



ICRC

independent competition and regulatory commission

Final Approval

**Access arrangement for ActewAGL gas distribution
system in the ACT and Greater Queanbeyan**

November 2004

The Independent Competition and Regulatory Commission (the commission) was established by the *Independent Competition and Regulatory Commission Act 1997* to determine prices for regulated industries, advise government about industry matters, advise on access to infrastructure and determine access disputes. The commission also has responsibilities under the Act for determining competitive neutrality complaints and providing advice about other government-regulated activities.

The commission has three commissioners:

Paul Baxter, Senior Commissioner
Robin Creyke, Commissioner
Peter McGhie, Commissioner.

Submissions, correspondence or other enquiries may be directed to the commission at the addresses below:

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The secretariat may be contacted at the above addresses, by telephone on 6205 0799, or by fax on 6207 5887. The commission's website is at www.icrc.act.gov.au and its email address is icrc@act.gov.au or ian.primrose@act.gov.au.

For further information on this or any other matters of concern to the commission please contact Ian Primrose, Chief Executive Officer, on 6205 0779.

Foreword

The Independent Competition and Regulatory Commission (the commission) has undertaken a review of ActewAGL's proposed revisions to the access arrangement governing third-party access to the natural gas distribution system in the Australian Capital Territory and Greater Queanbeyan. This decision is the commission's final approval of the revised access arrangement and revised access arrangement information submitted by ActewAGL.

The review was conducted in accordance with the National Third Party Access Code for Natural Gas Pipeline Systems (the Code).

In December 2003, ActewAGL submitted its proposed revisions to the access arrangement to the commission. The commission's final decision of October 2004 set out a number of amendments that ActewAGL was required to make in order for the commission to approve the proposed revisions to the access arrangement.

ActewAGL's revised access arrangement and revised access arrangement information substantially incorporate the amendments as required in the commission's final decision, and satisfactorily address the issues raised by the commission in its final decision. The commission therefore approves ActewAGL's proposed revisions to the access arrangement.

For further information about this review, please contact Ian Primrose, Chief Executive Officer, on 6205 0799 or by fax on 6207 5887.

Paul Baxter
Senior Commissioner
November 2004

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1 Introduction

In January 2001, the commission approved ActewAGL Distribution's Access Arrangement for ActewAGL natural gas system in ACT, Queanbeyan and Yarrowlunla, which came into effect on 1 February 2001. Under that access arrangement, ActewAGL Distribution (referred to as 'ActewAGL' in this final approval) was required to submit proposed revisions to the access arrangement, together with the applicable access arrangement information, by 30 June 2003. It was envisaged that the revisions to the access arrangement would commence on 1 July 2004. ActewAGL sought from the commission an extension of six months to the revisions submission date, which the commission subsequently granted.

In December 2003, ActewAGL submitted to the commission proposed revisions to the 2001 access arrangement. These proposed revisions outlined access terms and conditions, tariffs and service, extensions, expansions, trading, queuing, capacity management and tariff policies on which third parties may access ActewAGL's gas distribution network in the ACT and Greater Queanbeyan.

Under the National Third Party Access Code for Natural Gas Pipeline Systems (the Code), the commission is required to decide whether to approve or not to approve proposed revisions to the 2001 access arrangement.

The Code sets out the detailed regulatory principles and processes that the commission must follow in its assessment of ActewAGL's proposed revisions to the 2001 access arrangement. The process followed by the commission included:

February 2004	release of the commission's issues paper on ActewAGL's proposed revisions to the 2001 access arrangement.
April 2004	ActewAGL submission in response to the issues paper.
July 2004	release of the commission's draft decision.
August 2004	ActewAGL and Energy Networks Association submissions on the draft decision.
October 2004	release of the commission's final decision.

The final decision required ActewAGL to make 19 amendments to the revised access arrangement (AA) and revised access arrangement information (AAI) before the commission would approve the proposed revisions to the AA. ActewAGL was required to resubmit its revised AA and revised AAI by 03 November 2004.

ActewAGL submitted its revised AA and revised AAI on 03 November 2004.

This document is the commission's further final decision, issued under section 2.41 of the Code, and presents the commission's final approval of ActewAGL's revised AA. This decision should be read in conjunction with the commission's final decision, which outlines the reasons for the 19 amendments that the commission required ActewAGL to make.

The revised AA is to apply from 1 January 2005 to 30 June 2010.

The following documents are referred to in this decision and can be found, along with other relevant documents, on the commission's Webpage at www.icrc.act.gov.au:

- 'Access Arrangement for ActewAGL Gas Distribution System in ACT and Greater Queanbeyan' submitted 03 November 2004 and referred to in this final approval as the 'revised AA'.
- 'Access Arrangement Information for ActewAGL Gas Distribution System in ACT and Greater Queanbeyan' submitted 03 November 2004 and referred to in this final approval as the 'revised AAI'.
- 'Final Decision – Review of the access arrangement for ActewAGL natural gas system in ACT, Queanbeyan and Yarrowlumla' released October 2004 and referred to in this final approval as the 'final decision'.

2 Assessment of ActewAGL's revised access arrangement, revised access arrangement information and pricing model

Section 2.41 of the Code provides that:

If the Service Provider submits amended revisions to the Access Arrangement by the date specified by the Relevant Regulator under section 2.38(a)(ii) or (b)(ii) then the Relevant Regulator must issue a further final decision that:

- (a) if the Relevant Regulator is satisfied that the amended revisions to the Access Arrangement incorporate the amendments specified by the Relevant Regulator in its final decision under section 2.38(a)(ii) or (b)(ii), approves the amended revisions to the Access Arrangement; or
- (b) if the Relevant Regulator is satisfied that the amended revisions to the Access Arrangement either substantially incorporate the amendments specified by the Relevant Regulator or otherwise address to the Relevant Regulator's satisfaction the matters the Relevant Regulator identified in its final decision as being the reasons for requiring the amendments specified in its final decision under section 2.38(a)(ii) or (b)(ii), either approves or does not approve the amended revisions to the Access Arrangement (in the Relevant Regulator's discretion); or
- (c) in any other case, does not approve the amended revisions to the Access Arrangement.

Access Arrangement

The commission has assessed ActewAGL's revised AA to ensure that the amendments specified in the final decision have been made.

The commission is satisfied that the revised AA is consistent with the final decision and incorporates the required amendments.

Access Arrangement Information

The commission has assessed ActewAGL's revised AAI to ensure that the amendments specified in the final decision have been made.

The commission is satisfied that the revised AAI is consistent with the final decision and incorporates the required amendments.

Pricing model

The commission has assessed ActewAGL's pricing model to ensure that the model incorporates the required amendments and is consistent with the final decision.

The commission is satisfied that ActewAGL's pricing model is consistent with the final decision and incorporates the required amendments.

The commission's detailed assessment of ActewAGL's response to the final decision is set out in the Appendix to this final approval.

3 Commission approval

The commission is satisfied that ActewAGL's revised AA and revised AAI address the matters identified by the commission in its final decision and substantially incorporate the amendments required by that decision. The commission therefore approves:

- the revised access arrangement for ActewAGL gas distribution system in ACT and Greater Queanbeyan submitted to the commission on 3 November 2004; and
- the revised access arrangement information for ActewAGL gas distribution system in ACT and Greater Queanbeyan submitted to the commission on 3 November 2004.

4 Commencement date

Section 2.48 of the code states that:

A decision by the Relevant Regulator under section 2.42 or 2.45 is subject to review by the Relevant Appeals Body under the Gas Pipelines Access Law. Subject to the Gas Pipelines Access Law, revisions to an Access Arrangement come into effect on the date specified by the Relevant Regulator in its decision to approve the revisions (which date must not be earlier than either a date 14 days after the day the decision was made or, except where the Service Provider submitted the revisions voluntarily or because a mechanism of a type

referred to in section 3.18(a) included in the Access Arrangement was triggered, the Revisions Commencement.

As required by section 2.48, the commission confirms that revisions to ActewAGL's revised AA will come into effect on 1 January 2005.

5 ActewAGL contact details

Any requests for a hard copy of the approved AA, the approved AAI or information regarding access to the distribution system should be made to:

Mr Dale Weber
Manager Gas Networks
ActewAGL
Phone (02) 6293 5747

Electronic copies of the approved AA and the approved AAI can be found on the commission's website at www.icrc.act.gov.au.

Appendix

Compliance Review of ActewAGL's Revised Access Arrangement

This appendix sets out the amendments required in appendix 1 of the commission's final decision, followed by the commission's assessment of the compliance of ActewAGL's response with the required amendments.

Amendment 1

ActewAGL must include the following wording in its access arrangement:

The Meter Data Service, or relevant elements of that service, will cease to be offered as a Reference Service, and at ActewAGL's discretion as a Service, on the date of the commencement of any Gas Law (or the lawful adoption of any requirement by any person or group of people appointed by Government or industry to implement retail contestability in the gas industry in the Australian Capital Territory or New South Wales) where that Gas Law or requirement permits the provision of gas meter reading or on-site data and communication equipment in the ACT, Queanbeyan and Yarrowlumla by a person other than ActewAGL.

If such a Gas Law or requirement is introduced in either the Australian Capital Territory or New South Wales, but not in both jurisdictions, then this clause will apply to the Meter Data Service only in so far as it relates to the area affected by the Gas Law or requirement.

Commission's assessment

Sections 2.8 and 2.9 of the revised AA incorporate the amendment required by the commission's final decision.

Amendment 2

Clause 1.17 of Attachment 4 of ActewAGL's proposed access arrangement is to be amended so that it only applies to liability for:

- third-party claims made against ActewAGL as a result of load shedding
- direct loss that ActewAGL incurs as a result of a user's failure to take required action under the load-shedding provisions.

In response to amendment 2, ActewAGL adjusted clause 1.17 of Attachment 4 in the revised AA to read as follows:

1.17 The User is liable for and indemnifies ActewAGL against any:

(a) Loss ActewAGL suffers or incurs or is liable for arising out of or in connection with a Claim by a third party made against ActewAGL as a result of load shedding; and

(b) direct Loss ActewAGL suffers as a result of a User's failure to take required action under this Attachment 4.

Commission's assessment

Section 1.17 of attachment 4 of the revised AA satisfactorily addresses the amendment required by the commission's final decision.

Amendment 3

ActewAGL is to remove the 'return on working capital' building-block component from its calculation of the total cost of service (total revenue requirement) of the ACT natural gas pipeline system for the forthcoming access arrangement period.

In response to amendment 3, ActewAGL adjusted the total cost of service calculation in section 5.2 of the revised AAI as follows:

Table 1: Total cost of services - real 2004/05 \$ million

<i>Year ending 30 June</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Return on capital base	8.10	16.43	16.50	16.53	16.67	16.76
Depreciation	3.70	7.96	8.22	7.75	7.88	7.85
Non-capital costs	6.32	12.81	13.14	13.24	13.37	13.46
Total cost of services	18.12	37.21	37.86	37.52	37.91	38.07

Note: 2004/05 numbers are for a half year only. The revised Access Arrangement will start in January 2005. Return on capital base is calculated using the average capital base for each year.

Commission's assessment

Section 5.2 of the revised AAI demonstrates that ActewAGL has removed the 'return on working capital' building-block component from its calculation of the total cost of service as required by the commission's final decision.

Amendment 4

ActewAGL is to adopt the forecast asset management and asset services costs as shown in Table 7.10 of the final decision.

In response to amendment 4, ActewAGL adjusted the forecast asset management and asset services costs within the non-capital cost forecasts in section 4 of the revised AAI as follows:

Table 2: Non-capital costs - real 2004/05 \$ million

<i>Year ending 30 June</i>	2005	2006	2007	2008	2009	2010
<i>Controllable costs</i>						
Operating and maintenance	6.91	7.07	7.39	7.49	7.60	7.70
Corporate overheads	1.92	1.92	1.92	1.92	1.92	1.92
Non-system asset charge	0.48	0.48	0.48	0.48	0.48	0.48
Marketing	1.46	1.46	1.46	1.46	1.46	1.46
Other direct costs	0.24	0.24	0.24	0.24	0.24	0.24
Total controllable costs	11.01	11.17	11.49	11.59	11.70	11.80
<i>Other allowable costs</i>						
Government levies	0.55	0.55	0.55	0.55	0.55	0.55
Contestability costs	0.45	0.46	0.46	0.46	0.46	0.45
Unaccounted for gas	0.39	0.40	0.40	0.40	0.41	0.41
Other	0.24	0.24	0.24	0.24	0.25	0.25
Total other	1.63	1.65	1.65	1.65	1.67	1.66
Total non-capital costs	12.64	12.81	13.14	13.24	13.37	13.46

Commission's assessment

Section 4 of the revised AAI demonstrates that ActewAGL has incorporated the forecast asset management and asset services costs as shown in Table 7.10 of the commission's final decision. The commission notes that the forecast asset management and asset services cost in the revised AAI in 2006 are \$0.01 million different to that in Table 7.10 of the commission's final decision due to rounding. This forecast asset management and asset services costs rounding difference has no impact on forecast total non-capital costs.

Amendment 5

ActewAGL is to adopt the forecast marketing expenditure as shown in Table 7.11 of the final decision.

In response to amendment 5, ActewAGL adjusted the forecast marketing expenditure within the non-capital cost forecasts in section 4 of the revised AAI, as shown above in Table 2.

Commission's assessment

Section 4 of the revised AAI demonstrates that ActewAGL has adopted the forecast marketing expenditure as shown in Table 7.11 of the commission's final decision.

Amendment 6

ActewAGL is to adopt the revised forecast UAG expenditure as set out in Table 7.12 of the final decision.

In response to amendment 6, ActewAGL adjusted the forecast UAG expenditure within the non-capital cost forecasts in section 4 of the revised AAI as shown above in Table 2.

Commission's assessment

Section 4 of the revised AAI demonstrates that ActewAGL has adopted the forecast UAG expenditure as shown in Table 7.12 of the commission's final decision.

Amendment 7

ActewAGL is to adopt the forecast non-capital costs as set out in Table 7.13 of the final decision.

In response to amendment 7, ActewAGL adjusted the forecast non-capital cost expenditure in section 4 of the revised AAI as shown above in Table 2.

Commission's assessment

Section 4 of the revised AAI demonstrates that ActewAGL has adopted the forecast non-capital costs expenditure as shown in Table 7.13 of the commission's final decision.

Amendment 8

ActewAGL is to replace its capital program expenditure forecast with the capital expenditure forecast as shown in Table 8.8 of the final decision.

In response to amendment 8, ActewAGL adjusted the capital program expenditure forecast in section 3.2.1 of the revised AAI as follows:

Table 3: Forecast capital expenditure, by type - real 2004/05 \$ million

<i>Year ending 30 June</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Distribution system capex						
Growth market expansion	6.40	5.52	5.41	5.31	5.34	5.26
Growth capacity development	1.71	2.88	2.33	1.77	4.42	0.82
Stay in business	2.39	1.19	1.27	1.21	1.33	1.01
Total distribution system	10.51	9.59	9.01	8.29	11.09	7.10
Non system capex						
Gas networks GIS system	0.50	-	-	-	-	-
Regulatory capitalisation costs	1.60	-	-	-	-	-
Total non-system capex	2.10					
Total capex	12.61	9.59	9.01	8.29	11.09	7.10

Commission's assessment

Section 3.2.1 of the revised AAI demonstrates that ActewAGL has adopted the forecast capital expenditure as shown in Table 8.8 of the commission's final decision.

Amendment 9

Given that the commission's required variations to ActewAGL's capital expenditure forecasts have a consequential effect on projected depreciation charges over the forthcoming access arrangement period, ActewAGL is to adopt the revised depreciation charges as shown in the asset roll-forward summary table, Table 8.9 of the final decision.

In response to amendment 9, ActewAGL adjusted the depreciation charges within the asset roll-forward summary table of section 3.2 of the revised AAI as follows:

Table 4: Projected roll forward of the regulatory capital base from 2004/05 to 2009/10
nominal \$ million

<i>Year ending 30 June</i>	2005	2006	2007	2008	2009	2010
Opening Balance	225.9	236.8	244.5	252.2	260.4	272
- Plus Capital Expenditure	12.6	9.8	9.4	8.9	12.3	8.1
- Less Depreciation	7.4	8.1	8.6	8.4	8.7	9.0
- Less Disposals	0.1	0.1	0.1	0.1	0.1	0.1
- Plus Indexation	5.8	6.0	7.0	7.7	8.0	8.3
Capital Base Rolled Forward	236.8	244.5	252.2	260.4	272	279.3

Note: 2004/05 numbers are for a full year. The revised Access Arrangement will start in January 2005.

Commission's assessment

Section 3.2 of the revised AAI demonstrates that ActewAGL has adopted the revised depreciation charges as shown in the asset roll-forward summary table in the commission's final decision.

Amendment 10

ActewAGL is to adopt the roll-forward of the opening capital base over the forthcoming access arrangement period, adjusted for the effects of capital expenditure, depreciation, disposals and inflation as shown in the asset roll-forward summary table, Table 8.9 of the final decision.

In response to amendment 10, ActewAGL adjusted the roll-forward of the opening capital base over the forthcoming access arrangement period, adjusted for the effects of capital expenditure, depreciation, disposals and inflation in section 3.2 of the revised AAI as shown in Table 4.

Commission's assessment

Section 3.2 of the revised AAI demonstrates that ActewAGL has adopted the roll-forward of the opening capital base over the forthcoming access arrangement period, adjusted for the effects of capital expenditure, depreciation, disposals and inflation as shown in the asset roll-forward summary table in the commission's final decision.

Amendment 11

ActewAGL is to adopt the forecasts, including the tariff volume forecasts, shown in Table 9.13 of the final decision.

In response to amendment 11, ActewAGL adopted the following forecasts in section 8.7 of the revised AAI:

Table 5: Residential tariff market consumption forecasts (TJ)

<i>Yr ending 30 June</i>	2005	2006	2007	2008	2009	2010
Volume	4 716	4 862	5 002	5 138	5 270	5 398

Table 6: Business tariff market consumption forecasts (TJ)

<i>Yr ending 30 June</i>	2005	2006	2007	2008	2009	2010
Volume	1 435	1 448	1 460	1 473	1 486	1 498

Table 7: Contract market consumption forecasts

<i>Yr ending 30 June</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
ACQ (TJ)	1 057	1 040	1 023	1 007	990	973
MDQ booked (GJ)	5 711	5 628	5 546	5 487	5 405	5 347

Commission's assessment

Section 8.7 of the revised AAI demonstrates that ActewAGL has adopted the volume forecasts shown in Table 9.13 of the commission's final decision.

Analysis of the ActewAGL pricing model confirms that the forecast customer numbers shown in Table 9.13 of the commission's final decision have been incorporated.

Amendment 12

ActewAGL is to adopt a pre-tax real WACC of 7% in calculating the return on capital component within the cost of service methodology.

Commission's assessment

Section 3.3 of the revised AAI demonstrates that ActewAGL has adopted a pre-tax real WACC of 7% in calculating the return on capital component within the cost of service methodology.

Amendment 13

ActewAGL must adopt the total revenue requirement set out in Table 12.4 of the final decision.

In response to amendment 13, ActewAGL adopted the following total revenue requirement in section 5.2 of the revised AAI:

Table 8: Total cost of services - real 2004/05 \$ million

<i>Year ending 30 June</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Return on capital base	8.10	16.43	16.50	16.53	16.67	16.76
Depreciation	3.70	7.96	8.22	7.75	7.88	7.85
Non-capital costs	6.32	12.81	13.14	13.24	13.37	13.46
Total cost of services	18.12	37.21	37.86	37.52	37.91	38.07

Note: 2004/05 numbers are for a half year only. The revised Access Arrangement will start in January 2005. Return on capital base is calculated using the average capital base for each year.

Commission's assessment

Section 5.2 of the revised AAI demonstrates that ActewAGL has adopted the total revenue requirement set out in Table 12.4 of the commission's final decision.

Amendment 14

ActewAGL must revise the parameter values (in the form of P_0 and the X factor) incorporated into its CPI-related formula, in order that this price path mechanism be designed to recover no more than ActewAGL's total revenue requirement as specified in Amendment 13. This required amendment is to flow directly through to the real tariffs contained in ActewAGL's access arrangement.

In response to amendment 14, ActewAGL adopted the following total revenue path and total cost of services in section 5.5 of the revised AAI.

Table 9: Comparison of revenue path and cost of services - real 2004/05 \$ million

<i>Year ending 30 June</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Total revenue	17.69	36.26	37.11	37.93	38.73	39.50
Total cost of services	18.12	37.21	37.86	37.52	37.91	38.07

Note: Only a half year is shown for 2004/05.

Commission's assessment

Section 5.5 of the revised AAI demonstrates that ActewAGL has revised the parameter values incorporated into its CPI-related formula, so that the price path mechanism recovers no more than ActewAGL's total revenue requirement in net present value terms as specified in amendment 13 of the commission's final decision.

Analysis of the ActewAGL pricing model confirms that the real tariffs contained in Attachment 3 of the revised AA are calculated using the revised parameter values required by amendment 14 of the commission's final decision.

Amendment 15

Where ActewAGL proposes to amend the access arrangement in compliance with Amendment 14 by amending the P_0 factor incorporated into its CPI-related price path formula, in addition to the required changes to real tariffs contained in ActewAGL's access arrangement, ActewAGL is required to make commensurate adjustments to its proposed 2004–05 tariffs as set out in tables 2.7 and 12.3 of the final decision.

Commission's assessment

Analysis of the ActewAGL pricing model and Attachment 3 of the revised AA demonstrates that ActewAGL has adopted a P_0 factor and that ActewAGL has made the commensurate adjustments to its proposed 2004–05 tariffs as set out in tables 2.7 and 12.3 of the commission's final decision.

Amendment 16

ActewAGL is to specify the fixed period for which the fixed principles are to apply.

In response to amendment 16, ActewAGL added a new section 4.19 to the revised AA:

The fixed principles shall apply for the term of this Access Arrangement.

Commission's assessment

Section 4.19 of the revised AA states that the fixed principles shall apply for the term of this access arrangement. This amendment satisfies the requirements of the commission's final decision.

Amendment 17

ActewAGL is to adopt the following definition of pass-through events in its access arrangement.

Change in tax event

A change in tax event is:

- a change in the way or rate at which a relevant tax is calculated (including a change in the application or official interpretation of a relevant tax) or
- the removal of a relevant tax or imposition of a new relevant tax which, in either case, occurs on or after 1 December 2004, and satisfies the materiality test below.

A ‘relevant tax’ is any tax, rate, duty, charge or levy or other like or analogous impost that is imposed by or payable directly or indirectly by ActewAGL to any authority of the Commonwealth of Australia or relevant state and territory governments (including goods and services tax), excluding:

- income tax (or ACT-equivalent income tax) or capital gains tax
- stamp duty, financial institutions duty, bank account debits tax or similar taxes or duties
- penalties and interest for late payment relating to any tax
- any tax which replaces the taxes referred to above, where ‘tax’ includes any rate, duty, charge or other like or analogous impost.

Service standard event

A service standard event represents a decision made by the commission, or any other authority or any introduction of or amendment to an applicable law after the revisions commencement date that has the effect of:

- imposing or varying minimum standards on ActewAGL relating to reference services that are more onerous than the minimum standards applicable to ActewAGL in respect of reference services at the revisions commencement date
- altering the nature or scope of services that comprise the reference services or
- substantially varying the manner in which ActewAGL is required to undertake any activity forming part of reference services from the revisions commencement date; and results in ActewAGL incurring (or being likely to incur) materially higher costs in providing reference services than it would have incurred but for that event.

Terrorism or major natural disaster event

A terrorism or major natural disaster event is an act of terrorism or a major natural disaster (including, but not limited to, fire, flood or earthquake) which results in costs which are substantially different from those reasonably foreseen by the commission and ActewAGL and incorporated in this final decision.

Materiality test

The effect of the cost pass-through events outlined above must be such that the cost incurred, or forecast to be incurred, by ActewAGL as a result of the event, is at least \$0.5 million (in 2004–05 dollars) in any one year above the costs reasonably foreseen by the commission and ActewAGL and incorporated in this final decision.

In response to amendment 17, ActewAGL adjusted sections 6.9 and 6.10 of the revised AA to read as follows:

Cost pass-through

6.9 Subject to clause 6.5, the Reference Tariffs may be varied if there is a Material Impact on the cost of providing Reference Services as a result of one of the cost pass-through events listed below (**Cost Pass Through Events**), where that cost was not incorporated in the determination of Reference Tariffs at the Commencement Date of the Access Arrangement or, if there has been a previous review of the Reference Tariffs, at that review. Cost pass-through events include:

- (a) a Change in Tax Event;
- (b) a Service Standard Event; and
- (c) a Terrorism or Natural Disaster Event.

Definitions

6.10 In this Part 6:

Authority means any government or regulatory department, body, instrumentality, minister, agency or authority or any body which is the successor to the administrative responsibilities of that department, body, instrumentality, minister, agency or authority.

Annualised Cost of a Cost Pass-Through Event in any year, means the amount of additional non-capital expenditure incurred in that year as a result of the Cost Pass-Through Event, plus 15% of the additional capital expenditure incurred in that year.

Change in Tax Event means:

- (a) a change in the way or rate at which a Relevant Tax is calculated (including a change in the application or official interpretation of a Relevant Tax); or
- (b) the removal of a Relevant Tax or imposition of a new Relevant Tax;

which, in each case, occurs after the Commencement Date of the Access Arrangement.

Material Impact means a Cost Pass-Through Event for which the Annualised Cost incurred, or forecast to be incurred, by ActewAGL as a result of the event occurring, is at least \$0.5 million (in 2004-05 dollar terms) in any one year above the costs incorporated in the determination of Reference Tariffs at the Commencement Date of the Access Arrangement or, if there has been a previous review of the Reference Tariffs, at that review.

Relevant Tax means any tax (including any rate, duty, charge or levy or other like impost) that is imposed by or payable directly or indirectly by ActewAGL

to the Commonwealth of Australia, a State or Territory, or an Authority of the Commonwealth or of a State or Territory (including goods and services tax), but excluding:

- (a) income tax (or State or Territory equivalent income tax) or capital gains tax;
- (b) stamp duty, financial institutions duty, bank account debits tax or similar
- (c) taxes or duties;
- (d) penalties and interest for late payment relating to any tax; and
- (d) any tax which replaces a tax referred to in (a) - (c) above, where “tax” includes any rate, duty, charge or other like impost.

Service Standard Event means any decision made by the Relevant Regulator or any other Authority, or any introduction of or amendment to applicable law or Gas Law, after the Commencement Date which:

- (a) has the effect of:
 - (i) imposing or varying standards (including Network Design and operational standards) on ActewAGL relevant to any one or more of the Services, that are more onerous than the standards imposed at the Commencement Date; or
 - (ii) altering the nature or scope of services that comprise any one or more of the Services; or
 - (iii) substantially altering the manner in which ActewAGL is required to undertake any activity forming part of, or ancillary to, any one or more of the Services (including through rules for the operation of competitive gas markets); and,
- (b) results in ActewAGL incurring (or being likely to incur) materially higher costs in providing any one or more of the Services than it would have incurred but for that event.

Specified Event means:

- (a) a change in CPI as set out in clause 6.8; and
- (b) a Cost Pass-Through Event.

Terrorism or Natural Disaster Event is an act of terrorism or a natural disaster (including fire, flood or earthquake) which results in costs which are substantially different to those incorporated in the determination of Reference Tariffs at the Commencement Date of the Access Arrangement or, if there has been a previous review of the Reference Tariffs, at that review.

Commission's assessment

Sections 6.9 and 6.10 of the revised AA substantially incorporate the amended definitions set out in the commission's final decision.

Amendment 18

ActewAGL is to amend the extensions/expansions policy in its access arrangement as follows:

- Whether an extension or expansion is 'significant' (in terms of ActewAGL being able to provide written notice to the commission that a significant extension or expansion is treated as a stand-alone pipeline and not covered under the access arrangement for ActewAGL's natural gas pipeline system) shall be decided by the commission on a case-by case basis.
- ActewAGL is to give the commission written notice prior to such an extension or expansion entering service.

In response to amendment 18, ActewAGL added a new section 7.3 to the revised AA:

7.3 An extension or expansion will not be covered by this Access Arrangement (and will not be a Covered Pipeline) if:

- (a) ActewAGL gives the Relevant Regulator a notice under clause 7.2; and,
- (b) The Relevant Regulator gives ActewAGL a written notice stating that the Relevant Regulator considers that the extension or expansion is significant and may be excluded from the coverage of this Access Arrangement on that basis.

Commission's assessment

Section 7 of the revised AA substantially incorporates the amendment required in the commission's final decision.

Amendment 19

ActewAGL is to amend the trading policy in its proposed access arrangement to provide that it will take reasonable steps to respond to urgent requests for trade within two business days of receiving the request (rather than five business days, as proposed).

In response to amendment 19, ActewAGL adjusted section 8.7 of the revised AA to read as follows:

8.7 If at the time the request is made a User informs ActewAGL that due to hardship the User requires an urgent reply to its request, ActewAGL will take reasonable steps to respond to the request within 2 Business Days of receiving the request.

Commission's assessment

The revision to Section 8.7 of the revised AA provides that ActewAGL will take reasonable steps to respond to urgent requests for trade within two business days of receiving the request, as required in the commission's final decision.