



FINAL DECISION
Jemena Gas Networks (NSW)
Ltd
Access Arrangement 2015-20

Attachment 12 – Non-tariff
components

June 2015

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Note

This attachment forms part of the AER's final decision on Jemena Gas Networks' 2015–20 access arrangement. It should be read with other parts of the final decision.

The final decision includes the following documents:

Overview

Attachment 1 – services covered by the access arrangement

Attachment 2 – capital base

Attachment 3 – rate of return

Attachment 4 – value of imputation credits

Attachment 5 – regulatory depreciation

Attachment 6 – capital expenditure

Attachment 7 – operating expenditure

Attachment 8 – corporate income tax

Attachment 9 – efficiency carryover mechanism

Attachment 10 – reference tariff setting

Attachment 11 – reference tariff variation mechanism

Attachment 12 – non-tariff components

Attachment 13 – demand

Contents

Note	12-2
Contents	12-3
Shortened forms	12-5
12 Non-tariff components	12-6
12.1 Terms and Conditions	12-6
12.1.1 Final decision	12-6
12.1.2 JGN's revised proposal	12-7
12.1.3 AER's assessment approach	12-7
12.1.4 Reasons for final decision	12-7
12.2 Queuing requirements	12-13
12.2.1 Final decision	12-14
12.2.2 JGN's revised proposal	12-14
12.2.3 AER's assessment approach	12-14
12.2.4 Reasons for our final decision	12-14
12.3 Extension and expansion requirements	12-14
12.3.1 Final decision	12-15
12.3.2 JGN's revised proposal	12-15
12.3.3 AER's assessment approach	12-15
12.3.4 Reasons for our final decision	12-15
12.4 Capacity trading requirements	12-16
12.4.1 Final decision	12-16
12.4.2 JGN's revised proposal	12-16
12.4.3 AER's assessment approach	12-16
12.4.4 Reasons for our final decision	12-16

12.5	Changing receipt or delivery points	12-17
12.5.1	Final decision	12-17
12.5.2	JGN's revised proposal	12-17
12.5.3	AER's assessment approach	12-17
12.5.4	Reasons for our final decision	12-17
12.6	Review submission date and revision commencement date	12-19
12.6.1	Final decision	12-19
12.6.2	JGN's revised proposal	12-19
12.6.3	AER's assessment approach	12-20
12.6.4	Reasons for our final decision	12-20

Shortened forms

Shortened form	Extended form
AER	Australian Energy Regulator
capex	capital expenditure
CAPM	capital asset pricing model
CCP	Consumer Challenge Panel
Code	National Third Party Access Code for Natural Gas Pipeline Systems
CPI	consumer price index
DRP	debt risk premium
ERP	equity risk premium
JGN	Jemena Gas Networks (NSW) Ltd (ACN 003 004 322)
MRP	market risk premium
NGL	national gas law
NGO	national gas objective
NGR	national gas rules
opex	operating expenditure
PTRM	post-tax revenue model
RAB	regulatory asset base
RBA	Reserve Bank of Australia
RFM	roll forward model
RIN	regulatory information notice
RPP	revenue and pricing principles
SLCAPM	Sharpe-Lintner capital asset pricing model
WACC	weighted average cost of capital

12 Non-tariff components

JGN's Reference Service Agreement (RSA) forms part of its 2015–20 access arrangement proposal. The RSA sets out terms and conditions upon which JGN offers to supply the Haulage Reference Service. These are not directly related to the nature or level of tariffs that users pay. JGN's access arrangement also contains additional terms and conditions governing the relationship between JGN and users. These are:

- queuing requirements – a process or mechanism for establishing an order of priority between prospective users of spare and/or developable capacity
- extension and expansion requirements – the method for determining whether an extension to or expansion of a pipeline is a part of the covered pipeline and the effect this will have on tariffs. These requirements are relevant when identifying the covered pipeline and pipeline services which will be regulated through the access arrangement
- capacity trading requirement – how users may assign contracted capacity and change delivery and receipt points
- changing receipt and delivery points – the process or mechanism for changing a user's receipt or delivery point

Together we refer to these as the non-tariff components of the access arrangement. Our assessment of each non-tariff component is set out below.

12.1 Terms and Conditions

Rule 48(1)(d)(ii) of the NGR requires an access arrangement to specify the terms and conditions on which each reference service will be provided.

The terms and conditions specified in an access arrangement do not exhaustively set out the contractual arrangements between a service provider and a user for access to a pipeline service. Many aspects of these contractual arrangements are negotiated commercially between the parties. The NGL permits both the service provider and the user to negotiate and enter into an agreement on terms and conditions that differ to those specified in the applicable access arrangement.

12.1.1 Final decision

We do not approve JGN's Proposed RSA. We have made all revisions necessary to give effect to this final decision to JGN's revised proposed access arrangement in the *Reference Service Agreement - JGN's NSW gas distribution networks, 1 July 2015 - 30 June 2020* (June 2015) released with this final decision.¹ We consider that this is a

¹ NGR, r. 64(1) & (4).

preferable alternative that complies with the applicable requirements, and is consistent with the applicable criteria, in the NGL and NGR.²

12.1.2 JGN's revised proposal

The RSA that JGN included as part of its revised proposal (Proposed RSA) accepted some of our amendments made in the draft decision, rejected others, and made a number of further amendments. The amendments to the terms and conditions fall into the following categories:

- changes to indemnities and liabilities
- changes regarding JGN's discretion
- changes to accommodate the introduction of the National Energy Customer Framework (NECF) in NSW
- miscellaneous changes to clarify the RSA.

12.1.3 AER's assessment approach

The NGR require us to assess the terms and conditions in the Proposed RSA for consistency with the NGL and the relevant procedures in force.³ The NGL states that the objective of the NGL is to promote efficient investment in and efficient operation and use of natural gas pipeline services for the long term interest of consumers. The relevant procedures include the Retail Market Procedures applicable in New South Wales.⁴

This is an area in which we have full discretion. This means that we are able to withhold our approval of any aspect of the Proposed RSA if, in our opinion, a preferable alternative exists that complies with the requirements of the NGL and is consistent with the applicable criteria.⁵

Attachment 12 of our draft decision set out our approach to assessment of JGN's proposed RSA.⁶ We have used the same approach in this final decision.

12.1.4 Reasons for final decision

This section discusses the reasons for our final decisions. It addresses each of the areas identified above that we focus on. It also explains how we have taken into account JGN's explanation of its Proposed RSA and stakeholders' submissions.⁷

² NER, r. 40(3).

³ NGR, r. 100.

⁴ AEMO, Retail Market Procedures (NSW and ACT), version 13, 1 July 2014.

⁵ NGR, r. 40(3).

⁶ AER, *Draft Decision, Jemena Gas Networks (NSW) Ltd, Access Arrangement 2015–20, Attachment 12 – Non-tariff components*, November 2014, section 12.1.3, p. 12-8.

Indemnities and liabilities

In our draft decision we raised concerns regarding the drafting of certain indemnity and liability provisions and proposed revisions to address these.⁸ JGN accepted our amendment to clause 26.1(e). However, while it agreed with the intent in changes in clauses 9.4(b) and 10.1(d), it proposed alternative drafting.⁹ JGN's changes to clause 9.4(b) addressed our comments in the draft decision, so we accept these amendments.

Clause 10.1(d) deals with liability for out of specification gas. Our amendment to the clause specified that a user was only responsible for out of specification gas that the user was responsible for causing to enter the network. JGN has made amendments to this clause and added clauses 10.1(e)–(g). It argued that these amendments are required because, due to the functioning of the short term trading market, JGN does not have visibility of which user caused what gas to enter the network. JGN's amendments include a method of apportioning responsibility for out of specification gas between users at the affected receipt point.¹⁰ Origin Energy raised concerns with how these changes apportion responsibility.¹¹ We acknowledge Origin Energy's concerns that JGN's apportionment method may result in a user, who did not cause out of specification gas to be put in the network, to be held partially responsible for that gas. However, given that there is no method available for JGN to accurately determine responsibility, we consider that JGN's proposed clauses 10.1(d)–(g) are an appropriate and balanced method for apportioning responsibility for out of specification gas given JGN's difficulties in identifying the specific user responsible for the gas. Therefore we accept JGN's amendments.

In our draft decision, we also raised concerns with how JGN's RSA dealt with consequential damage. We concluded that users should not be liable for consequential damage.¹²

JGN disagreed that consequential damage is not appropriate and made amendments to the definition of "Consequential Damage" in the Proposed RSA and clauses 26.4(a),

⁷ AGL, *Re: Jemena Gas Networks gas access arrangement 2015–20: AER draft decision and revised regulatory proposal*, 27 March 2015; Origin Energy, *Response to the AER's Draft Decision and JGN's Revised Proposal for the 2015–20 Regulatory Control Period*, 27 March 2015.

⁸ AER, *Draft Decision, Jemena Gas Networks (NSW) Ltd, Access Arrangement 2015–20, Attachment 12 – Non-tariff components*, November 2014, section 12.1.4, p. 12-18 to 12-19.

⁹ Jemena Gas Networks, *Access Arrangement 2015–20, Response to the AER's draft decision & revised proposal, Appendix 1.5 - Response to the draft decision on JGN's revised RSA*, February 2015, pp. 7-16.

¹⁰ Jemena Gas Networks, *Access Arrangement 2015–20, Response to the AER's draft decision & revised proposal, Appendix 1.5 - Response to the draft decision on JGN's revised RSA*, February 2015, pp. 8-16.

¹¹ Origin Energy, *Response to the AER's Draft Decision and JGN's Revised Proposal for the 2015–20 Regulatory Control Period*, 27 March 2015, p. 15.

¹² AER, *Draft Decision, Jemena Gas Networks (NSW) Ltd, Access Arrangement 2015–20, Attachment 12 – Non-tariff components*, November 2014, section 12.1.4, p. 12-16 to 12-18.

26.4(b) and 26.5.¹³ JGN argued that it potentially faces substantial financial risk due to loss of revenue and service interruption costs from the consequences of out of specification gas, or gas that is not within the required pressure range, being delivered to its network on behalf a user.¹⁴

In our draft decision, we considered that JGN was in a similar position to Envestra in South Australia and similarly consequential damage was not appropriate.¹⁵ JGN argued that it is in a substantially different position to Envestra.¹⁶ JGN also argued that limiting users' liability to direct damage, in these circumstances, does not place enough liability risk on them because out of specification gas will likely only cause consequential damage. Therefore, JGN argued that the RSA must contain provisions subjecting users to liability for consequential damage to provide them with appropriate incentives to ensure that the gas they supply is of the correct specification and pressure.¹⁷

JGN further argued that it is not in a position to either ensure that gas is of the correct specification and pressure or to insure against the risk of out of specification gas.¹⁸ We accept JGN's contentions that consequential damage may be appropriate in these particular circumstances. Therefore we accept their amendments to the definition of "consequential damage" and clause 26.4. JGN also amended clause 26.5 to reflect that the only circumstances in which liability for consequential damage arises are when the user is responsible for the delivery of out of specification gas or gas that is not within the correct pressure range.¹⁹

Origin Energy submitted that the changes to the definition of "Consequential Damage" now may include types of damage that would be considered direct damage.²⁰ Given that the definition applies to both JGN and users, we do not believe that this amendment is unreasonable. We require JGN to make small amendments to clause 26.5 to make clear that the user is only liable for consequential damages when those damages are caused by gas that was delivered by or on behalf of that user.

¹³ Jemena Gas Networks, *Access Arrangement 2015–20, Response to the AER's draft decision & revised proposal, Appendix 1.5 - Response to the draft decision on JGN's revised RSA*, February 2015, pp. 3-5, 31-33.

¹⁴ Jemena Gas Networks, *Access Arrangement 2015–20, Response to the AER's draft decision & revised proposal, Appendix 1.5 - Response to the draft decision on JGN's revised RSA*, February 2015, pp. 35-37.

¹⁵ AER, *Draft Decision, Jemena Gas Networks (NSW) Ltd, Access Arrangement 2015-20, Attachment 12 – Non-tariff components*, November 2014, section 12.1.4, p. 12-17 to 12-18.

¹⁶ Jemena Gas Networks, *Access Arrangement 2015–20, Response to the AER's draft decision & revised proposal, Appendix 1.5 - Response to the draft decision on JGN's revised RSA*, February 2015, pp. 35-36.

¹⁷ Jemena Gas Networks, *Access Arrangement 2015–20, Response to the AER's draft decision & revised proposal, Appendix 1.5 - Response to the draft decision on JGN's revised RSA*, February 2015, p. 37.

¹⁸ Jemena Gas Networks, *Access Arrangement 2015–20, Response to the AER's draft decision & revised proposal, Appendix 1.5 - Response to the draft decision on JGN's revised RSA*, February 2015, pp. 38-40.

¹⁹ Jemena Gas Networks, *Access Arrangement 2015–20, Response to the AER's draft decision & revised proposal, Appendix 1.5 - Response to the draft decision on JGN's revised RSA*, February 2015, pp. 32-33.

²⁰ Origin Energy, *Response to the AER's Draft Decision and JGN's Revised Proposal for the 2015–20 Regulatory Control Period*, 27 March 2015, p. 14.

JGN discretion

As we said in our draft decision, the level of discretion that JGN is provided goes to questions of whether particular provisions in the Proposed RSA are clear and certain for both JGN and users. In some cases, it may be appropriate for JGN to have a broad level of discretion or to act unilaterally, while in others this may increase uncertainty for users.

In our draft decision we identified a number of clauses that could be improved by explicitly requiring JGN to act reasonably when exercising its discretion.²¹ JGN accepted most of these amendments except for amendments to clauses 1.3, 14.2(b), 20.7(c), 22.2(a), 23.4(d), 23.4(e) and 25.3.²² We accept JGN's changes to clauses 14.2(b), 20.7(c), 22.2(a), 23.4(d), 23.4(e) and 25.3. We do not accept JGN's change to clause 1.3

Clause 20.7 deals with disputed payments. JGN argued that amending cl. 20.7(c) to allow a user to withhold payment while disputing an amount as long as the user acted reasonably would unfairly burden JGN. It noted that JGN is required to pay interest on any amount it refunds due to a successful dispute. It also noted that allowing users to withhold payments could result in cash flow risks for JGN.²³ We accept that this may be true and therefore accept JGN's amendment to clause 20.7(c).

Clause 22.2 deals with suspension of service by JGN. Our draft decision amended the clause to require JGN to act reasonably in exercising its discretion to suspend services. JGN argued that its discretion was already limited to the situations described in subclauses 22.2(a)(i) to (iii), therefore it proposed removing 'acting reasonably' as well as the reference to JGN's discretion.²⁴ We agree that JGN is appropriately limited by the subclauses and so accept this change.

Clauses 23.4(d) and (e) deal with load shedding. In our draft decision, we amended these clauses to require JGN to act reasonably when exercising its discretion to determine load shedding priority. Origin Energy argued that this amendment would provide retailers with needed clarity about how JGN will conduct load shedding.²⁵ JGN argued that these amendments were not necessary because it is constrained by the

²¹ AER, *Draft Decision, Jemena Gas Networks (NSW) Ltd, Access Arrangement 2015–20, Attachment 12 – Non-tariff components*, November 2014, section 12.1.4, p. 12-21.

²² JGN accepted our changes to the definitions of "Country Distance", "Security" and "Volume" in clause 1.1, 5.2, 9.4(a), 11.3(d), 11.3(i), 11.4(c), 15.9(a), 16.1(c), 23.5(b), and 4(c) and 5(c) of Annexure 3.

²³ Jemena Gas Networks, *Access Arrangement 2015–20, Response to the AER's draft decision & revised proposal, Appendix 1.5 - Response to the draft decision on JGN's revised RSA*, February 2015, pp. 25-27.

²⁴ Jemena Gas Networks, *Access Arrangement 2015–20, Response to the AER's draft decision & revised proposal, Appendix 1.5 - Response to the draft decision on JGN's revised RSA*, February 2015, pp. 27-28.

²⁵ Origin Energy, *Response to the AER's Draft Decision and JGN's Revised Proposal for the 2015–20 Regulatory Control Period*, 27 March 2015, p. 16.

principles set out in the Operational Schedules and it is required to have a reasonable belief that there is a threat to the network before exercising its load shedding rights.²⁶

Clause 23.4(b) states that JGN will determine whether to implement load shedding in accordance with the Operational Schedules in the Access Arrangement. We consider that a requirement to act reasonably is implicit within the load shedding principles and priorities. We believe that the Operational Schedules appropriately limit JGN's discretion regarding load shedding. Therefore we accept JGN's amendments to clauses 23.4(d) and (e).

Clause 25.3 deals with failure to pay for services. In our draft decision we amended this clause to require JGN to act reasonably in exercising its discretion to call on security, terminate the agreement, or cease to provide services after notifying the user of default. JGN argued that this amendment was not reasonable given that to exercise this discretion, JGN must have already established a default. We accept JGN's reasoning and so accept the change to this clause.

Clause 1.3 deals with amendments to the RSA due to change of law. As initially proposed by JGN, this clause allowed JGN make changes to the RSA due to changes of law. The clause required JGN to consult with the user about any changes, but did not require the user's consent for changes. In our draft decision, we amended clause 1.3 to allow either party to initiate negotiations for amendments due to a change of law.²⁷ JGN rejected these amendments in its Proposed RSA. JGN indicated that clause 1.3 was a new clause to the RSA and was inserted to provide JGN with an administrative mechanism to address changes in law. It said that allowing users to initiate changes could lead to multiple inconsistent amendments from different users, for change of law. Because of this uncertainty, JGN preferred to remove the clause entirely and negotiate changes bilaterally, as needed.²⁸

We consider the inclusion of a balanced amended clause, that provides clarity to users, complies with the applicable requirements and criteria and is preferable to the uncertainty of JGN's proposed approach. We therefore maintain our draft decision requiring inclusion of an amended clause 1.3, to allow a clear mechanism for either JGN or the user to initiate negotiations for amendments due to change of law. Consequentially we reject JGN's proposed amendments to clause 25.2(b) and maintain our draft decision for that clause as well.²⁹

²⁶ Jemena Gas Networks, *Access Arrangement 2015–20, Response to the AER's draft decision & revised proposal, Appendix 1.5 - Response to the draft decision on JGN's revised RSA*, February 2015, pp. 28-29.

²⁷ AER, *Draft Decision, Jemena Gas Networks (NSW) Ltd, Access Arrangement 2015–20, Attachment 12 – Non-tariff components*, November 2014, section 12.1.4, p. 12-21.

²⁸ Jemena Gas Networks, *Access Arrangement 2015–20, Response to the AER's draft decision & revised proposal, Appendix 1.5 - Response to the draft decision on JGN's revised RSA*, February 2015, pp. 5-6.

²⁹ JGN's revised proposal amended clause 25.2(b) to remove reference to clause 1.3. Our draft decision amended clause 25.2(b) to include a reference to clause 1.3.

Accommodating the National Energy Customer Framework

The NECF governs the relationship between service providers and users (including retailers) in respect of their shared customers. The requirements of the NECF are spread between the NERL, the NERR and Parts 12A and 21 of the NGR. In addition there are also certain obligations specific to retailers and distributors operating in NSW that apply.³⁰

As we stated in our draft decision, we agree with JGN that the RSA must be consistent with the requirements of the NECF.³¹ In our draft decision, we proposed seven amendments to the RSA to accommodate the NECF.³² JGN accepted our changes to clause 11.4(c), 15.9(a), 20.3(a) and 20.4.

Clause 12 deals with the deletion of delivery points from customer lists. In our draft decision we amended clause 12(a) to remove the specified time period for deletion of the delivery point from the customer list. JGN has inserted wording that specifies the date for removal from the customer list as a date agreed between JGN and the user.³³ We accept the changes to clause 12(a) as they require the agreement of both parties as to when a delivery point is deleted from the customer list.

Clause 20 deals with invoicing and payment for non-retailer users. In our draft decision, we amended the RSA so that clause 20 was consistent with the invoicing and payments regime in the NECF. While recognising that the users subject to clause 20 are not retailers, we considered that consistency across all users was preferable to having different clauses for different types of users.

JGN argued that this is not appropriate given that non-retailers users are not subject to the NECF and JGN's view that non-retailers users may pose a greater financial risk to JGN than retailer users.³⁴ JGN argued that its initial proposal was more appropriate than our draft decision for clause 20. We maintain that there are potential benefits to having consistency across all users. However, we received no submissions on JGN's proposed amendments. Therefore, we accept JGN's amendments to clauses 20.3(a) and 20.6(b).

³⁰ See the National Energy Retail Law (Adoption) Act 2013 (NSW) and the National Energy Retail Law (Adoption) Regulation 2013 (NSW).

³¹ Although rule 100 of the NGR does not expressly require us to ensure that the Proposed RSA is consistent with the NECF, the revenue and pricing principles in the NGL state that a service provider should be provided with a reasonable opportunity to recover at least the efficient costs it incurs in complying with a regulatory obligation or requirement. A regulatory obligation or requirement includes the NERL and the NERR. In our view, given the reference service cannot practically be provided without the non-tariff components of an access arrangement, providing a service provider with a reasonable opportunity to recover at least its efficient costs involves ensuring that the access arrangement is consistent with the requirements of the NECF.

³² We proposed amendments to clauses 11.4(c), 12(a), 15.9(a), 20.1(a)(i), 20.3(a), 20.4 and 20.6(b) of the RSA.

³³ Jemena Gas Networks, *Access Arrangement 2015–20, Response to the AER's draft decision & revised proposal, Appendix 1.5 - Response to the draft decision on JGN's revised RSA*, February 2015, pp. 16-19.

³⁴ Jemena Gas Networks, *Access Arrangement 2015–20, Response to the AER's draft decision & revised proposal, Appendix 1.5 - Response to the draft decision on JGN's revised RSA*, February 2015, pp. 20-24.

Miscellaneous revisions

In our draft decision we made a number of miscellaneous amendments to clarify the Proposed RSA. JGN accepted most of these amendments.³⁵ JGN also accepted in principle our amendment to clause 19.1(d), and made further amendments to that clause.³⁶ These amendments specifically refer to the rule in the NGR which requires a customer to directly pay a service provider. We accept this change.

In our draft decision, we amended the definition of "Agreement" in clause 1.1 to state that "Agreement" included clause 2 of the Access Arrangement which sets out the Services Policy. JGN rejected this amendment arguing that clause 2 deals with matters outside the contracted Reference Service under the RSA.³⁷ Also, it argued that clause 2 deals with both reference and non-reference services. Therefore, JGN argued that clause 2 should not be incorporated into the RSA.

We disagree. We consider that the definition of "Agreement" should include reference to clauses 2.1 (as it applies the reference service), 2.2 and 2.3 of the Access Arrangement. We accept that these clauses may already be included in specific clauses of the RSA as JGN has argued.³⁸ However, we consider that including them in the definition of "Agreement" provides users with clarity. Therefore we require JGN to amend the definition of "Agreement" in clause 1.1.

12.2 Queuing requirements

Queuing is used to determine access to a pipeline that is fully, or close to being fully, utilised. Queuing requirements establish a process or mechanism to determine the priority that a prospective user has, compared to other prospective users, to obtain access to spare or developable capacity on a covered pipeline.³⁹

A distribution pipeline can typically accommodate new users. This is because, unlike transmission pipelines, distribution networks tend not to operate close to full capacity. Also, if use at one point in the network is nearing capacity, the service provider will normally undertake augmentation of the network to meet the needs of prospective users.

³⁵ JGN accepted our amendments to clauses 1.2(d), 3.1, 20.1, 23.3, and 26.2. JGN also amended its address in Annexure 1.

³⁶ Jemena Gas Networks, *Access Arrangement 2015–20, Response to the AER's draft decision & revised proposal, Appendix 1.5 - Response to the draft decision on JGN's revised RSA*, February 2015, p. 20.

³⁷ Jemena Gas Networks, *Access Arrangement 2015–20, Response to the AER's draft decision & revised proposal, Appendix 1.5 - Response to the draft decision on JGN's revised RSA*, February 2015, pp. 2-3.

³⁸ JGN response to AER information request 060, 5 May 2015.

³⁹ NGR, r. 103(3).

12.2.1 Final decision

Our draft decision approved the queuing requirements proposed in clauses 7.1 to 7.6 of JGN's proposed 2015–20 access arrangement, without amendment.⁴⁰ We maintain our draft decision position on JGN's queuing requirements for this final decision.⁴¹

12.2.2 JGN's revised proposal

JGN's revised proposal re-stated (without amendment) its original proposal on queuing requirements for the 2015–20 period.⁴²

12.2.3 AER's assessment approach

Attachment 12 of our draft decision set out our approach to assessment of JGN's proposed queuing requirements.⁴³ We have used the same approach in this final decision.

12.2.4 Reasons for our final decision

We did not receive any submissions from stakeholders on JGN's queuing requirements, nor have submissions raised any issues which impact on our reasoning as set out in the draft decision. As such, our draft decision reasons form part of our final decision to approve the queuing requirements in JGN's revised proposal.⁴⁴

12.3 Extension and expansion requirements

All access arrangements must include requirements relating to extensions of, and expansions to, a pipeline.⁴⁵ An extension relates to extending the pipeline to receive or deliver gas to or from new locations. An expansion relates to augmenting the pipeline's capacity which enhances its capacity to deliver an increased volume of gas to users.⁴⁶

⁴⁰ Jemena Gas Networks, *Access Arrangement, JGN's NSW gas distribution networks, 1 July 2015–30 June 2020*, 30 June 2014, cl. 7.1 to 7.6, pp. 24-26.

⁴¹ Jemena Gas Networks, *Access Arrangement, JGN's NSW gas distribution networks, 1 July 2015–30 June 2020 (incorporating revisions that address matters raised in the AER Draft Decision)*, 27 February 2015, cl. 7.1 to 7.6, pp. 26-28.

⁴² Jemena Gas Networks, *Access Arrangement, JGN's NSW gas distribution networks, 1 July 2015–30 June 2020 (incorporating revisions that address matters raised in the AER Draft Decision)*, 27 February, cl. 7.1 to 7.6, pp. 26-28.

⁴³ AER, *Draft Decision, Jemena Gas Networks (NSW) Ltd, Access Arrangement 2015–20, Attachment 12 – Non-tariff components*, November 2014, section 12.2.3, p. 12-24.

⁴⁴ AER, *Draft Decision, Jemena Gas Networks (NSW) Ltd, Access Arrangement 2015–20, Attachment 12 – Non-tariff components*, November 2014, section 12.2.4, pp. 12-24 to 12-25.

⁴⁵ Rule 48(1)(g) for full access arrangements, r. 45(1)(f) for limited access arrangements for light regulation services, r. 129(1)(f) for international pipelines, and r. 24(2)(c)(v) for CTP access arrangements.

⁴⁶ AER, *Access Arrangement Guideline*, March 2009, p. 47.

12.3.1 Final decision

We approve JGN's proposed extension and expansion requirements for the 2015–20 period, as set out in clauses 8.1(a)-(f) and 8.2(a)-(d) of JGN's revised access arrangement proposal.⁴⁷

12.3.2 JGN's revised proposal

In our draft decision, we required JGN to revise clause 8.2(c) of its proposed extension and expansion requirements as follows:⁴⁸

Revision 12.5: Amend clause 8.2(c) of the access arrangement revision proposal as follows:

Add text to clause 8.2(c) by inserting this sentence after the first sentence:

"The Service Provider will notify the AER of any proposed surcharge to be levied on users of incremental services and designed to recover non-conforming capital expenditure or a specified portion of non-conforming capital expenditure (non-conforming capital expenditure which is recovered by means of a surcharge will not be rolled into the capital base)."

JGN's revised proposal incorporated this amendment to its extension and expansion requirements under its proposed access arrangement, and made no further changes.⁴⁹

12.3.3 AER's assessment approach

Attachment 12 of our draft decision set out our approach to assessment of JGN's proposed extension and expansion requirements.⁵⁰ We have used the same approach in this final decision.

12.3.4 Reasons for our final decision

JGN's revised proposal addressed the concerns raised in our draft decision, and included the revisions set out in that draft decision. We did not receive any submissions from stakeholders on JGN's extension and expansion requirements, nor

⁴⁷ Jemena Gas Networks, *Access Arrangement, JGN's NSW gas distribution networks, 1 July 2015–30 June 2020 (incorporating revisions that address matters raised in the AER Draft Decision)*, 27 February 2015, cl. 8.1 to 8.2, pp. 29-30.

⁴⁸ AER, *Draft Decision, Jemena Gas Networks (NSW) Ltd, Access Arrangement 2015–20, Attachment 12 – Non-tariff components*, November 2014, section 12.3.1, pp. 12-26; section 12.7, pp. 12-34 to 12-35.

⁴⁹ JGN amended cl. 8.2(c) by adding a new cl. 8.2(d). See Jemena Gas Networks, *Access Arrangement, JGN's NSW gas distribution networks, 1 July 2015–30 June 2020 (incorporating revisions that address matters raised in the AER Draft Decision)*, 27 February 2015, cl. 8(d), p. 30.

⁵⁰ AER, *Draft Decision, Jemena Gas Networks (NSW) Ltd, Access Arrangement 2015–20, Attachment 12 – Non-tariff components*, November 2014, section 12.3.3, pp. 12-26 to 12-27.

have submissions raised any issues which impact on our reasoning as set out in the draft decision. As such, our draft decision reasons form part of our final decision to approve the extension and expansion requirements in JGN's revised proposal.⁵¹

12.4 Capacity trading requirements

The capacity trading requirements of an access arrangement allow a user to transfer, by way of a subcontract, all or any of the user's contracted capacity to another user.⁵² In doing so, it may enable a secondary market with more efficient price signals and levels of usage.

12.4.1 Final decision

Our draft decision approved the capacity trading requirements in clauses 9.1 to 9.2 of JGN's proposed 2015–20 access arrangement, without amendment.⁵³ We maintain our draft decision position on JGN's capacity trading requirements for this final decision.⁵⁴

12.4.2 JGN's revised proposal

JGN's revised proposal re-stated (without amendment) its original proposal on capacity trading requirements for the 2015–20 period.⁵⁵

12.4.3 AER's assessment approach

Attachment 12 of our draft decision set out our approach to assessment of JGN's proposed capacity trading requirements.⁵⁶ We have used the same approach in this final decision.

12.4.4 Reasons for our final decision

We did not receive any submissions from stakeholders on JGN's capacity trading requirements, nor have submissions raised any issues which impact on our reasoning

⁵¹ AER, *Draft Decision, Jemena Gas Networks (NSW) Ltd, Access Arrangement 2015–20, Attachment 12 – Non-tariff components*, November 2014, cl. 12.3.4, pp. 12-27 to 12-28.

⁵² NGR, r. 105(2).

⁵³ Jemena Gas Networks, *Access Arrangement, JGN's NSW gas distribution networks, 1 July 2015–30 June 2020*, 30 June 2014, cl. 9.1 to 9.2, p. 29.

⁵⁴ Jemena Gas Networks, *Access Arrangement, JGN's NSW gas distribution networks, 1 July 2015–30 June 2020 (incorporating revisions that address matters raised in the AER Draft Decision)*, 27 February 2015, cl. 9.1 to 9.2, p. 31.

⁵⁵ Jemena Gas Networks, *Access Arrangement, JGN's NSW gas distribution networks, 1 July 2015–30 June 2020 (incorporating revisions that address matters raised in the AER Draft Decision)*, 27 February 2015, cl. 9.1 to 9.2, p. 31.

⁵⁶ AER, *Draft Decision, Jemena Gas Networks (NSW) Ltd, Access Arrangement 2015–20, Attachment 12 – Non-tariff components*, November 2014, section 12.4.3, pp. 12-29 to 12-30.

as set out in the draft decision. As such, our draft decision reasons form part of our final decision to approve the capacity trading requirements in JGN's revised proposal.⁵⁷

12.5 Changing receipt or delivery points

A receipt or delivery point is a point on a pipeline at which a service provider takes delivery of natural gas, or delivers natural gas to a user.⁵⁸ A user may wish to change the point at which they receive or take delivery of natural gas.

12.5.1 Final decision

Our draft decision approved the requirements for changing receipt or delivery points under clauses 10.1 to 10.3 of JGN's proposed 2015–20 access arrangement, without further amendment.⁵⁹ We maintain our draft decision position on those requirements for this final decision.⁶⁰

12.5.2 JGN's revised proposal

JGN's revised proposal re-stated (without amendment) its original proposal on requirements for changing receipt or delivery points for the 2015–20 period.⁶¹

12.5.3 AER's assessment approach

Attachment 12 of our draft decision set out our approach to assessment of JGN's proposed requirements for changing receipt or delivery points.⁶² We have used the same approach in this final decision.

12.5.4 Reasons for our final decision

We received a submission from AGL regarding JGN's proposed requirement for changing receipt points. AGL submitted that clause 13 of the proposed RSA requires JGN's consent to a user's request for a change in receipt points but:

JGN consent should not be based on JGN commercial grounds.

⁵⁷ AER, *Draft Decision, Jemena Gas Networks (NSW) Ltd, Access Arrangement 2015–20, Attachment 12 – Non-tariff components*, November 2014, section 12.4.4, p. 12-30.

⁵⁸ NGR, r. 3.

⁵⁹ Jemena Gas Networks, *Access Arrangement, JGN's NSW gas distribution networks, 1 July 2015–30 June 2020*, 30 June 2014, cl. 10.1 to 10.3, p. 30.

⁶⁰ Jemena Gas Networks, *Access Arrangement, JGN's NSW gas distribution networks, 1 July 2015–30 June 2020 (incorporating revisions that address matters raised in the AER Draft Decision)*, 27 February 2015, cl. 10.1 to 10.3, p. 32.

⁶¹ Jemena Gas Networks, *Access Arrangement, JGN's NSW gas distribution networks, 1 July 2015–30 June 2020 (incorporating revisions that address matters raised in the AER Draft Decision)*, 27 February 2015, cl. 10.1 to 10.3, p. 31.

⁶² AER, *Draft Decision, Jemena Gas Networks (NSW) Ltd, Access Arrangement 2015–20, Attachment 12 – Non-tariff components*, November 2014, section 12.5.3, pp. 12-31.

The receipt point is that point where a User delivers its gas from transmission to distribution. Changes to arrangements within the gas production environment or transmission environment may require a user to change delivery points for reasons beyond its control. As long as gas can be delivered to the network section to meet the users' requirements in aggregation, JGN should not be able to withhold consent.⁶³

We consider that AGL's concern is already addressed by JGN's proposed RSA and access arrangement.

Clause 13(b) of the proposed RSA provides that:

The User may not change a Receipt Point or Delivery Point without the Service Provider's prior written consent, which shall only be withheld on reasonable commercial or technical grounds, and which may be given subject to reasonable commercial and technical conditions. An example of a reasonable ground for withholding consent is where the Service Provider would not receive at least the same amount of revenue relative to the amount it would have received before the change.⁶⁴

Clause 10.3 of the proposed access arrangement provides that:

The Service Provider must not withhold its consent under clause 10.1 or clause 10.2, as relevant, unless it has reasonable grounds, based on technical or commercial considerations, for doing so.⁶⁵

With these provisions, we consider that users such as AGL are reasonably protected from the risk of arbitrary decisions by JGN to withhold consent to change a delivery point.

Further, in the event of a dispute between users and JGN if JGN withholds its consent, users have recourse to the RSA's dispute resolution procedures.⁶⁶

Therefore, we have not been persuaded to depart from our draft decision on JGN's requirement for changing receipt points.

We did not receive any other submissions from stakeholders on JGN's requirements for changing receipt or delivery points, nor have submissions raised any issues which impact on our reasoning as set out in the draft decision. As such, our draft decision

⁶³ AGL, *Re: Jemena Gas Networks gas access arrangement 2015–20: AER draft decision and revised regulatory proposal*, 27 March 2015, p. 5.

⁶⁴ Jemena Gas Networks, *Reference Service Agreement, JGN response to AER draft decision, JGN's NSW gas distribution networks, 1 July 2015 - 30 June 2020*, 27 February 2015, cl. 13(b), p. 43.

⁶⁵ Jemena Gas Networks, *Access Arrangement, JGN's NSW gas distribution networks, 1 July 2015–30 June 2020 (incorporating revisions that address matters raised in the AER Draft Decision)*, 27 February 2015, cl. 10.3, p. 32.

⁶⁶ Jemena Gas Networks, *Reference Service Agreement, JGN response to AER draft decision, JGN's NSW gas distribution networks, 1 July 2015 - 30 June 2020*, 27 February 2015, cl. 30, pp. 86-88.

reasons form part of our final decision to approve these requirements in JGN's revised proposal.⁶⁷

12.6 Review submission date and revision commencement date

Rule 49(1) of the NGR requires that a full access arrangement that is not voluntary must contain a review submission date and a revision commencement date and must not contain an expiry date.

Rule 50(1) of the NGR provides that, as a general rule:

- a review submission date will fall 4 years after the access arrangement took effect or the last revision commencement date; and
- a revision commencement date will fall 5 years after the access arrangement took effect or the last revision commencement date.⁶⁸

12.6.1 Final decision

We approve JGN's proposed review submission date and revision commencement date for the 2015–20 period, as stated in clauses 1.3 and 1.4 of JGN's access arrangement revised proposal.

The review submission date is 30 June 2019.⁶⁹

The revision commencement date is 1 July 2020.⁷⁰

12.6.2 JGN's revised proposal

Our draft decision accepted JGN's original proposal on its review commencement date.

However, our draft decision required JGN to revise clause 1.3 of its proposed 2015-20 access arrangement as follows:

Revision 12.6: Amend clause 1.3 of the access arrangement revision proposal as follows:

Delete this part of the clause:

⁶⁷ AER, *Draft Decision, Jemena Gas Networks (NSW) Ltd, Access Arrangement 2015–20, Attachment 12 – Non-tariff components*, November 2014, section 12.5.4, p. 12-32.

⁶⁸ NGR, r. 50(1).

⁶⁹ Jemena Gas Networks, *Access Arrangement, JGN's NSW gas distribution networks, 1 July 2015–30 June 2020 (incorporating revisions that address matters raised in the AER Draft Decision)*, 27 February 2015, cl. 1.3, p. 2.

⁷⁰ Jemena Gas Networks, *Access Arrangement, JGN's NSW gas distribution networks, 1 July 2015–30 June 2020 (incorporating revisions that address matters raised in the AER Draft Decision)*, 27 February 2015, cl. 1.4, p. 2.

"or such later date as provided for by the AER pursuant to the National Gas Rules"

so that the final clause will read:

1.3 The review submission date is 30 June 2019.

JGN's revised proposal accepted our draft decision on the review submission date and made the required change to its proposed access arrangement.⁷¹

12.6.3 AER's assessment approach

Attachment 12 of our draft decision set out our approach to assessment of JGN's proposed review submission date and revision commencement date.⁷² We have used the same approach in this final decision.

12.6.4 Reasons for our final decision

JGN's revised proposal addressed the concerns raised in our draft decision, and included the revisions set out in that draft decision. We did not receive any submissions from stakeholders on JGN's proposed review submission date or review commencement date, nor have submissions raised any issues which impact on our reasoning as set out in the draft decision. As such, our draft decision reasons form part of our final decision to approve the review submission date and revision commencement date in JGN's revised proposal.⁷³

⁷¹ Jemena Gas Networks, *Access Arrangement, JGN's NSW gas distribution networks, 1 July 2015–30 June 2020 (incorporating revisions that address matters raised in the AER Draft Decision)*, 27 February 2015, cl. 1.3, p. 2.

⁷² AER, *Draft Decision, Jemena Gas Networks (NSW) Ltd, Access Arrangement 2015–20, Attachment 12 – Non-tariff components*, November 2014, section 12.6.3, p. 12-33.

⁷³ AER, *Draft Decision, Jemena Gas Networks (NSW) Ltd, Access Arrangement 2015–20, Attachment 12 – Non-tariff components*, November 2014, section 12.6.4, p. 12-34.