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Mr Mike Buckley  
General Manager, Network North Branch, AER  
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### **Clarifications following the round-table discussion of Jemena's access arrangement proposal (2010-2015) terms and conditions**

Dear Mr Buckley,

Jemena Gas Networks (NSW) Ltd (**JGN**) appreciates the recent round-tables on both Jemena's terms & conditions and tariffs that the AER has recently organised.

Following the round-table on Jemena's access arrangement (**AA**) terms & conditions on 27 November 2009, JGN would like to take the opportunity to clarify some matters that were discussed.

#### **Clause 1.4 of the Reference Services Agreement – Amendment to the AA revision proposal**

One of the matters discussed at the 27 November 2009 round-table was clause 1.4 of the Reference Services Agreement (**RSA**). This clause sets out how amendments to the RSA are to be made. During the round-table discussion the AER requested that JGN clarify the purpose of clause 1.4 and why JGN had not chosen to rely on the provisions of the National Gas Rules (**NGR**) that relate to AA variations.

JGN's response on this issue is outlined below:

#### **Reason for having clause 1.4 in the RSA**

Clause 1.4 of the RSA is necessary to allow for the amendment of all user contracts. The process outlined in the NGR only relates to AA changes, not to changes in executed contracts. From JGN's perspective, once access to the JGN network is granted, the relationship between the service provider and the user is governed by the contract, not the AA. It is therefore essential there is a mechanism in the RSA

that sets out how the RSA should change as a result of external events. The change process outlined in the NGR cannot affect executed contracts.

Having clause 1.4 in the RSA allows the following to occur in an efficient manner consistent with the National Gas Objective:

1. Changes during the AA term are supervised by the AER under the process set out in the AA
2. Changes at each AA revision form part of the contract, without this clause contract terms cannot keep up with regulatory developments.

Clause 1.4 of the RSA allows for the efficient standardisation of contracts across the market, avoids costly administration of different forms of contracts and allows a clear platform for access to the same terms and conditions as new access seekers.

### **Reason for framing the change processes in the AA in the terms that JGN has**

JGN included the change process in clause 2.2, Section C of the AA to facilitate variation to the RSA within the AA period. This is so that, for RSA changes within the AA period, it would not be necessary for the AER to open the entire AA when it is clear that an issue is solely related to the RSA and does not touch on issues of economic regulation such as pricing or cost allocation.

A relevant example is the ownership changes to JGN over the present AA period, which resulted in JGN's name changing from AGL Gas Networks to Alinta AGN to JGN. Each of these changes has required JGN to update contracts with users to include the new company name. Should this have required the AA to be reopened at each change of name this would have placed an onerous burden on the regulator, JGN and users for no apparent benefit. A second example is that, over the coming AA period, JGN anticipates that there may be reason for the RSA to be updated to reflect legal and regulatory changes (for example, to adjust to the requirements of the short term trading market as it evolves). Where these changes for example relate only to technical operational matters set out in the RSA and do not require reopening the AA, JGN's submission provides for an efficient and equitable method of dealing with these changes without placing an undue cost and time burden on the regulator or the network users.

Another reason for framing the change processes in these terms is that the process gives the AER considerable discretion as to how it wishes to deal with the change request. For example, the AER could notify all users that it has received a change request at the start of the 20 day notice period, meaning that users would have at least 22 business days notice of any change. Alternatively the AER could state that its decision takes effect only after a transition period or subject to some other condition precedent being met.

### **Reductions in Chargeable Demand - Revised principle**

Responses on chargeable demand (CD) at the 27 November round-table were supportive of the new concept to replace annual overrun charges with a forward-looking adjustment. However responses proposed that there should be greater flexibility to reduce chargeable demand than JGN has proposed.

### **Background – JGN's Proposal**

The principles that JGN is seeking to adopt for CD are:

- Capacity charge based on utilisation (tariff reflects costs)
- Stable and long term chargeable quantity levels – matches nature of network costs and installed customer requirements, matches annual structure of capacity charges, compares with current minimum MDQ terms of 12 to 24 months
- Low transaction costs - CD transfers with customer at the time of churn without administration by new retailer; CD is only adjusted where the physical characteristics of the customer change – ie: changes in CD occur by exception rather than routine periodic transactions

With respect to reductions in CD, JGN proposed that:

- Requests to reduce CD may not be made within 12 months after a change in CD
- After a request to reduce is made, the actual utilisation at a site would be monitored for a 12 month period to evidence the reduced physical requirements
- Reduction in CD occurs at the end of the 12 month monitoring period.
- Any reductions must be material (greater than 10%) and be expected to be permanent.

### **Responses to JGN's proposal**

A comment made in responses on reducing CD was that the combined waiting period for requesting a reduction in CD is too long in some circumstances (ie: 12 months after an increase in CD before a reduction request can be made, and then a further 12 months after a request is made before the CD is reduced).

*JGN response:*

If a fixed term and retrospective charges are removed from the AA (as JGN has proposed) then CD *must always* be based on 12 months of actual history. If this is not the case, then there will be an incentive for retailers to reduce CD (and MDQ) to unreasonably low levels knowing that their charges will be reduced for at least 1 month and with no retrospective correction of the shortfall in JGN revenue that occurs in the period before CD is again increased. Seasonal customers that only use their requested capacity for a couple of months each year (even though it is available to them all year) could request a reduction to reduce their annual capacity charge (which is charged monthly) through the off season.

However as long as any reduction in CD is consistent with actual withdrawals for the 12 months leading up to the reduction, then the approach would be consistent with JGN's needs and objectives while also allowing greater flexibility where an end customer would otherwise have had to wait a further 12 months before the reduction occurred. JGN has proposed a revised approach below which adopts this historical approach instead of employing a 12 month monitoring period.

Another comment made in responses was that reductions in chargeable demand should occur automatically.

*JGN response:*

JGN's view is that this approach would result in a very high volume of transactions – potentially a site could see multiple adjustments (both up and down) over the course of a year. Chargeable demand is only ever increased because the level of MDQ nominated for a site is excessively low (less than 9<sup>th</sup> highest withdrawal) – having been adjusted upwards, there should be a demonstration of a valid reason as to why that level of utilisation is no longer required on a permanent basis before any reduction occurs.

### **Alternate approach to reductions in chargeable demand**

An alternate proposal that takes into account respondents' comments on the waiting time for reductions is summarised below. This approach is still consistent with JGN's tariff and services proposal.

With respect to reductions in CD:

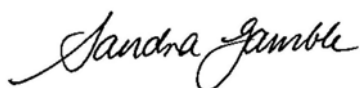
- Requests to reduce CD may not be made within 12 months after a change in CD
- Any reductions must be material (greater than 10%) and be expected to be permanent
- If a previous request was refused, then a 6 month waiting period applies before making another request for reduction
- *A request must not be for a quantity that is less than the 9<sup>th</sup> highest withdrawal at the site in the 12 months leading up to the requested reset date*
- *The reset date applying to a reduction in CD will be the start of the next month after a complete request is received.*

The first three bullet points are consistent with JGN's 25 August 2009 proposal. However, the last two bullet points replace the 12 month monitoring period with an immediate reduction in CD based on actual utilisation in the 12 months prior to the reduction.

JGN can suggest drafting changes to the RSA to accommodate this alternate approach for CD reductions at the AER's request.

If you have any questions regarding this submission please contact me on (02) 9270 4512 or [sandra.gamble@jemena.com.au](mailto:sandra.gamble@jemena.com.au)

Yours Sincerely,



**Sandra Gamble**  
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