



National Gas Amendment (Cross period revenue smoothing) Rule 2018 No. 2

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; and
- (g) the National Gas (Northern Territory) Act 2008 of Northern Territory;
- (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

National Gas Amendment (Cross period revenue smoothing) Rule 2018 No. 2

1 Title of Rule

This Rule is the *National Gas Amendment (Cross period revenue smoothing) Rule 2018 No. 2*.

2 Commencement

This Rule commences operation on 6 September 2018.

3 Savings and Transitional Amendments to the National Gas Rules

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

Schedule 1 Savings and Transitional Amendments to the National Gas Rules

(Clause 3)

[1] Schedule 1 Transitional Provisions

In Schedule 1, after Part 10, insert:

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) as it would have recovered if the remade 2015 access arrangement decision had been in force from the commencement of the 2015 access arrangement period.

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) 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 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.

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.

- (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 adjustments to provide for the recovery of:
- (a) where the applicable adjustment amount operates as if it were a revenue increase:
 - (i) the portion of total revenue allocated to reference services for the final regulatory year 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:
 - (i) the portion of total revenue allocated to reference services for the final regulatory year under the remade 2015 access arrangement decision; minus
 - (ii) the adjustment amount.
- (5) 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 to reference services in one or more regulatory years of the subsequent access arrangement period subject to the revenue recovery principle.
- (6) Any subsequent adjustment amount included as a revenue increase or revenue decrease under subclause 57(5) 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 take into account the subsequent adjustment amount for the subsequent access arrangement period either as a revenue decrease or revenue increase, as applicable under rule 57(5);
 - (b) for the purposes 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 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.

[END OF RULE AS MADE]
