



Economic Regulation Authority

Final decision on access arrangement for the Mid-West and South-West Gas Distribution Systems (2025 to 2029)

Attachment 8: Other access arrangement provisions

8 November 2024

Acknowledgement of Country

At the ERA we value our cultural diversity and respect the traditional custodians of the land and waters on which we live and work.

We acknowledge their continuing connection to culture and community, their traditions and stories. We commit to listening, continuously improving our performance and building a brighter future together.

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Contents

Note	ii
Attachment 8. Summary.....	1
Regulatory requirements.....	2
ERA draft decision	4
ATCO response to draft decision	5
Submissions to the ERA	7
Final decision	8
Fixed principles.....	8
Key performance indicators.....	9
 List of appendices	
Appendix 1 List of Tables.....	11

Note

This attachment forms part of the ERA's final decision on the access arrangement for the Mid-West and South-West Gas Distribution Systems. It should be read in conjunction with all other parts of the final decision, which is comprised of the following document and attachments:

- Final decision on access arrangement for the Mid-West and South-West Gas Distribution Systems (2025 to 2029) – Overview, 8 November 2024:
 - Attachment 1: Access arrangement and services
 - Attachment 2: Demand
 - Attachment 3: Revenue and tariffs
 - Attachment 4: Regulatory capital base
 - Attachment 5: Operating expenditure
 - Attachment 6: Depreciation
 - Attachment 7: Return on capital, taxation, incentives
 - Attachment 8: Other access arrangement provisions (this document)
 - Attachment 9: Service terms and conditions

Attachment 8. Summary

Provisions that ATCO must include in the access arrangement include extension and expansion requirements, capacity trading requirements, and principles for changing delivery and receipt points. In lieu of queuing requirements, which are required for transmission pipelines to establish a process and/or mechanism to determine an order of priority between prospective users for pipeline capacity, ATCO has included application procedures for prospective users seeking access to pipeline services.

ATCO's extension and expansion requirements, capacity trading requirements, principles for changing delivery and receipt points, and application procedures remain materially unchanged from the current (AA5) access arrangement. As there were no submissions from interested parties that raised any concerns about these access arrangement provisions, and no other compelling reason to make amendments to these provisions, the ERA has maintained its draft decision position to approve them in this final decision.

ATCO has elected to include optional fixed principles in the access arrangement. Fixed principles provide certainty that specific elements of an access arrangement will remain unchanged for a set period, which may extend across more than one access arrangement period.

The ERA has not approved this fixed principle on the basis that it would be unnecessary once the amendments to the regulatory framework to include other gases comes into effect. In any case, the inclusion of fixed principles for discretionary expenditure is problematic. Discretionary expenditure should be suitably assessed against applicable criteria with no predetermination that such expenditure will be recoverable under any fixed principle.

ATCO has also included several optional key performance indicators in its access arrangement information, which were used by ATCO to support elements of its proposal. As there is no requirement to include such indicators in an access arrangement proposal, the performance indicators included by ATCO serve as a general reporting tool. The ERA has noted ATCO's key performance indicators for AA6, and consistent with the ERA's other final decision considerations (for example, demand and expenditure considerations), the ERA has recalculated the affordability key performance indicators: operating expenditure per kilometre of main; and operating expenditure per customer connection.

Summary of required amendments

- 8.1 Fixed principle 11.5, as set out in Part 11 of the proposed revised access arrangement, must be deleted.

Regulatory requirements

1. The *National Gas Access (WA) Act 2009* implements a modified version of the National Gas Law (NGL) and National Gas Rules (NGR) in Western Australia. The rules referenced in this decision are those that apply in Western Australia.¹
2. The NGR provides that an access arrangement may include optional fixed principles to provide certainty that specific elements of an access arrangement will remain unchanged for a set period, which may extend over two or more access arrangement periods.² Once fixed, the principle is binding on the regulator and service provider for the stated period, however:
 - The regulator may vary or revoke a fixed principle at any time with the service provider's consent.
 - If a rule is found to be inconsistent with a fixed principle, the rule operates to the exclusion of the fixed principle.
3. Rules 104 to 106 of the NGR set out the following specific provisions for the required content of ATCO's access arrangement:³
 - Extension and expansion requirements (rule 104):
 - The access arrangement must set out the pipeline extension and expansion requirements that will apply and meet the following criteria:
 - The requirements may state whether the access arrangement will apply to incremental services to be provided as a result of a particular extension to the pipeline made during the access arrangement period or may allow for a later resolution of that question on a basis stated in the requirements.
 - If the service provider agrees, the requirements may state that the access arrangement will apply to incremental services to be provided as a result of a particular extension to the pipeline made before the revision commencement date for the access arrangement.
 - The requirements must state that the access arrangement will apply to incremental services to be provided as a result of any expansion to the capacity of the pipeline during the access arrangement period and deal with the effect of the expansion on tariffs.
 - The requirements cannot require the service provider to provide funds for work involved in making an extension or expansion unless the service provider agrees.
 - Capacity trading requirements (rule 105):
 - The access arrangement must set out the capacity trading requirements that will apply. Where the service provider is a registered participant in a gas

¹ The current rules that apply in Western Australia are available from the Australian Energy Market Commission: AEMC, 'National Gas Rules (Western Australia)' ([online](#)) (accessed November 2024). At the time of this decision, *National Gas Rules – Western Australia version 12 (1 February 2024)* was in effect.

² NGR, rule 99.

³ Rule 103 of the NGR details provisions for queuing requirements, which must be included if the access arrangement is for a transmission pipeline. Otherwise, the regulator may require an access arrangement for a distribution pipeline to contain queuing requirements by giving notice to the service provider. The ERA has not given notice to ATCO to include queuing requirements in its access arrangement.

market, the transfer of contracted capacity must be in accordance with the rules and procedures governing that gas market. If not a registered participant, or the market rules/procedures do not cover capacity trading, the capacity trading requirements must meet the criteria set out in the NGR.

- Under the NGR, capacity trading requirements must allow a user to transfer all or any of the user’s contracted capacity to a third party, with or without the user seeking the service provider’s consent for the transfer. Where consent to transfer capacity is sought, the service provider must not withhold its consent unless it has reasonable grounds, based on technical or commercial considerations.
 - Principles for changing receipt or delivery points (rule 106):
 - The access arrangement must set out the terms and conditions for changing receipt and delivery points in accordance with the following principles:
 - A user may change its receipt or delivery point with the service provider’s consent, and the service provider must not withhold its consent unless it has reasonable technical or commercial grounds to do so.
 - Conditions under which consent will or will not be given, and the conditions to be complied with if consent is given, may be specified in advance in the access arrangement.
4. Previously, the regulatory framework required the service provider to provide key performance indicator (KPI) information in its Access Arrangement Information (AAI).⁴ The requirement to include KPIs has been removed from the regulatory framework, however, the service provider may still use and report this information to support elements of its access arrangement proposal.

⁴ NGR, old rule 72(1)(f) that required AAI to include the key performance indicators to be used by the service provider to support expenditure to be incurred over the access arrangement period.

AAI is information that is reasonably necessary for users (including prospective users) to understand the background to the access arrangement; and the basis and derivation of the various elements of the access arrangement.

ERA draft decision

5. The provisions that ATCO must include in the access arrangement include extension and expansion requirements, capacity trading requirements, and principles for changing delivery and receipt points. In lieu of queuing requirements, which are required for transmission pipelines to establish a process and/or mechanism to determine an order of priority between prospective users for pipeline capacity, ATCO included application procedures for prospective users seeking access to pipeline services.
6. ATCO's extension and expansion requirements, capacity trading requirements, principles for changing delivery and receipt points, and application procedures remained materially unchanged from the current (AA5) access arrangement. As there were no submissions from interested parties that raised any concerns about these access arrangement provisions, and no other compelling reason to make amendments to these provisions, the ERA approved them.
7. ATCO elected to include optional fixed principles in the access arrangement. For AA6, ATCO proposed to let some existing fixed principles expire at their expiry date, amend other fixed principles related to the operation of the tariff variation mechanism, and add a new fixed principle (11.5) for emissions reductions and renewable gases. The ERA:
 - Noted that a fixed principle can only be revoked by the ERA subject to ATCO's consent, and therefore suggested that ATCO remove the fixed principles that were redundant to simplify the access arrangement.
 - Did not approve ATCO's new fixed principle (11.5) on the basis that expenditure related to these matters is likely to be discretionary and require comprehensive assessment, including stakeholder engagement, to ensure only conforming expenditure is included in total revenue and recovered through reference tariffs. In circumstances where such expenditure was required due to law, ATCO would be able to recover the expenditure as a cost pass through event as there is a cost pass through event for a change in law or tax would be applicable.
8. ATCO also included several (optional) KPIs in its access arrangement information, which were used by ATCO to support elements of its proposal. The ERA noted ATCO's KPIs and corporate targets for AA6. Consistent with the ERA's other draft decision considerations (for example, demand and expenditure considerations), the ERA indicated that ATCO would need to review and update some of its targets to reflect the ERA's draft decision approved amounts.
9. The ERA set out the following draft decision required amendments:
 - 8.1 ATCO must delete fixed principle 11.5 (relating to emissions reduction and renewables) from the proposed access arrangement.
 - 8.2 ATCO should review its affordability key performance indicator targets in accordance with the targets calculated by the ERA and set out in Table 8.3 of [Draft Decision Attachment 8].
 - 8.3 ATCO should review its carbon emissions key performance indicator targets in accordance with the revised investment levels approved by the ERA in its draft decision.

ATCO response to draft decision

10. ATCO did not accept the ERA's draft decision required amendment to delete fixed principle 11.5 from the access arrangement and instead proposed revised drafting for the fixed principle. ATCO submitted:

Given the progress that has been made on the regulatory framework since ATCO's September 2023 submission we have reassessed the need for the inclusion of the fixed principle that provides for expenditure incurred prior to the legislative amendments taking effect to be eligible to be treated as conforming expenditure.

As set out in Section 14.15.2 [of ATCO's revised plan], a mechanism is required to enable ATCO to recover conforming expenditure following the incorporation of biomethane and other renewable gases into the economic regulatory framework (if the amendments are not made prior to the ERA's Final Decision).

ATCO has amended fixed principle 11.5 to work in conjunction with the tariff variation mechanism to ensure that if there are any unrecovered operating or capital costs that arise during AA6 related to the enabling renewable gas program, that these costs are recovered in AA7.⁵

11. ATCO's revised fixed principle 11.5 reads as follows (with **emphasis** added to show the difference in drafting between ATCO's initial and revised proposals):⁶

11.5 INCLUSION OF COSTS FOR OTHER GASES OR GAS BLENDS

The following principle expires at the end of the Next Access Arrangement Period (between 1 January 2030 and the following revision commencement date determined under rule 50 of the National Gas Rules):

- a) This fixed principle relates to Capital Expenditure and Operating Expenditure incurred on or after 1 January 2025 but not approved as forming part of the Total Revenue prior to the Revision Commencement Date.
- b) The purpose of this fixed principle is to provide for the recovery of Capital Expenditure and Operating Expenditure undertaken on or after 1 January 2025:
 - i) **Following amendments to the National Gas Law or National Gas Rules to extend the regulatory environment in that Law or Rules to some or all Other Gases or Gas Blends; and**
 - ii) **That is the subject of a business case submitted by ATCO and provisionally approved by the ERA in the AA6 access arrangement revision process.**
- c) Under this fixed principle additional Capital Expenditure and Operating Expenditure incurred from 1 January 2025 for the purposes of paragraph 11.5b) will be eligible to be included (through a mechanism referred to in paragraph e) in the building blocks which make up Total Revenue (provided it otherwise meets the relevant tests in the National Gas Law and National Gas Rules as at the time ATCO seeks recovery of that expenditure), **and only to the extent that ATCO has not already recovered Total Revenue in respect of the expenditure through a tariff variation under clause 2 of Annexure B).**
- d) The relevant tests referred to in paragraph 11.5c) will be the provisions of the National Gas Law and National Gas Rules as in force as at the time ATCO

⁵ ATCO, *2025-29 Revised Plan*, 10 June 2024, p. 246.

⁶ ATCO, *Access Arrangement for the Mid-West and South-West Gas Distribution Systems*, 10 June 2024, pp. 26-27.

seeks recovery, including any provisions introduced into the National Gas Law and National Gas Rules to facilitate emissions reductions objectives and the expansion of the regulatory regime to Other Gases.

- e) ATCO may seek the recovery of the Capital Expenditure and Operating Expenditure by providing supporting information to the ERA either as:
- i) information contained in the tariff variation report in accordance with clause 3.2 of Annexure B; or
 - ii) part of ATCO's submissions in relation to the next Access Arrangement review process;

ATCO may account for the timing difference between incurring the additional Capital Expenditure and Operating expenditure and the start date for the Tariff variation, through a time value of money adjustment.

- f) Supporting information will include information substantiating the amount and nature of the costs that ATCO submits constitutes Conforming Capital Expenditure or Conforming Operating Expenditure.

12. ATCO has addressed the ERA's draft decision required amendments 8.2 and 8.3 in its revised proposal as follows:

[ATCO response to required amendment 8.2]

Although there is no requirement to state our key performance indicators (KPIs) within this Access Arrangement Information, we included KPIs within our 2025-29 Plan to enable stakeholders to understand the key metrics we use to measure our performance.

We have revised the affordability targets to match the forecasts incorporated into this 2025-29 Revised Plan.⁷

[ATCO response to required amendment 8.3]

ATCO's Sustainability Strategy (Attachment 0.3.003) sets out our emissions reduction target for 2030. In response to new information we have amended the timing of our expenditure plans to introduce renewable gases into the network as we now expect this to commence in 2027. However, the recommended option for the reduction of [unaccounted for gas] includes offsetting our Scope 1 emissions for every year of AA6 and therefore no changes were required to the Carbon Emission abatement profile in AA6.

In response we have revised our profile of the [unaccounted for gas] rate and confirmed our annual target Scope 1 abatement for AA6.

We have revised the carbon emissions profile to match the forecasts incorporated into this 2025-29 Revised Plan.⁸

⁷ ATCO, *2025-29 Revised Plan*, 10 June 2024, p. 247.

⁸ ATCO, *2025-29 Revised Plan*, 10 June 2024, pp. 247-248.

Submissions to the ERA

13. The ERA received two submissions that addressed other access arrangement provisions, which were taken into account as part of the ERA's draft decision considerations:

- The WA Expert Consumer Panel indicated that it did not support ATCO's proposed fixed principle for emissions reductions and renewable gases. The Panel's position was consistent with its views concerning ATCO's proposed expenditure on renewable gases as being conforming expenditure. The Panel submitted:

We do not support the inclusion of ATCO's proposed fixed principle about emissions reduction and renewable gases.

As raised earlier in our submission, we do not consider ATCO's proposed expenditure on renewable gas readiness to be conforming expenditure. Our view on this matter is consistent under both the current regulatory framework, and the amended regulatory framework. As suggested earlier in this submission, ATCO could include the proposed capital expenditure in its speculative capital expenditure account; if the expenditure comes to meet the conforming capital criteria, the relevant portion of the expenditure can be rolled into the capital base at that time.⁹

- Alinta Energy addressed ATCO's KPIs in the context of the disconnection services that are available. Alinta expressed concern about the absence of any KPIs and accountability for the performance of such services.¹⁰

14. In response to the ERA's draft decision and ATCO's revised proposal, the Chamber of Minerals and Energy of Western Australia (CME) indicated support for ATCO's proposed new fixed principle (11.5) for the recovery of expenditure related to renewable gas given the expected changes to the legislative framework for gas in Western Australia. CME submitted:

We strongly support aligning WA with all other jurisdictions in Australia on policy issues such as climate and energy. Earlier this year, we welcomed the adoption of a modified form of the National Gas Access Laws in WA to include jurisdictional emissions reduction targets. For consistency of regulation, we would welcome an extension of the WA gas access laws to include hydrogen and renewable gases. There should thus be flexibility in the pathway to abatement to ensure least cost and prevent unintended consequences. In the event that WA adopts the relevant amendments sooner than expected, we recommend the ERA consider ATCO's proposed new fixed principle for a 'cost pass through event' on renewable gas expenditure. With increased uncertainty on the future of gas and utilisation of pipelines, we support the provision of regulatory flexibility on timing to help with investment planning.¹¹

⁹ WA Expert Consumer Panel, *Submission on ATCO proposal and ERA issues paper*, November 2023, p. 30.

¹⁰ Alinta Energy, *Submission on ATCO proposal and ERA issues paper*, 30 November 2023, p. 9.

¹¹ Chamber of Minerals & Energy WA, *Submission on ERA draft decision and ATCO revised proposal*, 11 July 2024.

Final decision

Fixed principles

15. ATCO rejected draft decision required amendment 8.1 to delete fixed principle 11.5 from the proposed access arrangement and has instead proposed amendments to the drafting of the fixed principle (as set out at paragraph 11). The fixed principle is to ensure the recovery of any conforming expenditure incurred after 1 January 2025 to implement emissions reduction strategies and to prepare the network for the introduction of hydrogen, biomethane and other renewable gases.
16. While ATCO appears confident that amendments to incorporate other (renewable) gases into the regulatory framework will be implemented in Western Australia prior to the ERA's final decision, if this does not occur ATCO has stated that the amended fixed principle is needed for the same reasons its amended costs pass through is needed. That is, to recover relevant expenditure that is rejected by the ERA for reason that there is no legislation for the inclusion of renewable gases.¹²
17. The ERA has considered ATCO's amended cost pass through event for renewable gases in Final Decision Attachment 3. In summary, the ERA has maintained its draft decision position to require the deletion of the cost pass through event for the following reasons:
 - Once the necessary legislative changes to incorporate other gases become effective in Western Australia, this does not compel ATCO to include other gases. That is, the changes to the regulatory framework to include other gases is not a change in law that requires ATCO to include other gases; rather it will allow ATCO the discretion to transport other gases through its distribution system if it chooses to do so.¹³
 - The cost pass through event (tariff variation) mechanism is not designed for complex cost assessments of discretionary expenditure.
18. Noting ATCO's revised amendments to the drafting of fixed principle 11.5, the ERA also considers that there is no reason to change its draft decision position on the fixed principle. That is, ATCO's revised fixed principle will be unnecessary when the regulatory framework is amended to allow other gases; and the inclusion of a fixed principle for this type of expenditure that is discretionary, in that the change to the regulatory framework to allow other gases does not require ATCO to invest in other gases, is problematic. If such expenditure was to occur during the annual cost pass through event, as is an option for ATCO under the revised fixed principle, this would require the ERA to undertake a comprehensive assessment. This type of assessment is not contemplated under the processes for considering cost pass throughs. For these reasons, fixed principle 11.5 must be deleted from the access arrangement.

¹² ATCO, *2025-29 Revised Plan*, 10 June 2024, p. 246.

¹³ If the changes to the regulatory framework to include other gases were a change in law that obligates ATCO to include other gases, the existing cost pass through event for a change in law or tax would be applicable.

Required Amendment

- 8.1 Fixed principle 11.5, as set out in Part 11 of the proposed revised access arrangement, must be deleted.

Key performance indicators

19. The ERA's draft decision required amendments 8.2 and 8.3 relate to ATCO's inclusion of several (optional) KPIs that ATCO used to support elements of its access arrangement proposal.
20. While the ERA is satisfied that ATCO has addressed draft decision required amendment 8.2, by revising its affordability targets to match the demand and operating expenditure forecasts incorporated in its revised proposal, the ERA has not approved these forecasts as part of this final decision.¹⁴ Accordingly, the ERA has recalculated the targets to be consistent with the forecasts approved in the final decision. ATCO's revised targets and the ERA's final decision targets are shown in Table 8.1.

Table 8.1: Affordability key performance indicators for AA6 (\$ real as at December 2023)

AA6 KPI Target	2025	2026	2027	2028	2029
ATCO revised proposal					
Opex per km of main	5,603	5,756	5,852	6,198	6,091
Opex per customer connection	102	105	107	113	110
ERA final decision					
Opex per km of main	5,422	5,565	5,633	5,809	5,682
Opex per customer connection	99	101	103	106	103

Source: ATCO, 2025-29 Revised Plan, 10 June 2024, Table 12.2, p. 247.
ERA analysis (Final Decision Opex Model, November 2024).

21. ATCO also revised its sustainability indicators which comprise the unaccounted for gas rate (UAFG Rate) and net reduction in carbon emissions (Table 8.2).

¹⁴ The ERA has considered ATCO's demand forecasts and operating expenditure in Final Decision Attachments 2 and 5, respectively.

Table 8.2: ATCO revised sustainability KPIs for AA6

AA6 KPI Target	AA5 Target	2025	2026	2027	2028	2029
UAFG Rate (%)	2.37	1.81	1.78	1.74	1.73	1.72
Carbon emissions (net reduction) (Scope 1) (t CO ₂ -e)	N/A	7,357	11,467	14,630	18,082	20,443

Source: ATCO, 2025-29 Revised Plan, 10 June 2024, Table 12.3, p. 248.

22. The ERA has considered ATCO's forecast of unaccounted for gas and the associated operating expenditure to cover this gas in Final Decision Attachment 5. The ERA has not amended the UAFG Rate used by ATCO for its key performance indicators.
23. The ERA has included forecast operating expenditure to allow ATCO to reduce its own carbon emissions in line with its carbon emissions reduction targets. The ERA's consideration of ATCO's operating expenditure is detailed in Final Decision Attachment 5.

Appendix 1 List of Tables

Table 8.1: Affordability key performance indicators for AA6 (\$ real as at December 2023)	9
Table 8.2: ATCO revised sustainability KPIs for AA6.....	10