

# **Revisions to AGLGN's Access Arrangement : Terms and Conditions**

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# Review of proposed terms and conditions

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- Are there aspects of the terms and conditions of reference services under the proposed AGLGN Access Arrangement that would have a broad impact on users/customers that would be inconsistent with any of the objectives of the Gas Code and, if so, how could the Access Arrangement be revised to better reflect the Code objectives?
- Do any of the proposed terms and conditions in AGLGN's proposed access arrangement appear to be inconsistent with the reasonableness criterion of section 3.6 of the Code and, if so, how could the proposed terms and conditions be revised to better reflect the requirements of the Code?
  - Section 3.6: An Access Arrangement must include the terms and conditions on which the Service Provider will supply each Reference Service. The terms and conditions included must, in the Relevant Regulator's opinion, be reasonable.

# Specification of Terms and Conditions

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- Capacity Reservation Service, Managed Capacity Service, Throughput Service, Multiple Delivery Point Service, Meter Data Service and Gas Swap Service:
  - General terms and conditions in Schedule 2A
    - terms and conditions applicable to all reference services
  - General terms and conditions in Schedule 2B
    - MDQ, extension of contract terms
  - Gas balancing arrangements in Schedule 3
  - Operational principles in Schedule 4
    - load shedding, establishment of receipt points
  - Service specific terms and conditions in section 2
    - availability, term of service agreements
    - specification of receipt points, delivery points, MDQ, MHQ
    - overruns, additional capacity, metering
- Tariff Service
  - As above but excluding the general terms and conditions in Schedule 2B

# Matters addressed

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- General matters
  - The manner in which the terms and conditions in the access arrangement
  - Incomplete specification of terms and conditions for reference services
  - Terms and conditions for non-reference services
  - Relationship and interaction of the terms and conditions with the Gas Retail Market Business Rules
- Specific elements

# General matters: manner of specification

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## ➔ Issues

- ➔ proposed access arrangement is drafted in manner that is disjointed and repetitive
- ➔ “unnecessarily clumsy, complicated and difficult to comprehend” and “confusing and repetitive”
- ➔ specification of terms and conditions within the access arrangement and in multiple schedules gives rise to duplication and inconsistencies

## ➔ Assessment

- ➔ IPART has limited ability to require amendment of the access arrangement to remedy perceived deficiencies in drafting
- ➔ Poor drafting only constitutes cause for IPART to require amendment if deficiencies in drafting are considered to cause the terms and conditions to be “unreasonable”
  - ➔ ambiguity of rights and obligations
  - ➔ inconsistencies in duplication provisions
- ➔ Several instances of such deficiencies, which are addressed in relation to specific provisions
- ➔ But terms and conditions would remain poorly drafted

# General matters: incomplete specification

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## ➤ Issues

- The access arrangement does not provide a complete specification of terms and conditions for reference services
- Terms and conditions set out in the access arrangement omit provisions on many issues that would be expected to comprise part of terms and conditions under a service agreement
- AGLGN does not rely on terms and conditions as set out in the access arrangement, but rather uses a “full” specification of terms and conditions set out in standard *Reference Service Transportation Agreements* published on AGL’s web site

# General matters: incomplete specification (cont.)

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## ➤ Assessment

- Section 3.6: may be interpreted as requiring that any terms and conditions for a reference service are specified in the access arrangement
  - sufficient for parties to enter into a service agreement on the basis of those terms and conditions
  - would prevent the service provider from unilaterally imposing additional terms and conditions – may not be sustainable in an access dispute

➤ But the construction of the Code is open to different interpretation.

➤ IPART is limited in its role to consideration of terms and conditions as set out in the access arrangement, and not the *Reference Service Transportation Agreements*

but,

consideration of reasonableness may include consideration of whether the terms and conditions set out in the access arrangement address all matters necessary to specify the rights and obligations under a service agreement

- Terms and conditions in the access arrangement fail to address several matters commonly addressed in service agreements for gas distribution services.
- Open for IPART to find the terms and conditions to be unreasonable by virtue of these omissions.

# General matters: GRMBRs

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## ➔ Gas Retail Market Business Rules

- ➔ Regulatory arrangements for the operation of the contestable gas market
- ➔ “Approved Scheme” established under the Gas Supply Act
- ➔ AGLGN and gas retailers required to participate in the scheme
- ➔ Process exists for change: consultation and agreement by scheme participants

## ➔ Terms and conditions

- ➔ Deal with a range of matters also addressed by the GRMBRs (eg. metering, gas balancing)

## ➔ Assessment

- ➔ Conflict between the GRMBRs and terms and conditions should be avoided
- ➔ Achieved by:
  - ➔ terms and conditions not replicating provisions of the GRMBRs (reserve provisions only)
  - ➔ terms and conditions not seeking to supplement the GRMBRs except where supplementation is beyond the jurisdiction of the Gas Market Company



# Specific elements: assessment

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- Code compliance for specification of terms and conditions
  - specification of rights and obligations of AGLGN and the User without additional terms and conditions being specified outside of the access arrangement
- Consideration of “reasonableness”
  - complete
  - internally consistent
  - unambiguous
  - common industry and/or commercial practice
  - consistent with other law affecting commercial practice

# Specific elements: general terms and conditions

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- Provision for change to reflect the Gas Retail Market Business Rules
  - may not be compliant with the Code, which may not allow for change other than through a revision of the access arrangement
- Absence of qualitative or quantitative limits on the level and type of security that AGLGN may require
- Charges in the nature of penalties for overrun quantities\*
- Absence of qualitative or quantitative limits on costs able to be passed on to users in respect of new receipt points or alteration to receipt points
- Inadequate specification of terms and conditions in relation to accounts and payment
- Absence of qualitative or quantitative limits on charges able to be levied on users in respect of a request by a user to cease deliveries
- Provision for AGLGN to impose restrictions on terms and conditions of contracts between users and other parties (gas customers)

# Specific elements: general terms and conditions (cont.)

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- Excessively broad liability of users in respect of gas swaps
- Terms of service agreements and provisions for extension of service agreements
- Ambiguities and inconsistencies in respect of requirements for specification of MDQ and MHQ in service agreements
- Unreasonably broad provision for limitation of AGLGN's potential liability in relation to load shedding

# Specific elements: service-specific terms and conditions

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- Absence of provision for removal of delivery points from a service agreement for Multiple Delivery Point Services
- Limitations on the time period within which additional delivery points may be added to a service agreement for Multiple Delivery Point Services
- Ambiguity as to whether, for the Trunk Capacity Reservation Service, Trunk Managed Capacity Service and Trunk Throughput Service, gas may be transported to one or multiple delivery points under a single service agreement
- Ambiguity in provisions for obtaining additional short-term capacity under a service agreement for the Capacity Reservation Service

# Other issues and further investigation

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## ➔ Liability

### ➔ Legal issues

### ➔ Substantial concern of Users – “Users’ Squeeze”

- ➔ retailers are being required through general customer protection regulation to assume responsibility for supply of gas and provisions in retail contracts that seek to limit liability of the retailer are becoming unenforceable
- ➔ AGLGN is seeking to limit its liability for disruptions in supply of gas to end users
- ➔ Users have an interest in ensuring that AGLGN does not avoid its “fair share” of responsibility and liability, especially in relation to transportation reliability

## ➔ Load-shedding priorities

### ➔ Substantial concern of parties making submissions is that load-shedding priority should be related to the cause of the supply shortfall and to the nature of the end users of gas (including in embedded networks)

### ➔ But difficulty in addressing this through the terms and conditions

- ➔ affects non-reference services as well as reference services
- ➔ interaction between system-wide principles and individual contractual arrangements
- ➔ complex information requirements to link end-users of gas with supply sources
- ➔ interaction with the GRMBRs

### ➔ May need to be addressed in a different forum – the GRMBRs?