

11 November 2015

Jemena Electricity  
Networks (Vic) Ltd  
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Via email

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Dear Mr Bell

**JEN 2016 Electricity Distribution Price Review preliminary decision – request for clarification**

We confirm that the circumstances surrounding the current preliminary determination are novel, given the transitional process contemplated by Chapter 11 of the National Electricity Rules (**NER**). We also appreciate that other issues, such as the uncertain timing of a judgement by the Australian Competition Tribunal (which is clearly relevant to the current pricing reviews) could also impact on the process of the AER.

Whilst acknowledging these novel circumstances, JEN is also concerned to ensure that the AER's consultation process provides stakeholders with a fair opportunity to properly understand the AER's decision and analysis, and to respond to it (in the case of JEN, together with any third party submissions).

Amongst other things, this is important in order for the price review process to achieve an outcome which reflects the National Electricity Objective (**NEO**). The NEO is best achieved where all parties have an opportunity to express divergent opinions and where JEN (as the service provider) is given a reasonable opportunity to respond to issues, concerns or views raised by the AER or other stakeholders.

In this letter, JEN wishes to raise three concerns with the process and timetable proposed by the AER at page 23 of its preliminary determination:

**1. Requests in relation to provision of information by AER to JEN**

The timetable for preparing our submissions on the revocation and substitution of the preliminary determination is tight and further constrained by the Christmas break falling in the middle of this period.

In order for JEN to have a reasonable opportunity to assess the AER's analysis (particularly where the AER has indicated it intends to consider material which has not been included in the preliminary determination or which has not been provided to

JEN) and to then be able to respond in its revised proposal, we estimate that JEN would need to receive any AER analysis (including any views of the AER's independent experts, where relevant) by no later than **30 November 2015**.

Similarly, in order to be able to prepare further submissions as contemplated by the AER, JEN needs reasonable notice of any material changes proposed by the AER from the position which it adopts in the preliminary determination. Depending on the number and nature of any such changes in position, we estimate that JEN would need *at least* 20 business days to review, assess and respond to any of these type of late changes.

In addition as you are aware, under Rule 11.60.4(k) of the NER the AER is required to use best endeavours to publish a reasonable time prior to the further determination any analysis on which it intends to rely. This requirement (which reflects the similar requirement in the standard process under Rule 6.11.1) is critical to ensuring that stakeholders have a fair opportunity to properly understand the analysis that underpins the determination and, where relevant, respond to it. In order to provide a reasonable opportunity for stakeholders to respond we consider it reasonable to include additional steps in the proposed process for the AER to provide this material to the stakeholders, for a response to be given by the stakeholders to this material.

## **2. Concerns regarding the proposed procedure for responses**

A further concern for JEN is that the proposed timetable does not include an opportunity for JEN to respond to third party submissions made on its revised proposal (such submissions are currently due 4 February).

This at least leaves open the possibility that the AER may materially alter its position in response to third party submissions, without JEN having had an opportunity to consider or respond to those concerns. As you are aware, issues of this kind arose in the recent NSW gas determination process and raised considerable difficulty for Jemena and the NSW electricity distributors. To avoid this risk, in the current process, and to ensure that JEN (and other distributors) are allowed a fair opportunity to respond to third party submissions, we submit that it would be reasonable to include for this step and timing to be included in the process proposed by the AER.

## **3. Dealing with the implications of any Tribunal decision**

Finally, we acknowledge that the current timetable could also be impacted by the outcome of the current Tribunal process. While the timing of any judgement is uncertain, at this stage, JEN simply notes that all stakeholders need to be provided a fair opportunity:

- to consider the decision, and the resulting implications for the EDPR process; and
- should the AER propose to make any changes in the current EDPR process arising as a consequence of the decision, to understand and respond to those changes.

We certainly recognise that the uncertain Tribunal timing makes planning for this difficult for the AER and, at this stage, merely wish to flag that it may mean that a degree of flexibility is requested from the AER in relation to its timetable.

We are happy to discuss the matters set out in this letter with you at any stage. I can be contacted on (03) 9173 7905 or at [robert.mcmillan@jemena.com.au](mailto:robert.mcmillan@jemena.com.au) or you can contact Matthew Serpell on (03) 9173 8231 or at [matthew.serpell@jemena.com.au](mailto:matthew.serpell@jemena.com.au) at your convenience.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. McMillan', with a long horizontal flourish extending to the right.

**Robert McMillan**  
General Manager Regulation  
Jemena Limited