

Explanation of the liability and indemnity provisions in proposed RSA

Appendix 14.01

**Access Arrangement Information for the 2016-21
ACT, Queanbeyan and Palerang Access
Arrangement**

Submission to the Australian Energy Regulator

In support of the limitation of liability and indemnity provisions in ActewAGL Distribution’s proposed RSA, ActewAGL Distribution adopts the positions set out by Jemena Gas Networks (JGN) in the table commencing on page 28 of Appendix 1.2 to its 2015-20 Access Arrangement Information dated 30 June 2014. This table sets out JGN’s explanation of the indemnities and liabilities provisions in its proposed reference service agreement (RSA). This table is reproduced below, with additional comments by ActewAGL Distribution in italics and square brackets as to the applicability of the table with respect to ActewAGL Distribution's proposed RSA.

| No | Clause | Subject Matter | User's ability to manage the risk | Corresponding User indemnity given in favour of JGN? |
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| 1. | Clause 5.6(c) | Risks arising from JGN’s revocation of approval for an Authorised Overrun | <p>Overruns occur where the quantity of gas withdrawn by the User’s Customer exceeds the capacity entitlement requested by the User under the AA and RSA for that Delivery Point. Users are able to manage the quantities withdrawn at a Delivery Point through their gas supply contracts with the Customer.</p> <p>Where a Customer and User know in advance that they are going to overrun, they may request an overrun to be authorised as an alternative to permanently increasing their capacity entitlement or withdrawing gas as an unauthorised overrun.</p> <p>JGN’s capacity planning does not set aside capacity to cater for overruns, and therefore authorisation of overruns is made on an “as available” basis and on the condition that authorisation can be revoked at short notice if JGN subsequently considers there will be insufficient capacity in the network to accommodate the forecast overrun.</p> <p>As the User is the party that requests the capacity entitlement</p> | <p>No (liability exclusion only).</p> <p>The revocation of an Authorised Overrun is a matter specific to JGN and the relevant User and its Customer. In this situation, risks are not expected to arise for other Users or other Users’ Customers. Therefore no User indemnity is sought.</p> |

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| | | | for the Delivery Point, and that liaises with the Customer about the overrun on capacity entitlement and the authorised overrun request, the User is the party best able to inform the Customer of the potential for the authorisation to be revoked and to mitigate the risks for the Customer and the User which may arise from revocation. | |
| 2. | Clause 6.2 | Risks arising from unauthorised overruns by the User where withdrawals at a Delivery Point exceed the contractual capacity entitlement | <p>See explanation of overruns above.</p> <p>JGN uses capacity entitlement of Delivery Points for network capacity planning to ensure efficient network investment and safe and reliable supply for Customers.</p> <p>As between JGN and the User, it is the User that is best able to manage the risk that the withdrawals by the User's Customer remains within the capacity entitlement of that Delivery Point because:</p> <ol style="list-style-type: none"> 1. The User is the party that requests the level of capacity entitlement; 2. Users that are Retailers are able to manage the quantities withdrawn at a Delivery Point and the risks of overruns through their contracts with Customers. Self-contracting Users have an even more direct control over the withdrawals at the Delivery Point; and 3. JGN's relationship with the Customer under NECF does not deal with the capacity entitlement of the Haulage Reference Service or overruns on capacity entitlement | <p>Yes.</p> <p>Risks from unauthorised overruns have the potential to involve other Users and other Customers as well as the User and Customer at the particular Delivery Point. Should this occur, JGN has a potentially significant exposure. As the User is best able to manage the risks arising from unauthorised overruns, it is necessary and appropriate for the transfer of risk to the User to include an indemnity in JGN's favour (except where the circumstances are caused by JGN negligence or wilful misconduct).</p> |
| 3. | Clause 9.4(b) | Risks associated with gas prior to its receipt into, or after its delivery from, the JGN Network | Through its contractual arrangements with upstream suppliers and downstream Customers, each User is in a position to contractually address upstream requirements for the gas they purchase and downstream requirements relating to use and responsibility for gas sold to their Customers. JGN does not have equivalent upstream relationships, and as | <p>Yes</p> <p>Upstream events have the potential to result in circumstances that impact JGN and various other parties, including other Users and Customers. As between JGN and the User, it is the User that is best</p> |

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| | | | noted previously relies on a chain of compliance via contractual links through Users and pipeliners to producers, to mitigate risks to the network associated with upstream activities. | placed to manage such risks. Accordingly it is appropriate for the User to provide this indemnity, except where the circumstances are caused by JGN negligence or wilful misconduct. |
| 4. | Clauses 10.1(d) and (e) [Clause 10.1(d) of ActewAGL Distribution's proposed RSA] | Risks arising from the User's delivery of off-specification gas to JGN's Network | Users, through their upstream contractual arrangements, are better placed than JGN to manage the quality specification of gas they arrange to deliver into JGN's Network. This is further explained in section 7 above. | Yes. These risks have the potential to involve other Users and Customers. It is therefore necessary and appropriate for the User to indemnify JGN against liability caused by off-specification gas entering the network, except where the circumstances are caused by JGN negligence or wilful misconduct. |
| 5. | Clause 10.3(c) | Risks arising should it be necessary that JGN ceases to take, or directs the User to cease delivering, the User's off-specification gas into JGN's Network | In the event that Users fail to meet their contractual obligation to ensure gas meets the specification, then it is necessary that JGN has contractual remedies not to take off specification gas delivered by the User and to instruct the User to cease delivery. Because these circumstances only arise as a result of a breach of the User's obligations, and because the User is the party best able to contractually manage upstream issues, the User is the party best able to manage these risks, including from JGN having to refrain from taking that gas because it is off specification. | Yes. These risks have the potential to involve other Users, Customers and upstream parties. It is therefore necessary and appropriate for the User to indemnify JGN against liability except where the circumstances are caused by JGN negligence or wilful misconduct. |
| 6. | Clause 14.9(b) | Risks arising from the User's delivery of gas into JGN's Network which does not meet pressure specifications | Again Users, through their upstream contractual arrangements, are better placed to manage delivery of gas to the network at the right pressure. The rationale is essentially the same as that which applies for clauses 9.4 and the gas specification provisions in clause 10. This is further explained in section 8 above. | Yes. These risks have the potential to involve other Users, Customers and upstream parties. It is therefore necessary and appropriate for the User to indemnify JGN against liability except where the |

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| | | | | circumstances are caused by JGN negligence or wilful misconduct. |
| 7. | Clause 15.13 [<i>Clause 15.12 in ActewAGL Distribution's proposed RSA</i>] | Risks arising from decommissioning of Delivery Station or the disconnection of supply at User's request | Users are responsible for ensuring that they have the legal right and entitlement to make a request for decommissioning a Delivery Station or disconnection of supply. In the case where a User seeks disconnection of its Customer, as between the User and JGN, the User is clearly best placed to manage the risks arising from disconnection requests which they make. | No (liability exclusion only). Decommissioning of a Delivery Station or disconnection of supply are matters specific to JGN and the relevant User and Customer. In this situation, risks are not expected to arise for other Users or their Customers. Therefore no corresponding indemnity is sought. |
| 8. | Clause 22.3 | Risks arising from suspension of gas delivery at User's request or in circumstances set out in clause 22.2 | Users are responsible for ensuring they have the legal right and entitlement to request the suspension of gas delivery under clause 22.1, and as between JGN and the User are best placed to manage risks arising from any suspension that they request. With respect to suspension under 22.2, where gas is suspended due to immediate threat of injury or material damage neither JGN nor the User should be liable, and the other circumstances described in clause 22.2 are matters outside the control of and not initiated by JGN. | Yes. This indemnity now applies only where suspension is carried out at the User's request under clause 22.1. Where there is a suspension requested by the User, risks could be expected to arise for the Customer and it is appropriate that the User is responsible for any resulting claims or Damages arising from such suspension, except in circumstances where the issue is caused by JGN negligence or wilful misconduct. |

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| 9. | Clause 23.7 | Risks arising from interruption, curtailment or cessation of gas delivery or load shedding in accordance with JGN's rights under clause 23. | <p>The User is best able to manage the risks arising for the User and for the Customer from interruption, curtailment or load shedding through its Customer contracts.</p> <p>JGN's ability to conduct load shedding under clauses 23.4 to 23.6 is essential for the safe operation of the network, and JGN depends on the rights and obligations under the RSA to perform this function. As such, it is necessary that Users reflect these arrangements in their Customer contracts and that Users are held responsible for breaches of their relevant obligations under these clauses.</p> | <p>Yes.</p> <p>Given that the User is best placed to handle the relationship with Customers, it is appropriate that the User indemnify JGN. However, this indemnity now applies only where liability results from the User's negligence or breach of clause 23.4.</p> |
| 10. | Clause (d) of Annexure 7 | Energy production, distribution, supply or resale by User (after gas is delivered to User's Delivery Point) | <p>JGN is responsible for delivery of gas to the Delivery Point. Where the User or the User's Customer then uses that gas in connection with the production, supply or resale of energy downstream of the Delivery Point, then that is entirely a matter which the User must accept responsibility for, having regard to the consumer protection requirements imposed under law for energy resale and supply. JGN has no contractual ability to ensure that appropriate responsibility is taken by the User for supply to End Customers other than through the RSA. As the party acting as the energy supply intermediary or contracting to supply gas to the intermediary, the User is the party best placed to ensure that all necessary authorisations and consumer notifications and protections are in place in regard to that supply.</p> | <p>Yes.</p> <p>JGN takes responsibility for delivery of gas to the Delivery Point, but beyond that, the User is best placed to manage any issues with supply arrangements. It is possible that End Customers could seek to pursue JGN in this situation, and therefore the User should provide an indemnity in JGN's favour.</p> |