

23 January 2017

Jemena Limited  
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Via email submission

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Ms Sarah Proudfoot  
General Manager, Retail Markets  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

Dear Ms Proudfoot

### **Amendments to AER compliance procedures and guidelines**

Jemena Limited (**Jemena**) welcomes the opportunity to comment on the Australian Energy Regulators' (**AER**) consultation on the draft amendments to the AER compliance procedures and guidelines.

Jemena owns and operates the Jemena Gas Network (**JGN**) in NSW that delivers gas to over 1.3 million homes and businesses<sup>1</sup>, and together with Icon Distribution Limited owns the ActewAGL Distribution (**AAD**) gas network in the ACT, Queanbeyan, Palerang and Nowra. Jemena also owns the Jemena Electricity Network in Victoria that delivers electricity to 330,000 homes and businesses. JGN and AAD are currently subject to the guidelines.

Jemena supports the AER reviewing the guideline to ensure it remains fit for purpose, to take into account recent relevant rule changes and to provide additional guidance of potential audit processes. We support the majority of amendments proposed by the AER.

Jemena's comments focus on:

- the proposed amendment to include the protected period non-compliances (NERR rule 120(1)(b), (c), and (e)) in immediate reports, reversing changes made by the AER in 2014 (when the guideline was last reviewed), which we consider has no clear additional benefit – coupled with the new requirement for Chief Executive Officer / Managing Director (**CEO / MD**) sign off on immediate notifications
- improvements to the audit requirements.

In relation to other areas of the consultation and questions posed by the AER, Jemena has no particular issue with the proposed amendments.

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<sup>1</sup> The Network consists of the NSW Distribution System, the Wilton-Newcastle trunk pipeline, the Wilton-Wollongong trunk pipeline and the Central West Distribution System.

## **Including protected period non-compliances in immediate reports has no clear benefit**

The consultation paper states that prohibited disconnections are key consumer protections and should be treated consistently (noting that some prohibited disconnections require immediate notification at present, but some do not).<sup>2</sup> However, this would move away from the current, tailored, compliance management approach that appropriately differentiates the compliance reporting requirement based on the potential consequence of a breach. The consequences of breaches for a life support customer or during an extreme weather event have the potential to be far more severe than a disconnection during a protected period. The AER recognised this in their June 2014 review of the guidelines – which removed NERR rules 120(1)(b), (c) and (e) from the immediate reporting regime - stating:<sup>3</sup>

*This requirement recognises that certain obligations present unique risks for customer safety and wellbeing, and that more immediate action may be required where that risk is apparent or continuing. It also seeks to recognise that certain 'vulnerable' consumers may require greater protection if appropriate relief is not provided when a breach is first identified.*

In its 2014 review, the AER also took into account historical low numbers of reported incidents for some obligations – resulting in the removal of some obligations from the immediate notification regime. This is just as relevant for the current review. In the case of JGN, the number of protected period non-compliances has dramatically decreased since the introduction of NECF in 2013, and we have not had any disconnections when there is a live customer complaint. The two most recent protected period non-compliances were in June 2015 and September 2015 at vacant properties, with minimal customer impact. In such circumstances, it is not clear what benefit the AER or customers would receive, or additional business commitment to compliance would be delivered from re-insertion of rules 120(1)(b), (c) and (e) back into immediate reporting within the guidelines.

Jemena also wishes to highlight the new requirement for CEO / MD sign off for all immediate notifications, which effectively requires regulated entities to investigate, assess, finalise a report and then present it for CEO / MD within 2 business days. This has is not required in the current guideline or in previous versions. We consider that the focus in the period immediately following becoming aware of the non-compliance should be on understanding the nature and extent of the issue and the necessary steps required to rectify and prevent recurrence. As such, sign off from an appropriately authorised management representative should be sufficient - we query whether requiring CEO / MD sign off within such a tight time frame is reasonable – given the need to prepare paperwork, and undertake the necessary briefings (assuming the CEO / MD is available in this time). Jemena considers that such a requirement will have the effect of refocusing the incident response on these logistical “internal process” issues rather than substantive activities relevant to fixing the problem.

We therefore consider that to include rules 120(1)(b), (c) and (e) within the ‘immediate reports’, which would require CEO / MD sign-off within 2 business days, to be unnecessarily onerous, inefficient and would not meet best practice procedures. It could also be logistically difficult in a number of circumstances.

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<sup>2</sup> AER, Notice of draft instrument, Amendments to AER compliance procedures and guidelines, 9 December 2016, p. 13.

<sup>3</sup> AER, Notice of draft instrument | Amendments to Compliance Procedures and Guidelines, June 2014, p. 14.

There is no evidence provided that incidences of disconnections in these scenarios (including during protected periods or when there is a live customer complaint) have increased or are considered such a systemic problem that immediate, CEO / MD-level reporting is appropriate. Businesses take these obligations seriously and have focused on improving processes, procedures and staff training to maintain high levels of compliance.

Jemena considers a more balanced approach is for notification of disconnections during a protected period or when there is a live customer complaint (NERR 120(1)(b), (c) and (e)) to remain within quarterly reporting – for the reasons noted above. Jemena also does not support the new requirement for CEO / MD sign off for immediate reports. For reasons noted above, a more appropriate approach would be to either:

- retain existing arrangements where immediate reports do not require CEO / MD sign off
- include a requirement for CEO / MD sign off for immediate reports, but impose a more reasonable period to submit such reports (e.g. 10 business days), or
- build in a mechanism where the AER will accept immediate notification from CEO / MD or a member of the regulated entity's senior management team.

### **Improvements to audit process**

Jemena has the following specific comments on Section 4 'Compliance audits':

- Paragraph 4.3(b)—It is not clear what 'established audit requirements' means in the context of a compliance guideline. 'Established audit requirements' may be relevant for financial audits, but we query whether this might be interpreted to exclude parties well suited to undertake compliance audits (e.g. a law firm). This issue could be addressed by inserting "(where relevant)" after "audit requirements"
- Paragraphs 4.12(c) and 4.25(c)—Circumstances may exist where it is not reasonable or appropriate for auditors to have access to information – this is recognised in s206 of the National Energy Retail Law through the inclusion of certain qualifications (see for example sub-sections (6) and (8)). We consider it reasonable and appropriate for auditor access to a regulated entity's information be subject to reasonable restrictions consistent with the protections built into s206 of the NERL
- Paragraph 4.16—We consider it appropriate that the AER should be required to produce to the party bearing the audit costs reasonable evidence justifying any costs claimed under this paragraph, specifically around the matters specified in 4.16(a) to (d).

If you wish to discuss the submission, please contact Chris Stewart on (02) 9867 7290 or at [christopher.stewart@jemena.com.au](mailto:christopher.stewart@jemena.com.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Usa', with a horizontal line underneath.

**Usman Saadat**  
General Manager Regulation  
Jemena Limited