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28 April 2010

Mr Mike Buckley
General Manager
Network Regulation North Branch
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Dear Mike

Submission on Jemena NSW Gas Access Arrangement Review

Further to our previous submissions, including our joint submission on behalf of a number of large gas user clients, EnergyAdvice would like to provide further comment on specific issues in relation to the current AER review of the proposed Jemena NSW Gas Access Arrangement.

These comments are provided after review of the AER Draft Decision of 9 February 2010 and the revised Access Arrangement proposal submitted by Jemena on 19 March 2010.

In summary, the key items for which EnergyAdvice is seeking further review include:

- Seeking further adjustment to the DMT tariff to ensure greater equity for mid-sized industrial and commercial contract users in the Sydney region;

- Querying the size of the 50% discount being proposed by Jemena for the First Response tariff given that all users will remain subject to load shedding obligations;

- Supporting the decision by AER to reject Jemena's proposal to impose a Minimum Aggregate Charge of $60,000 pa by Year 5 for contract/demand customers; and

- Seeking further amendment to the mechanism and rules relating to the setting of Chargeable Demand and requests for reductions in Chargeable Demand.

Commentary of a number of other items is also provided in this submission.

1. Reference tariffs and tariff structure

In our November submission, EnergyAdvice broadly supported the simplified reference services proposed by Jemena but requested a continuation of the trunk negotiated service. We submitted that any merging of trunk and local network services for demand customers should be cost reflective for customers in all zones of the network, and that the reallocation of tariffs to some users and not others is not equitable compared with the earlier access arrangement.

Under Jemena's August 2009 proposal, in some cases tariffs for demand customers were proposed to increase on average by 52 per cent (with some sites increasing by more than 60 per cent), whilst analysis shows that Newcastle customers will pay substantially less per GJ of gas than Sydney customers under the proposed new structure.

The application of a more equitable charge structure was a critical concern of EnergyAdvice under the initially proposed Jemena AA.

Whilst there remain a couple of aspects which require further consideration as part of the AER's final decision on this matter, the revised Jemena proposal directionally goes some way to solving some key inequities inherent in their proposed pricing structure.

Under Jemena's revised proposal, Jemena has introduced an additional demand tariff category entitled Major End Customer Throughput (DMT) category for large end users in the Sydney region. Under this proposal, Sydney-based large end users which meet specific criteria based on usage load factor can nominate to be charged on a DMT basis (which is a mix of fixed and variable charge) rather than the Demand Capacity basis (which is the traditional capacity basis). Under this DMT tariff, Jemena has essentially introduced a tariff which would substantially defray the anticipated cost increases for larger Sydney user sites (ie ~ >500 TJ pa). However mid sized sites (~100-500 TJ pa) remain comparatively disadvantaged.

A detailed review of the relative impact of the proposed DC and DMT tariff categories across the range of demand customers in different locations would now indicate that:

- Large customers in the Newcastle region will enjoy tariff reductions of more than 40%;
- Large customers in the Sydney region (> 500 TJ pa) – which were previously facing increases of up to 60% - are now facing tariff increases (via DMT) of between 3% and 16%;
- Mid sized customers in the Sydney region (generally between 100 and 500 TJ pa) – which were previously facing increases of greater than 50% - are still facing tariff increases in excess of 40%.

Way Forward

The DMT solves part of the inequity between users which has resulted from the rolling in of the Trunk Charge into the Local Network Charges to create the Demand Capacity charge.

However, there is a clear need to review the criteria for eligibility for DMT and/or perhaps even the fixed and throughput split could be adjusted to ensure mid sized sites can qualify for DMT and are not unfairly disadvantaged by the application of the revised tariff structure.

There is no logical basis for the AER and Jemena to proceed with a tariff structure under which the biggest losers are mid sized demand customers – they are the only tariff category which is facing increases of 40%+. Companies with sites facing this level of tariff increase would include, for example, CSR, Boral and Lion Nathan.

2. First response tariff

Jemena proposed a first response tariff class for the largest ~20 demand customers, which entitled users to a discount of 50 per cent in return for shedding load under an agreed curtailment plan.

In our November submission, EnergyAdvice offered our in principle support for the new tariff. However, we argued that the AER needed to be satisfied that Jemena had used reasonable assumptions as to how many customers would be assumed to have taken up the tariff else the revenue outcome may be distorted.

In its Draft Decision, the AER concluded that Jemena should only assume 50% of large customers would take up the service. The AER also considered that Jemena had not provided sufficient support to justify the 50% discount proposed to induce customers to participate in the demand first response – and determined that the discount should be reduced to 25%.

Jemena has since conducted a survey of major users during March in relation to potential take up of the first response tariff, resulting from which it has assumed that all customers above 350 GJ/hr will take up the service, and has reiterated that the discount should be 50% rather than the 25% figure determined by the AER.

Way Forward

Whilst EnergyAdvice still supports the first response concept in principle, we note that Jemena has stated that “first response reductions are not intended to prevent or substitute for other demand customers from being called to load shed”.

The AER should require Jemena to provide additional evidence to substantiate that establishment of the first response category will actually substantially benefit Jemena’s operations and to the extent that other users not taking up the first response will be clearly better off. If this cannot be substantiated to the AER’s satisfaction, then it might be concluded that the tariff fails to operationally do sufficient other than establish a basis whereby these larger users are being further subsidised by the smaller users. If there is no clear evidence that the first response tariff would have assisted Jemena in past curtailment events, then Jemena’s proposed 50% reduction is excessive.

Jemena has suggested that a majority of the above 350 GJ/hr customers will take up the service and want the 50% discount to do so. An appropriate percentage of these customers should be modelled into Jemena’s forward revenue stream as having taken up the service – not all of the above 350 GJ/hr customers.

Given:

- that there is no commitment or warranty about improved certainty of supply being offered to customers who do not take up the first response offering as a result of the larger companies who do take up that service; and
- that all other customers will still be subject to load shedding going forward;

EnergyAdvice submits that the 50% tariff reduction being offered to first response customers is excessive, and agrees with the 25% discount proposed by the AER in its Draft Decision.

The AER should seek further information from Jemena so as to be able to assess the ultimate impacts of tariffs for some of these largest users as a result of the changes in proposed tariff structures and the first response discount. There are some very big winners from an overall tariff perspective – but to the cost of other users.

3. Minimum bill charge (Minimum Aggregate Charge)

Jemena's Access Arrangement proposal

Under its proposed Access Arrangement, Jemena is seeking to introduce a minimum bill charge (known as the Minimum Aggregate Charge) for demand customers which increases each year of the proposed AA to $5,000 per month (or $60,000 pa) by year 5.

Jemena states that this is to remove "perverse incentives" at the threshold between volume and demand customers and to provide a smooth transition in price between the volume and demand tariff classes. The justification for the introduction of a minimum demand bill is based on Jemena's assertion that "some customers who moved from the volume to the demand market initially experienced a significant price reduction despite the increase in their capacity requirements".

Many of the companies advised by EnergyAdvice operate a number of small sites. The imposition of a minimum charge across the board will, in some cases, more than double their annual gas network costs. These companies oppose the introduction of the Minimum Aggregate Charge.

In its Draft Decision, AER considers that a volume customer receives a very different service to a demand customer. Since demand customers are offered a more constrained service, it should be that the distribution charges for a given quantity of gas should be lower for a demand customer in comparison to a volume customer. AER considers that the minimum bill charge is not consistent with the national gas objective and does not comply with r. 100 of the NGR. The AER ruled that Jemena must remove the minimum demand bill requirement from the access arrangement proposal.

In its revised Access Arrangement proposal, Jemena did not remove the Minimum Aggregate Charge as directed by the AER.

Way Forward

EnergyAdvice continues to submit that the proposed Minimum Aggregate Charge is not appropriate, and supports the position taken by the AER on this issue.

We do not understand why a customer, after paying for connection, meter and capacity charges and being subject to the terms and conditions associated with the demand service, should be subject to a minimum bill merely for retaining connection to the network.

The cost impact on some of the smaller demand customers is huge. For example, a company like Inghams Enterprises, which operates 9 contract load sites in NSW, is facing this charge being imposed on 7 of its sites – at an overall cost increase in excess of $200,000.

4. Setting of Chargeable Demand for demand/contract users

Chargeable Demand (CD) has been introduced as the basis upon which demand tariffs will be set. Under the proposed tariff structures, users are charged based on CD rather than MDQ. Under the propose services terms, CD will be equal to the ninth-highest actual quantity of gas withdrawn at a delivery point in any one day over a 12 month period. This is a rolling calculation, with the Chargeable Demand ratcheting up, whilst there are fairly arduous pre-conditions associated with requests by users to decrease their forward CD booking. This CD mechanism replaces the need for / application of overruns under the AA.

EnergyAdvice argued in its November submission that it did not support the CD mechanism as proposed on the basis that Jemena imposes unreasonable pre-conditions associated with requests by users to decrease their forward CD booking (refer clause 4.7 of the Reference Services Agreement), including that any request would not take effect for a further 12 months after a request has been submitted and that Jemena has significant discretion as to whether it accepts the request. Given that customers currently have the right to reduce their MDQ booking on an annual basis (not with 12 months notice and not subject to Jemena's "reasonable satisfaction"), the Jemena proposal in respect of this provision is punitive rather than beneficial to customers.

In its Draft Decision, the AER noted various concerns raised in this matter and sought amendments to clause 4.7, including that any CD reduction request would take effect at the start of the month immediately following the month of receipt of a complete reduction request. However, the AER did not agree to allow ratcheting up and down on a rolling calculation basis.

In its revised Access Arrangement, Jemena has agreed to the amendments to the Reference Services Agreement as proposed by the AER.

Way Forward

Whilst there have been some key concessions in respect to this issue, there still needs to be some clearer and fairer rules as to the timing upon which requests can be made and the basis upon which Jemena can determine whether it will accept a reduction request – it is still at their discretion with no recourse for the user if the request is rejected. It the Chargeable Demand figure can ratchet up in small increments every month, it is only reasonable that the reduction request can be for a reduction of less than 10%. Reference to "permanent and material" creates uncertainty and too much discretion for Jemena to reject a request. If customers will be ratcheting automatically on the upside, then barriers to securing reduction requests should not be punitive or at Jemena's discretion.

Under clause 4.7(a), we propose the following amendment:

> "Where a Customer has experienced a ~~**permanent and material**~~ reduction in its requirements for Gas supply, …."

Under clause 4.7(b)(v), we propose the following amendment:

> "the requested Chargeable Demand is less than ~~**90%**~~ **95%** of the existing Chargeable Demand for the relevant Delivery Point"

Under clause 4.7(c), we propose the following amendment:

> "The Service Provider will provide its reasons in writing and advise whether or not it will consent to a Reduction Request within one month of the date on which it receives such Reduction Request from the User, **such consent not to be unreasonably withheld**."

5. Other Items

Provision of Meter data

EnergyAdvice submitted that demand customers should have a right to access their metering data directly from Jemena (without recourse to their retailer). Demand customers require metering data for a number of reasons, including internal energy management, monitoring, account auditing and now, most importantly NGERs and CPRS reporting. Jemena's proposed AA does not, where a retailer is the User contracting with Jemena (as in the majority of situations) readily or automatically allow the customer to gain direct access to its data independent of the customer's retailer.

The AER considers that no legal relationship exists between Jemena and the end customer located at the delivery point (unless the end customer is a self-contracting user) – Jemena contracts with the User (generally a retailer) and a separate contract governs the relationship between the User and the end customer. While the AER recognises that it may be open to Jemena to confer certain rights on end users, such as, for example, the right to access metering data, the NGR does not require or provide for this.

EnergyAdvice formally requests Jemena to confer rights for end users to access metering data via a service under its Access Arrangement, and notes that under such an arrangement an end user is seeking a legal relationship for that service.

Despite the strength of our conviction that this service should be made available to users (the same way that users can access metering data directly in the electricity market), in the event that neither Jemena or the AER conclude that this service should be offered to customers, it is considered that a change may be required in the National Gas Rules r.312 (Rights of access to metering data) to entrench the rights of the end user to be included as a person entitled to have either direct or remote access to metering data from a metering installation. It is ridiculous that the gas rules have been written in such a way as to seemingly prevent such direct rights of access of a user to its own data.

New Connections

EnergyAdvice rejects the AER decision not to recognise the need for the terms of Schedule 5 to be clarified to ensure gas consumers have the right to engage directly with Jemena for connection to the network rather than being required to do so via a retailer.

On page 370 of its Draft Decision, the AER states that it is Jemena's commercial decision which parties it decides to contract with and accept requests for service from.

We point out that the definition of Prospective User under the Access Arrangement means "a person who seeks or wishes to be provided with a Pipeline Service by means of the Network". A gas consumer has and retains the right to either become a self-contracting User or to appoint a retailer as its User (for the purposes of transportation of the network). It is therefore entirely inappropriate that Jemena should be able to refuse to engage directly with a gas consumer for connection to the network, or for the AER to be seemingly endorsing such a position.

We reiterate our requirement that Jemena and AER's acknowledgement is sought in the Access Arrangement that Jemena be required to treat with a gas consumer, for such a connection should such a request be received. Failure to do so is actually in breach of Jemena's own Access Arrangement terms and conditions.

Weather Variation Adjustments

EnergyAdvice maintains its previously stated position that it does not support Jemena's weather variation adjustment provisions in the Access Arrangement. We acknowledge the AER's concurrence with this view in its Draft Decision, and submit that the AER should retain its direction to Jemena to remove this provision in section 3.5 C.

Postcodes

The AER did not address the "Classification by Location" comments in our November submission, where we noted that Jemena continues to retain the assignment of Delivery Point locations on the basis of the 1997 Australia Post postcode boundaries. This needs to be updated to current postcodes boundaries to provide absolute transparency for customers.

Conclusion

Whilst we have not chosen to comment on a raft of other relevant terms and conditions within this submission, EnergyAdvice notes that there are a number of areas where Jemena has not incorporated some key features and directions from the AER Draft Decision, including key aspects relating to WACC, operating costs and capital costs.

An assessment of the tariff impact under the revised Access Arrangement proposal submitted by Jemena shows that there is still a substantial gap between the proposed tariffs determined by the AER in its Draft Decision and those currently proposed by Jemena.

There remains a strong belief among various demand customers that the outcome proposed by Jemena does not provide an equitable outcome for many such customers. Whilst directionally there are some aspects which improve the proposal from that which was initially submitted by Jemena in August 2009, further amendments – including key AER Draft Decision determinations – need to be incorporated into AER's Final Decision for the future Access Arrangement period.

We would be happy to discuss this submission further with you should you have any queries.

Yours faithfully

Phil Randall
Managing Director