procedures and Guidelines, AER Performance Reporting Procedures and Guidelines and AER Exempt Selling Guideline.

⁵ Ministerial Council on Energy Standing Committee of Officials, *Legislative and Regulatory Framework Information Paper*, August 2004, p 4

SCO now appears to be re-establishing these governance issues through the proposed NERL guideline provisions.

The proposed role of guidelines under the NERL is significantly out of step with the role of guidelines adopted under the NEL and NGL. The appropriate role of guidelines was a prominent issue in the development of the NEL and NGL, with earlier drafts of the NER including a mix of binding and non-binding guidelines. In response to stakeholder submissions highlighting the governance concerns with this approach, the MCE SCO amended the NER to its current form, where guidelines are not binding on the AER or regulated entities, but instead they set out how the AER will exercise its discretion and undertake processes.

ActewAGL considers it inappropriate for the AER to establish guidelines that impose obligations, as this is the role of the Law and Rules. For this reason, the ongoing development of the Rules is subject to stringent processes and accountability requirements. As currently drafted, however, the NERL empowers the AER to create guidelines that have the same effect as law and rules, without the same processes or accountability requirements.

The two other guidelines required under the NERL, related to ROLR appointments, are more in line with the accepted use of guidelines under national energy legislation, in that they appear intended to set out how the AER will exercise its discretion, and are not compulsory on the AER or businesses.

The second exposure draft legislative package also includes a guideline making power under the NER in respect of connection charges. The status of this guideline is unclear, given that Rule 6.2.8 of the NER sets out the role of guidelines under the access regime as non-binding. The proposed guideline relates to matters that are core to the access regime and determination process, including capital contributions. It is not appropriate for guidelines under Part 5 of the NER to bind the AER or businesses in the operation of the Law and Rules under Part 6.

2.2.2 Information gathering

In many circumstances the scope of NERL guidelines includes the imposition by the AER of information gathering obligations on retailers and distributors. Under the NEL and NGL, the AER is subject to clear accountability requirements in developing information instruments, including requirements to ensure that information requirements are consistent with the relevant law's objective, the information is reasonably necessary for the performance of the AER functions or powers, and that the costs to the business of gathering, preparing and providing the information is considered. While the second exposure draft of the NERL does establish that some of the AER's functions are subject to the NERL objective, it is not clear that the development of all guidelines is included in this, and the other accountability provisions relating to information gathering under the NEL and NGL do not apply to guidelines at all. This is particularly the case for the AER compliance procedures and guidelines, which in some respects are similar to the annual compliance order established by the AER under the NGL.

As set out above, ActewAGL does not consider that the AER should be able to establish binding rules through guidelines, and this extends to the imposition of reporting requirements. In the event that the MCE SCO retains binding guidelines in the NERL (which ActewAGL does not support), the AER should be required to consider the costs of information provision before establishing requirements, and show that the information required is reasonably necessary for the performance of the AER functions or powers. ActewAGL further considers that the development of all guidelines should be subject to the NERL Objective, and retailers and distributors should be able to recover costs associated with complying with guidelines, including information requirements, through relevant pass through provisions and retail tariffs.

2.2.3 AER Compliance procedures and guidelines

ActewAGL's previous submission on the first exposure draft highlighted its concerns with the scope of the proposed AER Compliance Procedures and Guidelines. As drafted, the NERL extends the AER powers to regulating internal policies and processes to ensure compliance, requiring regulated businesses to establish compliance policies, systems and procedures in accordance with the AER Compliance Procedures and Guidelines. ActewAGL maintains that this is an inappropriate power for the AER.

The AER's compliance monitoring role should be focused on compliance outcomes, rather than how the regulated business achieves compliance. As noted in our previous submission, ActewAGL operates in a highly complex regulatory environment that spans national and jurisdictional energy-specific regulation, technical regulation, safety, corporation, competition, environment and heritage law, and emergency management, to name just a few areas. A compliance guideline that requires specific systems and approaches to manage compliance in one area of law relevant to a business privileges that area of law, which in turn creates distortions and inconsistencies within the compliance systems in place within the business for all laws. ActewAGL considers that section 1202 of the NERL should be deleted, and further limitations be put on the AER guideline making power to ensure this guideline is limited to compliance monitoring, rather than compliance processes.

2.2.4 AER Retail Market Performance Reports

ActewAGL notes that the specific provisions in the proposed Rules relating to the content of retail market performance reports have been amended to remove certain detailed requirements relating to energy affordability, which ActewAGL raised in its earlier submission. ActewAGL remains concerned however, that the detailed requirements set out in Rule 1002 and Rule 1003 may lead to disclosure of information traceable to individual customers and commercially sensitive information.

The Rules set out requirements for retail market performance reports for publication of information for each retailer related to numbers of market and standard contracts, divided into small, large, residential and businesses customers. In a small jurisdiction, information disaggregated to this level may lead to the disclosure of information that can be related back to individual customers.

ActewAGL considers that the AER reporting requirements in Rules 1002 and 1003 should be subject to an overarching provision that information required to be published under these rules

need not be published where publication would lead to the disclosure of confidential information that can be linked to an individual customer or which is commercially sensitive.

The AER Retail Market Performance Report is also required to include information on retail market activities.⁶ It is unclear what information is intended to be covered in this category. ActewAGL supports the ongoing reporting and publication of high level information on retail market activity such as customer churn, the number of retailers active in the market, and the number of customers on market and standard contracts. ActewAGL does not support, however, the publication of detailed information on individual retailer offerings such as market tariffs and special offers. Marketing activities are business decisions by individual retailers and are commercially sensitive, and should not be published by the AER through retail market performance report or regulated through the AER Performance Reporting Procedures and Guidelines.

2.3 Review of authorisation decisions

ActewAGL previously submitted that the AER's powers to grant or revoke a retailer authorisation, as well as to approve the transfer of an authorisation, should be subject to merits review.⁷ ActewAGL is disappointed that the MCE SCO did not address this issue in its revisions to the NECF package, or explain its reasons for rejecting ActewAGL's submission in its explanatory memorandum. ActewAGL also notes comments by government officials at the stakeholder forum held in Melbourne on 3 and 4 February 2010 that the question of merits review for these decisions was one for Ministers, and that the possibility of extending merit review to these decisions was not currently being considered. It is unclear to ActewAGL how this issue could be considered by Ministers if issues raised in submissions that are relevant for ministerial consideration are not raised at that level.

ActewAGL confirms its view that the AER's decisions in respect of authorisations should be subject to merits review as they share key characteristics with other decisions to which merits review is available in that they:

- Involve a degree of discretion by the AER in making a decision or imposing conditions;
- They relate to the application of that discretion to an individual business; and
- The AER's decision has significant implications for the ongoing operation of that business.

Australian Competition Tribunal review of some AER decisions is already available under the NERL in relation to the public release of confidential material by referring to and invoking powers and procedures existing under the National Gas Law. ActewAGL considers that it would be a relatively straightforward matter to include key authorisation decisions under existing merits review arrangements under the NEL or NGL using similar legislative cross-referencing techniques.

⁶ Proposed NERL, Second Exposure Draft, s.1214(b)

⁷ ActewAGL, *ActewAGL response to National Energy Customer Framework First Exposure Draft*, June 2009, p 27

3. *Retailer obligations and provision of services*

3.1 Meaning of a small customer

The NERL defines a small customer for the purposes of the customer framework as all residential customers, and those customers with consumption below a threshold set by national regulations. ActewAGL is concerned that this broad “one size fits all” approach to regulation of small customers is inflexible in considering the different levels of retail competition in different jurisdictions and across fuel types. In practice, this definition effectively re-regulates gas retail pricing in the ACT and entrenches price and contract regulation for all residential customers. ActewAGL does not consider this is consistent with AEMA provisions associated with the eventual removal of retail price regulation, and seeks greater flexibility in the definition of small customers and customer contracts that are included under the framework.

ActewAGL is also concerned that the definition of a small customer is then used in many parts of the framework to impose consumer protection obligations on retailers that extend to commercial enterprises. It is unclear why a commercial enterprise that fits within the definition of a small customer requires protections such as limitations on disconnection timing for dual fuel contracts, the use of security deposits, and retail marketing contact times. ActewAGL considers the provisions related to small customers in the NERL and the NERR should be reviewed in light of their application to business customers and, where appropriate, further limited where the protections are not appropriate for commercial enterprises.

3.2 Standing offer prices

ActewAGL reiterates its earlier comments in relation to the limitations on variations to standing offer tariffs and is disappointed that issues raised by ActewAGL and other retailers have not been addressed in the framework or explanatory material.

Limitations on standing offer prices limit the ability of retailers to recover their costs. This increases the chance of retailer failure and undermines the powers of jurisdictional governments to set regulated retail tariffs. Tariffs need to be able to be changed more frequently than currently provided for under the NERL where, for regulated retail prices, a jurisdictional retail pricing determination or decision allows or requires prices to change. For retail prices that are not subject to regulation or explicit tariff setting, tariffs should be able to be varied as dictated by the market, particularly where there has been a significant change in underlying costs for the retailer, including in response to changes in underlying network tariffs.

3.3 Customer hardship and payment plans

The proposed NERL extends the requirement to offer a payment plan to both hardship customers and those customers identified as being in financial difficulty.⁸ ActewAGL notes that it can be very difficult to identify customers in financial difficulty and retailers do not have the expertise to assess a consumer's financial situation. Currently, hardship customers in the ACT are identified as those that are assisted by ACAT. Extending the obligation to offer payment plans to other customers that are perhaps not enrolled in specific assistance plans, but are still experiencing transitional financial difficulties will require additional staff training and some systems changes to implement.

Under the revised provisions the onus is being put on retailers to identify very early (e.g. if a customer is late paying a bill) whether or not the consumer may be experiencing even temporary hardship, and to offer a payment plan. Customers may not always inform the retailer that they are in financial difficulty, and other potential indicators, such as late payment of a bill, does not provide a reliable method to identify such customers as there may be a number of reasons why a customer may be late in paying a bill that is unrelated to financial difficulties (such as oversight of a bill or temporary failure of banking arrangements such as automatic payments or BPay facilities). This requirement necessitates additional resources and possibly system enhancements which will lead to increased costs to the end consumer.

Payment plans are administratively costly for retailers to establish and have cashflow implications. It is therefore important to ensure that payment plans are only offered to customers that have a genuine need for such a plan.

ActewAGL also considers that other options, such as debt forgiveness on compassionate grounds in circumstances such as bereavement, can be used in certain circumstances where a customer is experiencing temporary difficulties. As currently drafted, section 231 of the NERL requires a retailer to offer a payment plan to a customer experiencing financial difficulties, in place of potentially more compassionate options that a retailer may adopt in some circumstances at their discretion.

Further issues relevant to retailer obligations and provision of services are set out in the attached table.

⁸ NERL s. 231(1)(b)

4. *Distributor obligations and provision of services*

4.1 Definition of a distributor

The definition of a distributor included in the NERL refers to a service provider within the meaning of the NGL who owns, operates or controls a distribution pipeline that is a covered pipeline under the law.⁹ Under the NGL, there can be several service providers for a covered network. This means that under the NERL, there can be several “distributors” in respect of a single distribution system that have obligations under the framework.

Where there are multiple service providers for a network, the NGL allows one service provider to act as the complying service provider for the group.¹⁰ ActewAGL notes that the NERL does not contain a similar provision, and does not recognise the concept of a complying service provider under the NGL. Without such a provision, several service providers associated with a single network may be obliged to directly satisfy the obligations under the NERL such as to provide connection services to retail customers, rather than there being a single service provider potentially responsible for compliance such as is allowed under the NGL.

ActewAGL considers that the NERL should recognise that an obligation can be satisfied by a single service provider acting for a group, as allowed under the NGL.

ActewAGL also notes that a similar issue may arise under the national connection framework in relation to the definition of a distributor, which is related to the definition of a service provider.

4.2 Consistency with access regimes

ActewAGL notes that “retail support” obligations associated with the NECF have been incorporated into rules. ActewAGL supports this development as being consistent with the access frameworks and the nature of many of the obligations.

ActewAGL notes, however, that there are some aspects that are not consistent with current access regimes.

Rule 105 of the *Draft National Gas (Retail Support) Rules* states that distribution service charges (between the distributor and the retailer) must be calculated in accordance with the applicable access arrangement. This rule is not consistent with section 322 of the *National Gas Law* which provides scope for the parties to agree alternative arrangements to those in an

⁹ ActewAGL notes this definition relates to a subset of service providers under the NGL, which also includes service providers of pipelines that are not covered, and service providers intending to own, control or operate a pipeline.

¹⁰ National Gas Law s.10

access arrangement. In this way the access arrangement is not binding on a user (in this case a retailer) if they want to negotiate different terms to those in an access arrangement.

Maintaining these arrangements is an important part of the gas access regime, as described in the second reading speech for the *National Gas (South Australia) Bill 2008* which stated:

Consistent with the Gas Code, the National Gas Law ensures that access arrangements do not infringe upon protected existing contractual rights and service providers are free to negotiate terms and conditions of access with users which differ from an applicable access arrangement.¹¹

This scope for variation is put in practice by ActewAGL in respect of the ACT, Queanbeyan and Palerang gas distribution network by having an individual *Transport Service Agreement* with each user of the network. This is set out in clauses 3.6-3.14 of ActewAGL Distribution's current access arrangement, and is also included in revised access arrangement currently being considered by the AER.

ActewAGL considers that the retail support rules should be amended to be consistent with the NGL.

4.3 Definition of “supply”

ActewAGL notes that the definition of customer connection services includes at part (c) the word “supply”.

We note that the word “energisation” is defined as, in the case of electricity, “the closing of a connection”, or in the case of gas, “the opening of the connection in order to allow the flow of energy to the premises”.

The word “supply” however is not defined in the NECF2 package. As a result, the package does not accurately reflect the fundamental difference between those services which an electricity distributor provides to customers, and those provided by gas distributors. It is clear to ActewAGL that a one-size fits definition of customer connection services is unworkable.

Accordingly, we believe that changes need to be made to the package to differentiate between the two different forms of energy so as to provide a gas regime whereby the gas distributor provides connection services to the customer, but not the supply of gas. In other words, the gas distributor's obligation in this particular area would be limited to energising the customer whilst supply obligations would be a matter to be dealt with through the retailer/customer agreement, or as otherwise determined between the distributor and retailer under the relevant access arrangements.

ActewAGL considers that the above could be accomplished in a number of ways, including:

1. isolating the word “supply” by moving it into a new part (e) of the “customer connection service” definition, prefacing the word supply with “*in the case of electricity only...*”;

¹¹ Second Reading Speech, National Gas (South Australia) Bill 2008, p 17

2. deleting the definition of “supply” from part (c) of the “customer connection service” definition entirely, on the basis that it introduces uncertainty and may in any case be redundant given the existing definitions of “connections” and “energisation”; or
3. defining the word supply so as to split the definition taking into account the nature of a gas connection service and the current gas access regime.

Given that there is considerable ambiguity concerning the use of the word supply in the abovementioned definition and throughout the NECF2 package, we urge MCE SCO to provide clarity in relation to the use of that word and to further discuss this matter with all stakeholders.

Further issues relevant to distributor obligations and provision of services are set out in the attached table.

5. *Liability and compensation arrangements*

5.1 Liability and indemnity

ActewAGL Distribution has endorsed and commends to the MCE SCO the key points and detail of the ENA's submission.

As set out in our previous submission responding to the NECF1 package, ActewAGL Distribution currently accepts liability for losses incurred as a direct result of any negligence or breach of contract, however, we specifically exclude liability for consequential loss and other specified losses. While we consider that a cap on liability would be preferable to allow us to effectively manage our risk, we are of the view that limitation of liability to direct losses is a minimum level of protection that may be effectively managed by distribution businesses.

We are particularly concerned with the proposed removal of the distributors' ability to contractually vary their liability with their customers (pursuant to section 120 of the *National Electricity Law*). Whilst ActewAGL Distribution has only a limited number of customers with negotiated contracts given the size of the network and profile of our customers, the ability to negotiate has allowed sophisticated larger customers, such as government and educational facilities, to better achieve their commercial imperatives in exchange for a more flexible approach to risk allocation.

ActewAGL Distribution also endorses and commends to the MCE SCO the points made by the ENA in relation to the distributor/retailer indemnity in section 1502 of the NERL. As set out in our previous submission in response to NECF1, we are of the view that the existing arrangements under the NER and Access Arrangements are more appropriate and better reflect the relative position of the parties and the nature of electricity and gas supply, respectively.

6. Retailer of last resort

The NECF2 legislative package includes new national Retailer of Last Resort (ROLR) arrangements. ActewAGL supports the development of national ROLR arrangements, however it considers that the proposed arrangements are overly complex, have the potential to create significant uncertainty in the market, and will impose unnecessary costs on retailers and ultimately customers. ActewAGL considers that the arrangements need to be simplified to ensure a smooth transition of customers during a ROLR event, in accordance with transparent processes.

6.1 The need for simplicity, certainty and transparency in arrangements

An important element of any ROLR framework is to ensure ongoing financial continuity for customer supply points, giving confidence in the market. Key elements to deliver continuity and confidence include:

- Clear arrangements setting out what will happen in a ROLR event;
- Clear lines of responsibility such that parties expected to act in a ROLR event know what they are expected to do; and
- Clear and expeditious transfer of financial responsibility for customers from one retailer to another in a ROLR event.

ActewAGL considers that the framework does not deliver these elements. Instead, the proposed ROLR arrangements will create considerable uncertainty at the time of an event as to the identity of the designated retailer, and the timing of transfer of financial responsibility for ROLR event customers. This arises from the registration of multiple retailers that could potentially become the designated retailer for a particular supply point, and the process for appointing the designated retailer or retailers.

As an alternative, ActewAGL considers that the AER should appoint a default and alternative ROLR for relevant areas or customer classes through a transparent process prior to the occurrence of a ROLR event. An alternative ROLR is required to prepare for the potential that the default retailer is also the failed retailer. This approach means that the ROLR retailers are clear as to their responsibilities in a ROLR event, and can act in that role immediately without an intermediate decision by the regulator to appoint a designated ROLR. This approach ensures market continuity and confidence by ensuring that there is always an effective retailer responsible for each supply point. It also reduces the costs of a ROLR scheme, as noted below.

6.2 Cost and complexity of ROLR arrangements

ActewAGL notes that the designation of multiple overlapping ROLRs will significantly increase costs passed on to customers incurred in preparing for a ROLR event. Under the ROLR cost recovery scheme, designated ROLRS can apply to the AER to recover costs associated with preparing for ROLR events. This is appropriate as there can be significant costs associated with undertaking this role, even where an event does not take place. The arrangements, however, mean that customers may be paying for multiple registered retailers to prepare for an event in respect of their supply point, where only one retailer will ultimately be responsible at that customer's supply point in a ROLR event. ActewAGL does not consider that this is an efficient outcome for customers.

In addition, the NERL includes a number of requirements that will increase the administrative costs of the regime. For example, ActewAGL considers that the legislative requirement that the AER undertake annual EOIs for registered ROLRs¹² is unnecessary, will be costly to implement, will increase retailer costs in being a registered retailer, and will increase risks for retailers. Given the costs associated with preparing for an event, the relevant retailers and customers would be better served by more certainty as to who would be the retailer in a ROLR event, with longer terms of appointment. Further, annual ROLR exercises¹³ are costly and unnecessary where there is continuity in the responsible ROLR from year to year.

6.3 Unnecessary and intrusive information requirements

ActewAGL considers that the proposed ROLR information arrangements are inappropriate for application to retailers and not necessary to ensure an effective and efficient ROLR scheme.

The ROLR information arrangements impose requirements on retailers that are similar to those currently applying to regulated network businesses, and which go far beyond information that may be needed in a ROLR event. As set out in the law, it is anticipated that the information provisions will be used to gather historic, current and forecast information on an annual basis (or potentially even more regularly) from all retailers on:

- Metering and billing;
- Details of any parent company guarantees;
- Details of cash flow;
- Details of hedging contracts; and
- Latest financial statements.

Information instruments can be issued on any or all retailers for any purpose relevant to the ROLR scheme. This is not limited to the occurrence of a ROLR event or apprehended ROLR event, but can be issued at any time to gather information on other factors such as:

¹² Proposed NERL s. 606

¹³ Proposed NERL s. 644(a)

- cost recovery arrangements;
- identification of possible retailers to act as a default or designated ROLR (but which may not be a registered ROLR) based on their hedging arrangements; and
- the setting of large customer tariffs in a ROLR event.

ActewAGL considers that these arrangements are essentially unconstrained, and completely out of step with the needs of an efficient ROLR scheme, and the appropriate functions of the AER in administering the ROLR scheme or during a ROLR event. ActewAGL considers that the general information provisions set out in Part 8 the proposed NERL are sufficient to allow the AER, if required, to gather information from a failed or failing retailer in order to facilitate the transfer to customers in a ROLR event. It is not necessary to the AER to gather information on an annual basis for it to carry out its functions, or for the AER to have special powers for the purpose.

Further comments on the ROLR arrangements are set out in the attached table.

7. National Connections Framework

7.1 Application of the connections framework to uncovered gas networks

ActewAGL is concerned that the connections framework can be applied to uncovered networks through the operation of a local instrument made under section 112 of the NERL. The decision to impose these obligations is unguided by principles or rules, and a jurisdictional minister does not have to consult before nominating a distributor. The practical effect of nominating a distributor is to apply key aspects of access regulation to networks that are not covered.

The determination of a pipeline as covered or uncovered (and therefore subject to the gas access regime) is a central element of the gas access regime. A detailed coverage test is applied to ensure that regulatory intervention occurs only in those circumstances in which it is likely the benefits of regulation outweigh its costs.¹⁴ In 2006 the MCE raised the threshold for coverage by adding a further requirement to the coverage test. The MCE noted that “the adoption of this change should ensure that only pipelines with substantial market power will meet the test for coverage, thus lessening the chances that formal price control is imposed where it is not absolutely necessary”.¹⁵

ActewAGL is therefore disappointed that aspects of the gas access regime, in particular the imposition of an obligation to connect and limitations on the charges that can be applied to a connection, are intended to be able to be applied to uncovered pipelines through processes and decisions that are unrelated to the considerations relevant to coverage.

Uncovered pipelines operate in a competitive market. They are subject to market pressure in determining their prices, including for connection, and have no interest in limiting the ability of an otherwise economic connection from proceeding. ActewAGL further notes that the competitive pressures on gas network businesses are at their greatest at the time of connection, as customers have considerable options in relation to appliances, and whether they proceed with a gas connection.

ActewAGL does not consider that the gas connections framework should be able to be applied to uncovered pipelines, and the scope for jurisdictional nomination of networks should not extend to the connections framework.

7.2 Connection services provided to party other than a customer

ActewAGL notes that in some circumstances the party that is seeking a new connection to the network is not a *customer* as defined under the connections framework, in that they do not

¹⁴ Productivity Commission, *Review of the Gas Access Regime* 2004, p 198

¹⁵ MCE, *Review of the National Gas Pipelines Access Regime - Decision*, May 2006, p 10

purchase or propose to purchase electricity or gas from a retailer in respect of the site for which they are seeking a connection. This is particularly the case for developers connecting a site prior to a customer seeking energy at a site. In this circumstance, a developer also does not appear to fulfil the definition of a *connection applicant* as they are not acting on behalf of a customer, and the eventual customer may not actually take energy at a site until some time later. This leads to a lack of clarity as to the intended application of the framework to developer-led connections, which also extends to capital contributions discussed further below.

The potential separation between the party seeking a connection and the eventual customer at that site creates a number of difficulties under the framework. The connection process assumes that the connection applicant is a customer, non-registered embedded generator or an agent for a customer, and explicitly excludes a party seeking a connection that is not in one of these categories. This therefore excludes a developer not acting for a specific customer. ActewAGL also notes that the existing chapter 5 will not apply to this connection as the connections framework is stated to apply to connections other than those for:

- A registered participant; or
- A person that intends to become a registered participant.

A developer seeking to connect a commercial building is unlikely to fall into these categories.

The framework must be amended to separate the concept of a customer for distribution services from a connection applicant to encompass current practice in respect of developer-led connection works.

7.3 Connection conditions and ongoing obligations

Whilst ActewAGL welcomes the flexibility offered by negotiated connection contracts with both small and large customers, we have concerns that the draft arrangements will not allow distributors to ensure future owners of the site will be bound to the terms of the negotiated connection contract for the site. A customer who enters into a negotiated connection contract with a distributor does not have the capacity to enforce the terms of that negotiated contract on any successor in title to the site, nor does the distributor. As a result, future owners of the site may disown the agreement which was entered into for certain purposes and, no doubt, for consideration.

To address this issue ActewAGL recommends that provision be made in the NERL such that, where a customer and distributor enter into a negotiated connection contract, that contract, by force of statute, is binding upon successive owners of the site unless otherwise agreed between the successive owner and the distributor.

7.4 Electricity connection charge principles

For its electricity network, ActewAGL currently applies the *ACT Capital Contributions Code* in determining appropriate capital contributions to be paid by a customer in respect of a

connection. The Code does not allow ActewAGL to charge a customer for a connection (that is, require a capital contribution) unless the connection is uneconomic, in that the revenue expected to be derived from the connection is less than the cost of the connection. Under this regime, very few small customers are required to make a capital contribution towards their connection, and means that customers effectively pay for their dedicated connection assets through use of system charges, while developers pay any capital contributions associated with extensions and augmentations necessary to make a connection economic, or for a connection above the "basic standard". This separation between the parties, which is also relevant to the discussion above in relation to developer-led connections, is not recognised or supported by the framework. ActewAGL notes that the approach in the ACT is similar to the approach under the gas access regime in determining conforming capital expenditure for connection assets.

The connection charge principles set out in the national connections framework represents a significant change in arrangements for the ACT network which has implications for both existing customers, as well as future customers seeking connection to the network.

Notwithstanding the need for appropriate transitional arrangements to ensure that the new connection charge principles can be reflected in future price determinations (as it will change assumptions associated with forecast capital expenditure included in the asset base), this change will introduce significant distortions between customers connected to the network before and after the introduction of the national connections framework. Customers connecting to the network after the introduction of the framework will essentially be required to pay for both their own dedicated assets (though a capital contribution), and the connection assets of earlier customers connected under the *ACT Capital Contributions Code* through general network use of system charges. The move to a proposed connections charging regime, if applied, will require very careful implementation in the ACT to limit these impacts.

ActewAGL considers that connection charge principles should be based around the concept of economic and uneconomic connection, similar to that for the gas regime, and as is currently in place in the ACT. This approach ensures that for a customer connection that is economic for the distributor (that is where network revenue from the load likely to arise from that connection is greater than the costs of making the connection services available as requested by the customer), no capital contribution is payable by the customer. The extent of any capital contribution is then equivalent to any shortfall between likely revenue to be derived and the cost of the connection.

ActewAGL does not support the introduction of a connection asset payback scheme in the ACT, as is proposed under Rule 5A.E.1(b). Land development in the ACT takes place in dedicated development zones, which means that there are very few "pioneering" customers of the kind intended to benefit under the proposed arrangements. A pay-back scheme for connection assets that later become shared would be costly and cumbersome to administer and would not take account of the specific development circumstances in the ACT that would make such rebates inappropriate. Generally, in the ACT, capital contributions are levied when the load is deemed to be uneconomic or the supply is above a "basic standard". Furthermore, the 2009 determination by AER for 2009-2014 period was based in the existing

ACT Capital Contributions Code. ActewAGL also notes that similar issues relate to the implementation of a gas connection scheme, which ActewAGL similarly does not support.

8. Implementation of the national framework

8.1 Managing implementation of the national framework

ActewAGL considers that an important aspect of the NECF package is the implementation of the framework in individual jurisdictions.

There is currently considerable uncertainty as to the timing of implementation of the framework, as well as the extent to which individual jurisdictions will enact specific parts of the framework. The 4 December 2009 Ministerial Council on Energy Communiqué stated the following in respect of jurisdiction implementation of the national framework:

To provide greater certainty to stakeholders on the NECF introduction, Ministers agreed that jurisdictions will introduce the NECF progressively between July 2011 and July 2013, noting that some transitional arrangements will be required and Western Australia currently has no commitment to the NECF. Implementation is still expected to be on an incremental basis with jurisdictions noting it may take longer before they apply the entire Framework. Ministers previously proposed at the 10 July 2009 MCE meeting that the NECF legislative package be introduced into the South Australian Parliament in the Spring Session of 2010.

This statement does not provide sufficient certainty as to the scope of national arrangements to apply in each jurisdiction, or even the scope of the commitment in each jurisdiction to implement the framework. While it states that enacting legislation will be introduced over a two year period, it explicitly states that it may take longer for specific parts of the framework to be enacted. This creates the possibility of long term overlapping and duplicative regulations and responsibilities between the AER and current jurisdictional regulators. This is a worst case outcome for retailers and distributors where they are subject to partial frameworks, mismatching obligations, and multiple regulators, potentially across a number of jurisdictions.

ActewAGL considers that it is essential that the national framework recognise and accommodate jurisdictional difference. It would significantly undermine the framework if the outcome of not accommodating legitimate jurisdictional differences in the national framework was the partial implementation of the framework in some jurisdictions. Such an approach would not achieve the overarching aims of streamlining and simplifying regulation through the adoption of a national framework to distribution and retail regulation, and instead further complicate arrangements, impeding competition, undermining customer outcomes and increasing costs.

8.2 Existing and ongoing jurisdictional arrangements

As noted by the MCE in its November 2009 Communiqué, individual jurisdictional legislation will implement the framework in each jurisdiction. ActewAGL anticipates that this enacting legislation will be accompanied by an extensive rollback of existing jurisdictional legislation,

regulations, codes and guidelines to ensure that there are no conflicting and overlapping requirements on businesses at both a jurisdictional and national level.

ActewAGL is concerned, however, that no commitment has been made to roll back all existing jurisdictional obligations that are covered by the national framework. ActewAGL considers that commitment to the principle that areas covered by the national framework, where those are enacted, will represent the complete set of obligations faced by a business in that area, and that there will be a roll back of existing obligations that are superseded by new arrangements and not implement new obligations outside of the national framework.

This is important as existing obligations that extend beyond those in the framework would survive to the extent they were not inconsistent with the new framework, and new jurisdictional arrangements would supplement those in the national framework. Failing to roll back existing jurisdictional arrangements, or supplementing the national framework with additional obligations, would undermine the national framework, further complicate arrangements, impede competition, undermine customer outcomes and increase costs.

8.3 Transitional arrangements

Appropriate transitional arrangements are an essential part of the legislative package. ActewAGL has previously submitted that further detail is required on a number of transitional matters to be able to comprehensively comment on the framework. These matters include:

- The impact of the NECF and connections framework on existing access arrangements and price determinations;
- The impact on existing fixed term contracts with customers;
- The scope of proposed consequential changes to NEL and NGL provisions; and
- The scope of replacement or amendment to existing jurisdictional instruments.

ActewAGL notes that in parts of the framework provisions operate such that the new framework would override anything currently existing in a price determination or access arrangement.¹⁶ The timing of implementation of the framework, however, will impact the extent to which this is appropriate. ActewAGL does not consider that this approach facilitates the orderly integration of the national framework into existing determinations and access arrangements, and does not take account of the potential costs imposed by the changes enforced by law. Also, it does not address how the relevant new provisions may impact on existing contracts based on existing price determinations or access arrangements.

Further work is required on appropriate transitional arrangements to apply to ensure that the framework can be implemented without:

- Imposing overlapping and duplicative requirements;

¹⁶ For example the retail support rules.

- Unnecessarily impacting or conflicting with existing price determinations and access arrangements;
- Exposing businesses to costs that they cannot recover;
- Exposing business to compliance risks where arrangements apply before a business has been able to implement system, contractual or financial changes required to comply with those changes; and
- Imposing unnecessary additional costs on customers.

Achieving these aims requires an orderly transition process that recognises that some aspects of the national framework may need to be transitioned over a longer period, within a framework that provides certainty as to the intent of jurisdictions to move to the national arrangements.

ActewAGL detailed comments on NECF2 legislative package

Table 1: National Energy Retail Law

| National Energy Retail Law | | |
|----------------------------|-----------------------------|--|
| Provision | Subject matter | Comment |
| 102 | Definition of a distributor | <p>See section 4.1 of ActewAGL's submission.</p> <p>The NERL should be amended to include the concept of a complying service provider (or recognise a complying service provider under the NGL) to ensure that a single service provider for each covered network can comply with the NERL.</p> |
| 105 | Meaning of a customer | <p>See section 3.1 of ActewAGL's submission.</p> <p>The NERL defines a small customer for the purposes of the customer framework as all residential customers, and those customers with consumption below a threshold set by national regulations. ActewAGL is concerned that this broad "one size fits all" approach to regulation of small customers is inflexible in considering the different levels of retail competition in different jurisdictions and across fuel types. In practice, this definition effectively re-regulates retail gas prices in the ACT and entrenches price and contract regulation for all residential customers. ActewAGL Retail does not consider this is consistent AEMA provisions associated with the removal of retail price regulation, and seeks greater flexibility in the definition of small customers under the framework.</p> |

National Energy Retail Law

| Provision | Subject matter | Comment |
|-----------|----------------------------------|---|
| 113 | National energy retail objective | <p>See section 2.1 of ActewAGL’s submission.</p> <p>Section 113(2) states that the national retail objective should not be taken to prevent or restrict the development and application of consumer protections for hardship customers and other small customers.</p> <p>ActewAGL notes that the drafting of this exception is very broad, and extends to all consumer protection provisions under the Law, not just hardship customers or hardship provisions. This appears broader than the intention set out in the Explanatory Material, which states that the exception relates to “specific” consumer protections.</p> <p>ActewAGL also notes comments by officials at the stakeholder forum held in Melbourne on 3 and 4 February 2010 that the clause is intended to be clarificatory – to ensure that efficiency under the objective is construed broadly to include the protection of customers. ActewAGL does not consider that the clause acts in this way, and instead acts to exclude the application of the objective to provisions that could be considered to be related to consumer protection of small customers. ActewAGL considers that subsection 113(2) should be deleted from the NERL.</p> <p>If further clarification of the appropriate interpretation of the Objective is considered necessary, guidance may be incorporated into the second reading speech for the introduction of the legislation in the South Australian Parliament.</p> |

National Energy Retail Law

| Provision | Subject matter | Comment |
|-----------|------------------------------------|---|
| 205 | Variation of standing offer prices | <p>See section 3.2 of ActewAGL’s submission.</p> <p>The time-limits included in the NERL on the variation of standing offer prices limit the ability of retailers to recover their costs. This increases the chance of retailer failure and undermines the powers of jurisdictional governments to set regulated retail tariffs.</p> <p>ActewAGL Retail considers that tariffs need to be able to be changed more frequently than currently provided for under the NERL where, for regulated retail prices, a jurisdictional retail pricing determination or decision allows or requires prices to change. For retail prices that are not subject to regulation or explicit tariff setting, tariffs should be able to be varied as dictated by the market and where there has been a significant change in underlying costs for the retailer, including in response to changes in underlying network tariffs.</p> <p>ActewAGL Retail also notes that the arrangements for determining the financially responsible retailer with the obligation to supply, operating alongside the requirement that standing offer prices be published and their variation be limited, regulates retail prices for second tier retailers for the first time. ActewAGL Retail considers that the limitations will serve as a barrier to entry for small retailers, as they will no longer be able to tailor their service offerings to particular customers, as they will carry an obligation to supply in respect of supply points where they are the financially responsible retailer. These retailers will also potentially carry a higher credit risk as they will not be sure that they can recover their costs through tariffs where they are subject to a retailed retail price, or where they are otherwise limited in their ability to vary tariffs.</p> |
| 222(1)(b) | Record of informed consent | <p>The obligation to maintain records of explicit informed consent for a period of 2 years is longer than the requirement under section 223(2)(b) for the customer to raise an objection related to explicit informed consent within 12 months. The obligation to maintain these records for 2 years places an additional compliance cost burden with little or no perceived benefit to consumers. ActewAGL Retail considers that clause 222(1)(b) should be amended to require the retailer to retain a record of explicit informed consent for 12 months.</p> |

National Energy Retail Law

| Provision | Subject matter | Comment |
|-----------|---|--|
| 223 | No or defective explicit informed consent | <p>ActewAGL Retail notes that the requirements for explicit informed consent are similar to current arrangements, however some aspects of the new framework will require systems changes that will lead to transitional costs. In addition, there will be increased ongoing costs involved for resourcing for compliance monitoring.</p> <p>ActewAGL Retail also notes that in most cases customer churn requests can be reversed with no detriment to any of the parties involved. The principle in relation to an invalid customer churn transaction should be that the customer be returned to the previous retailer with no penalty.</p> |
| 231 | Payment plans | <p>See section 3.3 of ActewAGL's submission.</p> <p>The proposed NERL extends the requirement to offer a payment plan to both hardship customers and those customers identified as being in financial difficulty. ActewAGL Retail notes that it can be very difficult to identify customers in financial difficulty and retailers do not have the expertise to assess a consumer's financial situation. Currently, hardship customers in the ACT are identified as those that are assisted by ACAT. Extending the obligation to offer payment plans to other customers that are perhaps not enrolled in specific assistance plans, but are still experiencing transitional financial difficulties will require additional staff training and some systems changes to implement.</p> <p>Under the revised provisions the onus is being put on retailers to identify very early (e.g. if a customer is late paying a bill) whether or not the consumer may be experiencing even temporary hardship, and to offer a payment plan. This requirement necessitates additional resources and possibly system enhancements which will lead to increased costs to the end consumer.</p> <p>Further, the compliance framework states that the AER may undertake compliance audits into a retailer's compliance with hardship provisions, as well as the implementation of their hardship policies. This is in addition to compliance reporting on hardship for performance reports. ActewAGL considers that the AER's compliance monitoring processes should be integrated to ensure that businesses are not subject to overlapping reporting obligations and compliance processes. Compliance monitoring should also be commensurate with the seriousness of any possible breach and take into account a business' past compliance performance.</p> |

National Energy Retail Law

| Provision | Subject matter | Comment |
|-----------|---|--|
| 236 | Application of deemed arrangement to market offer customers | <p>There appears to be an inconsistency between the deemed arrangements and those applying to small market offer customers under normal conditions where these customers seek supply from a retailer.</p> <p>The financially responsible retailer is not obliged to offer a small market offer customer its standard contract and standing offer tariff. By not formalising arrangements, however, a customer that would otherwise be a small market offer customer can access the retailer's standard contract and standing offer tariff through the deemed arrangements. This may create a perverse incentive for small market offer customers not to formalise arrangements.</p> <p>ActewAGL Retail considers that the financially responsible retailer should not be obliged to place such a customer on a standard contract, but instead be able to place the customer on an appropriate market offer contract and tariff utilised by customers of a similar profile, and inform the customer of the arrangements that apply and options to move to an alternative arrangement.</p> |
| 242 | AER Retail Pricing Information Guidelines | <p>See section 2.2 of ActewAGL's submission.</p> <p>ActewAGL Retail does not support the proposed use of guidelines under the NERL to establish binding obligations. ActewAGL Retail further does not support mandatory information gathering through guidelines, which are subject to none of the protections that information instruments under the NEL or NGL are subject to.</p> |
| 308(5) | When variation takes effect on existing contracts | <p>It is unclear why variations for the distributor/customer contract take effect when published, but the parallel provision in relation to retailer/customer contracts (s.210(5)) takes effect either from when the variation is published or a later date specified in the published variation. It would appear appropriate for these provisions to be aligned to remove unnecessary complexity and deviations in arrangements for varying contracts.</p> |

National Energy Retail Law

| Provision | Subject matter | Comment |
|----------------------|---|---|
| Part 3 Division 5 | AER approval of standard connection contracts | <p>The NERL currently limits the ability for distributors to develop and the AER to approve standard connection contracts for classes of small customers. ActewAGL Distribution understands that this limitation is intended to ensure that standard, nationally consistent arrangements apply to small customer connection contracts. While ActewAGL Distribution understands this policy position, it is concerned that the limitation may restrict the flexibility of the framework to accommodate market developments and address weaknesses that may emerge in the formulation of the standard contract included in the Rules.</p> <p>ActewAGL Distribution considers that the NERL should include scope for standard connection contracts to be developed for classes of small customers under certain circumstances.</p> <p>ActewAGL Distribution considers that the future development of the market, particularly with the increased use of smart meters, may mean that a different standard form connection contract for some small customers may become appropriate. By including scope for such contracts, the future development of the market can be accommodated without requiring a change to the law, and without undermining the policy intent that standard deemed arrangements for small customers should apply. ActewAGL Distribution also considers that this approach can provide flexibility to address any weaknesses or flaws that may emerge with the standard connection contract that require an immediate response (without waiting for the Rule change process to complete).</p> |
| 311(3) | AER approval of standard connection contracts | Where the AER has an approval role for standard connection contracts, the AER should be required to approve proposed contracts where the terms and conditions are fair and reasonable and the contract complies with applicable laws. In order to achieve this, the word “may determine to” in s. 311(3) should become “must”. |
| Part 3 Division 5 | AER approval of standard connection contracts | Where the AER has an approval role for standard connection contracts, the Law or Rules should include a timeframe for AER approval. ActewAGL Distribution recommends that the AER be deemed to have approved a proposed standard connection contract if it has not reached a decision in respect of that contract within 3 months of the contract being submitted to the AER. |
| 407 | Information and assistance requirements | The powers given to the Ombudsman under this section are too broad and should exclude information which is privileged, and afford appropriate protections for information that is commercial-in-confidence or subject to obligations of confidentiality to a third party. |

National Energy Retail Law

| Provision | Subject matter | Comment |
|-----------|---|---|
| 505 | Deciding application | ActewAGL Retail considers that the AER should be subject to decision-making time-limits in deciding an application for a retailer authorisation, or at least be required to make a decision “as soon as practicable”. |
| 507 | Notice of decision to grant application | A maximum time limit should be given in relation to a notice of decision to grant an application of 20 Business Days, as this allows for a level of business certainty. |
| | Review of Authorisation decisions | See section 2.3 of ActewAGL’s submission. Decisions by the AER in relation to granting, transferring, surrendering or revoking (or refusing to grant, transfer or approve surrender) of a retailer authorisation and any condition imposed by the AER under any of these processes, should be subject to merits review. |
| Part 6 | Retailer of Last Resort Scheme | See section 6 of ActewAGL’s submission. |
| 603 | Registration as retailer of last resort | ActewAGL Retail does not support the registration of multiple retailers in relation to the same connection point. ActewAGL Retail considers that this approach introduces uncertainty for retailers and inefficient costs as multiple retailers may prepare for a ROLR event for the same connection point (and incur costs that are passed on to customers), without being appointed the designated ROLR for that connection point if there is a ROLR event. ActewAGL Retail considers that it would be preferable to appoint a default ROLR for each connection point with a clear responsibility to act as the ROLR where there is a ROLR event. An alternative should also be appointed for each connection point to act when the failed retailer is the default ROLR. This approach provides certainty to retailers and the market and imposes minimal costs on customers and multiple retailers are not preparing for a ROLR event where only a single ROLR can be appointed for each connection point. |

National Energy Retail Law

| Provision | Subject matter | Comment |
|-----------|---|--|
| 605 | Appointment and registration as default ROLR | ActewAGL Retail considers that the arrangements for appointing a default ROLR provide insufficient certainty to default ROLRs and are likely to lead to additional costs for customers. Under s. 605(8), the AER is able to terminate a retailer's appointment as the default ROLR at any time. Given the costs and risks associated with being appointed a default ROLR, and the fact that the AER can appoint a default ROLR without its consent and without that ROLR meeting the relevant criteria (with appointment meaning that a default ROLR must as soon as practicable ensure that it meets the criteria) it appears inappropriate that the AER can, without constraint, terminate this appointment. This approach would appear to impose maximum costs on customers by introducing the risk that a default retailer's investment to meet the organisational capacity criterion will be stranded. This risk is exacerbated by the requirement to conduct annual EOIs for registered ROLRs, as discussed below. |
| 606 | Registration following lodgement of ROLR register EOI | The requirement for the AER to call for EOIs for inclusion on the ROLR register "at least annually" could impose significant costs on retailers and the regulator without clear benefit if it is intended to operate as a full process each year. In many cases, retailers interested and able to act as a ROLR will not change significantly from year to year. Requiring retailers to engage in the EOI process in full each year appears unnecessary. Annual confirmation of that the default and alternative ROLR are able to continue to act in their appointed roles appears sufficient to ensure that the arrangements are robust. |

National Energy Retail Law

| Provision | Subject matter | Comment |
|-------------|---|---|
| 608 and 609 | Designation of registered ROLR for actual or apprehended ROLR event | <p>These sections give the AER the ability to appoint a number of designated ROLRs from the list of registered ROLRs in a ROLR event. This appointment, however:</p> <ul style="list-style-type: none"> - Does not need to involve the default ROLR; - For the default ROLR, can be in relation to customers or areas that it does not usually serve; and - Can be made without the consent of the relevant ROLR (default or registered). <p>ActewAGL Retail considers that this introduces an unacceptable risk for registered ROLRs as to the potential scope of their responsibilities in a ROLR event. This approach introduces maximum costs on customers as it would be prudent for all registered ROLRs to prepare for an event to the fullest extent of their possible involvement. A more preferable and less costly approach would be to ensure that retailers that carry ROLR responsibilities know the extent of their possible exposure before an event, and know that they will be appointed as the designated ROLR in an event (thereby avoiding the costs associated with multiple retailers preparing for an event on the possibility they will be made the designated ROLR, and subsequently not being appointed).</p> |
| 608(6) | Designation of registered ROLR for actual or apprehended ROLR event | <p>ActewAGL Retail considers that there is insufficient accountability and transparency set out in the Rules for the appointment of the designated ROLR or ROLRs by the AER under s. 608(6). It is important that the AER's role, on the whole and specifically in relation to the management of a ROLR event, to be independent, to allow the AER to effectively carry out its functions as regulator. The introduction of a decision-making point for the AER that involves discretion, for which there is no transparency or accountability as to its decision, such as the appointment of a designated ROLR under s. 608(6), is inappropriate and may undermine the perception of the AER as an independent regulator.</p> <p>ActewAGL Retail considers that the appointment of a designated retailer should be made through a transparent process prior to a ROLR event to ensure accountability and transparency in the decision, and to ensure that the transfer of customers can be made quickly, as discussed below, to ensure financial continuity and confidence in the market.</p> |

National Energy Retail Law

| Provision | Subject matter | Comment |
|-----------|------------------------|--|
| 612 | Issue of a ROLR notice | <p>ActewAGL Retail is concerned that the AER decision-making process for transferring customers in a ROLR event will be too slow and will not support financial continuity and market confidence.</p> <p>In a ROLR event, the AER is required to make a number of decisions:</p> <ul style="list-style-type: none"> - That an event has happened (relying on advice from other parties) and the scope of affected customers; - The appropriate registered ROLR or ROLRs to act in the event, and how their responsibilities will be allocated as between regions, particular customers, and classes of customers; and - The date on which customers will be transferred, which is not before the issuance of a notice setting the transfer date, designated ROLR/s and responsibilities. <p>In a ROLR event it is important to ensure that customers are transferred to the ROLR immediately to ensure financial continuity for each supply point. Delays associated with an AER ROLR appointment process, and the issuance of a notice before the transfer of customers, are inappropriate and will undermine market confidence. The responsible ROLR should be known prior to an event, such that in a ROLR event, customers can be transferred immediately, without intermediate decision-making points that may be hurried and not sufficiently transparent.</p> <p>In addition, the potential that particular customers or classes of customers be transferred to different ROLRs creates more pressure on the process, creates further delays, and puts greater burdens on relevant distributors, requiring greater information to be available before a ROLR event occurs. This increases costs associated with the ROLR scheme and the regulatory burden placed on all retailers.</p> |
| 614 | Pending transfers | <p>Pending transfers should be allowed to complete at the time of a ROLR event to allow customers to transfer to their preferred retailer.</p> |

National Energy Retail Law

| Provision | Subject matter | Comment |
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| 622 | Contractual arrangements for sale of energy to transferred large customers | <p>ActewAGL Retail does not support the arrangements for sale of energy to transferred large customers. ActewAGL Retail does not consider it is appropriate for the AER to be determining wholesale energy costs, the appropriate retail margin, or terms and conditions of contracts for large customers. Similar to current jurisdictional arrangements, the terms and conditions, including prices, relevant to large customers in a ROLR event should only be subject to a requirement that they be fair and reasonable noting that:</p> <ul style="list-style-type: none"> - Large customers (like any other customer) can transfer away from a ROLR retailer at any time; - Large customers are more aware of their energy costs and have an interest in ensuring that arrangements that apply to them are appropriate; and - The AER does not have a role in regulating prices offered by retailers, and arrangements for large customers are not regulated under the NECF at all. <p>Section 622(5) also requires terms and conditions for large customers to be published by the designated ROLR and approved by the AER. The approval process set out in the rules includes a notice and submission timetable. It is unclear when these arrangements are to apply, as they are to be published and approved following an event (as the designated ROLR is only appointed after an event). This process creates significant uncertainty for large customers and retailers as to arrangements to apply at the time of a ROLR event.</p> <p>ActewAGL Retail considers that the approval process for large customer arrangements should be removed from the NECF package, and replaced by a general requirement that arrangements be fair and reasonable.</p> |
| 623 | Duration of arrangements for small customers | <p>It is unclear how the cost recovery arrangements will apply to small customers that have been transferred from a failed retailer. The arrangements appear intended to allow costs to be recovered from transferred customers (see page 28 of the Explanatory Memorandum); however the ability for these customers to churn away from the designated ROLR undermines this intent. ActewAGL Retail considers that the principle that ROLR costs be recovered only from transferred customers undermines retail competition by creating additional risks for customers that choose to move to a smaller less established retailer, that may arguably be more likely to fail. All customers benefit from the existence of ROLR arrangements and the smooth transfer of customers in a ROLR event. Requiring costs only to be recovered from transferred customers also increases complexity of arrangements and implementation costs.</p> |

National Energy Retail Law

| Provision | Subject matter | Comment |
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| Division 6 | Information requirements | <p>ActewAGL Retail considers that the ROLR information regime is inappropriate for application to retailers and not necessary to ensure an effective and efficient ROLR scheme.</p> <p>The ROLR information arrangements impose requirements on retailers that are similar to those currently applying to regulated network businesses, and which go far beyond information that may be needed in a ROLR event to include requiring historic, current and forecast information from all retailers on an annual, or even more frequent basis, on:</p> <ul style="list-style-type: none"> - Metering and billing information; - Details of any parent company guarantees; - Details of cash flow; - Details of hedging contracts; and - Latest financial statements. <p>Information instruments can be issued on any or all retailers for any purpose relevant to the ROLR scheme. This is not limited to the occurrence of a ROLR event or apprehended ROLR event, but can be issued at any time to gather information on other factors such as:</p> <ul style="list-style-type: none"> - Cost recovery arrangements; - Identification of possible retailers in a possible to act as a designated ROLR (but which may not be a registered ROLR); and - The setting of large customer tariffs in a ROLR event. <p>This information collected, as long as it was not solely sought for the purpose, can also be used for the preparation of a retail market performance report (s. 629(3)(d)).</p> <p>ActewAGL Retail considers that these arrangements are essentially unconstrained, and completely out of step with the needs of an efficient ROLR scheme, and the appropriate functions of the AER in administering the ROLR scheme or during a ROLR event. ActewAGL Retail considers that the general information provisions set out in Part 8 the proposed NERL are sufficient to allow the AER, if required, to gather information from a failed or failing retailer in order to facilitate the transfer to customers in a ROLR event. It is not necessary to the AER to gather information on a periodic basis for it to carry out its functions, or for the AER to have special powers for the purpose.</p> |

| National Energy Retail Law | | |
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| Provision | Subject matter | Comment |
| 643 and 644 | ROLR plans | ActewAGL considers that annual review of ROLR plans and annual ROLR exercises are unnecessary and costly given the frequency of ROLR events and the largely procedural matters that must be addressed in a ROLR event. |
| Part 6 Division 8 | ROLR cost recovery schemes | <p>ActewAGL considers that the proposed ROLR cost recovery scheme is poorly specified and does not provide sufficient certainty or clarity over:</p> <ul style="list-style-type: none"> - Whether registered retailers will be able to recover efficient costs associated with preparing for a ROLR event; - Whether designated retailers will be able to recover costs associated with an event either under a ROLR cost recovery scheme distributor payment determination or from transferred customers; - How a retailer's costs (either preparing for an event or incurred as a result of an event) will be allocated to customers; - Whether a distribution business can effectively implement a ROLR cost recovery scheme distributor payment determination through its systems; and - The timing of recovery of distributor and retailer costs. <p>ActewAGL considers that this cost recovery scheme requires further consultation with both retailers and distributors to ensure its workability.</p> |
| 720 | Rejection of claims | ActewAGL Distribution questions whether there is a drafting error in this provision, such that s. 717 has not been referenced in s. 710 (rejection of claims). It appears that there is no reason why s. 717 should not be included. |
| 723 | Method of payment | ActewAGL Distribution believes that appropriate wording should be inserted to make it clear that either of the options for methods of payment set out at parts (a) and (b) can be elected at the discretion of the distributor. |

| National Energy Retail Law | | |
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| Provision | Subject matter | Comment |
| 802 | Manner in which the AER performs AER regulatory functions or powers | Section 802(2) states that in exercising an AER function or power, the AER may give any such weight to any aspect of the national energy retail objective. This appears to nullify the AER's accountability in applying the NERL objective to deliver an appropriate balance between the competing parts of the objective. No similar provision is contained in the NEL or NGL with respect to how the AER must exercise its regulatory functions and powers under those Laws. ActewAGL considers that s. 802(2) should be deleted from the NERL. |
| Part 8 Division 3 | Confidentiality | ActewAGL does not support the provisions on the disclosure of confidential information. These provisions do not provide sufficient protection to regulated entities in respect to the information they either voluntarily provide, or are required to provide, to the AER. |
| 904 | AEMC must have regard to the national energy retail objective | <p>See section 2.1 of ActewAGL's submission.</p> <p>The National Energy Retail Objective is qualified by s. 113(2) that states that the national retail objective should not be taken to prevent or restrict the development and application of consumer protections for hardship customers and other small customers.</p> <p>ActewAGL notes that this exception, as drafted, is very broad, and extends to all consumer protection provisions under the Law, not just those relating to hardship customers or hardship provisions. This appears broader than the intention set out in the Explanatory Material, which states that the exception relates to "specific" consumer protections.</p> <p>ActewAGL considers that s. 113(2) serves to remove guidance provided in the Law to the AEMC in exercising its powers with respect to consumer protection provisions for small customers, and in the role of the National Energy Retail Objective as the rule-making test.</p> <p>ActewAGL considers that s. 113(2) should be deleted from the NERL. If further clarification of the appropriate interpretation of the objective is considered necessary, guidance may be incorporated into the second reading speech for the introduction of the legislation in the South Australian Parliament.</p> |

| National Energy Retail Law | | |
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| Provision | Subject matter | Comment |
| 1002 | Application of national energy retail objective | <p>ActewAGL considers that s. 113(2) serves to remove guidance provided in the Law to the AEMC in exercising its powers with respect to consumer protection provisions for small customers, and in the role of the National Energy Retail Objective as the rule-making test under s.1002.</p> <p>ActewAGL considers that s. 113(2) should be deleted from the NERL. If further clarification of the appropriate interpretation of the objective is considered necessary, guidance may be incorporated into the second reading speech for the introduction of the legislation in the South Australian Parliament.</p> |
| 1202 | Obligation of regulated entities to establish arrangements to monitor compliance | <p>See section 2.2 of ActewAGL's submission.</p> <p>ActewAGL is concerned that this provision, operating alongside the AER's requirement to establish <i>AER Compliance Procedures and Guidelines</i>, allows the AER to regulate how businesses establish internal systems to ensure compliance. ActewAGL does not consider that it is appropriate for the AER to determine how a regulated business will achieve compliance, only the compliance outcomes of the business.</p> <p>Whilst ActewAGL accepts that it is reasonable for it to establish policies and procedures for the purposes of ensuring compliance with the Law, in respect of the detail of those procedures, ActewAGL is better placed to determine the best means of achieving compliance.</p> <p>Additionally, it is highly likely that this would result in an unfair cost imposition on utilities where the AER has not, or is unable to, take into account the size and business environment of various utilities.</p> <p>The issue should be that a utility reaches the end goal, without dictating the road taken to achieve that goal.</p> |
| Part 13 Division 7 | Tribunal review of decisions | ActewAGL considers that authorisation decisions (decisions to grant, transfer or revoke) should be subject to merits review by the Tribunal. |
| Part 15 | General – immunity and indemnity | See section 5.1 of ActewAGL's submission. |

Table 2: National Energy Retail Rules -

| National Energy Retail Rules | | |
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| Provision | Subject matter | Comment |
| 208(2) | Responsibilities of the designated retailer in response to request for sale of energy | This rule does not reflect the sequence of events that occurs when a customer is transferred to a new retailer. The relevant retailer must first be the financially responsible retailer for the premise, then the distributor will accept the advice on the customer’s details. Outside of this sequence, most distributors will reject the advice (except if the B2B service order for re-energisation) as the new retailer is not yet the financially responsible retailer. |
| 212 | Frequency of bills | While ActewAGL Retail accepts that as a general rule bills should be issued every 3 months, minor deviations from this timing can occur where metering data is not available in time to bill precisely on this cycle. This can be as a result of a failure by the Responsible Person that is outside the control of the retailer. Where data will be available within a reasonable time of the required billing date, it may be in the customer’s interests to receive a bill later, than to have an entire bill based on an estimate. ActewAGL Retail therefore considers that this provision should be subject to the retailers “best endeavours” or provide a timing window for billing, while still maintaining the principle of at least 4 bills a year. |
| 213(1)(j) | Values of meter reading or meter data | Where a meter is an interval meter in place, there can be hundreds of meter data values. This rule needs to be limited to the metering data for the start and end of the billing period for each tariff level (eg peak, off-peak and shoulder). |
| 221 | Payment difficulties | Extension of payment plans to residential customers not in hardship but in financial difficulty appears to be an onerous requirement for market retail contracts. These contracts can be based on pay-by dates that allow for lower tariffs to be charged. As all residential customers have a right to a standard retail contract, this provision should not be a minimum provision for market retail contracts. |
| 225(1) | Security deposits | This clause limits the ability of a retailer to require a security deposit in a number of ways, including by only allowing a retailer to require a security deposit at the start of a contract. This limitation can have the effect of increasing the number of customers that may be required to pay a security deposit, as retailers who currently do not request security deposits due to the administrative burden they impose unless the need becomes apparent, may automatically require a security deposit from relevant customers at the start of a contract to ensure that they are protected from non-payment. ActewAGL Retail considers retailers should be able to require a security deposit during a contract. |

National Energy Retail Rules

| Provision | Subject matter | Comment |
|-------------|---|---|
| 225(10) | Security deposits | ActewAGL Retail does not consider that detailed limitations on the use of security deposits are appropriate to apply to market retail contracts. |
| 232 | Liabilities and immunities | See section 5.1 of ActewAGL's submission. |
| 237 -new | Retailer notice of expiry of market retail contract | Limitations on how early a retailer can inform a customer of forthcoming expiry of a retail contract is overly restrictive and can limit competition in retail offerings. ActewAGL Retail suggests the provision be revised to require a retailer to inform a customer of the forthcoming expiry of a retail contract between 40 and 20 business days before the scheduled end of that contract, unless the customer has already entered into a new contract with the retailer, or has given instructions as to the actions of the retailer at the end of the contract. |
| 407 | Liabilities and immunities | See section 5.1 of ActewAGL's submission. |
| 408(1) note | Customer service standards and GSL schemes | While most GSL schemes currently in operation are established under jurisdictional legislation, the National Electricity Rules include provision for the AER's Service Target Performance Incentive Scheme (STPIS) to establish a national GSL scheme (NER 6.6.2). The AER's STPIS published on its website includes a national GSL scheme that applies where there is no jurisdictional regime. The note to this provision therefore incorrectly refers only to jurisdictional GSL schemes. |
| 411 | Definition of unplanned interruptions | The definition relates to interruptions to supply initiated by the distributor for one of the reasons listed in the definition. Many unplanned interruptions (outages) are not initiated by the distributor but are instead the result of external events (such as weather events or third party interference to assets). |
| 413 | Planned interruptions | The amount of notice to be provided to customers for a planned interruption is the subject of a jurisdictional GSL scheme in the ACT. The requirement in the framework to provide notice of 4 business days significantly increases the amount of notice that must be provided to customers compared to the GSL in place in the ACT. ActewAGL Distribution considers that the appropriate service standard for notice of unplanned outages is a matter for jurisdictional governments through the setting of GSL targets under r. 408, as is currently the case. |

National Energy Retail Rules

| Provision | Subject matter | Comment |
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| 414 | Unplanned interruptions | <p>For both the ACT electricity and gas networks, information on the nature and likely restoration time after an outage is difficult to attain without visiting a site. This is because most sites are not remotely monitored with automated information relays. This is further complicated for ActewAGL in respect of its electricity network because the ACT has a system of backyard reticulation. Ascertaining the cause of an interruption can often require gaining access to private property including behind locked gates.</p> <p>ActewAGL Distribution considers that the time within which the distributor should have information available on an unplanned outage should therefore be 1 hour. This period is more in step with required emergency response times and the practical limitations involved in:</p> <ul style="list-style-type: none"> - recording an event; - travelling to the site; - assessing the cause and likely need for repair, including how long that repair will take; and - relaying that information to the call centre such that operators have sufficient information to provide accurate information to customers. |
| 505 | Requirements for information | <p>Provision requires that the distributor and retailer must ensure that, for information referred to in and as required by the Division, the details are at all times current.</p> <p>ActewAGL agrees that information relating directly to the distributor and the retailer should at all times be current. However, we do not agree that this provision is appropriate in relation to personal customer information (eg: surname, phone numbers) although it will be current in relation to <u>known</u> information such as NIMI, tariffs and connection information). ActewAGL suggests that the provision be amended to allow for the fact that distributors and retailers can only provide personal customer information as it is registered in their system, and do not have control over the accuracy of information given to them by its customers.</p> |
| 610 (b) and (d) | When retailer must not arrange de-energisation | <p>The retailer may not always be aware that a customer has made a complaint or applied for assistance. These obligations should be limited to circumstances where the customer informs the retailer, or the retailer is otherwise aware, that the customer has made a complaint or applied for assistance.</p> <p>The type of assistance relevant under r. 610(d) should also be reviewed as the current drafting could also include customers that have applied for a government concession such as a pensioner rebate.</p> |

National Energy Retail Rules

| Provision | Subject matter | Comment |
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| 611 | Timing of de-energisation where dual fuel contract | <p>Provision requires that for dual fuel contracts, where the circumstances allow for de-energisation, the retailer must de-energise gas first and cannot de-energise electricity less than 15 days after de-energisation of gas. This appears to add an additional step in the de-energisation process for customers that have not paid their bills but are on a dual fuel market contract.</p> <p>ActewAGL considers that the standard de-energisation processes should apply to dual fuel contracts, noting that customers that are experiencing hardship can have their dual fuel contract reviewed under Rule 305 and can, if an alternative contract is considered to be more appropriate, transfer to that contract without penalty.</p> |
| 614(1)(b) | Restrictions on energisation | <p>ActewAGL Distribution suggests that this clause be amended to require the distributor to actually be made aware, either through notice from the customer or the ombudsman, of the existence of a complaint. There may be circumstances where a customer has made a complaint direct to the Ombudsman and the distributor has not yet been made aware of the complaint. ActewAGL Distribution does not consider that it would be a reasonable outcome to restrict the distributor's ability to de-energise where they have no reason to be aware that grounds for not being able to do so exist.</p> |
| Part 8 | Pre-payment meter systems | <p>Throughout this part the retailer is required to replace a prepayment meter with a standard meter at no cost to the customer. In many cases the distributor may be the responsible person for that meter. The rules should clarify that the distributor can recover costs for replacing the meter where the meter was installed at the request of the retailer or customer.</p> |
| 815 | Rebate, concession or relief schemes | <p>Rule 815 can be interpreted to require a retailer who sells energy under a prepayment meter system to ensure that a customer, if entitled to any rebate etc, receives that entitlement. This requirement appears to go further than intended as it seems place positive obligation on the retailer to seek out rebates etc for pre-payment meter customers rather than a more limited requirement to ensure that a customer can access those rebates while being on a pre-payment meter system.</p> <p>ActewAGL seeks clarification on the intention of this Rule.</p> |

National Energy Retail Rules

| Provision | Subject matter | Comment |
|-----------|-----------------------------------|--|
| 1002 | Retail market performance reports | <p>Rule 1002 sets out requirements for retail market performance reports requiring publication of information for each retailer related to numbers of market and standard contracts, divided into small, large, residential and businesses customers. As currently drafted, the information required to be included in the performance report may, in a small jurisdiction, lead to disclosure information that can be linked to an individual customer along with competitive information.</p> <p>ActewAGL Retail considers that the information and reporting requirements set out in r. 1002 should be subject to an overarching provision that information required to be published under this rule need not be published where publication would lead to the disclosure of confidential information related to an individual customer and commercially sensitive information.</p> |

National Energy Retail Rules

| Provision | Subject matter | Comment |
|-----------|---|---|
| 1118 | Decision on large customer T&C's and retailer margin for ROLR customers | <p>Under the NERL the AER must make a decision regarding the approval of large customer retail arrangements to apply under a ROLR event.</p> <p>As discussed in relation to s. 622 of the NERL, ActewAGL Retail does not support the proposal that the AER be responsible for approving large customer arrangements, including contract provisions and prices. ActewAGL Retail does not consider that it is appropriate for the AER to have a role in setting or approving retail prices.</p> <p>Reaching a conclusion on these matters would require the AER to undertake investigations on these matters – all of which are outside of the regulatory reach of the AER under the current gas and electricity laws. Arrangements for large customers are not currently regulated in any jurisdiction, including in relation to ROLR events. The proposed approach undermines principles that large customers be responsible for their own energy arrangements, and that the AER not be involved in the setting of retail prices.</p> <p>Further, the NERR provide no real guidance to the AER as to how it will reach a conclusion on large customer arrangements, nor protections to retailers as to the process the AER must undertake or any appeal rights they may have where the AER does not accept a retailer's proposal for large customer retail arrangements.</p> <p>In addition, the Law and Rules also require large customer retail arrangements to be published (NERL s. 622(3) and NERR r.1116(4)). As these arrangements are based on existing large customer contracts, this requirement risks publishing arrangements that are subject to commercial negotiation and are strictly confidential for the retail business. This is particularly concerning since the AER can require a retailer to be the default or designated retailer, therefore compelling that retailer to go through these processes, without any appropriate protections.</p> <p>ActewAGL Retail considers that regulation of contractual arrangements for large customers involved in a ROLR event should be removed from the framework and left to the market.</p> |
| 1202 | Retail consultation procedures | <p>The retail consultation procedures should follow the distribution consultation procedures. It is unclear why the distribution and retail consultation procedures are or need to be different. The distribution consultation procedures require the AER to address issues raised in submissions and publish a response to those issues. ActewAGL Retail considers that this is a minimum accountability requirement for the AER in determining issues subject to the retail consultation procedure.</p> |

National Energy Retail Rules

| Provision | Subject matter | Comment |
|------------------------|---|--|
| Schedule 1, clause 5.2 | What is not covered by this contract? | <p>ActewAGL considers that the contract between the customer and the retailer should only address rights and obligations between the customer and the retailer. In particular, the contract should not point to a third party, in this instance the distributor, and represent that that party is responsible. This is a matter for the contract between the distributor and the customer.</p> <p>ActewAGL does not think it is appropriate to delineate the scope of the retail contract by referring to services provided by other parties. We suggest that 5.2 be removed in its entirety, because 5.1 clearly sets out what is covered by this contract.</p> <p>Further, ActewAGL has some concerns as to the accuracy of statements in clause 5.2.</p> <p>Clause 5.2(b)(i) states that the distributor is responsible for metering equipment at the customer’s premise. ActewAGL notes that this is not always the case. For electricity type 1-4 meters (which includes smart meters) in most jurisdictions the retailer is the responsible person to provide metering services, unless they nominate the distributor in this role. The standard retail contract should therefore not assume that the distributor is responsible for metering equipment. This can be addressed by removing references in the contract to services provided by other parties.</p> <p>Clause 5.2(b)(iv) states that the distributor is responsible for the quality and other characteristics of energy. In the gas sector, the distribution business is <u>not</u> responsible for the quality of gas purchased by a user (for example a retailer) and injected into the network. It is the responsibility of the user of the network to ensure the gas it purchases meets specifications. The network business has no control over, and does not affect, gas quality in the network.</p> <p>This is a characteristic of the physical supply of gas under contract with a retailer, and is not relevant to the decisions of the MCE SCO to make distributors directly responsible to customers for other aspects of related to the delivery of gas, such as reliability. ActewAGL Distribution also notes that this clause appears inconsistent with the characterisation of the distributor’s responsibilities at clause 5.5 in the standard connection contract.</p> |
| Schedule 2, clause 6.8 | Obligations if you have a small generator such as a solar panel | ActewAGL Distribution notes that a “small generator” is not defined. It may be appropriate for the standard connection contract to refer to “micro” embedded generators as defined in the connection framework. |

National Energy Retail Rules

| Provision | Subject matter | Comment |
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| Schedule 2, clause 11.1 | When can we arrange for disconnection? | The note below clause 11.1 appears to incorrectly refer to distributors instead of retailers. ActewAGL Distribution considers that this note should be redrafted so as to only refer to the fact that other authorised persons may disconnect or arrange disconnection of premises. |

Table 3: National Electricity (Retail Support) Amendment Rule -

| National Electricity (Retail Support) Amendment Rule | | |
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| Provision | Subject matter | Comment |
| 6B.2.4 | Statement of charges | <p>Provision requires the distributor to provide a statement of charges <u>on</u> the 10th business day of each billing period. This provision has been changed from <u>by</u> the 10th business day in the former proposed retail services agreement. This change in billing arrangements has occurred without explanation.</p> <p>ActewAGL Distribution currently bills retailers on a fortnightly basis. This provision inappropriately limits ActewAGL’s ability to manage its business cash flow and credit arrangements with retailers by requiring billing to occur on a particular date in the billing period, and providing a base assumption that this period will be monthly. It is unclear why distributor billing of retailers is regulated in the first instance, given that distributors have an incentive to bill as soon as possible. This provision is unnecessarily restrictive and also takes no account of issues that may arise that may limit the ability of a distributor to bill on a particular day.</p> <p>ActewAGL Distribution considers that this should be an “<u>on or before</u>” provision, and should allow retailers and distributors to agree to alternative arrangements, and as such should include a qualification of “unless otherwise agreed”.</p> |

National Electricity (Retail Support) Amendment Rule

| Provision | Subject matter | Comment |
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| 6B.3.5 | Notification of changes to distributor tariffs | <p>This provision requires the distributor to notify the retailer of any proposed changes in its distribution network tariffs no later than 2 business days after the date on which the changes are notified to the AER.</p> <p>Under the electricity distribution price review process, the distributor must submit a regulatory proposal to the AER that includes, amongst other things, indicative prices for the forthcoming regulatory period. This proposal is to be submitted to the AER no later than 13 months before the start of the next regulatory period. Under the drafting of Rule 6B.3.5, this regulatory proposal would appear to meet the definition of “preliminary information”, and therefore the distributor would be required to notify the retailer indicative prices contained in the proposal within 2 business days of submission. ActewAGL Distribution notes, however, that this regulatory proposal is not immediately published by the AER, but is instead subject to an initial assessment for compliance with regulatory obligations and information requirements. Subsequent publication typically occurs 1-2 weeks after submission. A similar process occurs for gas distribution tariffs included in an access arrangement proposal, which are typically submitted to the AER 12 months before the new tariffs are scheduled to take effect.</p> <p>The requirement under 6B.3.5 would require the distribution business to provide to retailers a key part of its regulatory proposal before it is assessed by the AER as compliant. It is unclear the benefit that retailers would receive from this obligation since (1) the submission relates to proposed prices that will not apply for 12 months at least; and (2) the proposal will be made public on the AER’s website once it is deemed compliant. ActewAGL Distribution therefore considers that this requirement is duplicative and potentially undermines the AER’s processes in determining compliance of a regulatory proposal before publication.</p> <p>Annual pricing proposals are also submitted to the AER some weeks before they take effect and are published on the AER’s website. The AER also includes detailed provisions for the publication of tariffs on the distributor’s website once approved. It is therefore unclear what additional transparency is achieved from the requirement on distributors to inform retailers of prices where these processes are well documented and already dictated by rules related to publication. If considered necessary, the AER may consider informing retailers of relevant pricing decisions as part of their normal consultation and information roles without requiring the distribution business to undertake a special function in this respect.</p> |

National Electricity (Retail Support) Amendment Rule

| Provision | Subject matter | Comment |
|------------|----------------|--|
| Division 3 | Credit Support | <p><u>ActewAGL Distribution comment</u></p> <p>The ACT Electricity Network Use of System Code includes a requirement that Network Use of System Agreements must include credit support arrangements. A default Agreement, including credit support provisions, applies in the absence of a negotiated agreement. ActewAGL Distribution considers that the credit support arrangements in place in the ACT provide it with an appropriate level of rights and protections from retailer non-payment or failure, and observes that the proposed credit support arrangements in the NECF2 package represent a significant diminution of these rights. ActewAGL Distribution does not support the proposed new credit support arrangements, and endorses views set out in the Energy Networks Association submission.</p> <p>ActewAGL Distribution also observes that the proposed arrangements do not appear to adequately provide for calculating a credit support amount for a new retailer in the market as the formula relies on making a forecast of a retailer's estimated distribution service charges liability (DSCL). For a new retailer, this is heavily dependent on its success in securing customers, which may not be known at the time the credit allowance is being calculated. The DSCL can also change rapidly as the retailer gains market share. Similarly, changes in a retailers (or guarantor's) credit rating over time need to be able to be reflected in the calculating of the relevant credit support amount. It is unclear whether retailers have a requirement to communicate changes in credit rating to a distributor.</p> |
| Division 3 | Credit support | <p><u>ActewAGL Retail comment</u></p> <p>ActewAGL Retail considers that any credit support requirements set out in the framework and imposed by distributors should be commensurate with the risks posed by the retailer in question. The proposed arrangements address this by linking credit support amounts to the credit rating of the retailer and the retailer's distribution service charges liability. This approach does not, however, recognise payment histories of retailers and unfairly penalises retailers that do not have a credit rating.</p> <p>If maximum credit support amounts are imposed on retailers that have maintained a good payment history, this then has the potential to affect a retailer's cash flow position insofar as the retailer remits network charges in advance of receiving payment from consumers. It is also considered a significant barrier to entry for new entrants into the national energy market.</p> |

Table 4: National Gas (Retail Support) Amendment Rule -

| National Gas (Retail Support) Amendment Rule | | |
|---|--|--|
| Provision | Subject matter | Comment |
| 102 | Definition of default rate | <p>ActewAGL queries why the definition of default rate is different to that in the Electricity retail support rules. Rule 203 states:</p> <p>(1) A reference in this Part to the interest rate is a reference to the Bloomberg Bank Bill Swap Reference Rate most recently published in the Australian Financial Review.</p> <p>(2) If the above rate ceases to exist, or that rate becomes, in AEMO's reasonable opinion, inappropriate, the interest rate is a rate determined and published by AEMO.</p> |
| 105 | Calculating distribution service charges | <p>See section 4.2 of ActewAGL's submission.</p> <p>Provision states that distribution service charges must be calculated in accordance with the applicable access arrangements. In gas, the arrangement a gas distributor has with a retailer does not necessarily follow the terms and conditions, or tariffs, set out in the access arrangement – there is scope for the parties to agree alternative arrangements (see NGL s. 322). Therefore, distribution service charges should not be set by reference to the access arrangement but instead the transport services agreement (or similar agreement) between the distributor and the retailer.</p> |
| 106 | Statement of charges | <p>Provision requires the distributor to provide a statement of charges <u>on</u> the 10th business day of each billing period. Previously in the retail support contract this was <u>by</u> the 10th business day.</p> <p>In respect of gas where transport services agreements are in place between retailers and distributors, this provision should be covered by the transport services agreements instead of being in Rules. ActewAGL Distribution therefore considers that this provision should be deleted.</p> |

National Gas (Retail Support) Amendment Rule

| Provision | Subject matter | Comment |
|-----------|--|---|
| 112 | Notification of changes to distributor tariffs | <p>This provision requires the distributor to notify the retailer of any proposed changes in its distribution network tariffs no later than 2 business days after the date on which the changes are notified to the AER.</p> <p>Under the gas access arrangement revision process, the distributor must submit an access arrangement proposal to the AER that includes, amongst other things, reference tariffs for reference services over the access arrangement period. This proposal is to be submitted to the AER usually 12 months before the start of the next access arrangement period. Under the drafting of Rule 112, this proposal would appear to meet the definition of “preliminary information”, and therefore the distributor would be required to notify the retailer of indicative prices contained in the proposal within 2 business days of submission. ActewAGL Distribution notes, however, that this access arrangement proposal is not immediately published by the AER, but is instead subject to an initial assessment for compliance with regulatory obligations and information requirements. Subsequent publication typically occurs 1-2 weeks after submission. A similar process occurs for electricity distribution tariffs included in an electricity regulatory proposal.</p> <p>The requirement under r. 112 would require the distribution business to provide to retailers a key part of its access arrangement proposal before it is assessed by the AER as compliant. It is unclear the benefit that retailers would receive from this obligation since (1) the submission relates to proposed prices that will not apply for 12 months at least; (2) the proposal will be made public on the AER’s website once it is deemed compliant (usually 1-2 weeks after submission). ActewAGL Distribution therefore considers that this requirement is duplicative and potentially undermines the AER’s processes in determining compliance of a regulatory proposal before publication.</p> <p>Annual tariff variation proposals are also submitted to the AER and published on the AER’s website. It is therefore unclear what additional transparency is achieved from the requirement on distributors to inform retailers of prices where these processes are well documented and dictated by rules related to publication. If considered necessary, the AER may consider informing retailers of relevant pricing decisions as part of their normal consultation and information roles without requiring the distribution business to undertake a special function in this respect.</p> |

National Gas (Retail Support) Amendment Rule

| Provision | Subject matter | Comment |
|-----------------------|----------------|--|
| Part 21 Division 4 | Credit Support | <p><u>ActewAGL Distribution comment</u></p> <p>ActewAGL Distribution has a requirement for security of payment from users in its access arrangement for the ACT and Greater Queanbeyan. ActewAGL Distribution considers that the credit support arrangements in place in its access arrangement provide it with an appropriate level of rights and protections from retailer non-payment or failure, and observes that the proposed credit support arrangements in the NECF2 package represent a significant diminution of these rights. ActewAGL Distribution does not support the proposed new credit support arrangements, and endorses views set out in the Energy Networks Association submission.</p> |
| Part 21 Division 4 | Credit Support | <p><u>ActewAGL Retail comment</u></p> <p>ActewAGL Retail considers that any credit support requirements set out in the framework and imposed by distributors should be commensurate with the risks posed by the retailer in question. The proposed arrangements address this by linking credit support amounts to the credit rating of the retailer and the retailer's distribution service charges liability. This approach does not, however, recognise payment histories of retailers and unfairly penalises retailers that do not have a credit rating.</p> <p>If maximum credit support amounts are imposed on retailers that have maintained a good payment history, this then has the potential to affect a retailer's cash flow position insofar as the retailer remits network charges in advance of receiving payment from consumers. It is also considered a significant barrier to entry for new entrants into the national energy market.</p> |

Table 5: National Electricity (Retail Connection) Amendment Rule -

| National Electricity (Retail Connection) Amendment Rule | | |
|---|---|--|
| Provision | Subject matter | Comment |
| 5A.B.2(3) | Standing offer for basic connection services | This provision requires that a standing offer for basic connection services include information on the qualifications required for carrying out connection works. This appears to assume that connection works are contestable in all jurisdictions. This is not the case in the ACT and this is a jurisdictional decision. This provision should be redrafted to state that the standing offer for basic connection services should, <i>where relevant</i> , include information on the qualifications required for carrying out connection works. The same comment is also relevant to Rule 5A.B.4(c)(3). |
| 5A.B.3 | Approval of terms and conditions of standing offer to provide basic connection services | <p>The provision currently states that the AER <u>may</u> approve a proposed standing offer to provide basic connection services if it is satisfied that the proposal meets the requirements under the provision. As distribution businesses must have a standing offer in place for relevant basic connection services, it appears inconsistent that the AER is not obliged to approve a proposal for a standing offer where it meets relevant requirements. It is unclear under what circumstances the AER would not approve a standing offer proposal that met the requirements, and the inclusion of discretion for the AER to not approve a compliant proposal creates uncertainty for distribution businesses in respect of its ability to comply with this provision. ActewAGL Distribution considers that the provision should be changed so that the AER <u>must</u> approve a proposed standing offer if it meets the relevant requirements. This is also consistent with other requirements of the AER under the access regime where it has an approval role.</p> <p>ActewAGL Distribution also considers that the AER should be subject to a decision-making timetable for the approval of terms and conditions of a standing offer to provide basic connection services. ActewAGL Distribution recommends that the AER be deemed to have approved a proposed standing offer if it has not reached a decision in respect of that offer within 3 months of the proposal being submitted to the AER.</p> |

National Electricity (Retail Connection) Amendment Rule

| Provision | Subject matter | Comment |
|-----------|-----------------------|---|
| 5A.C.3 | Negotiation framework | <p>ActewAGL Distribution’s 2009-14 electricity network distribution determination contains a negotiating framework for “negotiable components” of direct control services (under specific transitional arrangements under the NER relevant to the ACT). This framework relates to aspects of network service delivery, including aspects of connections, that are potentially variable for individual customers. As such, this negotiating framework appears to overlap with the framework in the national connections framework.</p> <p>The Explanatory Memorandum states the intention of MCE SCO that the chapter 5A negotiating framework supersede any negotiating framework established under chapter 6 for connection services that are also negotiable distribution services as classified by the AER. ActewAGL Distribution is unclear how this is apply to its distribution determination given that, through specific transitional arrangements, the negotiating framework applies to direct control services, as opposed to the general provisions in chapter 6 which applied the framework only to negotiated network services. In addition, ActewAGL Distribution’s negotiating framework does not explicitly identify negotiable components of direct control services to which the negotiating framework applies, but instead establishes principles for determining whether a particular network service may be subject to negotiation.</p> <p>ActewAGL Distribution considers that these jurisdictional differences highlight the need for detailed consideration of transitional arrangements as a part of the establishment of the national frameworks. They also highlight the importance of ensuring that transitional arrangements accommodate existing network determinations to allow appropriate changes to be worked through the myriad of interweaved obligations and arrangements in a systematic matter that does not create overlapping and potentially conflicting regulatory arrangements that cannot be complied with. Broad statements that certain arrangements will replace those in existing determinations are not appropriate and do not contribute to certainty in future arrangements.</p> <p>ActewAGL Distribution urges the MCE SCO to further consider appropriate transitional arrangements relevant to the entire framework to provide greater clarity, certainty and transparency to retailers, distributors and customers.</p> |

National Electricity (Retail Connection) Amendment Rule

| Provision | Subject matter | Comment |
|-----------------------|------------------------------|---|
| 5A.D.2 | Preliminary enquiry | ActewAGL Distribution considers that the information requirements for responding to a preliminary enquiry are generally appropriate and can be met within the timeframe. The requirement under subrule (b)(5), however, may be difficult to meet depending on the information requested by enquirer. ActewAGL Distribution considers that the distributor should be required to provide any <u>additional information</u> required by the enquirer under subrule (b)(5) as soon as reasonably practicable, rather than within 5 business days. |
| 5A.D.3(e) & 5A.F.1 | Application process | ActewAGL Distribution considers that 10 business days is generally sufficient time to determine whether a connection is basic or standard and to make an offer to connect. This is because most connections do not require a site inspection before the distributor can make an offer to connect. Where a site visit is needed, however, 10 business days may not be sufficient time to undertake that inspection, and then prepare an offer to connect. ActewAGL Distribution considers that the 10 business days should be extendable by the distributor by a further 10 business days where a site inspection is required, as a site visit may involve arranging access to the site with the customer (including relevant notification periods). |
| 5A.E.1 | Connection charge principles | <p>See section 7.4 of ActewAGL's submission.</p> <p>ActewAGL Distribution considers that connection charge principles should be based around the concept of economic and uneconomic connection, similar to that for the gas regime, and as is currently in place in the ACT. This approach ensures that for a customer connection that is economic for the distributor (that is where network revenue from the load likely to arise from that connection is greater than the costs of making the connection services available as requested by the customer), no capital contribution is payable by the customer. The extent of any capital contribution is then equivalent to any shortfall between likely revenue to be derived and the cost of the connection. The proposed changes to the framework, requiring customers to pay for dedicated connection assets regardless of whether that connection is economic for the distributor, introduces significant distortions between customers connected to the network before and after the introduction of the national connections framework.</p> <p>ActewAGL Distribution is also unclear as to the distinction that appears to be made under the connection charge principles between network extensions and augmentations. ActewAGL Distribution notes that these terms are not defined, however it is expected that cost recovery arrangements will apply depending on whether an asset is considered an extension or expansion to the network.</p> |

Table 6: National Gas (Retail Connection) Amendment Rule -

| National Gas (Retail Connection) Amendment Rule | | |
|---|---|--|
| Provision | Subject matter | Comment |
| 119A | Definition of supply service | <p>See section 4.3 of ActewAGL's submission.</p> <p>ActewAGL Distribution is unclear as to the intended scope of the supply service provided under the connection contract and its consistency with the gas access regime. ActewAGL Distribution considers that this definition requires further development for consistency with services provided to retailers under access arrangements established in accordance with the NGL.</p> |
| 119D | Approval of terms and conditions of standing offer to provide basic connection services | <p>The provision currently states that the AER <u>may</u> approve a proposed standing offer to provide basic connection services if it is satisfied that the proposal meets the requirements under the provision. As distribution businesses must have a standing offer in place for relevant basic connection services, it appears inconsistent that the AER is not obliged to approve a proposal for a standing offer where it meets relevant requirements. It is unclear under what circumstances the AER would not approve a standing offer proposal that met the requirements, and the inclusion of discretion for the AER to not approve a compliant proposal creates uncertainty for distribution businesses in respect of its ability to comply with this provision. ActewAGL Distribution considers that the provision should be changed so that the AER <u>must</u> approve a proposed standing offer if it meets the relevant requirements. This is also consistent with other requirements of the AER under the access regime where it has an approval role.</p> |

National Gas (Retail Connection) Amendment Rule

| Provision | Subject matter | Comment |
|-------------|------------------------------|--|
| 119M & 119N | Nature of connection charges | <p>ActewAGL Distribution is concerned that the partial reproduction of elements of the NGR into the connections framework unintentionally limits options available to the distributor to recover uneconomic connection costs that are available under the NGR. For example, the NGR allows non-conforming capital expenditure (that is, capital expenditure that does not satisfy Rule 79) to be recovered either through:</p> <ul style="list-style-type: none"> - a capital contribution; - a surcharge; or - establishment of a speculative capital expenditure account. <p>In contrast, the connections framework requires that all such expenditure be recovered through a capital contribution, effectively closing off these other options available under the NGR in respect of connections.</p> <p>ActewAGL Distribution does not consider that this is appropriate, both for consistency with the access regime, and to ensure support investment in gas infrastructure through the expansion of gas markets.</p> <p>The alternative options are available under the NGR to ensure that the distributor can recover of non-conforming capital expenditure from customers in a situation of diffuse beneficiaries in a way that may not involve an up-front cost to the connecting customer or customers. This may be appropriate in circumstances where a significant capital expenditure is required to service initial customers (such as the reticulation of a small town), however, over time, more customers are expected to connect making the initial investment economically justified. In these circumstances, it is generally not appropriate to require the initial customers to pay the entire costs of the up-front investment through a capital contribution and this would likely lead to the investment stalling, as customers will be unwilling to connect at all as costs would be prohibitive. Initial customers would also be subsidising later customers (noting that this investment may not relate to dedicated connection assets, so a recovery scheme would not address this issue). As an alternative, under the NGR the initial capital costs can be placed in a “speculative capital expenditure account”, and if that expenditure later becomes conforming, it can be added to the capital base. This approach supports investment in new regions without imposing high costs on existing customers. Scope for non-conforming capital expenditure to be recovered through capital contributions, a surcharge or a speculative capital expenditure account should therefore be preserved under the gas connections framework.</p> |

National Gas (Retail Connection) Amendment Rule

| Provision | Subject matter | Comment |
|-----------|------------------------------|---|
| 119N | Nature of connection charges | <p>ActewAGL Distribution notes that connection charges can include costs of negotiation and of conducting a site visit. Where a project subsequently goes ahead, these costs are included as capital contributions, however, where the connection does not proceed, they are not capital contributions as there has been no capital works. ActewAGL Distribution is unsure what categories of costs are included under a connection charge under rule 119N, particularly whether this clause includes charges to a customer related to a connection application where the connection does not ultimately proceed. It would appear that the definition of a connection charge would include these services.</p> <p>If these costs are intended to be included in the definition, then it is not appropriate for these charges to be considered capital contributions as capital contributions have specific accounting and tax implications.</p> |
| 119Q | Preliminary enquiry | <p>ActewAGL Distribution considers that the information requirements for responding to a preliminary enquiry are generally appropriate and can be met within the timeframe. The requirement under subrule (2)(v), however, may not be possible to meet depending on the information requested by enquirer. ActewAGL Distribution considers that the distributor should be required to provide any <u>additional information</u> required by the enquirer as soon as reasonably practicable, rather than within 5 business days.</p> |
| 119R | Application process | <p>ActewAGL Distribution considers that 10 business days is generally sufficient time to determine whether a connection is basic or standard and to make an offer to connect. This is because most connections do not require a site inspection before the distributor can make an offer to connect. Where a site visit is needed, however, 10 business days may not be sufficient time to undertake that inspection, and then prepare an offer to connect. ActewAGL Distribution considers that the 10 business days should be extendable by the distributor by a further 10 business days where a site inspection is required, as a site visit may involve arranging access to a site with the customer (including relevant notification periods).</p> |
| | Site inspection | <p>It is unclear why the gas connections framework does not include a provision similar to that in the electricity framework related to costs associated with site inspections (5A.D.4). Site inspections are common for gas connections to determine soil conditions and other potential impediments to connection.</p> <p>ActewAGL Distribution recommends inclusion of an additional provision in the gas connections framework related to the recovery of costs associated with site inspections.</p> |

National Gas (Retail Connection) Amendment Rule

| Provision | Subject matter | Comment |
|-----------|---------------------------------------|---|
| 119S | Distributor's response to application | ActewAGL Distribution considers that 10 business days is generally sufficient time to determine whether a connection is basic or standard and to make an offer to connect. This is because most connections do not require a site inspection before the distributor can make an offer to connect. Where a site visit is needed, however, 10 business days may not be sufficient time to undertake that inspection, and then prepare an offer to connect. ActewAGL Distribution considers that the 10 business days should be extendable by the distributor by a further 10 business days where a site inspection is required. |
| 119V | Acceptance of distributor's offer | ActewAGL Distribution notes that a distributor may enter into a negotiated connection agreement with a customer. It is unclear how this agreement could bind a subsequent customer who replaces the original customer. ActewAGL Distribution seeks further clarification on this issue. |