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Jo Gall
General Manager, Compliance and Enforcement
Australian Energy Regulator
GPO Box 3131
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Dear Jo

Annual Compliance Order – Consultation paper

Jemena welcomes the opportunity to make this submission in response to the Australian Energy Regulator's (**AER**) consultation paper on the new Annual Compliance Order (**ACO**) for gas pipeline service providers. Jemena owns and operates a scheme distribution pipeline (the Jemena Gas Network in NSW) which was previously subject to the old ACO, as well as a number of non-scheme transmission pipelines throughout eastern and northern Australia which would be subject to the proposed new ACO.

We appreciate the opportunity to engage constructively with the AER's team in relation to this consultation to date. At **Attachment A** to this letter we have provided a table setting out feedback on specific aspects of the proposed ACO, and we look forward to further engagement with the AER on these and other matters.

Should you have any questions regarding this submission, please contact James Harding, Gas Transmission & Processing Regulation Manager, at [REDACTED], or Ju-Ai Ng, Senior Regulatory & Compliance Analyst, at [REDACTED].

Yours sincerely

A black rectangular box redacting the signature of Ana Dijanosic.

Ana Dijanosic
General Manager Regulation

Attachment A – Feedback on proposed ACO

ACO template reference	Matter	Jemena feedback
n/a	External assurance requirements	<p>We note from discussion with the AER that external assurance requirements applicable to the ACO process will be subject to further consultation during the development of the AER’s Compliance Procedure Guideline later this year, and we look forward to this consultation.</p> <p>As a general comment, we note that the proposed ACO requires a company officer of the service provider to attest to the completeness and quality of the information provided in response to the ACO by way of a statutory declaration in a form set out in the ACO. This declaration includes a statement confirming that the service provider’s response is in accordance with the requirements of the ACO, and true and accurate. In making a statutory declaration of this form, the company officer is taking on significant personal liability in relation to their declaration, and consequently, the compliance, trueness and accuracy of the service provider’s response to the ACO. Within our organisation, an officer making such a statutory declaration would seek to rely on a comprehensive internal quality assurance, review and sign-off process covering all staff members (and their General Managers and Executive General Managers) involved in the preparation of the service provider’s response.</p> <p>The AER should derive significant comfort over a service provider’s response by virtue of this statutory declaration process, and to this end, we consider that it is important that the AER clearly identify why external assurance would be required in addition to the statutory declaration requirements. In the absence of a clear gap or failing within the proposed statutory declaration requirement, obtaining external assurance is likely to represent an additional administrative and cost burden on service providers (the cost of which is ultimately borne by gas consumers) which may not exceed any incremental benefit. We look forward to further discussion on this matter later this year.</p>
n/a	Form of the statutory declaration	<p>Paragraph 5.6.2 of the proposed ACO sets out that the officer must make a declaration in the specified terms, which include that ‘the actual information (as defined in the Order) provided in [the Service Provider]’s response to the Order is, to the best of my information, knowledge, and belief: ... true and accurate.’</p> <p>Notwithstanding our above comments in relation to whether requiring both a statutory declaration and external assurance would represent a net benefit for gas consumers, we note that the phrase ‘true and accurate’ in the prescribed declaration differs from the phrase ‘true and fair’ which would be used by external assurance practitioners when providing an audit or review report. We therefore</p>

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		suggest that the statutory declaration wording be amended to refer to 'true and fair' to align with the test an external assurance practitioner would apply in an external assurance process.
3.1	Queuing requirements	We note that the NGR does not specify any queuing requirements for non-scheme pipelines, and suggest that the wording of item 3.1 be clarified to allow for a response by such service providers which states that this is not applicable.
4.1 & 4.2	Compliance with pipeline interconnection principles	<p>Items 4.1 and 4.2 as proposed appear to relate to an individual instance of an interconnection request, and also may only be relevant to the AER's assessment of compliance in circumstances where a service provider has refused an interconnection on the grounds that the criteria set out in NGR r 37 were not satisfied.</p> <p>To provide the AER with information which is more targeted at the substance of the obligations under NGL s 136 and NGR Part 6, we suggest that the following be adopted in place of items 4.1 and 4.2 as currently drafted:</p> <p>4.1 Has the Service Provider received an interconnection request during the period?</p> <p>4.2 If yes to 4.1, has the Service Provider refused an interconnection request during the period?</p> <p>4.2A If yes to 4.2, was the request refused on the grounds that:</p> <ul style="list-style-type: none"> (i) the Service Provider considered the interconnection was not technically feasible and consistent with the safe and reliable operation of the pipeline? (ii) the person seeking to establish the interconnection did not agree to fund the costs associated with making the interconnection?
5.1	Increases to service charges to subsidise development	There are a wide range of factors unrelated to the development of a capacity expansion which may cause prices for a pipeline service to increase or decrease over time. As currently drafted, item 5.1 is unlikely to provide the AER with information that is relevant to assessing a service provider's compliance with NGL s 136A. In particular, it is common for gas transportation agreements on both scheme and non-scheme transmission pipelines to include mechanisms for annual price escalation, however the requirement as drafted would capture these and other price changes that are unrelated to the funding of a capacity expansion.

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		<p>Notably, NGL s 136A does not prevent a pipeline service provider from increasing charges—only from increasing a charge for a pipeline service payable by an existing user to subsidise the development of an extension, or expansion of the capacity, of the pipeline.</p> <p>We therefore suggest it would be of greater relevance for 5.1 to instead require the service provider to state whether it has increased a charge for a pipeline service payable by an existing user to the service provider in order to subsidise the development of an extension, or expansion of the capacity, of the pipeline, and if so, whether the service provider was exempted under the NGR from complying with NGL s 136A(2).</p>
6.1	Bundling of services	<p>Similarly to item 5.1, we consider that item 6.1 should be more closely targeted at the specific conduct which is the subject of the obligation, to reduce the likelihood of the AER collecting unnecessary information (with the cost of collecting and providing this information ultimately borne by consumers of gas services) which does not necessarily allow it to assess compliance. In particular, NGL s 136B does not impose a blanket prohibition on the bundling of services—rather, it prohibits a service provider from making it a condition of the provision of a particular pipeline service to a prospective user that the prospective user accept another service from the service provider unless the bundling of the services is reasonably necessary.</p> <p>As currently drafted, the requirement to identify whether the service provider has ‘bundled services’ does not provide any indication as to whether the service provider <u>made it a condition</u> of the provision of a particular service that the prospective user accept another service from the service provider—noting that in some cases, a prospective user may desire and request a bundled service, and the service provider may not make bundling a condition of the provision of a service.</p> <p>Similarly, the requirement as drafted does not explicitly address the question of whether any bundling which was made a condition of the provision of a particular service was <u>reasonably necessary</u>. We note that there are a range of commercial, technical and other reasons which may make service bundling reasonably necessary—such as the need for a prospective user of a compression service procure a pipeline service to deliver gas onto that pipeline.</p> <p>We therefore suggest that the drafting of item 6.1 be clarified to address these two aspects of NGL s 136B.</p>
7.1	Publishing of prescribed transparency information	<p>To reduce the administrative burden of this requirement, the current drafting of item 7.1 for the service provider to ‘provide’ information published pursuant to Part 10 of the NGR should be</p>

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		<p>clarified to allow for service providers to respond by providing a link to the web page where it has published this information during the reporting period. We note that some of the information required by NGR Part 10 is not static and is required by r 101A(2) to be updated periodically throughout the year, and therefore may only be current at a point in time.</p> <p>We also note that r 101A(4) and the Pipeline Information Disclosure Guideline already require service providers to give the AER a copy of financial information, historical demand information and actual prices payable information when this information is published.</p> <p>Finally, we note that some obligations for service providers under Part 10 may change in the near future as a result of the reform package provided for by the <i>Statutes Amendment (National Energy Laws) (Other Gases) Bill (SA)</i>.</p>
9.1	Marketing staff and the taking part in related businesses	We note that this item is already covered by item 8.2.
10.2 & 10.4	Separate accounts must be prepared, maintained and kept	Given the inclusion of items 10.1 and 10.3, the purpose of items 10.2 and 10.4 is not clear, noting that NGL s 141 imposes the obligation on the service provider itself to perform the duties referred to in each of items 10.2 and 10.4.
10.5	Separate accounts must be prepared, maintained and kept	<p>Pursuant to ASIC Corporations (Wholly owned Companies) Instrument 2016/785, all Jemena service providers are relieved from the Corporations Act 2001 requirements for the preparation, audit and lodgement of financial reports and Directors' reports with ASIC. These service providers are also not required to lodge audited financial reports with a state or territory department, agency or body under relevant state or territory legislation. These service providers would therefore be unable to respond to this item.</p> <p>We also note that the Jemena Gas Networks (NSW) Ltd (which is a scheme pipeline service provider) already submits base accounts to the AER in response to an existing annual Regulatory Information Notice, and that unless they are subject to an exemption, service providers are already required to publish various financial reporting templates (and give a copy of this information to the AER) each year under Part 10 of the NGR.</p>

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11.1	Additional ring fencing requirements	For clarity, we suggest the drafting of this item be amended to ‘Is the Service Provider the subject of a determination which imposes additional ring fencing requirements?’
12	Associate contracts	We note that it may be necessary to reassess the relevance of items under this section after the implementation of the reform package provided for by the <i>Statutes Amendment (National Energy Laws) (Other Gases) Bill (SA)</i> , as the Australian Energy Market Commission had previously recommended changes to the associate contract monitoring and notification requirements under NGR Part 12 which may supplant some of these items.
14	Making access arrangement available	As Part 8 of the NGR is only applicable to scheme pipelines, the template should allow for responses that these items are not applicable.
16.2	User access guide	To reduce the administrative burden of this requirement, the current drafting of 16.2 for the service provider to provide a copy of its user access guide for each of its pipelines pursuant to r 105C of the NGL should be clarified to allow service providers to respond by providing a link to the web page where this information has been published.
16.3	Access negotiations	<p>We would appreciate it if the AER could clarify whether the intention of this requirement is for the service provider to produce all access contracts entered into (or varied) during the reporting period, and if so, how it intends to use this information in order to assess the service provider’s compliance with the access negotiation obligations under NGL Chapter 4, Part 3 and NGR Part 11—which relate to conduct during the access request/access offer process. It is not immediately apparent how directly relevant the provision of access contracts would be to the AER’s assessment of compliance with the access negotiation obligations, and we note that such contracts are generally required to be kept confidential unless the service provider is compelled at law to produce them.</p> <p>Furthermore, in relation to scheme pipelines, we note that the terms and conditions of access to our reference service can be found in the Reference Service Agreement (as approved by the AER) as part of the Access Arrangement and this information has been published. We also note that the AER has not specified if the access requests and offer requirements refer to reference or non-reference service. Accordingly, we suggest that the requirement to provide these terms and conditions governing the provision of access would be more applicable to a non-reference service.</p>