



Draft National Gas Amendment (Retailer - Distributor Credit Support Requirements) Rule 2016

under the National Gas Law to the extent applied by:

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

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

John Pierce
Chairman
Australian Energy Market Commission

Draft National Gas Amendment (Retailer - Distributor Credit Support Requirements) Rule 2016

1 Title of Rule

This Rule is the Draft *National Gas Amendment (Retailer - Distributor Credit Support Requirements) Rule 2016 No. ##*.

2 Commencement

This Rule commences operation on [COMMENCEMENT_DATE].

3 Amendment of the National Gas Rules

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

4 Amendment of the National Gas Rules

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

5 Savings and Transitional Amendments to the National Gas Rules

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

Schedule 1 Amendment to the National Gas Rules

(Clause 3)

[1] Division 4 Credit support regime

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

Division 4 Credit support required for late payment

Note:

The *credit support* rules set out in Division 4 are conduct provisions for the purpose of the *NGL*.

513 Application of Division 4

This Division (to be known as the *credit support rules*) applies to a *distributor* and a *retailer*:

- (a) in respect of shared customers;
- (b) in respect of charges for services for which the *retailer* pays the *distributor* in arrears in accordance with a statement of charges under rule 506.

514 Distributor may require credit support in limited circumstances

- (1) A *distributor* may only require a *retailer* to provide *credit support* if within the previous 12 months, the *retailer* has failed to pay in full:
 - (a) the charges contained in 3 statements of charges by the due date for payment; or
 - (b) the charges contained in 2 consecutive statements of charges by the due date for payment; or
 - (c) the charges contained in 1 statement of charges within 25 business days of the due date for payment.

and then only in accordance with the *credit support* rules.

- (2) A *distributor* may only require a *retailer* to provide *credit support* up to an amount equal to the charges contained in the most recent statement of charges that gave rise to the requirement for the *retailer* to provide *credit support* under rule 514(1).
- (3) If the *retailer* fails to pay charges contained in a statement of charges, but the charges are disputed, and the *retailer* has complied with the requirements of rule 510 in respect of the dispute, the *retailer* will not be considered in default in payment of the disputed

charges and the *distributor* will not be entitled to require the *retailer* to provide *credit support*.

515 Retailer to provide credit support

- (1) A *retailer* must, on request by a *distributor* under rule 514(1), provide *credit support* to a distributor in accordance with the *credit support* rules.
- (2) The *credit support* provided by a *retailer* must be:
 - (a) for an amount requested by the *distributor*, not exceeding an amount equal to the charges contained in the most recent statement of charges that gave rise to the requirement for the *retailer* to provide *credit support* under rule 514(1); and
 - (b) provided within 5 business days of the *distributor*'s request; and
 - (c) an acceptable form of *credit support* in favour of the *distributor* (see rule 516).
- (3) A *retailer* must ensure that at all times the aggregate undrawn amount of the *credit support* is not less than the amount requested by a *distributor* in accordance with rule 514(1).

516 Acceptable form of credit support

- (1) A *retailer* required to provide *credit support* under these rules must provide the *credit support* in an acceptable form.
- (2) An acceptable form of *credit support* is:
 - (a) a form of *credit support* that the *retailer* agrees to provide, and the *distributor* agrees to accept; or
 - (b) an undertaking:
 - (i) substantially in the form set out in Schedule 2 to this Part; and
 - (ii) issued by a financial institution acceptable to the *distributor*.

517 Application of credit support

A *distributor* may only apply or draw on the *credit support* if:

- (a) the *distributor* has given not less than 3 business days' notice to a *retailer* that it intends to apply or draw on the *credit support* in

respect of an amount due and payable by the *retailer* to the *distributor*, and that amount remains outstanding; and

- (b) there is no unresolved dispute under rule 510 about the *retailer's* liability to pay that amount.

518 Return of credit support

- (1) If:
 - (a) a *distributor* and a *retailer* no longer have any shared customers; or
 - (b) in the 12 months since the *credit support* was provided, a *retailer* has paid in full the charges contained in each statement of charges issued in that 12 month period by the due date for payment,

the *distributor* must pay, cancel or return to the *retailer* as appropriate, any balance of *credit support* outstanding after payment of all amounts owing by the *retailer* to the *distributor*.

519 Other retailer obligations

- (1) A *retailer* must not take any steps to restrain (by injunction or otherwise):
 - (a) an issuer of *credit support* from paying out, or otherwise satisfying, a claim properly made by the *distributor* under the terms of the *credit support*; or
 - (b) the *distributor* from making a claim on the *credit support* in accordance with the *credit support* rules; or
 - (c) the *distributor* from using the money obtained by calling on the *credit support*
- (2) A *distributor* may also disclose to its financiers, the AER or AEMO that it has required or called on *credit support* provided by the *retailer* under the *credit support* rules.

520 Pass through of unpaid distribution service charges

- (1) If a *retailer insolvency event* occurs, a *distributor* may apply to the AER for approval to vary one or more reference tariffs by a retailer insolvency pass through amount in accordance with this rule.
- (2) To apply for approval to vary a reference tariff under subrule (1), a *distributor* must submit to the AER, within 90 business days of the occurrence of a *retailer insolvency event*, a written statement including:

- (a) the *distributor's* proposed *retailer* insolvency pass through amount, showing the calculation of that amount taking into account the matters in subrule (3); and
 - (b) the portion of that amount that the *distributor* proposes to pass through to end users in each year of the applicable *access arrangement period* and how each reference tariff would be varied to achieve that pass through; and
 - (c) evidence of:
 - (i) the actual and likely increase in *retailer insolvency costs* referred to in subrule (3); and
 - (ii) the amount to which the *distributor* is entitled under any relevant *credit support*; and
 - (iii) the maximum amount of *credit support* (if any) that the *distributor* was entitled to request the *retailer* to provide under the *credit support* rules; and
 - (iv) any amount that the *distributor* is likely to receive on a winding-up of the *retailer*.
- (3) the *distributor* must propose, and the AER must determine, a *retailer* insolvency pass through amount that reflects the increase in the *retailer insolvency costs* that the *distributor* has incurred and is likely to incur in providing reference services until the end of the applicable *access arrangement period* solely as a consequence of the *retailer insolvency event*, but does not include:
- (a) any amount recovered or recoverable from a *retailer* or a guarantor of a *retailer* under this Part; or
 - (b) any costs that are recoverable under a RoLR cost recovery scheme distributor payment determination.
- (4) In the event that a *retailer insolvency event* has occurred and the AER approves a *retailer* insolvency pass through amount under subrule (3) in respect of that event, the *distributor's* access arrangement is taken to be amended so that:
- (a) the *retailer insolvency event* is taken to be an approved cost pass through event under that access arrangement; and
 - (b) the *retailer* insolvency pass through amount determined under subrule (3) is taken to be an approved cost pass through amount under that access arrangement, allowing variation of the *distributor's* reference tariffs.
- (5) In this rule 520:

failed retailer has the same meaning as in the *NERL*.

billed but unpaid charges means, in respect of a *distributor*, distribution service charges that have been billed to a *failed retailer* by the *distributor*, but that the *failed retailer* has not yet paid (whether before or after the relevant due date for payment).

retailer insolvency costs means in respect of a *distributor*:

- (a) billed but unpaid charges;
- (b) the actual amount of unbilled distribution service charges accrued by a *failed retailer*; and
- (c) other costs that the *distributor* has incurred or is likely to incur as a result of a *retailer insolvency event*.

retailer insolvency event means the failure of a *retailer* during an *access arrangement period*, to pay a *distributor* an amount to which the service provider is entitled for the provision of reference services, if:

- (a) an *insolvency official* has been appointed in respect of that *retailer*; and
- (b) the *distributor* is not entitled to payment of those charges in full under the terms of any *credit support* provided in respect of that *retailer*.

RoLR cost of recovery scheme distributor payment determination has the same meaning as in the *NERL*.

[2] Schedule 1 to Part 21

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

[3] Schedule 2 to Part 21

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

Schedule 2 Amendment to the National Gas Rules

(Clause 4)

[1] Part 1 Substituted definition

In Part 1, substitute the following definition:

retailer insolvency event – see rule 520.

Schedule 3 Savings and Transitional Amendments to the National Gas Rules

(Clause 5)

[1] Schedule 1 Transitional Provisions

After Part [xx] insert:

Part [xx] Transitional provisions consequent on the National Gas Amendment (Retailer Distributor Credit Support Requirements) Rule 2016

[x] Definitions

For the purposes of this rule [x]:

Amending Rule means the National Gas Amendment (Retailer Distributor Credit Support Requirements) Rule 2016.

effective date means [insert date which is the Commencement Date of Schedules 1, 2 and 3 of the Amending Rule].

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

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

[x] Continued operation of old Division 4 of Part 21

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

[x] Interaction with rule 520

(a) For the purposes of 520(2)(c) of the Amending Rule, *credit support* means where the context requires:

- (1) any *credit support* held by a *distributor* under the old Division 4 of Part 21; and/or
- (2) any *credit support* held by a *distributor* under new Division 4 of Part 21.

[x] Application of new Division 4 of Part 21

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