31 August 2023

Jemena Limited
ABN 95 052 167 405

Level 16, 567 Collins Street
Melbourne, VIC 3000
PO Box 16182
Melbourne, VIC 3000
T +61 3 9173 7000
F +61 3 9173 7516
www.jemena.com.au

Cain Fleckhammer
Director – Gas Pipelines
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Sent by email: AERgasreform@aer.gov.au

Dear Cain

Draft AER Pipeline Information Disclosure Guidelines

Thank you for the opportunity to provide feedback on the AER's draft Pipeline Information Disclosure Guidelines (**Guidelines**).

Jemena owns and operates a scheme pipeline (the Jemena Gas Networks distribution network in NSW) and multiple non-scheme gas transmission pipelines throughout eastern and northern Australia.

The Guidelines should support Part 10 of the National Gas Rules (**NGR**) by improving information transparency of gas pipeline service providers to inform users in access negotiations. We appreciate the changes the AER has made on several directions set out in the draft Guidelines compared with positions the AER flagged in its issues paper dated 6 April 2023 including:

- Continuing the inclusion of decommissioning costs under the recovered capital method (**RCM**)
- Allowing for the use of alternative approaches available to determining pipeline net tax liabilities
- Allowing for the provision of high-level responses for reconciling values between the depreciated book value and RCM in most circumstances, other than for values common between asset valuation methods, such as capex and disposals, and at the aggregated pipeline level
- The ability for estimates to be provided of historical costs in determining non-scheme asset values, including construction cost of the pipeline where actual information is not reasonably available.

We have provided detailed feedback on a number of areas of the draft Guidelines in Attachment A to this letter, and have provided a report from HoustonKemp on rate of return for the calculation of RCM asset values as Attachment B to this letter.

Broadly, Jemena highlights that:

- We are concerned that the draft Guidelines' prescriptive approach to determining the rate of return for the RCM will lead to return on capital outcomes, and RCM valuations, that are inconsistent with the outcomes of a workably competitive market and may not contribute to the National Gas Objective. This would significantly compromise the usefulness of information available to access seekers. We propose that the AER modify its approach by reducing prescription to improve the likelihood of outcomes that are consistent with those of a workably competitive market.

- We are concerned with the duplication of information reporting for scheme distribution pipelines given the requirements of existing Regulatory Information Notices (**RIN**) for some service providers. We consider that the administrative burden associated with this duplication can be minimised by allowing service providers to include references to relevant RIN information in their Part 10 financial templates rather than being required to populate this information twice. We also note that the template categorisations are more relevant to transmission pipelines and would benefit from including categorisations relevant to distribution pipelines (for example, reference and non-reference revenue for scheme distribution pipelines and distribution pipelines assets classes).

- Where a term is defined in the NGR or National Gas Law (**NGL**), the Guidelines should refer to those definitions rather than define a term differently. Also, there should be consistency in defined terms used in the Guidelines and RINs.

- There are some issues with formulas in the draft financial template, including in relation to unit conversion, comparability assumptions and categorisation, which we have highlighted and set out proposed improvements for in Attachment A.

- The logic underpinning some of the calculations in the pricing template risk confusing access seekers and other stakeholders. For example, the 'low' pricing benchmarks in the pricing template is based on the minimum value for fixed operating costs that only include direct costs, and exclude shared costs which are incurred in providing services by means of the pipeline. Given it is highly unlikely that any pipeline operator can deliver pipeline services without shared costs, and noting the Guidelines specify strict requirements relating to any allocations of shared costs to pipeline services, it is unclear how price benchmarks excluding shared costs would represent meaningful information for prospective users.

- It is important that pipeline service providers are able to prepare their own templates (provided the information requirements set out in the National Gas Rules (**NGR**) are met) for actual prices payable reportable under Rule 101E, to ensure that service providers have sufficient time between publication of the final Guidelines and 22 December 2023 to make the necessary reporting system changes to enable this reporting.

- We consider that the draft requirement for publishing non-price terms under Part 10 of the NGR is inconsistent with the intent of the NGR, will place a significant administrative burden and costs on service providers and is unlikely to provide useful information to prospective users. We are also concerned about the implications of potentially needing to disclose commercially sensitive information about our customers' supply arrangements. We would welcome the opportunity to work with the AER and other stakeholders on this issue over the coming weeks.

- We consider that the requirement for scheme distribution pipelines to publish information on extensions and expansions is inconsistent with the intent of publishing such information as set out in the AER's issues paper, and unnecessary given that most charges for scheme distribution pipeline services are consulted on and set by the AER as part of the access arrangement process. Further we note that scheme distribution pipelines are obliged under the RINs to provide audited information on capital expenditure projects. Therefore, we ask that the AER clarify in the final Guidelines and financial templates that this requirement does not apply to scheme distribution pipelines.

- We note that the way the Guidelines specify the assurance requirements for information is at a level which is open to interpretation. To avoid confusion, we recommend that the AER align the assurance requirements to the worksheets and / or tables in the financial template.

Should you have any questions please do not hesitate to contact [redacted]

Yours sincerely

Ana Dijanosic

Ana Dijanosic
General Manager Regulation

Attachment A: Feedback on Pipeline Information Disclosure Guidelines

Definitions

We set out in the table 1 below inconsistencies in definitions with other definitions in the draft Guidelines, or the NGL and NGR, with recommended changes.

Table 1: Proposed amendments to definitions

AER Draft Guidelines definition	Concern	Proposed change (shown as markup)
access information standard has the meaning given in Rule 101 of the NGR	This is slightly inconsistent with the definition for Part 18A information standard	**access information standard** has the meaning given in Rule 101<u>(2)</u> of the NGR
pipeline service means a service provided to a user by a service provider by means of a pipeline	Should refer to the NGL definition	**pipeline service** ~~means a service provided to a user by a service provider by means of a pipeline~~ <u>has the meaning given in Chapter 1 Part 1 of the NGL</u>
rate of return instrument means the instruments, guidelines, or statement of regulatory intent published by the AER from time to time, that sets out how the AER determines or intends to determine (as the case may be) the return that fully regulated electricity and gas network businesses can earn on their investment	Should refer to the NGL definition	**rate of return instrument** ~~means the instruments, guidelines, or statement of regulatory intent published by the AER from time to time, that sets out how the AER determines or intends to determine (as the case may be) the return that fully regulated electricity and gas network businesses can earn on their investment~~ <u>has the meaning given in clause 30D(2) of the NGL</u>
revenue means earnings made by a service provider in the provision of pipeline services. To avoid doubt, revenue may include indirect (shared) revenue allocated to the pipeline in accordance with Section 2.3.6 of these guidelines	For clarity, 'earnings' should be 'income' to avoid misinterpretation of 'earnings' as referring to net profit, which we believe would be inconsistent with the AER's intent	**revenue** means ~~earnings~~ <u>income</u> ~~made~~ <u>earned</u> by a service provider in the provision of pipeline services. To avoid doubt, revenue may include indirect (shared) revenue allocated to the pipeline in accordance with Section 2.3.6 of these guidelines
standing price has the meaning given in Rule 100C of the NGR	Incorrect rule reference	**standing price** has the meaning given in Rule ~~100C~~ <u>101C</u> of the NGR
user means a person that seeks or wishes to be provided with a pipeline service by means of a pipeline. To avoid doubt, a user may be an existing user or a prospective user of pipeline services	Under the NGL, **user** means a person who— (a) is a party to a contract with a service provider under which the service provider provides or intends to provide a pipeline service to that person by means of a pipeline; or	**user** means ~~a person that seeks or wishes to be provided with a pipeline service by means of a pipeline. To avoid doubt, a user may be an existing user or a prospective user of pipeline services~~ <u>a user and / or a prospective user of pipeline</u>

	(b) has a right under an access determination to be provided with a pipeline service by means of a pipeline Under the NGL, a **prospective user** is a person who seeks or wishes to be provided with a pipeline service by means of a pipeline, with a clarification to avoid doubt provided in NGL s 5(2).	services as defined in Chapter 1 Part 1 of the NGL

We also note that there should be consistency in definition of terms used in the RINs and the Guidelines.

Section 2 Financial Statements

We note that the financial template categorisations are generally more relevant to transmission pipelines and would benefit from including categorisations relevant to distribution pipelines.

The AER notes the potential duplication of information requirements for scheme pipelines in the financial template, such as the existing requirement to report depreciation information through the stringent annual reporting requirements under the RINs. We believe that scheme pipelines should not be required to duplicate the reporting of information that is provided through the existing regulatory framework (including through the AER's access arrangement review process) to avoid unnecessary data gathering and review costs, and potentially inconsistent or redundant information for users which does not meaningfully contribute to the policy intent of Part 10. Therefore, we recommend that:

1. The AER add in RIN references on the blank financial template worksheets when it publishes them. The AER could also add RIN references in the tables where the information is already contained in the annual RINs, with no requirement for scheme pipelines to have to duplicate the information; or alternatively

2. The AER allow service providers to add in RIN references to information duplicated in the financial templates with no requirement for scheme pipelines to duplicate the information.

We note that there are errors in formulas, errors in unit conversion, incorrect comparability assumptions and categorisation issues in the draft financial template. We have provided feedback specific to various worksheets in the draft financial templates below.

Worksheet 1 pipeline information

- We suggest that pipeline services be labelled in the template consistently. For example, 'park services' and 'park and loan services' are required to be reported in table 1.2 whereas in tables 2.2.1 and 2.2.2 'park' and 'loan' revenue is required to be reported. Also, the current service descriptors are more relevant for transmission pipeline services—the template should include scheme distribution pipeline services (for example, for scheme distribution pipelines, the reference service and non-reference service as defined in the pipeline's AER-approved access arrangement), and appropriate categories for non-scheme distribution pipelines.
- For scheme distribution pipelines:
  - Pipeline Location – service providers should be able to provide a link to our map located on their website.
  - Construction date – a gas distribution network may not have a definitive (or known) single 'construction date', and by its nature, a distribution network expands over time. The AER should clarify what date should be reported in these situations. More generally, we query the relevance of this information for a scheme distribution pipeline.

Worksheet 2 revenue and expenses

- Backhaul services should be called out as a standalone service category, consistent with the current categorisations.
- As above:
  - Pipeline service categories be reported in the template consistently. For example, 'park services' and 'park and loan services' are required to be reported in table 1.2 whereas in tables 2.2.1 and 2.2.2 'park' and 'loan' revenue is required to be reported.
  - As per worksheet 1, table 2.1 should include scheme distribution pipelines services (i.e. reference service and non-reference service for scheme distribution pipelines).

Worksheet 2.2 allocation to pipeline

- Backhaul services and distribution pipeline services need to be included as a standalone service categories.

Worksheet 3 depreciated book value

- We consider that use of the depreciated book value template for economic regulatory asset value (scheme pipelines) and accounting standard values (non-scheme pipelines) is likely to create confusion. This can be avoided by using separate depreciated book value templates for scheme and non-scheme pipelines along with an explanatory note on each spreadsheet describing the basis of the respective asset values. We also consider that the template(s) would benefit from including asset categories relevant to distribution pipelines.
- We note that 'reporting period' in column D of table 3.1 links to depreciation set out in tables 3.3.1, 3.3.2, which as noted in our comments on worksheet 3.3 below are on a cumulative basis giving a life to date (**LTD**) view inconsistent with our accounting records.

Worksheet 3.3 depreciation amortisation

- We note that this template does not align with a normal annual fixed asset movement schedule which would be typical of a service provider's accounting records. For example, the template has separate cost columns for 'Acquisition Cost' and 'Additions', whereas we would expect a single column for Acquisition Cost. Although we note that similar requirements existed under the previous Part 23 reporting templates, we consider that this represents an opportunity for incremental improvement over the previous reporting approach, to streamline population of the templates and improve consistency of reporting with service providers' internal accounting records.
- The template also notes that 'Additions, capitalised maintenance and disposals must be reported on a cumulative basis' which is inconsistent with Jemena's internal accounting records and AASB 116 paragraph 73(e), which requires financial statements to disclose a reconciliation of the carrying amount at the beginning and end of the period. This approach (also reflected in the Part 23 reporting template) currently results in numerous manual adjustments for the purposes of completing the reporting templates. To address this, we suggest that the template focusses on annual movements consistent with the requirements of International Financial Reporting Standards (**IFRS**) disclosure requirements (but with regulatory categorisations), rather than cumulative movements. For example, the requirement for columns H and I should be amended so that column H reflects the opening cost base at the beginning of the annual reporting period (i.e. reflective of all additions and disposals to cost base in all years prior to the annual reporting period) and column I reflects only additions during that annual reporting period. Similarly, column K should reflect only disposals which have occurred during the annual reporting period.
- In tables 3.3.1 and 3.3.2, the column D Category drop down does not have any categories to select – the data validation either needs to be removed or updated to include categories.

Worksheet 4 RCM

- It is not clear to us what the difference is between 'decommissioning costs' and 'negative residual value' and would appreciate the AER clarifying this.

Worksheet 4.1 pipelines capex

- We note that the table 4.1.2 heading should be 'Planned expansions <u>and extensions</u> of capacity'.
- In table 4.1.2, we would appreciate AER clarification of what is meant by the headings 'Description of the matter', 'Expected start date', 'Expected end date' and 'Expected maximum daily capacity of the pipeline during the affected period'. We note similarities in these headings to the language used in rule 101B of the NGR, which we consider appears to be more suitable for the reporting of temporary changes to pipeline capacity due to matters such as planned maintenance – noting that an expansion of pipeline capacity would generally be expected to be permanent and not have an 'end date'. As a more suitable alternative, we suggest adopting language similar to that which is used in rule 190F (facility development project reporting) such as 'Increase in facility's nameplate rating, or estimated likely range'[1] and 'Proposed commissioning date, or range of dates'.

Worksheet 5 historical demand

- Backhaul services need to be called out as a standalone service category.
- Column F needs to be unlocked to allow for different nameplate capacity values to be provided throughout the reporting year, as this is not necessarily a static value – pipelines may have different summer and winter nameplate values or may commission an expansion part-way through a year.

Worksheet 6 pricing template

We outline some calculation improvements that can be made in the template in the table below.

Cell references	Description of issue	Suggested change
D36:F37	The MIN and MAX functions are linking to the wrong cells below. For instance, the formula at cell D36 is taking the minimum of the depreciation of RCM asset value at cell G61 and the return on capital at cell H36. It should be taking the minimum of the fixed operating costs at cells C61 and D61.	Update the formulas so that the formulas reference the correct columns in table 6.3. This could be done by copying the formulas from row 38 and pasting them over those at rows 36 and 37.
F87:G95 F111:G119 G122:G130 I142:J150 I153:J161	The formulas are multiplying by 1,000 when converting to a $/GJ basis rather than dividing by 1,000. This significantly overstates the cost per GJ. The formulas should be divided by 1,000.	Update the formulas to divide by 1,000 rather than multiply by 1,000.
C111:D119	The depreciation values sourced from the '*2.1 Profit & Loss by component*' sheet are coming through as negative values. These should be converted into positive values in order to be more meaningfully used in the pricing benchmarks calculations at cells E36:E53 where they are being compared to other costs, such as fixed operating costs, return on capital, or tax, that are shown as positive values.	Update the formulas to convert the depreciation values to positives (e.g., by including the negative sign at the start of the formula, multiplying by negative 1 at the end, or using Excel's ABS function).

- More broadly, we are also concerned that the logic underpinning some of the calculations risk confusing or providing misleading information to access seekers and other stakeholders. These concerns are summarised in the table below along with suggested changes.

[1] For completeness, we note the definitions of 'nameplate rating' and 'daily capacity' in Part 18 of the NGR, and that not all pipeline expansions will necessarily result in a change to a pipeline's nameplate rating – for example, works may be undertaken to allow more gas to be receipted at different locations on a pipeline without increasing the amount of gas which can be transported on the pipeline.

Cell references	Concern	Suggested change
D36:F53	The formulas calculate minimum or maximum values across different asset valuation methods. This could lead to mismatches between the asset base used to calculate depreciation and the return on capital. For example, this formula could lead to the use of RCM depreciation with book value return on capital. Such a misalignment in the underlying assumptions in calculating price benchmarks is unlikely to provide useful information for access seekers, especially where these potential misalignments are not identified clearly in the template.	Rather than taking the minimum or maximum of individual building block components of the pricing benchmarks, we suggest taking the minimum or maximum value of the total building block costs-based pricing benchmarks derived based on a consistent set of assumptions.
D36:F53	The formulas for the 'low' pricing benchmark's return values for fixed operating costs as well as the return of capital that only include direct costs and exclude any indirect/shared costs. The NGR and the Guidelines contain prescriptive requirements regarding the allocation of indirect costs to pipeline services, meaning that any indirect costs reported in the templates must be incurred by the pipeline operator in delivering pipeline services. Therefore, it would be inconsistent with the outcomes of a workably competitive market for these indirect costs not to be recovered from users of these services. The 'low' pricing benchmarks derived using this approach would underestimate the costs required to operate pipeline services, and could set misleading pricing expectations for access seekers, undermining the information disclosure objectives.	We recommend that the price benchmark calculations do not contain references to costs which exclude indirect costs. This will reduce the risk of underestimating the costs required to provide pipeline services.
C73:D81	The formulas take the average of fixed operating costs between direct costs only and the direct plus shared costs. The average of these two costs does not reflect the 'average' fixed operating costs required to operate a pipeline service. It is not clear what these average cost values represent. The formulas also average depreciation and return on capital values calculated based on different asset values. It is not clear what these average values show and how they intend to be used. Without clear explanations of what the values represent, there is a real risk that access seekers and other stakeholders may misunderstand what the values represent, undermining the information disclosure objectives.	Given that the calculations do not appear to provide useful information, we suggest removing these average cost values to avoid potential confusion and misleading information. If the AER intend to retain these calculations, we recommend the AER include explanations in the pricing template to help access seekers better understand the derived values.
C87:D95	The formulas use the direct expense allocation percentages from the '*2.2 Allocation to pipeline*' sheet to allocate total expenses across pipeline services, which includes direct and shared opex as well as depreciation.	We recommend amending the formulas so that each cost is allocated using the allocation percentages that correspond to that cost (e.g., direct expense allocators

Cell references	Concern	Suggested change
	This approach could produce misleading results if the allocation percentages differ across direct costs, shared costs and depreciation.	are used to allocate direct expenses, shared expense allocators are used to allocate shared expenses, etc).

Section 2.3.8 Depreciation

The draft Guidelines[2] say that 'Depreciation must reconcile between Table 2.1.1 and Table 3.3'. However, the Guidelines do not acknowledge that life to date depreciation is reversed on disposal of assets and therefore will not always reconcile. We suggest that the AER recognise this in the Guidelines.

Section 2.4.2 Pipeline assets

The draft Guidelines[3] state that 'where land or easements are owned by the service provider, these assets must be recorded at historical cost and not depreciated.'

We note that for accounting purposes, Jemena does depreciate easements and considers that the Guidelines (and financial template) should be consistent with what is allowed for accounting recording purposes under AASB 116 Property, Plant and Equipment. In assessing the economic useful life of an asset, AASB 116 requires consideration of the:[4]

- Expected usage of the asset (by reference to the asset's capacity or output)
- Expected physical wear and tear (depending on operational factors such as frequency of use and repairs and maintenance)
- Technical or commercial obsolescence arising from changes or improvements in technology, environment or production, and
- Legal or similar limits on the asset's use (for example the expiry date of a lease or right to occupy).

In the case of easements, we take into account their expected use to us as a service provider and the role they play in enabling the use of other assets such as the pipeline itself (and hence, the intrinsic relationship between useful lives of easements and other pipeline assets). Consequently, we consider that easements held by us for the purposes of providing pipeline services have a life limited to the life of other pipeline assets, and therefore we depreciate them accordingly.

Therefore, to promote consistency between reporting in the template and AASB 116, we consider that section 2.4.2 and 2.4.2.1 of the Guidelines should be amended to remove references to easements:

> *Where land ~~or easements are~~ is owned by the service provider, these assets must be recorded at historical cost and not depreciated.*

Section 2.5 Recovered capital

Return on capital

The draft Guidelines[5] specify how non-scheme service providers must determine the return on capital used when applying the RCM, including that:

- The risk-free rate used to calculate the cost of equity must be 'estimated shortly prior to the commencement of the year for which the weighted-average cost of capital is being set'

2 AER Guidelines s2.3.8, page 16.

3 AER Guidelines s2.4.2 and 2.4.2.1, page 17.

4 AASB 116 paragraph 56.

5 AER Guidelines s2.5.3, pages 22–23.

- The cost of debt for each year must reflect 'the service provider's actual portfolio cost of debt for that year'.

We are concerned that these requirements, and more broadly the AER's highly prescriptive approach, will lead to return on capital, and RCM valuations, that are inconsistent with the outcomes of a workably competitive market.

Our concern is reinforced by a report from HoustonKemp, whom we engaged to review the proposed approach to applying the RCM, with this report included as Attachment B to this submission. HoustonKemp concluded that the:[6]

> *rate of return methodology prescribed in the draft guidelines, if incorporated into an RCM asset value:*
>
> *• is likely to give rise to outcomes that are inconsistent with those that would be delivered by workably competitive markets for the development of gas pipeline infrastructure such that it would be inconsistent with the asset valuation objective; and*
>
> *• would not contribute to the NGO since it could reduce the benefits of long term contracts that underpin new investment in gas pipeline capacity.*

In particular, HoustonKemp notes that workably competitive markets allow for normal returns on capital in expectation, but not an outturn basis. This is even true for scheme pipelines where prices and revenue expectations are developed on an ex-ante basis, with an *expectation* of normal market returns. However, the realised or ex-post return could be higher or lower compared to ex-ante return due to different outturn demand, efficiencies and costs. For example, if under a price cap a scheme pipeline recovers more than the expected return due to higher than assumed volumes it is not assumed that the extra return is used for repayment of capital. However, the AER's approach to using prescribed rate of return parameters that updates annually and the resulting RCM value does precisely that, in that it assumes that outcomes observed in workably competitive markets will not be affected by unexpected shocks to revenue and costs. This approach is inconsistent with underlying outcomes observed in workably competitive markets as outlined by HoustonKemp in its report.

HoustonKemp note:

> *The long-term contracts commonly observed in workably competitive markets for infrastructure services tend to be negotiated based on depreciation assumptions that are unaffected by yearly shocks to the service provider's revenues and/or costs.*
>
> *This means that the realised rate of return for individual projects in a workably competitive market will be affected by unexpected shocks to its revenues and costs, ie:*
>
> *• shocks that increase revenues or reduce costs will increase the company's realised rate of return; and*
>
> *• shocks that decrease revenues or increase costs will decrease the company's realised rate of return.*
>
> *Due to the potential for such shocks, over the short to medium term, a company operating in workably competitive markets may earn super-normal or sub-normal realised rates of return on a project.*

The AER's draft Guidelines require operators of non-scheme pipelines to use an annually updated rate of return based on a period shortly prior to the start of each year, irrespective of the time and terms of negotiated contracts that underpins the pipeline investments.

HoustonKemp note that:

---

6 HoustonKemp, *Rate of return for the calculation of RCM asset values: A report for Jemena*, August 2023.

It follows that, in workably competitive markets, the rate of return on equity delivered to the service provider in any year is likely to reflect the market conditions that prevailed at the time that long term agreements were established.

However, the rate of return methodology set out in the draft guidelines would require operators of non-scheme pipelines to estimate its return of capital using an updated rate of return that is estimated shortly prior to the commencement of the year in which it applies. This means that the rate of return on equity used to calculate the RCM asset value will not reflect the financial market conditions prevailing at the time that the agreements were established.

Specifically, the methodology in the draft guidelines would reduce the value of the rate of return assurance delivered to service providers and access seekers through such contracts. Year-to-year changes in the rate of return measured in financial markets would be reflected in changes in the asset value, such that:

- *a reduction in the rate of return in a particular year will increase the asset value and thus increase future revenues under the RCM; and*

- *an increase in the rate of return in a particular year will decrease the asset value and thus decrease future revenues under the RCM.*

This undermines the mechanism through which long-term contracts resolve the hold-up problem, since it generates the same outcomes after the expiry of a contract as if the contract had never been entered into. This may in turn distort incentives for efficient investment in gas pipeline infrastructure.

Such an outcome is inconsistent with the NGO, which aims to promote efficient investment in, and efficient operation and use of, natural gas services for the long-term interests of consumers of natural gas. In this way, the rate of return methodology in the draft guidelines may not contribute to the NGO.

An alternative approach is to allow for the use of return on equity estimates that reflect the individual circumstances of each pipeline and that reflect periods other than the financial year being reported. This approach would allow RCM asset values to achieve the asset valuation objective more often and would restore the rate of return assurance that workably competitive markets provide through foundation contracts.

Similarly, on the estimation of cost of debt, to rely on actual portfolio cost of debt raised at a consolidated group level is not relevant to the timing of when finance is actually raised for the particular non-scheme asset. This is because the group level debt may include investments in other regulated and unregulated assets that have different risk profiles and investment timing. Therefore, reporting the actual portfolio cost of debt in the rate of return estimates, which does not reflect the actual marginal financing cost incurred by a pipeline operator, for RCM calculations will not promote the purpose of the information disclosure.

Furthermore, HoustonKemp notes that this will generate internally inconsistent estimates of the actual debt financing costs incurred by the service provider, since it combines a cost of debt derived from the book value of assets which incorporates an assumed depreciation rate and a synthetic RCM asset value which incorporates a return of capital equal to the difference between service provider's revenues and costs. It further concludes that this approach is:

unlikely to generate an accurate estimate of a service provider's actual debt costs for any non-scheme pipeline because:

- *it calculates the actual cost of debt and gearing ratio for the overall group in that year instead of the actual cost of debt that the group incurs in respect of the specific non-scheme pipeline; and*

- *it uses cost of debt and gearing estimates derived from book values of debt and applies these to the RCM asset value.*

This will not reliably inform access seekers about the actual costs of providing pipeline services and therefore will not contribute to the purpose of information disclosure.

Houstonkemp concludes that:

> *the approach in the draft guidelines is not likely to contribute to the purpose of information disclosure, because it means that access seekers will neither:*
>
> - *receive offers from service providers that reflect the disclosed RCM asset values; nor*
> - *be able to assume that these RCM asset values are relevant in the event of arbitration.*

Consistent with HoustonKemp's advice, we recommend that the AER's final Guidelines allow service providers to:

1. adopt rate of return estimates that reflect the financial market conditions that prevailed at the time the contracts underpinning investment in the pipelines were entered into and the term of contracts – this would improve the likelihood that the rate of return, and resulting RCM value, reflects outcomes consistent with workably competitive markets
2. adopt alternative cost of debt estimates that better reflect the marginal costs of financing non-scheme pipelines aligning to the timing of pipeline investments – for instance, use of benchmark costs where actual group costs do not reflect the nature of the risks involved with owning and operating such pipelines.

Other RCM matters

With regards to the requirement that service providers qualitatively explain the difference in the total asset value using the depreciated book value method and the recovered capital method, or any alternative asset valuation method, we note the AER's response in the explanatory statement[7] that high-level responses will be sufficient in most circumstances.

Appropriateness of replacement cost methods

We note the AER's statement in the draft Guidelines that it does not consider that a depreciated replacement cost of the asset is appropriate to set the initial capital base. This statement should at least be clarified, as its scope is currently unclear.

We do not understand the AER to be saying in the draft Guidelines that depreciated replacement cost methods will never be an appropriate basis for asset valuation. Replacement cost is a well-recognised method for determining initial capital base values. It has been applied in numerous regulatory and legal proceedings for establishing initial capital base values, and is explicitly referred to as a relevant methodology in section 8.10 of the Gas Code (which can apply to the determination of initial capital base values for scheme pipelines under rule 77(1)(a) of the NGR).

Rather, we understand the AER to be saying that it does not consider replacement cost to be an appropriate method for the purposes of information disclosure under Part 10 of the NGR.

This statement should be either clarified or removed from the Guidelines, to avoid confusion for stakeholders around the potential for alternative asset valuation methodologies to be used in some situations.

Section 2.5.11 Major capital projects and pipeline expansions and extensions

Overall requirement

---

[7] AER Draft guidelines section 2.5.9, AER Pipeline information disclosure guidelines and Price reporting guidelines for Part 18A facilities Draft guidelines – Explanatory note, p. 9.

We welcome the AER's amendment of the position set out in the issues paper to publish forecast financial information for planned pipeline capacity expansions and extensions only after the final investment decision stage, regardless of value or expected commissioning date.

However, as we noted in our submission to the AER on its issues paper, we do not consider that it is a necessary requirement given that:

1. It is our experience that estimated costs (in businesses cases) of planned expansions or extensions of pipeline assets are unlikely to match final construction costs, and in some cases can be materially greater depending on many factors including the complexity of the project, the project risk and assignment of those risks.
2. We voluntarily share information on planned expansions and extensions (including estimated costs) with prospective users at the time they seek access to services which require us to undertake such works, and prospective users have mechanisms under Part 11 to access this information should a service provider not be forthcoming with it during negotiations.

We consider that it is not clear how the benefits would outweigh the costs of requiring service providers to provide information in cases where there are already mechanisms available to prospective users to obtain such information. We therefore ask the AER to reconsider the need for this information to be included under the Guidelines.

Relevance to scheme distribution pipelines

We note that in its issues paper the AER sought feedback on how useful planned pipeline capacity expansions and extensions information will be to users and any additional information users may need to assist them in negotiating contracts for pipeline services using the incremental capacity. Charges for scheme distribution pipeline services are set by the AER and the cost of extensions and expansions would generally be subject to approval by the AER as part of the access arrangement process. The relevance of this information to users of scheme distribution pipelines is therefore likely to be very limited. Further we note that some scheme distribution pipelines are obliged under RINs to provide audited information on capital expenditure projects. Therefore, we consider that information for planned pipeline capacity expansions and extensions for scheme distribution pipelines is not required and ask the AER to exclude the obligation for scheme distribution pipelines.

We consider that the rule 103(2)(iii)(C) requirement for the Guidelines to specify the requirements for publishing the cost of any extension to, or expansion of the capacity of, pipelines is more relevant to large distribution pipelines and transmission pipelines. Requiring scheme distribution pipelines to publish such information for all their assets will result in excessive information and information which is unlikely to result in achieving the AER's stated objectives.

Section 2.7 Basis of preparation (**BoP**)

From our initial review, we consider that the AER's prescribed BoP template will likely result in a longer document which may be less accessible than Jemena's current BoP documents. For example, we note that fields of the template which are relevant only to instances where estimated information is reported will be shown for each table (or item) even where those sections of the template are left blank due to them being not applicable due to actual (rather than estimated) information being reported. In contrast, Jemena's current basis of preparation document format uses separate table structures for actual information and estimated information.

We note that a standardised template may not always result an optimal outcome, and request that the Guidelines provide have flexibility in amending the template where appropriate (for example, adding fields where it makes sense to do so and deleting non-relevant cells).

Section 4 Actual prices payable

Standard template

In its public forum on 15 August 2023, the AER mentioned that it sought comments on use of a standard template for actual prices payable under Part 10. We consider that the flexibility proposed in the draft Guidelines for each pipeline service provider to develop the form of the template within a clearly labelled document, in Excel or similar machine-readable format (or as agreed with the AER) is the best approach. This approach will enable each service provider to develop a template that meets the specific NGR rule 101E requirements in the most efficient way by the required reporting date of 22 December 2023, providing a relatively short implementation period from the time the AER intends to release its final Guidelines by 31 October 2023. Given the amount of information required to be reported, Jemena intends to automate the population of its templates and therefore requires sufficient certainty over the required form of this reporting and sufficient time to implement the IT system changes to report this information. We therefore encourage the AER to continue to engage with service providers on this issue to ensure they are in a position to provide compliant information by the reporting date.

Publication of non-price terms (rule 101E(1)(h))

We note that rule 101E(1)(h) specifies that a service provider must publish for each pipeline service that a user has procured under an access contract:

> *whether the pipeline service is provided on the same or substantially the same non-price terms as those set out in the standing terms published for the pipeline under rule 101C(1)(a); and*

We consider that this is intended to provide for a yes/no response. For an existing pipeline, the most material contract terms which are likely to influence the price of a pipeline service are the amount of the service (e.g. capacity) sought and the term (length of contract) over which the service is sought. We note that rule 101E already specifies that these (and a number of other) contract terms must be reported alongside each actual price payable. In a typical commercial negotiation for a pipeline service of a given type/priority (e.g. firm haulage), matters such as capacity, length of contract, receipt and delivery points (also to be published under rule 101E) and price would typically be agreed between the parties first on an in-principle basis. Once settled, other non-price terms of the gas transportation agreement (**GTA**) may be negotiated if desired by the access seeker based on their specific requirements, for example termination rights, liability and insurance arrangements, credit support and payment terms.

The draft Guidelines say:

> *If a pipeline service procured under an access contract is provided on non-price terms that are not the same or substantially the same as the standing terms, the service provider must specify those non-price terms.*

Given the large number of bespoke GTAs that we (and other service providers) have for our pipeline services, we are concerned that this requirement will result in a significant administrative burden on us. We currently have over 250 contractual documents (noting that in some instances we may have to refer to historical amendments), with our GTAs generally being 80-90 pages in length and containing many non-price terms. We often spend many months negotiating bespoke GTAs with prospective users to meet their specific needs. To specify all the non-standard non-price terms for each GTA will take considerable effort and it is not clear to us what the market benefit will be, particularly when these terms are for the purposes of meeting customers' bespoke service needs.

We are also concerned that disclosure of detail within non-standard non-price terms may result in publishing commercially sensitive information, including potentially revealing sensitive information about pipeline users' gas supply arrangements, which could damage their competitive position in wholesale gas markets.

It is also not clear whether service providers would be adequately protected against the risk arising from disclosure of customers' confidential information. Whilst rule 100B(2) provides service providers no liability for breach of contract, breach of confidence, or any other civil wrong by complying with Part 10, we are concerned by the proposal that the Guidelines go further than the requirement of Part 10 (specifically rule 101E(1)(h)) by requiring service providers to stipulate the specifics of the non-standard terms rather than simply whether standard terms apply. For example, where a service provider takes a conservative (broader) interpretation of the Guidelines' reporting requirement, customers may dispute whether this is necessary to comply with Part 10.

Lastly, we note that reference is made in section 4 of the Guidelines to rule 105E rather than <u>101E</u>.

Section 5 How and where to publish information

In relation to the first principle set out in section 5.1.1, we agree that businesses such as Jemena—which owns and operates a range of gas and electricity infrastructure—should be able to provide all Part 10 information for each pipeline on the homepage of each pipeline, rather than on the corporate homepage of the business. We also suggest removing the word 'direct' from this principle, as in the case of larger corporate groups which have multiple pipelines alongside other energy infrastructure assets, it may be more accessible for users to navigate to the Part 10 information for each pipeline via a 'pipelines' landing page or similar.

We also suggest for clarity that the second principle be amended as follows:

- ensure that all information <u>for each pipeline</u> is readily accessible from a single webpage.

This amendment will avoid requiring large amounts of Part 10 information for multiple pipelines being published on a single webpage, which is likely to reduce accessibility for users who will most likely only be seeking information about a single pipeline.

Section 6 Certification

We note that the way the draft Guidelines specify the assurance requirements for information is at a level which is open to interpretation. For example, section 6.2.1 of the Guidelines state that reasonable assurance is required for the 'statement of revenues and expenses', but there is no clearly-labelled statement of revenues and expenses in the financial templates. Rather, worksheet 2 is labelled 'revenue and expenses', table 2.1 within that worksheet sets out the 'statement of pipeline revenue and expenses by service' and table 2.1.1 in worksheet 2.1 sets out a 'statement of pipeline revenue and expenses by component'. To avoid confusion, we recommend that the AER more clearly specify the alignment of the assurance requirements to the worksheets and/or tables in the financial templates.

As we noted in our submission to the AER's issues paper, whilst rule 103(2)(f) specifies that the Guidelines must 'provide for the manner in which the financial information, historical demand information and cost allocation methodology is to be certified as being true and fair', the sign off by an assurance practitioner will be limited to what is allowed under the relevant assurance standards proposed to be prescribed by the Guidelines—in this case, Auditing Standards (ASA 800 and ASA 805), Standard on Review Engagements (ARE 2045) and Standard on Assurance Engagements (ASAE 3000).

With regards to the AER's proposed level of assurance, we understand that assurance practitioners will be able to provide a sign off sought by the AER in the case of the **limited assurance** required for service providers' RCM, historical demand and cost allocation method information.

However, in providing a **reasonable assurance** for the specified financial information, we understand that assurance practitioners will likely not be able to provide an opinion as to whether the financial information provided is 'a true and fair representation of the service provider's financial position'. Rather, per ASA 805 an assurance practitioner will likely be able to provide an opinion as to whether 'the financial report is prepared, in all material respects in accordance with the relevant presentation standards'. This is consistent with the approach taken by our assurance practitioners in relation to financial information required for non-scheme pipelines under the AER's Financial Reporting Guideline for Non-Scheme Pipelines.

We are happy to arrange a meeting with the AER and our assurance practitioners to discuss the above matter further.