



**National Gas Amendment
(Reference service and
rebateable service definitions)
Rule 2011—GRC0012**

**Submission from
Jemena Limited
to the
Australian Energy Market Commission**

30 April 2012



Contact Person

Sandra Gamble

General Manager Regulation and Strategy

Ph: (02) 9455 1512

sandra.gamble@jemena.com.au

Jemena Limited

ABN 95 052 167 405

321 Ferntree Gully Road
Mt Waverley VIC 3149

Postal Address:

Locked Bag 7000
Mt Waverley VIC 3149

Ph: (03) 8544 9000

Fax: (03) 8544 9888

Table of contents

1	Executive summary	1
2	Introduction	2
2.1	Context of this consultation.....	2
2.2	Jemena's gas businesses.....	2
2.3	Structure of Jemena's submission.....	2
3	The Commission's more preferable rule	3
3.1	The Commission's more preferable rule.....	3
3.2	Transfer of discretion from Service Provider to Regulator.....	5
3.2.1	<i>The more preferable rule changes the balance of judgement</i>	5
3.2.2	<i>Risk that the Revenue and Pricing Principles will not be satisfied</i>	6
3.3	Summary.....	7
4	Jemena's alternative proposed rule	8
4.1	NGR rule 101.....	8
4.2	NGR rule 59.....	9
4.3	Summary.....	9
4.3.1	<i>Amend NGR rule 101(2)</i>	9
4.3.2	<i>Amend the second example under NGR rule 59(2)</i>	9



1 Executive summary

The Australian Energy Regulator (**AER**) has proposed changes to the National Gas Rules (**NGR**) to address a potential and specific issue that it sees arising with APA GasNet and the AMDQ credit certificates that it offers on the Victorian Declared Transmission System. The AER considers that the certificates would be regarded as a reference service under the current rules as they are likely to be sought by a significant part of the market. However, because the certificates are sold by tender, it is not practicable to set a reference tariff for the certificates.

Jemena agrees with the Commission that the AER has identified a problem that is not necessarily limited to the specific case of APA GasNet's AMDQ certificates. That is, there could well be other circumstances where it is not appropriate or practicable to set a reference tariff for a service that is likely to be sought by a significant part of the market. Jemena also agrees with the Commission that the AER's proposed rule changes are not an appropriate way of addressing that problem.

Jemena accepts that there is a case for changing the NGR to provide for the general situation where a reference tariff cannot be set for a service that is likely to be sought by a significant part of the market. However, Jemena does not consider the Commission's proposed more preferable rule to be a satisfactory solution. The Commission's proposal would increase the AER's discretion unnecessarily. A service provider should have a reasonable expectation that, if it submits a complete and compliant access arrangement proposal, the AER will accept it. Accordingly, the definition of "reference service" in the NGR should be clear and complete so that the service provider can rely on that definition to identify at the outset all the reference services it needs to include in its access arrangement proposal.

Jemena proposes an alternative rule that would address the problem identified by the AER while avoiding the complications and risks inherent in the Commission's more preferable rule.

2 Introduction

2.1 Context of this consultation

On 5 August 2011 the AER submitted a rule change proposal to address a potential and specific issue that it sees arising with APA GasNet and the AMDQ credit certificates that it offers on the Victorian Declared Transmission System. The Commission subsequently published a Consultation Paper and Jemena made a submission in response to that paper on 7 November 2011. The Commission has now published and invited submissions on its Draft Rule Determination in which it proposes a more preferable rule than that proposed by the AER.

2.2 Jemena's gas businesses

Jemena owns Jemena Gas Networks (NSW) Ltd which is the principal gas distributor in NSW and has a 50 per cent interest in the ActewAGL Distribution Partnership with distributes gas in the ACT and adjacent areas of NSW. The services provided by both of those businesses are covered and regulated by the AER. Both would be affected directly if the proposed changes to the NGR are adopted.

Jemena also owns the Jemena Eastern Gas Pipeline and Jemena Queensland Gas Pipeline, both of which are uncovered.

2.3 Structure of Jemena's submission

This submission responds to the Commission's Draft Rule Determination as follows:

Section 3: The Commission's more preferable rule.

Section 4: Jemena's alternative proposed rule.

3 The Commission's more preferable rule

Key points:

- Jemena agrees with the Commission that there could be circumstances, other than the specific case identified by the AER, where it is not appropriate or practicable to set a reference tariff for a service that is likely to be sought by a significant part of the market, and accepts that there is a case for changing the NGR to provide for such situations.
- Jemena considers that the more preferable rule proposed by the Commission would:
 - a) increase the AER's discretion unnecessarily; and
 - b) inhibit the service provider's ability to put forward a complete and coherent access arrangement proposal and reference service offering.
- Jemena submits that there are alternative rule changes – including those set out in section 4 of this submission – that are better able to address the problem identified by the AER while avoiding the complications presented by the more preferable rule.

3.1 The Commission's more preferable rule

As presently drafted, the NGR require that a full access arrangement must specify all reference services where a reference service is a pipeline service that is likely to be sought by a significant part of the market.¹ That is, every service that is likely to be sought by a significant part of the market must be included in the access arrangement as a reference service. It follows that every other pipeline service must be one that is not likely to be sought by a significant part of the market.

The AER and the Commission have concluded that there may be circumstances where it is problematic or inappropriate to set a reference tariff for a pipeline service that is likely to be sought by a significant part of the market. For example, where there is uncertainty about the demand for and/or revenue to be derived from the service; or due to technical and/or commercial factors.

¹ NGR, r. 101.

The Commission has considered the AER's proposed rule changes and determined that a more preferable rule should be made which:

would provide increased discretion to the AER to enable it not to specify a pipeline service sought by a significant part of the market as a reference service. As a result, the AER would not be required to set a tariff for the relevant service which in certain circumstances may not be reflective of efficient costs.²

The Commission's more preferable rule would:

- a. change what services the service provider must include as reference services in its access arrangement proposal:

Current arrangements	Proposed more preferable rule
<p>An access arrangement proposal must:</p> <ul style="list-style-type: none"> describe all pipeline services (NGR, r. 48(1)(b)) specify every service likely to be sought by a significant part of the market as a reference service (NGR, rr. 48(1)(c) and 101) 	<p>An access arrangement proposal must:</p> <ul style="list-style-type: none"> describe all pipeline services (NGR, r. 48(1)(b)) specify at least one reference service which is likely to be sought by a significant part of the market (NGR, r. 101(1)(a))

- b. extend the AER's discretion in relation to the specification of reference services in cases where it does not approve an access arrangement proposal:

Current arrangements	Proposed more preferable rule
<p>The draft decision:</p> <ul style="list-style-type: none"> indicates the nature of amendments required to make the proposal acceptable to AER and must fix the period for revision of proposal (at least 15 business days) (revision period) (NGR, r. 59) 	<p>The draft decision:</p> <ul style="list-style-type: none"> indicates the nature of amendments required to make the proposal acceptable to AER and must fix the period for revision of proposal (at least 15 business days) (revision period) (NGR, r. 59) must specify any other pipeline service that is likely to be sought by a significant part of the market and which the AER considers should be specified as a reference service (NGR, r. 101(1)(b))

² AEMC, *Draft Rule Determination, National Gas Amendment (Reference service and rebateable service definitions) Rule 2011*, p.13.

3.2 Transfer of discretion from Service Provider to Regulator

Currently, the service provider must specify all reference services in its proposed access arrangement (without limitation), and design its service offering accordingly.

Under the more preferable rule, the service provider is only required to include one service as a reference service in its access arrangement, leaving the regulator to specify additional reference services (or not) at its discretion.

The Commission's rationale for its more preferable rule is:

It will allow regulators to accommodate circumstances where it is problematic to set a reference tariff due to the uncertainty of demand and/or revenue; or where it is inappropriate to set a reference tariff due to technical and/or commercial arrangements. In these cases, the regulator may find that market mechanisms, rather than a reference tariff, may be better at determining the price for and allocation of a pipeline service.³

3.2.1 *The more preferable rule changes the balance of judgement*

While Jemena agrees that there may be circumstances where it is problematic or inappropriate to set a reference tariff for a pipeline service that is likely to be sought by a significant part of the market, the more preferable rule will shift the balance of judgement as to what should or should not be a reference service from the service provider to the regulator. Jemena is concerned about this change in the balance of judgement because the service provider is best qualified to make the initial judgement call on what should be a reference service. The service provider has detailed knowledge of the gas market and the disciplines that it imposes on all participants and of users' and customers' requirements. The service provider is also in the best position to identify and quantify the technical, commercial and market risks that must be taken into account in designing a reference service offering.

Importantly, the change in the balance of judgement implicit in the more preferable rule means that the service provider is less able to put forward a complete and coherent access arrangement proposal in the first instance. If the regulator has broad discretion to require additional reference services then the service provider is effectively put in the position of having to second-guess what the regulator might require. At the time the service provider is preparing its access arrangement proposal, one of the most important aspects of the proposal—the range of reference services to be offered—would be among the least certain.

³ AEMC, *Draft Rule Determination, National Gas Amendment (Reference service and rebateable service definitions) Rule 2011*, p.7



The meaning of the term “reference service” should be defined completely and clearly in the NGR so that the service provider, relying on that definition, can be certain that the access arrangement proposal it develops and submits includes all reference services. The regulator’s role is then to assess the service provider’s proposed service offering against that definition and respond with its draft decision.

3.2.2 *Risk that the Revenue and Pricing Principles will not be satisfied*

The Commission’s more preferable rule would allow the regulator to require the service provider to include one or more additional reference services in its access arrangement. However, the service provider would not receive formal notification of that requirement until the regulator publishes its draft decision.

In Jemena’s view the time normally allowed for a service provider to respond to a draft decision would be insufficient for the service provider to appropriately cost and reflect the terms and conditions of an amended reference service offering in its revised access arrangement proposal.⁴ As a consequence, there is a real risk that the access arrangement will not satisfy some or all of the Revenue and Pricing Principles (RPP) in the National Gas Law (NGL)⁵. In other words, there is a real risk that, as a result of the process implicit in the more preferable rule:

- the service provider may not have a reasonable opportunity to recover at least the efficient costs that it incurs in providing reference services
- the service provider may not be provided with effective incentives to promote economic efficiency with respect to the reference services the service provider provides
- the reference tariff may not allow for a return commensurate with the regulatory and commercial risks involved in providing the reference service to which that tariff relates
- insufficient regard may be had to the economic costs and risks of the potential for under and over investment by a service provider in a pipeline with which the service provider provides pipeline services
- insufficient regard may be had to the economic costs and risks of the potential for under and over utilisation of a pipeline with which a service provider provides pipeline services.

⁴ The regulator specifies the period within which the service provider must respond to the draft decision. The period must be at least 15 business days and has typically been 5 to 7 working weeks in reviews that the AER has conducted to date. That is insufficient time for the service provider to redesign its proposal to reflect the amendments required by the draft decision if they include additional reference services.

⁵ NGL, r. 24.

3.3 Summary

Jemena's primary position is that the term "reference service" should be defined completely and clearly in the NGR so that the service provider can, with certainty, prepare and submit an access arrangement proposal that includes all reference services. The Commission's more preferable rule does not provide that certainty. Moreover, if the rule were made, then the time that the service provider would have to respond to a draft decision that required one or more additional reference services is insufficient for the service provider to undertake the task of re-working its proposal with the thoroughness it requires.

Jemena submits that the consequential effects described above mean that the more preferable rule proposed by the Commission will not contribute to the achievement of the National Gas Objective (**NGO**) or the RPP.

4 Jemena's alternative proposed rule

As indicated in section 3 of this submission, Jemena considers that the Commission's more preferable rule goes beyond what is necessary to accomplish its intent. Jemena proposes an alternative rule that would address the principal issue identified by the AER and the Commission while avoiding the complications presented by the Commission's more preferable rule. Jemena's proposal involves amendments to rules 101 and 59 of the NGR.

4.1 NGR rule 101

Jemena proposes leaving rule 101(1) unchanged and amending rule 101(2) as follows:

- (2) A reference service is a pipeline service that is likely to be sought by a significant part of the market unless:
 - (a) substantial uncertainty exists about the extent of revenue to be generated from the service; or
 - (b) it is not commercially or technically reasonable to set a reference tariff for the service.

Jemena submits that its alternative wording avoids the likely detrimental effects of the Commission's more preferable rule, and better contributes to the achievement of the NGO and RPP by clarifying that all services that are likely to be sought by a significant part of the market will be reference services unless:

- substantial uncertainty exists concerning the extent of the revenue to be generated from the service; or
- it is not commercially and technically reasonable to set a reference tariff for the service.

Jemena considers that it is unnecessary to include the additional limb of the AER's proposed rule (93(4)(b)(i)) regarding demand for the service. That is because, if substantial uncertainty exists concerning the extent of demand for a service, then there can be no certainty that the service is likely to be sought by a significant part of the market and hence the service cannot be classified as a reference service. The APA Group made a similar point in its submission to the AEMC on the AER's proposed rule.⁶

⁶ APA Group, *Submission to the AEMC on National Gas Amendment (Reference service and rebateable service definitions) Rule 2011*, 3 November 2011, p.2.

4.2 NGR rule 59

Jemena agrees with the amendment to the second example under rule 59(2) as proposed by the Commission in its more preferable rule.

4.3 Summary

Jemena's alternative proposed rule is as follows:

4.3.1 Amend NGR rule 101(2)

- (2) A reference service is a pipeline service that is likely to be sought by a significant part of the market unless:
- (a) substantial uncertainty exists about the extent of revenue to be generated from the service; or
 - (b) it is not commercially or technically reasonable to set a reference tariff for the service.⁷

4.3.2 Amend the second example under NGR rule 59(2)

- (2) An access arrangement draft decision indicates whether the AER is prepared to approve the access arrangement proposal as submitted and, if not, the nature of the amendments that are required in order to make the proposal acceptable to the AER.

Examples:

1. If the AER is not satisfied that the access arrangement proposal adequately describes the pipeline services offered, or to be offered, by the service provider, the decision might indicate the amendment or the nature of the amendment required to correct the deficiency.
2. If the AER is not satisfied that the access arrangement proposal designates as reference services all pipeline services that ~~are sought, or likely to be sought, by a significant part of the market~~⁸ it considers should be designated as reference services under rule 101, the decision might indicate that further or other pipeline services should be designated as reference services.
3. The decision might indicate that specified changes, or changes of a specified nature, should be made to a reference tariff.
4. The decision might indicate changes to queuing requirements, capacity trading requirements, or extension and expansion requirements needed to make the access arrangement acceptable to the AER.

⁷ Underlined words indicate proposed additions/insertions.

⁸ Struck through words indicate proposed deletions.