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Via online submission

Mr John Pierce  
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Australian Energy Market Commission  
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Dear Mr Pierce

**Jemena submission to draft determination—Cross period revenue smoothing – GRC0043**

Jemena Gas Networks (NSW) Ltd (**JGN**) is the owner and operator of the NSW Gas Network and is the proponent of GRC0043.

JGN supports the draft determination to make a rule that gives effect to a one-off power for cross period smoothing of JGN's revenues.

This submission focuses on four points of drafting to ensure that the final rule best reflects the Commission's intent:

- "Revenue Recovery Principle" definition
- "Subsequent adjustment amount" definition
- Recovery of revenue (draft rule 57)
- Clarification to draft rule 59(2).

Attachment A provides some potential drafting for each (with drafting explanatory notes) that we consider give best effect to the Commission's intent.

**"Revenue recovery principle" definition**

As currently drafted, the revenue recovery principle must be achieved for the Australian Energy Regulator (**AER**) to make an adjustment determination under draft rule 56.

JGN considers the "achieved" criteria is appropriate provided that the revenue recovery principle is clear. However, as currently drafted, there is scope for ambiguity, given the principle only refers to the remade 2015 access arrangement (**AA**) decision and the 2015 AA period. It is also open for various interpretations of "revenue" and how to take into account JGN's historical price path.

The current ambiguity with this principle could be addressed by including some additional drafting to clarify that Jemena's ability to recover the same, but no more, revenue as it would have recovered across the two access arrangement periods – both the 2015 AA period and the subsequent period. It should also be clear that the principle relates to the amount of revenue that JGN has the opportunity to earn across both of these AA periods.

Without this clarification, the principle could be interpreted as requiring no change to the amount of revenue which may be earned in the 2015 AA period – this would be inconsistent with the intended purpose of the rule, which is to allow shifting of revenue recovery between the two periods (provided the overall result is the same, but no more). Alternatively (or in addition), the principle could have been interpreted as requiring no change to the final year x-factor from the remade determination – again, this would be inconsistent with the intended purpose of the rule, which is to allow smoothing of tariff paths.

### **“Subsequent adjustment amount” definition**

As drafted, these rules provide for both the adjustment amount and subsequent adjustment amount to be determined by the AER at the same time. But at that time, the AER will not have the relevant CPI data to be able to state what the exact subsequent adjustment amount will be when it is applied by the AER pursuant to rule 57(3).

To address this, an amendment to the definition could be made to make it clear that *at the time* it is applied as an adjustment to JGN's revenue it is equivalent in net present value terms to the adjustment amount (refer to suggested amendments in Attachment A).

### **Recovery of revenue (draft rule 57)**

JGN's tariff variation mechanism in its AA provides upward or downward adjustments to cater for changes to CPI, any approved pass through, automatic pass through (such as where allowance for licence fee and Unaccounted for Gas are different to actual/wash up amounts) and cost of debt updates (as required under NGR 87(12)).

However, draft rule 57(2) requires the AER to only approve JGN's tariff variation notice if it provides for the recovery of final year smoothed revenue plus the adjustment amount. On its own this constraint appears to override the previously mentioned additional elements of JGN's tariff variation mechanism (including by operation of rule 55(2)). We understand this is not the Commission's intent.

Draft rule 57(2) could be redrafted to clarify that:

- the tariff variation mechanism in JGN's remade 2015 decision AA is preserved; *except for*
- giving effect to the adjustment amount, by increasing or decreasing JGN's forecast revenue.

Refer to suggested drafting and drafting explanatory notes in Attachment A. JGN notes that this issue does not arise for the subsequent period, for which draft rule 57(3) appears adequate.

### **Minor clarification to draft rule 59(2)**

The purpose of draft rule 59(2)(a) and (b) appears to be to ensure the subsequent adjustment amount will be allocated entirely to reference services. JGN accepts this, but considers there could be benefit in further clarifying:

- within draft rule 59(2)(a) that the subsequent adjustment amount be included as a revenue decrease or revenue increase, as applicable under rule 57.
- that draft rule 59(2)(b) ensures the subsequent adjustment amount is not taken into account when determining total revenue to be allocated between reference and other services for the subsequent access arrangement period.

Once again, refer to suggested drafting in Attachment A.

If you have any questions or would like to discuss any aspect of this submission with us, please contact Chris Stewart on (02) 9867 7290 or at [christopher.stewart@jemena.com.au](mailto:christopher.stewart@jemena.com.au).

Yours sincerely



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# Attachment A – Suggested rule drafting amendments

## Part 11 Transitional provisions regarding cross period smoothing for Jemena Gas Networks

### 53 Definitions

For the purposes of this Part 11:

**2015 access arrangement decision** means the decision of the AER, published on 3 June 2015, to approve revisions to the access arrangement in respect of Jemena for the 2015 access arrangement period.

**2015 access arrangement period** means the *access arrangement period* for the NSW gas distribution network owned by Jemena commencing on 1 July 2015.

**adjustment amount** means an amount determined by the AER under subclause 56(1) that operates as if it were:

- (a) a revenue increase; or
- (b) a revenue decrease,

to that portion of the total revenue that is allocated to reference services that may be earned by Jemena for the final regulatory year of the 2015 access arrangement period as determined under the remade 2015 access arrangement decision.

**adjustment determination** means the AER's determination of whether there is, and the relevant amounts of, an adjustment amount and a subsequent adjustment amount.

**annual variation notice** means the annual variation notice referred to in the remade 2015 access arrangement decision.

**Jemena** means Jemena Gas Networks (NSW) Limited (ABN 87 003 004 322).

**remade 2015 access arrangement decision** means the decision of the AER to approve revisions to the access arrangement in respect of Jemena for the 2015 access arrangement period, as remade by the AER following the Tribunal's decision.

**revenue recovery principle** means the principle that Jemena must be given the ability to recover the same, but no more, revenue (in net present value equivalent terms) across the 2015 access arrangement period and the subsequent access arrangement period as it would have recovered if:

- (a) the portion of total revenue able to be recovered from reference services over the 2015 access arrangement period had been as set out in the remade 2015 access arrangement decision ~~had been in force from the commencement of the 2015 access arrangement period;~~ and

(b) the portion of total revenue able to be recovered from reference services over the subsequent access arrangement period had been determined for that period in accordance with Part 9.

**Drafting note:** Amendments are to ensure that the revenue recovery principle can be applied in a way that is consistent with maintaining the revenue outcome from any remade determination, while allowing for cross-period smoothing of revenue recovery.

The purpose of the amendments is to clarify that the revenue recovery principle applies across the two access arrangement periods, and relates to the amount of revenue that Jemena should have an opportunity to earn across those two periods. Without this clarification, the principle could be interpreted as requiring no change to the amount of revenue which may be earned in each period – this would be inconsistent with the intended purpose of the rule, which is to allow shifting of revenue recovery between the two periods. Alternatively (or in addition), the principle could have been interpreted as requiring no change to the tariff paths from the remade determination – again, this would be inconsistent with the intended purpose of the rule, which is to allow smoothing of tariff paths.

**subsequent access arrangement decision** means the access arrangement decision for Jemena that is made by the AER for the subsequent access arrangement period.

**subsequent access arrangement period** means the *access arrangement period* for Jemena immediately following the 2015 access arrangement period.

**subsequent adjustment amount** means an amount determined by the AER under subclause 56(1) that:

~~(a) is equivalent in net present value terms to the adjustment amount in order to achieve the revenue recovery principle in respect of Jemena; and~~

(ab) represents a revenue increase (where the adjustment amount is a negative amount) or a revenue decrease (where the adjustment amount is a positive amount) to that portion of the total revenue that is allocated to reference services that may be earned by Jemena in one or more regulatory years of the subsequent access arrangement period; and

(b) at the time it is applied as an adjustment to that portion of the total revenue that is allocated to reference services, is equivalent in net present value terms to the adjustment amount in order to achieve the revenue recovery principle in respect of Jemena.

**Drafting note:** Amendments are to clarify that, *at the time an adjustment is made to allowable revenue for the subsequent period*, this adjustment must be equivalent (in NPV terms, taking into account CPI movements and the time value of money) to the original adjustment amount.

**Tribunal's decision** means the decision of the Australian Competition Tribunal dated 26 February 2016 to set aside the 2015 access arrangement decision and remit the matter back to the AER, as varied as a consequence of the outcome of judicial review of that decision.

## **54 Expiry**

- (1) If the AER has not made an adjustment determination on or before 1 March 2019, this Part 11 expires on that date.
- (2) If the AER has made an adjustment determination on or before 1 March 2019, this Part 11 expires on the date that immediately follows the end of the subsequent access arrangement period.

## **55 Application of Part 11**

- (1) This Part 11 applies to Jemena in respect of the NSW gas distribution network owned by Jemena.
- (2) This Part 11 prevails to the extent of any inconsistency with:
  - (a) any other provision of the Rules; and
  - (b) a remade 2015 access arrangement decision.
- (3) Nothing in this Part 11 has the effect of changing the application of the Rules to the making of a remade 2015 access arrangement decision.

## **56 Adjustment determination**

- (1) The AER may determine for Jemena:
  - (a) an adjustment amount; and
  - (b) a subsequent adjustment amount,if the AER is satisfied that the application of the adjustment amount and subsequent adjustment amount under subclause 57(2) and 57(3) respectively would:
  - (c) be reasonably likely to minimise variations in reference tariffs for Jemena between:
    - (i) the fourth and final regulatory year of the 2015 access arrangement period; and
    - (ii) the final regulatory year of the 2015 access arrangement period and the first regulatory year of the subsequent access arrangement period; and
  - (d) achieve the revenue recovery principle in respect of Jemena.

### **Note**

When determining the adjustment amount and the subsequent adjustment amount, the AER must also take into account the national gas objective and may take into account the revenue and pricing principles if the AER considers it appropriate to do so: see *National Gas Law*, s 28(1)(a) and s 28(2)(b).

## 57 Recovery of revenue

- (1) This clause 57 applies to Jemena if the AER has made a determination of an adjustment amount and subsequent adjustment amount under clause 56.
- (2) Jemena must submit an annual variation notice for the final regulatory year of the 2015 access arrangement period [in accordance with the remade 2015 access arrangement decision](#).
- (3) [Subject to this clause 57, the annual variation notice is to be assessed in accordance with the procedure specified in the remade 2015 access arrangement decision.](#)

**Drafting note:** The amendment to 57(2) and proposed new 57(3) and 57(4) are to ensure that the process for tariff variation under the access arrangement is preserved, and only adjusted to the extent necessary to accommodate the adjustment determination.

- (4) The AER must approve the reference tariffs specified in the annual variation notice if they [are compliant with the reference tariff variation mechanism specified in the remade 2015 access arrangement decision, subject to the following adjustments-only provide for the recovery of:](#)
  - (a) where the applicable adjustment amount operates as if it were a revenue increase, [the reference tariff variation mechanism is to be adjusted so as to equalise \(in terms of present values\) forecast revenue from reference services over the 2015 access arrangement period with:](#)
    - (i) the portion of total revenue allocated ~~for to~~ [reference services for the final regulatory year over the 2015 access arrangement period](#) under the remade 2015 access arrangement decision; plus
    - (ii) the adjustment amount; or
  - (b) where the applicable adjustment amount operates as if it were a revenue decrease, [the reference tariff variation mechanism is to be adjusted so as to equalise \(in terms of present values\) forecast revenue from reference services over the 2015 access arrangement period with:](#)
    - (i) the portion of total revenue allocated ~~for to~~ [reference services for the final regulatory year over the 2015 access arrangement period](#) under the remade 2015 access arrangement decision; minus
    - (ii) the adjustment amount.

**Drafting note:** Amendments are to provide that the reference tariff variation mechanism will be adjusted so as to re-equalise forecast and allowable revenues over the entire access arrangement period, rather than just adjusting the final year revenue.

In practice, this is likely to involve re-calculation of the final year X

factor. However, this re-calculation will require adding / subtracting the adjustment amount to / from the total revenue allocated to reference services across the entire period and then re-equalising this with forecast revenue across the entire period, taking into account tariffs that have been in place for the first four years – in effect, the equalisation process set out in rule 92(2) is re-applied, but with the adjustment amount included.

If reference tariffs are calculated for the final year just taking into account the revenue allocated to reference services for that year plus/minus the adjustment amount, this would ignore smoothing of revenue recovery within the period, and tariffs in place for the first four years.

- (35) The AER must include the subsequent adjustment amount determined under subclause 56(1) as:
- (a) if subclause 57(2)(a) applies, a revenue decrease; or
  - (b) if subclause 57(2)(b) applies, a revenue increase,
- to the portion of total revenue allocated ~~for~~ to reference services in one or more regulatory years of the subsequent access arrangement period subject to the revenue recovery principle.
- (46) Any subsequent adjustment amount included as a revenue increase or revenue decrease under subclause 57(35) must not be considered by the AER when determining whether any amount is payable or recoverable by Jemena under any incentive mechanism that applies to it in respect of the subsequent access arrangement period.

## **58 Requirements for adjustment determination**

The AER must in respect of an adjustment determination made for Jemena:

- (1) make the adjustment determination after consulting with Jemena and any other persons as the AER considers appropriate;
- (2) publish its adjustment determination; and
- (3) include in its adjustment determination, the reasons for the AER's determination:
  - (a) of the adjustment amount and the subsequent adjustment amount; or
  - (b) not to determine an adjustment amount and subsequent adjustment amount.

## **59 Application of Parts 8 and 9 of the Rules**

- (1) Except as otherwise specified in this Part 11, Parts 8 and 9 of the Rules applies to:
  - (a) the remainder of the 2015 access arrangement period; and
  - (b) the making of the subsequent access arrangement decision, in respect of Jemena.



- (2) If clause 56 applies:
- (a) the reference to ‘the portion of total revenue allocated to reference services’ in subrule 92(2)(b) will include the subsequent adjustment amount for the subsequent access arrangement period, either as a revenue decrease or a revenue increase, as applicable under clause 57(5);
  - (b) For the purpose of subrule 93(1), the subsequent adjustment amount will not be taken into account in determining total revenue to be allocated between reference and other services for the subsequent access arrangement period~~the total revenue ‘allocated between reference and other services’ in subrule 93(1) will not include the subsequent adjustment amount in the subsequent access arrangement decision~~; and
  - (c) subrule 94(3) and (4) do not apply to the extent that Jemena’s tariffs would not comply with those subrules due to the application of this Part 11.