



Jemena Gas Networks  
(NSW) Ltd  
ABN 87 003 004 322

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Email: [NSWACTgas@aer.gov.au](mailto:NSWACTgas@aer.gov.au)

Level 20  
111 Pacific Highway  
North Sydney NSW 2060  
PO Box  
North Sydney NSW 2060  
T +61 2 9455 1500  
F +61 2 9455 1501  
[www.jemena.com.au](http://www.jemena.com.au)

Mr Mike Buckley  
General Manager, Network North Branch  
Australian Energy Regulator  
23 Marcus Clarke Street  
CANBERRA ACT 2601

**JGN access arrangement revision proposal: JGN response to public submissions on the JGN revised access arrangement revision proposal**

Dear Mike

Jemena Gas Networks (NSW) Ltd (**JGN**) provides this submission to the Australian Energy Regulator (**AER**) in response to new issues raised by stakeholders in submissions that were published by the AER on 4 May 2010.

JGN appreciates the interest that stakeholders have expressed in our revised access arrangement along with this opportunity to respond and have our views taken into account for the AER's final decision.

JGN's initial response to the AER draft decision<sup>1</sup> outlined our expectation that JGN will have a reasonable opportunity to respond to all materials relevant to the access arrangement revision process, including any new information the AER intends to take into account or any change in thinking on issues upon which the AER has not previously consulted JGN<sup>2</sup>.

In this letter JGN responds to a selection of issues in relation to:

- cost of equity – raised by the Energy Networks Association (**ENA**) and WA Gas Networks Pty Ltd (**WAGN**)
- benchmarking – raised by the Energy Users' Association of Australia (**EUAA**)
- demand forecasts – raised by AGL Energy Limited (**AGL**)
- productivity adjustments – raised by Energy Markets Reform Forum (**EMRF**)

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<sup>1</sup> JGN, *Initial response to the draft decision*, 19 March 2010 (**initial response**).

<sup>2</sup> Initial response, p. 15.

- JGN's Reference Service Agreement (**RSA**), liability and other issues – raised by EnergyAustralia (**EA**), AGL and other stakeholders
- unaccounted for gas (**UAG**) – raised by Origin Energy Retail Ltd (**Origin**)
- bypass – raised by EMRF
- hot water billing – raised by Ms Madeleine Kingston.

In addition to responding to the above issues, we also address related matters in relation to benchmarking and productivity adjustments that the AER has raised in its final decisions for ActewAGL and for Energex and Ergon.

### **Cost of equity**

#### *Issues raised by stakeholder/s*

The ENA submission discusses the AER draft decision's rejection of the Fama-French Model (**FFM**) as a cost of equity model. The ENA are concerned that the AER have applied a framework of analysis which is inappropriate and inconsistent with the policy intent of the National Gas Rules (**NGR**) and the National Gas Law (**NGL**).

The WAGN submission also focuses on the AER's treatment of JGN's proposal to use the FFM. WAGN expressed concern that the AER has not properly exercised its discretion in reaching its decision to reject JGN's proposed use of the FFM.

#### *JGN response*

JGN endorses the views that ENA and WAGN set out in their submissions.

### **Benchmarking**

#### *Issues raised by stakeholder/s*

The EUAA expresses a view that the AER should place greater weight on benchmarking in order to determine an efficient level of capex<sup>3</sup>. The EUAA makes particular reference to Ofgem's practice in the United Kingdom of setting expenditure allowances using a mechanistic application of benchmarking.

#### *JGN response*

JGN does not support using a mechanistic application of benchmarking to set expenditure allowances. A forecast produced solely on that basis would be unlikely to be consistent with the requirements of rule 74(2) of the NGR.

In its initial response to the draft decision, JGN made the following statement:

JGN agrees with the AER and Wilson Cook that benchmarking has its limitations and cannot alone be used to assess whether opex or capex complies with the NGR. However, JGN does not agree with the AER and Wilson Cook that they should take no account of benchmarking when assessing JGN's forecast expenditure.<sup>4</sup>

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<sup>3</sup> EUAA, Submission to AER on Access Arrangements to be applied to Jemena Gas Networks in the period from 1 July 2010 to 30 June 2015, 28 April 2010, pp. 11-13.

<sup>4</sup> Initial response, p. 170.

JGN affirms the view set out in its initial response to the draft decision.

Attachment 1 to this letter provides JGN's more detailed analysis of the specific issues raised by the EUAA in their submission that relate to benchmarking.

### ***Demand forecast***

#### *Issues raised by stakeholder/s*

AGL is concerned that JGN's demand forecast does not take account a range of factors in the light of the improved economic outlook and changes to government programs and policy since the initial forecasts for JGN were prepared in early 2009—in particular, increased gas volumes<sup>5</sup>.

#### *JGN response*

The revised demand forecasts that JGN submitted to the AER with its revised access arrangement revision proposal on 19 March 2010 do take account of the recent economic outlook and changes to government programs and policy since early 2009. In Attachment 2, we explain this in more detail.

### ***Productivity adjustments***

#### *Issues raised by stakeholder/s*

The EMRF believes that inflation, as measured by the CPI, should be the only adjustment for wage growth the AER allows for JGN. Failing this, the EMRF considers that the AER should use either productivity adjusted real wage growth forecasts or explicitly state a productivity improvement. The EMRF makes extensive use of Access Economics' labour cost forecasts to support its views.

#### *JGN response*

Imposing a notional efficiency benchmark upon JGN would be inconsistent with allowing JGN to recover at least its efficient costs as required by section 24(2) of the NGL. Regarding labour productivity, the CEG labour escalators that JGN has submitted are much lower than if productivity had been specifically introduced, as urged by the EMRF. In Attachment 3 JGN examines these productivity issues in more detail.

### ***Reference services agreement***

#### *Issues raised by stakeholder/s*

EnergyAustralia reiterates issues in relation to liability it raised in earlier submissions and at the AER roundtable forum on 27 November 2009, and which the AER had considered in its draft decision.

In addition stakeholders, including AGL and Energy Australia, raised a number of issues of detail with certain aspects JGN's proposed RSA. These largely reiterate points The AER has considered in its draft decision.

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<sup>5</sup> AGL, *JGN Access Arrangement 2010-2015 – Draft Decision and Jemena's revised proposal*, pp. 5 and 6.

### *JGN response*

JGN's response on the latest RSA submissions is set out in Attachments 4 and 5, which include, respectively:

- a response to EA's and AGL's further submissions on the liability provisions
- tabulated responses to stakeholders' submission on other RSA related issues.

### **Unaccounted for gas**

#### *Issues raised by stakeholder/s*

Origin believes that, in the first year of the next access arrangement period, market participants will be paying twice for UAG and the AER should consult with the Australian Energy Market Operator (**AEMO**) and consider making adjustments to JGN's UAG allowance to account for participants' calculated contributions to UAG<sup>6</sup>.

#### *JGN response*

The amount of gas that JGN procures to replace UAG for its network, and JGN's corresponding costs, is independent of the level of user gas imbalances in the retail market.

JGN has a responsibility to replace the physical gas lost from its network—the unaccounted for gas—which is the difference between total metered injections and total metered withdrawals.

Separately, the AEMO performs daily calculations for retail participant gas balancing on JGN's network which use approximations and profiles for non-daily metered gas withdrawals (and not metered withdrawals). The resulting reconciliation account balances have no direct relationship with UAG. That is, the reconciliation account balances do not change the physical gas lost from JGN's network over time.

Accordingly, Origin's belief that net retail market imbalances increase or decrease JGN's UAG costs is not correct.

### **Bypass**

#### *Issues raised by stakeholder/s*

The EMRF submits<sup>7</sup>:

... that the existence of the STTM and JGN's approach to pricing indicates that withdrawing gas at any point along the trunk line would imply direct withdrawal of gas from the STTM and would be considered to be bypassing the entire JGN network and would not be subject to any JGN network requirements.

The AER should make it clear that Jemena is required to allow customers to connect directly to its trunk line and, if they do so, what the import of such connection results in.

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<sup>6</sup> Origin, *Access Arrangement Draft Decision: Jemena's NSW Gas Networks*, April 2010, p7

<sup>7</sup> EMRF, *NSW Gas Distribution Revenue Reset, AER Draft Decision, A response by The Energy Markets Reform Group*, April 2010, section 8.3, p 68.

*JGN response*

Under the Short Term Trading Market (**STTM**) rules<sup>8</sup> only STTM distribution systems are considered to physically withdraw gas from a STTM hub. STTM facilities, such as production facilities, storage facilities and pipelines, physically inject gas into the hub. The market design does not contemplate such facilities *physically withdrawing gas*<sup>9</sup>.

A trunk connection (for withdrawals) is treated the same as any other network connections and would be seen by the STTM as a withdrawal at a JGN delivery point and not as a “bypass”. This means JGN has the same regulatory and commercial incentives to facilitate connection to the trunk main as any other part of the distribution network.

With regard to prospective trunk connections for injection into the network, JGN notes that new receipt points are already dealt with under the access arrangement<sup>10</sup>.

**Hot water billing**

*Issues raised by stakeholder/s*

Ms Kingston raised some concerns relating to centralised (bulk) hot water billing arrangements that operate in Victoria and Queensland<sup>11</sup>.

*JGN response*

The NSW market works in a different manner to Victoria and Queensland. In NSW, each individual consumer in an apartment block has the opportunity to choose its gas retailer. In Victoria and Queensland, a single energy retailer supplies an entire apartment block. Consequently, Ms Kingston’s comments on this issue are not directly relevant to JGN.

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

Yours sincerely



**Sandra Gamble**  
Group Manager Regulatory  
Jemena Limited

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<sup>8</sup> Draft National Gas (Short Term Trading Market) Amendment Rules 2010, 8 April 2010.

<sup>9</sup> In the STTM Amendments to the NGR, see definitions for STTM storage facility and STTM production facility which each deal with “injections”. Also see rule 405 (1)(d) which only allows an STTM schedule to be formed for physical injections from an STTM pipeline. Also see section 3.6 of STTM Detailed Design V2 which states that in order for a facility to purchase gas for use at the hub, e.g. to replenish a storage field, then it must either source that from a network user or register as a network user.

<sup>10</sup> Section 1.2 of Schedule 6 of JGN's Revised Access Arrangement and clause 14.2 of the Reference Service Agreement.

<sup>11</sup> Ms Kingston, *Open submission*, April 2010.

## ATTACHMENT 1: BENCHMARKING

### *Issues raised by EUAA*

The EUAA criticises the analyses performed by Parsons Brinckerhoff Australia (**PB**) and Wilson Cook of JGN's proposed capital expenditure, as well as the AER's evaluation, suggesting that:

a more appropriate application of the approach, as we outlined in our submission on Queensland and South Australian electricity distribution determinations, would show that Jemena's proposed Capex is worse than an efficient operator's<sup>12</sup>.

The EUAA expresses a view that the AER should place greater weight on benchmarking in order to determine an efficient level of capex<sup>13</sup>. The EUAA makes particular reference to Ofgem's practice in the UK of setting expenditure allowances using a mechanistic application of benchmarking.

The EUAA illustrates its preferred approach in Figure 3 of its submission, which is based on PB's Figure 4-3<sup>14</sup>. In its Figure 3, the EUAA adds a line labelled "upper quartile (used by Ofgem)" to the PB figure. The EUAA does not provide details of how the added line is derived. It attributes all of the difference between its upper quartile value and JGN's expenditure to inefficiency.

### *JGN comments*

#### *Careful interpretation and consideration of the circumstances*

JGN does not support a mechanistic approach to the use of benchmarking. A forecast produced solely on the basis of benchmarking would be unlikely to be consistent with the requirements of rule 74(2) of the NGR. In contrast, JGN's approach to forecasting its capex on the basis of a detailed analysis of its network and its market is a superior method that does comply with rule 74(2), as well as the national gas objective and the revenue and pricing principles in sections 23 and 24 of the NGL.

Depending on the nature and the quality of any particular benchmarking study, benchmarking may provide information that is relevant to an assessment of efficiency. However, benchmarking material is not necessarily determinative of matters relating to efficiency and it is critical that regard is had to other relevant information.

In its initial response to the Draft Decision, JGN made the following statement:

JGN agrees with the AER and Wilson Cook that benchmarking has its limitations and cannot alone be used to assess whether opex or capex complies with the NGR. However, JGN does not agree with the AER and Wilson Cook that they should take no account of benchmarking when assessing JGN's forecast expenditure.<sup>15</sup>

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<sup>12</sup> EUAA, *Submission to AER on Access Arrangements to be applied to Jemena Gas Networks in the period from 1 July 2010 to 30 June 2015*, 28 April 2010, p. 12.

<sup>13</sup> EUAA, *Submission to AER on Access Arrangements to be applied to Jemena Gas Networks in the period from 1 July 2010 to 30 June 2015*, 28 April 2010, pp 11-13.

<sup>14</sup> Parsons Brinckerhoff Australia Pty Ltd, *2010-11 to 2014-15 Jemena Gas Networks Access Arrangement Review – Review of JGN Capital Expenditure*, August 2009 (submitted by JGN on 25 August 2009 as Appendix 7.4 to its AAI).

<sup>15</sup> Initial response, p. 170.

JGN affirms that view. To emphasise this point, below, JGN demonstrates the limitations of using PB Figure 4-3 in the manner EUAA proposes, and highlights the importance of the AER taking account of other reliable benchmarking to gain a better picture of JGN's comparative performance.

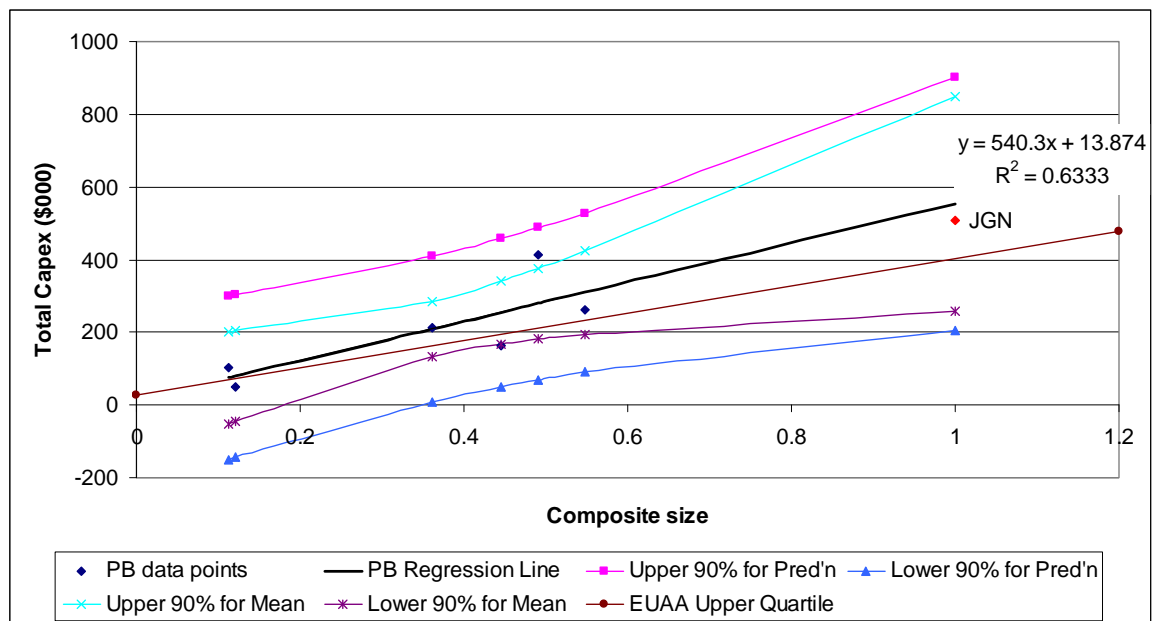
*PB Figure 4-3 and EUAA's upper quartile line*

PB's Figure 4-3 shows the results of an ordinary least squares (**OLS**) regression of capital expenditure against a 'composite size' variable based on data for six distribution businesses excluding JGN. PB obtained data for the six businesses from a variety of public sources<sup>16</sup>. The regression has a coefficient of determination ( $r^2$ ) of 0.63 so a significant amount of variation remains unexplained. When confidence intervals are plotted around the regression line it is clear that, based on the plotted relationship, no business can be said to be significantly different from the others.

In particular, the PB regression calculation does not include the JGN data point. The relationship is based on data for the six other businesses and extrapolated to the JGN point. Because JGN's composite size is much greater than that of the other businesses, the confidence interval is relatively wide at that point.

PB's Figure 4-3 is reproduced below with mean and prediction confidence limits plotted as well as the EUAA's "upper quartile (used by Ofgem)" line.

**Figure 1: Capex vs Composite size**



The EUAA's upper quartile line lies entirely within the 90% confidence band around the PB OLS line so is not significantly different from the OLS line.

It is not surprising that there is a significant degree of uncertainty around the regression line given: the small size of the PB sample, the diversity of data sources that PB relied upon, and the factors that can affect the level of capex and are unaccounted for in the composite size measure

<sup>16</sup> See Parsons Brinckerhoff Australia Pty Ltd, op. cit., Table 4-1 and footnotes. It is unlikely that data from the different sources will be consistent.

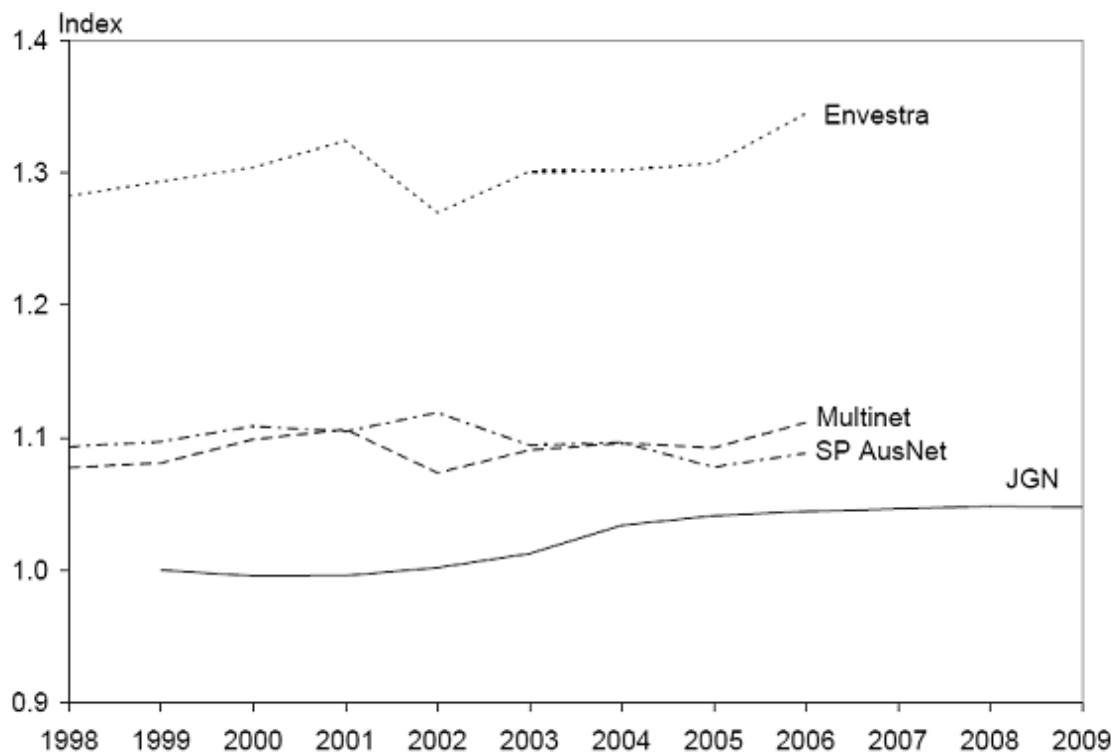
There is no justification for a view that the entire difference (or even part of the difference) between the EUAA's upper quartile line and JGN's plotted value is attributable to inefficiency. For example, the Sydney Primary Loop project accounted for more than \$90 million or some 18% of JGN's capex over the current AA period. This was an abnormally large single project for JGN.

*Taking account of other reliable benchmarking information*

Different approaches to benchmarking (of which there are many) will inevitably produce different results, which together can provide a richer picture of comparative performance.

For example, Economic Insights compared the multilateral capital partial factor productivity (PFP) indexes of JGN with the Victorian gas distribution businesses (GDBs)<sup>17</sup>:

**Figure 2: Economics insight – JGN and Victorian GDB multilateral capital PFP indexes, 1998-2009**



Source: Economic Insights GDB database

Economic Insights concluded that<sup>18</sup>:

In terms of capital multilateral PFP levels, JGN was 4 per cent below SP AusNet and 6 per cent below Multinet. Given the differences in system structures – dendritic for JGN versus intermeshed for the Victorian GDBs – which could be expected to put JGN at a significant disadvantage, JGN's capital multilateral PFP performance is relatively strong.

<sup>17</sup> Economic Insights Pty Ltd, *The Productivity Performance of Jemena Gas Networks' NSW Gas Distribution System*, 18 August 2009, (submitted by JGN on 25 August 2009 as Appendix 6.7 to its original access arrangement information), Figure 7.

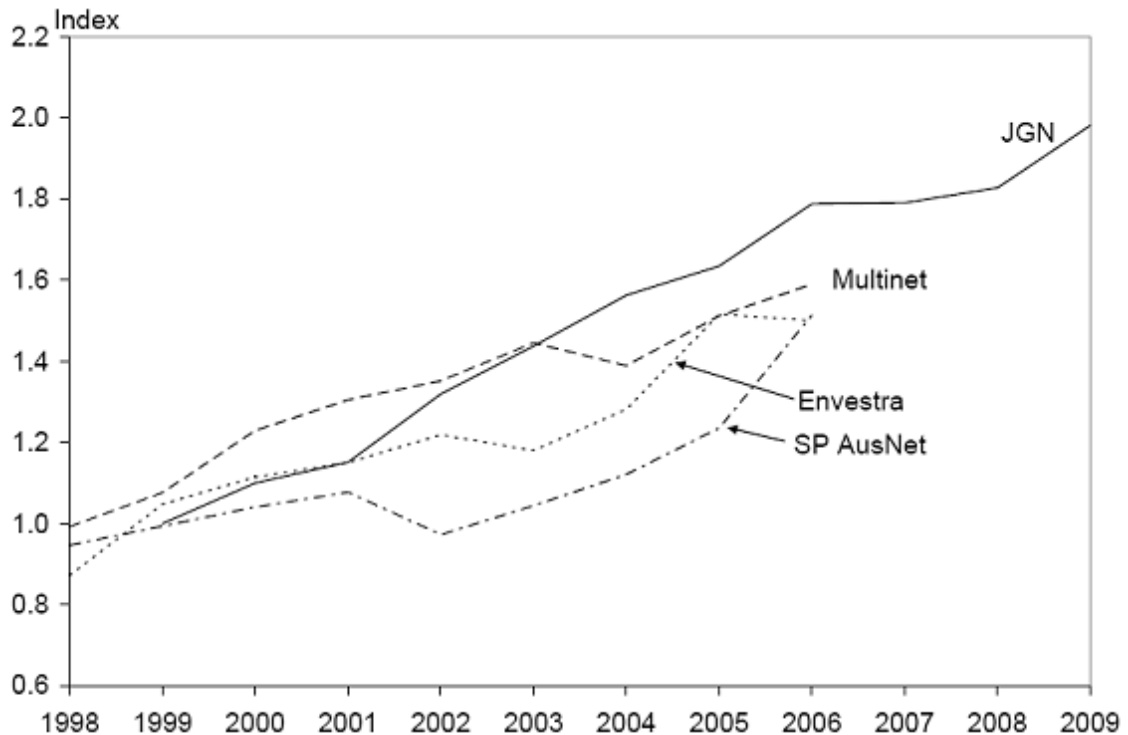
<sup>18</sup> Economic Insights Pty Ltd, *The Productivity Performance of Jemena Gas Networks' NSW Gas Distribution System*, 18 August 2009, (submitted by JGN on 25 August 2009 as Appendix 6.7 to its original access arrangement information), p. 33.



While JGN's capex PFP performance was below that of the Victorian GDBs, its multilateral Opex PFP as assessed by Economic Insights was above that of the Victorian GDBs from 2003 onwards<sup>19</sup>. This can be seen in Figure 3 below.

Figure 2 above shows that Envestra (Victoria)'s capex performance is above that of Multinet in the Economic Insights analysis whereas, in the PB work, the relationship is apparently reversed.

**Figure 3: Economic Insights, JGN and Victorian GDB multilateral opex PFP indexes 1998-2009**



Source: Economic Insights GDB database

*Energex and Ergon final decisions*

JGN's position on benchmarking is consistent with the position that the AER has adopted in its final decision for Energex and Ergon in response to the EUAA's submissions in that matter.<sup>20</sup> However, while JGN supports that position in general, JGN does not agree with the AER's statement that:

In each of these exercises (the ratio analysis, the regression analysis, and the various unit cost assessments) there is an implicit assumption that the most efficient firm will be the lowest cost firm for each measure. The AER has not explicitly pointed this out in each case, and does not consider it necessary to do so.<sup>21</sup>

<sup>19</sup> Economic Insights Pty Ltd, *The Productivity Performance of Jemena Gas Networks' NSW Gas Distribution System*, 18 August 2009, (submitted by JGN on 25 August 2009 as Appendix 6.7 to its original access arrangement information), Figure 6.

<sup>20</sup> AER, *Final decision, Queensland distribution determination 2010-11 to 2014-15*, May 2010, Appendix G.

<sup>21</sup> AER, *Final decision, Queensland distribution determination 2010-11 to 2014-15*, May 2010, p. 420.

This unqualified assumption is not valid in that it does not take account of the critical element of the national electricity and gas objectives, namely that they require a long term view to be taken of price, quality, safety, reliability and security of supply [of electricity or natural gas]. The firm that has the lowest costs in the short term may not be operating sustainably. Mr Geoff Swier examined the relationship between the concepts of 'efficiency' and 'lowest sustainable cost' in his expert opinion which JGN submitted with its revised access arrangement revision proposal, and JGN continues to endorse his analysis and conclusions.<sup>22</sup>

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<sup>22</sup> Geoff Swier, *JGN Gas Networks (JGN) Access Arrangements 2010: Approach to Opex Forecasts Expert Opinion*, Geoff Swier March 2010 (Appendix 9.1 of JGN's initial response, 19 March 2010).

## ATTACHMENT 2: DEMAND FORECAST

### *Issues raised by AGL*

AGL believes that the JGN demand forecast has not taken into consideration<sup>23</sup>:

- *improved economic conditions* – AGL believes that the improved economic outlook and certain government measures ought to translate into further increases in gas volumes in NSW.
- *an increase in 2009-10 existing residential per customer usage since the previous forecast* – AGL believes that:
  - NIEIR and JGN have now updated the average existing residential customer usage as being 21.5 GJ in 2009-10, up from 20.8 GJ in 2008-09 that was in the previous report. This is a 3.4 per cent increase and contradicts their projected decline in average usage. This alone ought to lead to an increase of 3.4 per cent in the tariff market volumes, without any change in assumptions.
  - However, after acknowledging a higher average usage as a reference point, NIEIR and JGN go on to negate this impact by actually worsening their projected decline in average usage of existing customers. Previously they showed a drop of 2.2 per cent per year, and now this rate of decline is up to 3.1 per cent per year. AGL does not see any justification for the declining trend, let alone an increase in this rate of decline<sup>24</sup>.
- *delay or cancellation of (a) the ETS and (b) the home insulation scheme* - AGL quotes projected increases in market gas prices over the period 2009-10 to 2014-15 in the NIEIR revised forecasts, and comments that:

The only justification is an ETS 'to be introduced by 2010-11'. This does not seem credible, given recent developments<sup>25</sup> and

NIEIR and JGN still quote the now defunct home insulation scheme as a driver for reduced residential usage<sup>26</sup>.

- *gas-fired power generation* – AGL observes that:

Table 5.1 of the revised NIEIR report persists in excluding gas-powered generation (**GPG**) from JGN's forecast gas consumption by sector. AGL queried this anomalous exclusion in its previous submission and, whilst acknowledging the difficulty in forecasting non-baseload GPG usage, argued that it is now a source of gas consumption in the network and should be included in overall industrial demand. As we stated previously, the absence of GPG seems questionable at best and can only exacerbate any downward trend that is being projected.<sup>27</sup>

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<sup>23</sup> AGL, op cit., pp. 5 and 6.

<sup>24</sup> AGL, op cit., p. 5.

<sup>25</sup> AGL, op cit., p. 6.

<sup>26</sup> AGL, op cit., p. 5.

<sup>27</sup> AGL, op. cit., p. 6.

## **JGN response**

### *Improved economic conditions*

With its initial response to the draft decision, JGN submitted revised NIEIR demand forecasts to the AER.<sup>28</sup> NIEIR updated its demand forecast taking into consideration the changed economic conditions and government policy since the time of its initial forecast in January 2009. JGN provided comparisons between the 2009 and 2010 economic scenarios in Table 11-9 of the initial response<sup>29</sup>.

Whilst acknowledging the improved conditions, NIEIR observes:

While the main shocks of the global economic recession appear to be behind us, the New South Wales economy is not out of the woods yet. It is only expected to record a very modest improvement in growth in the current financial year.<sup>30</sup>

NIEIR expects the recovery in economic growth in New South Wales to begin to pick up pace in 2010-11, before accelerating considerably in 2011-12. However, the unwinding of the Commonwealth Government fiscal stimulus and a reversal of expansionary monetary policy is expected to significantly slow economic growth in New South Wales during 2012-13 and 2013-14. NIEIR expects economic growth to not recover again until after 2014-15<sup>31</sup>. A rebound from a massive shock like the 2008-09 downturn does not imply an automatic return to a 'growth as usual' scenario.

The NIEIR demand forecasts are predicated on this economic outlook. Overall, JGN is satisfied that NIEIR has produced a realistic economic background to its forecasts, given the substantial international and national uncertainties that NIEIR has documented in its revised report.

### *Increase in 2009-10 existing residential per customer usage*

With its initial response to the draft decision, JGN also provided an updated NIEIR 2010-11 residential forecast based on actual residential demand for 2009-10, as observed in early 2010.<sup>32</sup> JGN increased its 2010-11 forecast from 20,475 TJ in its original proposal to 22,553 TJ in the revised proposal. Accordingly, JGN has provided a forecast incorporating the increased average consumption for existing customers that was evident in early 2010. This increase in the base year forecast has flowed through to subsequent forecast years, resulting in an overall increase in residential demand over the regulatory period of 5.6 per cent when compared to the forecast JGN submitted in August 2009.

A one-off increase in weather normalised average consumption per existing customer from 2008-09 to 2009-10 does not establish a longer term trend.

JGN has in both its initial response to the draft decision<sup>33</sup>, and its response to AER questions received on 31 March 2010<sup>34</sup>, provided a detailed analysis of historical

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<sup>28</sup> Initial response Appendix 11.1.

<sup>29</sup> Initial response, p. 214.

<sup>30</sup> Initial response, p. 215.

<sup>31</sup> NIEIR cited in JGN, op. cit., p. 215.

<sup>32</sup> Initial response, Table 11-16, p. 221.

<sup>33</sup> Initial response. The analysis referred to above is in section 11.5.1, especially Figure 11-5 on p. 210.

consumption trends that demonstrates a clear declining trend in average consumption of existing customers. This analysis included the revised 2008-09 actual and 2009-10 forecast residential demand figures. The analysis presented to the AER in the above documents demonstrates that the NIEIR forecast results in a more optimistic forecast than the extrapolation of historical trends.

#### *Delay in the ETS scheme*

JGN acknowledges that the implementation of an emissions trading scheme (**ETS**) under the current Federal Government has been delayed until at least 2013, and that there may be more short-term uncertainty regarding the implementation of a CPRS in terms of scope and timing.

In this regard, ACIL Tasman, the AER consultants reviewing JGN's forecasts, observed in January 2010 that:

The base scenario of NIEIR adopts the Treasury CPRS-5 scenario until 2015 with a transitional shift to the CPRS-15 scenario by 2025, as well as the gas, coal and renewable energy and permit prices outlined in the Treasury White Paper.

However a precise analysis of the effect of CPRS was beyond the scope of the [ACIL Tasman] NIEIR analysis.

ACIL Tasman considers NIEIR's treatment of the impacts of CPRS on the gas demand forecast to be reasonable<sup>35</sup>.

Most importantly, JGN notes that deferral of the ETS does not have a significant impact on the overall demand forecast. NIEIR in its revised assumptions used the Federal Government's policy position of a five per cent reduction in greenhouse gas emissions by 2020 as the principal energy policy objective for greenhouse policy. This position has not changed. JGN observes that it is the greenhouse gas reduction target that will predominantly drive policy-induced changes in energy consumption and not necessarily the specific details of an ETS (although this will have effects).

#### *Home insulation scheme*

The impacts of the insulation scheme are currently not evident in historical consumption trends and the ongoing effect will be realised in the forecast period as developed in NIEIR's forecast.

Cancellation of the scheme does not eliminate the energy savings that will result in the dwellings where insulation was installed. The scheme had extraordinary uptake in the short time it was in operation. The scheme started on 1 July 2009 and was terminated in February 2010. In that time, 1.1 million homes were insulated at a cost of \$1.5 billion<sup>36</sup>. It is far too early for even the initial impact of the scheme to show up in energy data. JGN would expect reduced gas consumption as a result of the scheme to be progressively evident over the course of the next regulatory period.

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<sup>34</sup> Jemena Gas Networks (NSW) Ltd, *Response to AER questions received on 31 March 2010*, 9 April 2010. See response to question 12, page 31, where JGN refers to the confidential spreadsheet "Volume market disaggregated extrapolation" provided in its email to the AER on 9 April 2010.

<sup>35</sup> ACIL Tasman, *Review of demand forecasts for Jemena Gas Networks NSW for the access arrangement period commencing 1 July 2010*, 2 February 2010, p. 12.

<sup>36</sup> The Hon. Greg Combet AM, MP, Minister Assisting the Minister for Climate Change and Energy Efficiency: *Home Insulation Program*, Speech 10 March 2010.

### *Gas-fired power generation*

As noted above, AGL observes that the revised NIEIR report excludes gas-powered generation (**GPG**) from JGN's forecast gas consumption by sector. While this is correct, it does not mean that GPG is absent from the total gas demand forecast submitted by JGN. The AER draft decision explicitly noted that JGN had adjusted its forecasts to include GPG, and this is still the case:

The AER notes AGL's submission that demand associated with GPG has not been factored into the projections. While the NIEIR report excludes GPG, the AER confirms the adjustments made by Jemena to the NIEIR forecasts include GPG<sup>37</sup>.

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<sup>37</sup> AER, *Draft decision: Jemena access arrangement proposal for the NSW gas networks*, 1 July 2010 – 30 June 2015, February 2010, p. 248.

## ATTACHMENT 3: PRODUCTIVITY GAINS

### *Issues raised by EMRF*

The submission from the Energy Markets Reform Forum (EMRF) in respect of the AER's JGN draft decision raises a number of productivity-related issues. In particular, EMRF submits:

The AER's decision to allow for real wages growth specific to the EGW [electricity/water/gas] industry without building in any adjustment for productivity is incorrect and unacceptable, and is contrary to its expressed approach in the treatment of this issue<sup>38</sup>.

In relation to labour productivity, EMRF believes that:<sup>39</sup>

- the AER is incorrect to assess JGN in isolation but must assess JGN as if it is a notional network
- Access Economics has identified that the notional network does show productivity gains
- the AER is required to build into its forecasts allowances for the notional efficient provider of services
- Access Economics considers that productivity growth in the Utilities sector should more than offset the difference between Utilities wages growth and general inflation
- Access Economics opines that real EGW wages are likely to rise at a rate less than the real NSW state average over the next regulatory period and, after productivity adjustment, they should fall
- in its draft decision, the AER uses real wage growth but not adjusted for productivity.

EMRF makes the following case for treating JGN as a 'notional' network:

It is immaterial if Jemena actually did provide any productivity improvement in their application as the allowances for opex and capex are (under the National Gas Rules) for an efficient network services provider, not specifically Jemena. The AER is required to set what is the appropriate allowance for the efficient provider.<sup>40</sup>

EMRF make extensive use of Access Economics' labour cost analysis in their submission to the AER. EMRF's conclusions from this analysis require comment, especially given that the AER draft decision proposed to update JGN's labour escalators with those produced by Access Economics (a decision not implemented by JGN in its initial response)<sup>41</sup>.

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<sup>38</sup> AER, *NSW Gas Distribution Revenue Reset, AER Draft Decision: A response by The Energy Markets Reform Forum*, April 2010, p. 3.

<sup>39</sup> EMRF, op. cit. section 4.3.

<sup>40</sup> EMRF, op. cit. p. 38.

<sup>41</sup> Instead, JGN submitted revised CEG labour escalators.

EMRF conclude:

...implicitly Access Economics is stating it considers that whilst Utilities wages might grow, there is productivity growth in the Utilities sector that should more than offset the difference between Utilities wages growth and general inflation.

More simply stated, there should be no real wages growth adjustment allowed in the Utilities sector<sup>42</sup>.

And also:

In its report to the AER, Access Economics opines that real EGW wages are likely to rise at a rate less than the real NSW state average (table 9.2) over the next regulatory period. This confirms the points made above, that in fact EGW wages after productivity adjustments are likely to be low and perhaps fall<sup>43</sup>.

The EMRF submission is generally critical of allowing regulated business to have real escalation of their costs (i.e. cost increases above CPI) in regulatory decisions. The following quote is one sample of that view:

The performance of Jemena over the past regulatory periods where there have not been allowances for increased material costs allowed for by regulators (such as the ACCC and IPART), shows that it has consistently been able to absorb increases and decreases in materials prices within its capex and opex allowances when adjusted by the CPI. The EMRF observes that other businesses must manage these price movements within a market that has price movements measured by the CPI. This is the real world.<sup>44</sup>

The EMRF submission also argues that efficiency targets should be imposed on regulated businesses, including JGN:

It is quite clear that if the AER decides (as it has in its draft decision) that it should allow forecast opex and capex to be escalated against estimates of future costs, then it should also include for the same pressures that competitive industry has to do – improve efficiency to offset these external price pressures that are likely to be applied.<sup>45</sup>

The EMRF concludes that inflation as measured by the CPI should be the only adjustment for wage growth. Failing this, the AER should use either productivity adjusted real wage growth forecasts or explicitly state a productivity improvement.

### ***JGN response***

JGN responds to the EMRF comments on labour productivity and on JGN productivity in general.

JGN notes that its opex forecasts already provide for productivity gains in corporate costs and that the CEG labour escalators build in a conservative (relatively high) level of labour productivity. JGN considers that these productivity allowances within its forecasts make them the best estimates for a business in JGN's circumstances as contemplated by rule 74.

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<sup>42</sup> EMRF, op.cit., p. 40.

<sup>43</sup> EMRF, op.cit., p. 40..

<sup>44</sup> EMRF, op. cit. p. 36.

<sup>45</sup> EMRF, op. cit. p. 31.



JGN does not agree with the EMRF's conclusions for the reasons set out in this submission.

#### *Assessing JGN as a 'notional' network*

JGN observes that the capex and opex rules (rules 79 and 91) do encompass the concept of an efficient service provider. Rule 74(2)(b) also requires that any forecasts or estimates must represent the best forecast or estimate possible in the circumstances. Hence, the rules focus is on the individual circumstances of the particular service provider, not an abstract entity.

The revenue and pricing principles in section 24 of the NGL also suggest that while efficiency is important, this is examined in the context of the actual service provider – for example, subsection 24(2) provides that a service provider should be provided with a reasonable opportunity to recover at least the efficient costs the service provider incurs in providing reference services and complying with a regulatory obligation or requirement or making a regulatory payment.

Issues such as the kinds of productivity improvements which JGN has attained in the past, and the kinds of productivity improvements it can attain in the future, must be evaluated in terms of JGN's particular operations and operating environment. It therefore follows that EMRF has incorrectly surmised that the AER must impose on JGN some kind of notional efficiency benchmark.

Imposing a notional efficiency benchmark upon JGN would be inconsistent with allowing JGN to recover at least its efficient costs as required by section 24(2) of the NGL. The Economic Insights productivity study that JGN submitted with its original access arrangement revision proposal<sup>46</sup> demonstrates that JGN is experiencing diminishing marginal productivity gains. This is consistent with JGN's maturity as a network business under longstanding economic regulation, and it shows that a notional or benchmark productivity assumption is inappropriate. The national gas objective in section 23 of the NGL makes it plain that a long term view is to be taken by referring to the "long term interests of consumers of natural gas".

#### *Reliance on Access Economics analysis*

JGN submits that:

- there is a solid (and unexplained) difference between the Access Economics forecasts and other forecasts at both the nominal and productivity-adjusted levels for NSW EGW labour costs
- even if inflation were introduced to produce real labour forecasts, there would still be major differences to be explained
- JGN does not consider that historical Australian Bureau of Statistics (**ABS**) data—which should be broadly common amongst modellers—would satisfactorily explain the differences between forecasters
- there must be modelling assumption differences between Access Economics and the others to explain the relevant outcomes

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<sup>46</sup> Economic Insights Pty Ltd, *The Productivity Performance of Jemena Gas Networks' NSW Gas Distribution System*, 18 August 2009, (submitted by JGN on 25 August 2009 as Appendix 6.7 to its original access arrangement information).

- Macromonitor has a distinctly different outlook on productivity to that of Access Economics—rather than reducing the labour cost forecast, productivity adjustment increases it—meaning that Macromonitor sees productivity growth as negative.

JGN notes that Access Economics' Table 9.2 does forecast that real productivity adjusted EGW wages will fall over the next regulatory period.<sup>47</sup> However, Access Economics is not the only professional forecaster to produce estimates of labour prices for NSW, both with and without productivity adjustment.

JGN's initial response to the draft decision submitted revised cost escalators prepared by CEG, which included labour cost escalators<sup>48</sup>. These were derived from an average of labour cost forecasts produced for CEG by Macromonitor<sup>49</sup> and BIS Shrapnel<sup>50</sup>.

Ideally, JGN would like to compare Access Economics' real escalators (with and without productivity), with Macromonitor and BIS Shrapnel forecasts. There are issues with doing this unambiguously:

- unlike the other two forecasters, Access Economics does not separately forecast EGW enterprise (**EBA**) labour and EGW contract labour
- while Access Economics and BIS Shrapnel publish real labour costs, Macromonitor does not<sup>51</sup>
- forecasters may use different inflation assumptions
- there is a timing difference – the Access Economics report was prepared in September 2009, the others in December 2009
- there are likely to be conceptual modelling differences between Access Economics and the other forecasters.

As a result, JGN has focused on nominal wages growth, both with and without productivity.

The table below contrasts total EGW contract labour forecasts from Macromonitor and BIS Shrapnel with Access Economics' forecasts.

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<sup>47</sup> Access Economics, *Forecast growth in labour costs, 16 September 2009 – report for the Australian Energy Regulator*, Table 9.2, p. 50.

<sup>48</sup> CEG, *Escalation factors affecting expenditure forecasts – a report for ActewAGL*, January 2010.

<sup>49</sup> Macromonitor, *Forecasts of cost indicators – Electricity, Gas and Water sector, NSW*, December 2009.

<sup>50</sup> BIS Shrapnel, *Update of Wages Outlook for the Electricity, Gas and Water Sector in New South Wales*, December 2009.

<sup>51</sup> JGN observes that CEG would have adjusted Macromonitor's forecasts to obtain real labour escalators.

**Table 1: Nominal NSW EGW labour cost escalators – comparison of forecasts<sup>52</sup>**

Forecast	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
<b>Without productivity adjustment</b>						
Access	3.5	3.0	3.4	3.4	3.5	3.6
Macromonitor	4.0	4.2	4.5	5.0	5.5	5.7
BIS Shrapnel	3.8	4.8	4.6	5.0	5.0	5.1
<b>With productivity adjustment</b>						
Access	2.4	1.7	1.8	1.6	1.3	2.2
Macromonitor	6.6	5.8	5.0	4.5	4.7	4.4
BIS Shrapnel	na	na	na	na	na	na

JGN can confirm that BIS Shrapnel uses the same ABS<sup>53</sup> series as Macromonitor to forecast forward EGW wages. BIS Shrapnel says that its “prefers using AWOTE as the measure that best reflects the increase in wage cost changes (or unit labour costs, net of productivity increases) for business and the public sector across the economy”.<sup>54</sup>

*Macromonitor forecasts and productivity*

Macromonitor provides a succinct analysis of productivity adjustment for general wages growth.<sup>55</sup> Macromonitor:

- shows a series of tables and charts which illustrate a sustained decline in the index of EGW sector productivity since the late 1990s
- states that, in their view, “much of the decline in productivity, as measured by the ABS data, is likely to be attributable to declining productivity of labour”
- analyses the likely reasons for this labour productivity decline, including exhaustion of historical utility efficiency improvements.

After further analysis, Macromonitor concludes:

Ultimately, labour productivity in the [EGW] sector will turn positive once again. On our forecasts, this will happen once the current expansion in the sector – involving large additions to, and upgrades of, capacity, strongly rising construction activity and big rises in employment – comes to an end. This should be around 2012/13, and will result in a reduced demand for additional labour and a return to a more normal mode of operation with positive labour productivity improvements.<sup>56</sup>

<sup>52</sup> Sources: Access Economics *Forecast growth in labour costs, 16 September 2009 – report for the Australian Energy Regulator*, Table 9.2 (utilities), p 50; Macromonitor, *Forecasts of cost indicators – Electricity, Gas and Water sector, NSW, December 2009*, Table 8, total EGW, p. 21; and BIS Shrapnel, *Update of Wages Outlook for the Electricity, Gas and Water Sector in New South Wales*, December 2009, Table 1.1, p. 1.

<sup>53</sup> Australian Bureau of Statistics Catalogue No. 6306.0.

<sup>54</sup> BIS Shrapnel, *Update of Wages Outlook for the Electricity, Gas and Water Sector in New South Wales*, December 2009, p. 9.

<sup>55</sup> Macromonitor, *Forecasts of cost indicators – Electricity, Gas and Water sector, NSW*, December 2009, pp. 15-21.

<sup>56</sup> Macromonitor, op. cit., p.18.

Macromonitor's overall outlook for EGW labour is:

- labour cost increases to slow over 2009-10 and 2010-11 due to slower nominal wages growth and smaller declines in productivity
- subsequent unit labour cost growth to be stable at 4-5 per cent per year, with the pick-up in nominal wages growth from 2011-12 to 2014-15 offset by a return to positive productivity growth.

The Macromonitor labour cost forecasts are an independent and valid contribution to the overall labour escalators produced by CEG.

*Adjustment of JGN labour cost escalators for productivity*

JGN submits that its labour escalators already have a conservative productivity bias, and should not be altered.

As noted above, JGN submitted revised cost escalators to the AER which CEG prepared.<sup>57</sup> JGN has confirmed with CEG that:

- CEG used the Macromonitor labour forecasts without productivity adjustment meaning these forecasts do not account for Macromonitor's anticipated labour productivity losses and are therefore conservative
- The BIS Shrapnel labour forecasts are not specifically productivity adjusted.

However, the statement on page 9 of the BIS Shrapnel report (cited under table 1 above) indicates that BIS Shrapnel regard their selected ABS measure of unit labour costs as best representing cost movements net of productivity.

JGN notes that adjusting the Macromonitor forecasts incorporated into the CEG labour escalators submitted by JGN would actually increase the escalators significantly<sup>58</sup>. This is because Macromonitor has modelled negative productivity growth over the medium term.

*ActewAGL final decision*

JGN's initial response to the AER draft decision in respect of labour escalators reflected ActewAGL's response to its own draft decision. That is, JGN submitted updated CEG escalators based on updated Macromonitor and BIS Shrapnel reports, and these were not adjusted for productivity<sup>59</sup>.

Given that the AER has recently accepted escalators for ActewAGL Distribution (**ActewAGL**) that were not productivity adjusted, JGN submits that it would be inconsistent for the AER to apply productivity adjusted real wage growth forecasts to JGN.

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<sup>57</sup> Initial response, Table 3-12, p. 79.

<sup>58</sup> Both the Macromonitor and BIS Shrapnel forecasts would presumably require some adjustment.

<sup>59</sup> Initial response, pp. 67-80.

The AER final decision for ActewAGL examined the issues surrounding the labour escalators submitted by ActewAGL in response to the draft decision.<sup>60</sup>

The draft decision had proposed substituting ActewAGL's escalators with later forecasts prepared by Access Economics.<sup>61</sup> ActewAGL submitted a number of reasons why this would be inappropriate, and provided the AER with updated escalators prepared by CEG (based on updated Macromonitor and BIS Shrapnel reports).<sup>62</sup>

The AER final decision accepted the updated ActewAGL labour escalators. The AER concluded:

The AER has examined the cost escalators for labour and considers they incorporate relevant data on actual wages and rely on a number of independent forecasts from professional economic forecasters.

For these reasons, the AER considers that ActewAGL's revised forecasts for labour

- aluminium and steel have been arrived at on a reasonable basis and represent the
- best forecast possible in the circumstances and meet the requirements of the new
- capital expenditure criteria.<sup>63</sup>

JGN submits that the same AER reasoning as above should apply to the JGN labour escalators; that is, they have been arrived at on a reasonable basis and represent the best forecast possible in the circumstances and meet the requirements of the new capital expenditure (and operating expenditure) criteria.

### *JGN productivity*

JGN wishes to make a number of observations on JGN productivity:

- (a) The EMRF views assume that a regulated business will have significant efficiencies to be exploited, and that these will be sufficient to offset the effects of future labour and materials escalation – at least to the extent that costs increase above inflation. This is debatable, especially if a business has had a long history of economic regulation and has achieved significant productive efficiency gains in the past, like JGN.
- (b) The recent past – at least until the advent of the global financial crisis – has shown that input materials escalation can be exceptional, and no business should reasonably be expected to absorb such costs.
- (c) JGN is forecasting productivity gains. In its initial response, JGN lists 19 sub-categories of opex costs divers over the next regulatory period, and the percentage

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<sup>60</sup> AER, *Access arrangement proposal for ACT, Queanbeyan and Palerang gas distribution network*, 1 July 2010–30 June 2015, March 2010, p. 25.

<sup>61</sup> AER, *Access arrangement proposal for ACT, Queanbeyan and Palerang gas distribution network*, 1 July 2010–30 June 2015, March 2010, p. 16.

<sup>62</sup> ActewAGL, *Addendum to Access Arrangement Information for the ACT, Queanbeyan and Palerang Gas Distribution Network*, 6 January 2010, p.24.

<sup>63</sup> AER, *Access arrangement proposal for ACT, Queanbeyan and Palerang gas distribution network*, 1 July 2010–30 June 2015, March 2010, p. 25.

contribution of each cost category to total opex.<sup>64</sup> The table shows that, while JGN has allowed for growth in the business by applying a scale increase and real input cost escalators in many categories, JGN has not made any allowance for scale effects in corporate overheads. Thus, while JGN is forecasting increased business output, this will be done with the same quantity of overheads. This constitutes a significant productivity increase.

(d) JGN demonstrated past efficiency gains.<sup>65</sup> In its initial response, JGN said:

With its original AA proposal and in a subsequent submission, JGN submitted the Economic Insights study with its original AA proposal and a confidential benchmarking study on 10 November 2009, as supporting evidence for its submission in support of its cost forecasts. JGN also submitted expert reports from Parsons Brinkerhoff and KPMG that contain relevant benchmarking information. The studies provided by JGN support the view that JGN's cost efficiency and productivity performance are at least comparable to, and on some measures, better than that of its peers.

In relation to the Economic Insights Report, the AER draft decision notes:

In regards to the nature of the Economic Insights report, the Wilson Cook report notes that total and partial factor productivity concepts have been applied in Australia for over ten years. The Wilson Cook report notes that it can be accepted that the report provides a supporting opinion that Jemena has obtained value for money for its past operating expenditures and, without evidence to the contrary, is likely to continue to do so<sup>66</sup>.

#### *ETSA final decision*

JGN notes the AER's proposed the use of productivity-adjusted labour escalators in the ETSA final decision. The AER said:

The AER considers that productivity adjustments can be an important factor in forecasting actual business costs and notes this approach is consistent with previous regulatory decisions. The AER further notes Access Economics considers productivity factors as a key driver of wage differentials and has incorporated productivity into its modelling. The AER considers the application of Access Economics' productivity factors into its model is reasonable, reflecting a realistic expectation of labour cost.<sup>67</sup>

From a procedural point of view, it is of considerable concern to JGN that the ETSA draft decision did not raise the issue of labour productivity (e.g. in appendix G4), and the matter does not appear to have been raised elsewhere between ETSA and the AER prior to the AER's final decision.

In order for the decision-making framework to operate in a meaningful way it is critical that all parties to the regulatory process have the opportunity to fully participate in the that process – particularly those parties whose legitimate business interests are significantly and directly affected by the decision being made. Without raising the possibility of incorporating labour productivity in the decision to apply to JGN and providing JGN (and other third parties) with an adequate opportunity to respond to this issue, JGN does not consider that it would be appropriate for the AER to incorporate productivity-adjusted labour escalators in the JGN final decision.

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<sup>64</sup> Initial response, Table 9.1, p.154.

<sup>65</sup> Initial response, p. 171.

<sup>66</sup> AER, Draft decision: *Jemena access arrangement proposal for the NSW gas networks, 1 July 2010 – 30 June 2015*, February 2010, p. 218

<sup>67</sup> AER, *South Australia distribution determination 2010–11 to 2014–15*, May 2010, p. 97.

## ATTACHMENT 4: REFERENCE SERVICES AGREEMENT - LIABILITY

### *Issues raised by EnergyAustralia*

EnergyAustralia has made further submissions concerning the liability provisions contained in the revised RSA that forms part of JGN's revised AA proposal (**RSA**). Those submissions reiterate EA's submission of 10 November 2009 and its comments at the AER's round-table forum on 27 November 2009 (**round-table forum**).

In summary, EA's submissions on the liability regime are as follows:

- the test by which the AER should assess the RSA is one of reasonableness, or, alternatively, one by which the RSA is considered by reference to what would be the outcome of a commercial negotiation between the relevant parties, and on the basis of that test further amendments are required to ensure that the RSA is reasonable<sup>68</sup>
- the AER was incorrect in forming the view that the Independent Pricing and Regulatory Tribunal of NSW (**IPART**) and the Allen Consulting Group (**ACG**) conducted a detailed review of the liability regime when considering the 2005 Access Arrangement<sup>69</sup>
- the RSA contains liability provisions which are significantly different to the regime in the current access arrangement<sup>70</sup>
- the RSA contains liability provisions that wrongly allocate risks to users<sup>71</sup>
- the only way in which users are able to manage these risk is through their contracts with customers<sup>72</sup>
- the liability provisions in JGN's RSA are substantially different to those included in the Envestra and ActewAGL access arrangements<sup>73</sup>.

### *Issues raised by AGL*

AGL made specific submissions on the liability provisions in clauses 15.12 and 28 .2(b) of the RSA which are addressed in the table below.<sup>74</sup>

AGL also referred in general terms to "Use of System agreements that are currently in force in other States".<sup>75</sup>

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<sup>68</sup> EnergyAustralia, *Jemena Gas Networks (NSW) Ltd's Revised 2010-2015 Access Arrangement & Reference Services Agreement, Submission on JGN's Revised Access Arrangement*, April 2010, ss 3.2 and 3.3.2, pp 11-12 & 18-20. .

<sup>69</sup> EnergyAustralia, *Jemena Gas Networks (NSW) Ltd's Revised 2010-2015 Access Arrangement & Reference Services Agreement, Submission on JGN's Revised Access Arrangement*, April 2010, s. 3.3.1, pp 12-18. .

<sup>70</sup> EnergyAustralia, *Jemena Gas Networks (NSW) Ltd's Revised 2010-2015 Access Arrangement & Reference Services Agreement, Submission on JGN's Revised Access Arrangement*, April 2010 s. 3.2, p. 11

<sup>71</sup> EnergyAustralia, *Jemena Gas Networks (NSW) Ltd's Revised 2010-2015 Access Arrangement & Reference Services Agreement, Submission on JGN's Revised Access Arrangement*, April 2010 s. 3.3.1, pp. 20-21.

<sup>72</sup> EnergyAustralia, *Jemena Gas Networks (NSW) Ltd's Revised 2010-2015 Access Arrangement & Reference Services Agreement, Submission on JGN's Revised Access Arrangement*, April 2010, s. 3.3.3, pp. 21-22.

<sup>73</sup> EnergyAustralia, *Jemena Gas Networks (NSW) Ltd's Revised 2010-2015 Access Arrangement & Reference Services Agreement, Submission on JGN's Revised Access Arrangement*, April 2010 s. 3.3.4, p. 25.

<sup>74</sup> AGL, *JGN Access Arrangement 2010-2015 - AER Draft Decision and Jemena's revised proposal*, 28 April 2010, p. 7-9.

<sup>75</sup> AGL, *JGN Access Arrangement 2010-2015 - AER Draft Decision and Jemena's revised proposal*, 28 April 2010, p. 2.

## JGN response

### *Relevant Test*

While the relevant test under the Code was whether the terms and conditions were reasonable, the test under the NGL is whether the terms and conditions are consistent with the national gas objective.<sup>76</sup> JGN submits that the liability provisions in the RSA are appropriate in assigning risk to the party best able to manage that risk and are consistent with the national gas objective.<sup>77</sup>

### *IPART's and the Allen Consulting Group's detailed review*

The principles that are reflected in JGN's current contracts are consistent with the principles set out in JGN's current access arrangement.

IPART conducted a detailed review of those principles.<sup>78</sup> In considering those principles, IPART commissioned ACG to undertake an assessment of the terms and conditions, which included the liability regime. ACG considered that regime in detail.<sup>79</sup> In considering that regime, ACG and IPART were aware that AGL Gas Networks Limited (**AGLGN**) provided the reference services under service agreements that include more detailed and more rigorously drafted terms and conditions as noted in the ACG Report, namely the general terms and conditions for services published on AGLGN's website<sup>80</sup>.

ACG suggested that a fully drafted service agreement should have been submitted rather than general principles<sup>81</sup> and IPART received submissions to this effect<sup>82</sup>. This is the approach taken in JGN's proposed RSA to provide an efficient means of standardising and clarifying the terms and conditions on which the reference services are offered, to ensure equal treatment for all users.

### *The RSA liability regime is substantially the same*

JGN confirms the views it expressed at the round-table forum that, while the liability provisions in the RSA have been clarified compared to those throughout the current AA and the current contracts, the risk profile is the same in most respects—for example, the events for which liability is not limited and each user's indemnity with respect to those events has been included in JGN's (and its predecessors') general terms and conditions since at least 2000<sup>83</sup>.

### *Liability regime appropriately allocates risks to users*

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<sup>76</sup> AER, *Draft Decision - Jemena Access arrangement proposal for the NSW gas networks, 1 July 2010 - 30 June 2015*, February 2010, p. 319.

<sup>77</sup> AER, *Round-table discussion of Jemena's access arrangement revision proposal (2010 - 2015): terms & conditions*, 27 November 2009, pp. 16-19.

<sup>78</sup> IPART, *Revised Access Arrangement for AGL Gas Networks Final Decision*, April 2005, ss 13.4.5, p. 165-167.

<sup>79</sup> ACG, *Revisions to AGLGN's Access Arrangement Assessment of Terms and Conditions*, August 2004, s. 4.18, pp 48-61.

<sup>80</sup> ACG, *Revisions to AGLGN's Access Arrangement Assessment of Terms and Conditions*, August 2004, s. 3.3, p11. The current general terms and conditions are available at <http://www.jemena.com.au/operations/distribution/jemenagasnetworksnsw/distributionnetworks/referenceservice.aspx>

<sup>81</sup> ACG, *Revisions to AGLGN's Access Arrangement Assessment of Terms and Conditions*, August 2004, s. 3.3, pp. 13-5.

<sup>82</sup> IPART *Revised Access Arrangement for AGL Gas Networks Final Decision*, April 2005, s. 13.4.5, p. 165.

<sup>83</sup> AER, *Round-table discussion of Jemena's access arrangement revision proposal (2010 - 2015): terms & conditions*, 27 November 2009, pp. 16-19.



JGN's proposed RSA liability regime is consistent with the principle that the most efficient way to manage a risk is to pass it to the party best able to manage it. The AER's draft decision identified two provisions that the AER considered did not reflect this principle<sup>84</sup> and JGN has made changes to those provisions which fully address those concerns<sup>85</sup>.

EA submits that JGN's proposed RSA liability regime does not continue the approach taken in our current access arrangement but rather enlarges the list of events where users may be exposed to unlimited liability<sup>86</sup>. However, JGN's current access arrangement allows for liability provisions that are not symmetrical between AGLGN and the user in relation to<sup>87</sup>:

- delivery of non-specification gas to the network
- failure to cease delivery or taking of gas if required to do so under the service agreement
- withdrawal of gas at a delivery point in excess of the MDQ or MHQ except as an authorized overrun
- acts or omissions in regard to the installation, operation, removal or maintenance of measuring equipment and liabilities in respect of delivery of non-specification gas at a delivery point.

ACG and IPART concluded that those provisions are instances where the actions of one party may impose significant risk on another and are reasonable<sup>88</sup>. This conclusion equally applies to the liability provisions in the RSA..

#### *Ability of users to manage risk*

As JGN indicated at the round-table forum, users are in a position to avoid or mitigate risks through their relationships and contracts with a variety of parties—in particular, end customers, producers, shippers and the gas market operator. JGN does not have the same scope of relationships and so is less able to manage the risks that are passed to users under the RSA—for example, JGN might need to revoke authorised overruns. The risk arising from that decision arises at customer level and, as between JGN and the user, the user is best placed to communicate with the customer to manage and appropriately mitigate any risk.

The RSA also contains provisions which allocate risk to the user as a result of the introduction of the new short term trading market (**STTM**).<sup>89</sup> Unlike the situation in Victoria, where the market operator is required to ensure the physical safety and ongoing operation and security of the distribution network, under the STTM, this role remains with JGN, which needs to balance the network and ensure continuity of supply to all users.

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<sup>84</sup> AER, *Draft Decision - Jemena Access arrangement proposal for the NSW gas networks, 1 July 2010 - 30 June 2015*, February 2010, s. 14.2.17, pp. 339-343.

<sup>85</sup> JGN, *Jemena Gas Networks (NSW) Ltd Initial response to the draft decision*, 19 March 2010, s. 14.2.15, pp. 278-281.

<sup>86</sup> EnergyAustralia, *Jemena Gas Networks (NSW) Ltd's Revised 2010-2015 Access Arrangement & Reference Services Agreement, Submission on JGN's Revised Access Arrangement*, April 2010 s. 3.3.1, p. 13

<sup>87</sup> ACG, *Revisions to AGLGN's Access Arrangement Assessment of Terms and Conditions*, August 2004, pp. 59-60.

<sup>88</sup> IPART, *Revised Access Arrangement for AGL Gas Networks Final Decision*, April 2005, p. 166.

<sup>89</sup> AER, *Round-table discussion of Jemena's access arrangement revision proposal (2010 - 2015): terms & conditions*, 27 November 2009, pp. 16-19.

Under the STTM, JGN is not in a position to enforce responsibility for out-of-specification gas with users of an individual transmission pipeline, and there is no way in which JGN can identify which users are responsible for delivery of gas at a particular STTM receipt point.

*Liability provisions in other access arrangements*

EA has selected 2 access arrangements and attempted to compare the liability provisions in those arrangements with those proposed by JGN. AGL has also referred in general terms to "Use of System agreements that are currently in force in other States"<sup>90</sup>.

JGN submits that the provisions in the Envestra and ActewAGL access arrangements and the attempted comparison of these provisions with those proposed by JGN are not relevant to the AER's consideration of JGN's RSA. The AER is required to consider whether the terms and conditions in JGN's RSA are consistent with the national gas objective<sup>91</sup>, not whether they are consistent with the terms and conditions of other access arrangements

In any event, the submissions put forward by EA and AGL do not enable any meaningful comparison to be made. As acknowledged by EA, it has not undertaken an exhaustive review of the liability regimes<sup>92</sup>. Neither submission makes any reference to the principles or rationale that underlie the relevant liability provisions, nor to the existing access arrangement and contracts that are in place for each pipeline nor to the operational or regulatory context in which the liability provisions were put forward, including the STTM. JGN submits that liability regimes cannot be meaningfully compared without taking such factors into account.

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<sup>90</sup> AGL, *JGN Access Arrangement 2010-2015 - AER Draft Decision and Jemena's revised proposal*, 28 April 2010, p. 2

<sup>91</sup> AER, *Draft Decision - Jemena Access arrangement proposal for the NSW gas networks, 1 July 2010 - 30 June 2015*, February 2010, p. 319.

<sup>92</sup> EnergyAustralia, *Jemena Gas Networks (NSW) Ltd's Revised 2010-2015 Access Arrangement & Reference Services Agreement, Submission on JGN's Revised Access Arrangement*, April 2010 s. 3.3.4, p. 25

## ATTACHMENT 5: REFERENCE SERVICES AGREEMENT – OTHER ISSUES

Clause	Submission	JGN Response
<b>Response to AGL's submission dated 28 April 2010</b>		
5.6(b)	This clause is unamended. The indemnity should be limited to damage caused by User.	The AER's draft decision did not require an amendment to this clause <sup>93</sup> . In any case, as JGN indicated at the round-table forum <sup>94</sup> , the user is better placed than JGN to manage the risk to which this clause relates—that is, damages arising from the revocation of an authorised overrun—because that risk can be mitigated by the user informing and communicating the risks of overrun revocation to its customers.
7.4	Different regime for gas balancing on JGN's assessment of the STTM is not acceptable	JGN has not proposed clause 7.4 because JGN sees fault or inadequacy in the STTM design. JGN has proposed clause 7.4 because: <ul style="list-style-type: none"> <li>a) ultimately JGN remains responsible for network operation, and as such, JGN must contemplate the possibility that, for any reason, the market balancing arrangements cease to effectively schedule gas deliveries to the network; and</li> <li>b) the STTM is based on a completely new and unique market design and completely new processes and systems. Market operation will be a new and untested experience, and clause 7.4 provides a means to mitigate the risks posed to physical network operation by a new external regime.</li> </ul> <p>The alternate arrangements under clause 7.4 are not intended to come into effect when the STTM is operating effectively. Clause 7.4(a) has the effect that nothing in clause 7.4 is intended to be inconsistent with any obligations of a user or JGN under law, including the NGL (under which the STTM was established), the Short Term Trading Market Rules that form part of the NGR and the STTM Procedures made under section 91BRH of the NGL.. Clause 7.4 would not operate "for a day" to deal with a specific supply event: it would only operate where JGN was legally able to implement an alternative network balancing arrangement.</p> <p>In addition, AGL's comments that JGN intends to revert to the current balancing regime is not correct. Clause 7.2 states that Annexure 4 applies in that circumstance. There is no "Operational Balancing Gas" under the arrangements in Annexure 4.</p> <p>It is not the case that clause 7.4 leaves users with a large operational liability and risk, and notes that the greater risk to JGN, users and the market is if there is no contingency plan in place for the event that the market arrangements cease to effectively schedule gas deliveries into the network.</p> <p>The basis of AGL's submission appears to be an assumption that JGN will not comply with, and will prevent users from complying with, the STTM. This is not the case, as is clear from the amendment to clause 7.4(a) in response to the AER's draft decision<sup>95</sup>. This amendment expressly acknowledges that nothing in clause 7.4 is intended to be inconsistent with any obligations which are imposed on the Service Provider and/or user by any scheme which is introduced by AEMO, or any other relevant industry scheme, which includes the STTM.</p> <p>Unlike the situation in Victoria, JGN remains responsible for system security and the physical operation of the network. In those circumstances, it is in the interests of all users and users' customers (and shippers) that the system operates at all times in a manner which is safe, reliable and ensures security of supply of natural gas.<sup>96</sup> This is achieved through clause 7.4 as amended in response to the draft decision.</p>

<sup>93</sup> AER, *Draft Decision - Jemena Access arrangement proposal for the NSW gas networks, 1 July 2010 - 30 June 2015*, February 2010, s 14.2.17, pp. 339-343.

<sup>94</sup> AER, *Round-table discussion of Jemena's access arrangement revision proposal (2010 - 2015): terms & conditions*, 27 November 2009, pp. 16-19.

<sup>95</sup> JGN, *Jemena Gas Networks (NSW) Ltd Initial response to the draft decision*, 19 March 2010, s. 14.2.7, pp. 275-277.

<sup>96</sup> JGN, *Jemena Gas Networks (NSW) Ltd Initial response to the draft decision*, 19 March 2010, s. 14.2.7, pp. 275-277.

Clause	Submission	JGN Response
15.12	JGN should be liable for its negligence or wilful misconduct	<p>The indemnity in this clause is limited to damages arising from the <u>cessation or termination of delivery of gas</u> which occurs due to user requests or other acts by the user over which JGN has no control (namely, disconnection or cessation of supply by, or at the request of, the user, pursuant to the events set out in clauses 15.8 and 15.9).</p> <p>The indemnity, as amended in the revised access arrangement proposal, does not extend to the sorts of damage that JGN might cause in effecting the disconnection or any other activities to effect the requested cessation of delivery of gas, for example, damage to a customer's letter box caused by the negligence of JGN employees in attending the premises and physically carrying out the work required to decommission a delivery point.</p> <p>The general indemnity given by JGN in clause 28.2(b) covers any damage that arises as a result of such a negligent act or omission by JGN.</p>
17.1	Meter data – format in which data is provided and standards for data validation. JGN should indemnify users if JGN negligent or fails to comply	The AER considered this issue in its draft decision. <sup>97</sup> JGN has made the amendments required by the AER. <sup>98</sup>
17.5	JGN to indemnify user against any loss from incorrect meter read	The AER considered clause 17.5 (formerly numbered clause 17.7) in its draft decision. <sup>99</sup> JGN has made the AER's required amendment to this clause. <sup>100</sup>
22.1	Invoicing frequency shouldn't be at absolute discretion of JGN. Timing should be by agreement and provide user sufficient time to enable user to run automated reconciliation processes prior to payment: e.g. no more than one per month.	<p>The AER considered this issue in its draft decision and concluded that clause 22.1 is a continuation of current commercial obligations.<sup>101</sup></p> <p>JGN supports the AER's view that the treatment of invoicing frequency in the RSA is consistent with existing commercial practice.</p> <p>Current tariff service agreements state that JGN will issue an invoice as soon as possible after reading a meter<sup>102</sup>, and JGN's current practice is to invoice tariff market retailers with large portfolios more frequently than monthly. In the case of daily read meters, the obligation is to invoice monthly<sup>103</sup>.</p> <p>While clause 22.1 of the RSA is expressed as an ability for JGN to issue the user with an invoice at intervals determined at the absolute discretion of JGN, both the RSA clause and the invoicing clauses in the current contracts require the invoice to be issued in respect of the immediately preceding period, to specify amounts payable for all services supplied to the user under the agreement in that period and use the same due date for payment.</p>

<sup>97</sup> AER, *Draft Decision - Jemena Access arrangement proposal for the NSW gas networks, 1 July 2010 - 30 June 2015*, February 2010, s. 14.2.18, pp. 343.

<sup>98</sup> JGN, *Jemena Gas Networks (NSW) Ltd Initial response to the draft decision*, 19 March 2010, s. 14.2.1, p. 267-268 (Amendment 14.30, and amended clause 1.1 in the RSA).

<sup>99</sup> AER, *Draft Decision - Jemena Access arrangement proposal for the NSW gas networks, 1 July 2010 - 30 June 2015*, February 2010, s. 14.2.4pp. 321-322.

<sup>100</sup> JGN, *Jemena Gas Networks (NSW) Ltd Initial response to the draft decision*, 19 March 2010, s. 14.2.4, pp. 271-272 (Amendment 14.3, and amended clause 17.5 in the RSA).

<sup>101</sup> AER, *Draft Decision - Jemena Access arrangement proposal for the NSW gas networks, 1 July 2010 - 30 June 2015*, February 2010, Appendix E, p. 377.

<sup>102</sup> JGN General Terms and Conditions for Tariff Reference Services (Version 3), clause 17.1; JGN General Terms and Conditions for Non-Tariff Reference Services (Version 3), clause 20.1.

<sup>103</sup> JGN General Terms and Conditions for Tariff Reference Services (Version 3), clause 17.1 and definition of "Billing Period"; JGN General Terms and Conditions for Non-Tariff Reference Services (Version 3), clause 20.1 and definition of "Billing Period".

Clause	Submission	JGN Response
22.6	Users should be able to withhold disputed amounts	As above, the AER considered this issue and concluded that RSA clause 22.6 is a continuation of existing commercial arrangements. That conclusion is correct as the treatment of disputed amounts in the RSA is the same as in existing agreements <sup>104</sup> .
22.8	Drafting changes	JGN has no objection to AGL's proposed amendments, which would alter the wording of an AER draft decision amendment.
26.1(a)(vii) and (viii)	Exclude native title claims and equipment breakdowns from FM events as they are within JGN control	This submission assumes that RSA clauses 26.1(vii) and 26.1(viii) operate so as to give JGN the benefit of the force majeure clause in the case of equipment breakdown or native title claims which occur in circumstances which are within JGN's control. This is not correct and is expressly excluded by the general words at the commencement of clause 26.1(a) being "any event, circumstance or cause not within the control of the Party and which by the execution of due diligence that Party is not reasonably able to prevent or overcome, including ...". In any event, this definition of Force Majeure is the same as the definition that is included in the existing agreements <sup>105</sup> .
28.2(b)	Add explicit wording allocating to JGN liability related to JGN's negligence in dealing with user requests and/or carrying out acts of decommissioning, disconnection or suspension	The concern the AER raised in its draft decision in relation to clauses 15.2(a) and 24.3(b) was that, as originally drafted, these clauses imposed indemnity liability on users for JGN's negligent conduct. <sup>106</sup> The amendments put forward by JGN in response to the draft decision <sup>107</sup> limit the indemnity liability of users to Damages resulting from the cessation of delivery of gas in the circumstances referred to in these clauses. Such cessation of delivery of gas arises only as a result of action or inaction on the part of the user or AEMO. JGN has no control over risks arising from the cessation of delivery of gas in the circumstances to which these clauses apply (user/AEMO instruction to cease supply). The AER has previously accepted the principle that liability for negligence can only arise where the matters to which the liability relates are within the party's control (see AER Final Decision - Public - March 2010 Wagga Wagga natural gas distribution network access arrangement 1 July 2010 - 20 June 2015, p81). This principle applies to these clauses. These clauses, as amended by JGN, do not extend to any damages resulting from JGN's negligence in carrying out the work required to give effect to a user request or carrying out actions of decommissioning etc to which these clauses apply, for example, damage to a customer's letter box caused by the negligent acts of a JGN employee in attending the site to do the necessary work. The general indemnity given by JGN in clause 28.2(b) covers such damage.
28.4(b)	Liability scope should be reciprocal	The AER considered this submission in its draft decision <sup>108</sup> and did not require any changes to be made to the RSA, on the basis that the authorisation and licences held by JGN under the <i>Gas Supply Act 1996</i> (NSW) and the <i>Pipelines Act 1967</i> (NSW), respectively, require JGN to arrange and maintain prudent insurance and that this requirement is sufficient. JGN submits that this continues to be the case.
30	Need non-contentious triggers within clause as to when JGN can draw on credit support provided by a user.	The AER considered this submission in its draft decision and formed the view that clause 30 is consistent with the NGL and the national gas objective. <sup>109</sup> JGN submits that this is correct. In addition, JGN notes that clause 30 is the same as the security provision which is included in JGN's existing contracts, for example, clause 16 of the standard Multiple Delivery Point Services Agreement.

<sup>104</sup> JGN General Terms and Conditions for Tariff Reference Services (Version 3), clause 17.6; JGN General Terms and Conditions for Non-Tariff Reference Services (Version 3), clause 20.7.

<sup>105</sup> JGN General Terms and Conditions for Tariff Reference Services (Version 3), clause 21.1(a); JGN General Terms and Conditions for Non-Tariff Reference Services (Version 3), clause 24.1.

<sup>106</sup> AER, *Draft Decision - Jemena Access arrangement proposal for the NSW gas networks, 1 July 2010 - 30 June 2015*, February 2010, p. 342.

<sup>107</sup> JGN, *Jemena Gas Networks (NSW) Ltd Initial response to the draft decision*, 19 March 2010, s. 14.2.15, pp. 278-281 (Amendment 14.28, and amended clauses 15.12(b) and 24.3(b) in the RSA).

<sup>108</sup> AER, *Draft Decision - Jemena Access arrangement proposal for the NSW gas networks, 1 July 2010 - 30 June 2015*, February 2010, Appendix E p. 379.

<sup>109</sup> AER, *Draft Decision - Jemena Access arrangement proposal for the NSW gas networks, 1 July 2010 - 30 June 2015*, February 2010, Appendix E p. 380.

Clause	Submission	JGN Response
<b>Response to EnergyAustralia's submission dated 28 April 2010</b>		
1.4	<p>JGN should be obliged to lodge amendments to RSA in timely manner for consistency with changes in law and NECF.</p> <p>Without such an obligation users may be exposed to obligations and liabilities that were intended to sit with the Service Provider.</p>	<p>This submission is to the same effect as Amendment 14.38 in the Draft Decision. JGN responded comprehensively to that Amendment<sup>110</sup>. As noted in that section, JGN accepts that if there is a change in law that means that a party can no longer comply with the RSA, the AA should be reviewed to ensure consistency with law.</p> <p>As with any commercial agreement it is a commercial matter between the parties as to how to deal with changes in law. It is not appropriate, nor is it consistent with national gas objective, that the terms and conditions of service should prescribe when and if JGN re-opens its access arrangement. Matters which need to be prescribed in law for transition to the NECF are a matter of policy and should be dealt with in relevant NECF transitional legislation after appropriate consultation.</p>
4.2	<p>JGN should be obliged to deliver in line with the greater of the Chargeable Demand and the MDQ.</p>	<p>As explained at the round-table forum, the relationship between MDQ, MHQ and contractual capacity entitlement in the RSA is the same as under the existing agreements. The difference is that retrospective overrun charges for overruns on MDQ will no longer apply, but will be replaced with Chargeable Demand.</p> <p>Capacity entitlement does not increase with overrun charges, and similarly under the RSA capacity entitlement does not increase with Chargeable Demand. As stated in the round-table forum, the process for increasing capacity entitlement (either MHQ or MDQ) is to submit an RFS for the increased capacity or to request authorisation of overruns.</p>
4.5(c) and (d)	<p>To be deleted to avoid customers having Chargeable Demand in excess of MDQ and current withdrawals</p>	<p>As set out above, Chargeable Demand replaces the current retrospective capacity reservation charges which were based on MDQ plus overruns. The relationship between 10 times the MHQ and the MDQ was established from 1 July 2005 under JGN's current Access Arrangement (clause 6 of schedule 2B and the service availability criteria for Capacity Reservation, managed Capacity and Throughput Services set out in section 2) in order to provide a link between hourly capacity and network charges (based on MDQ) and thereby creating a financial incentive for efficient utilisation of hourly capacity. As Chargeable Demand is now used as the charging parameter it is necessary to replace the MHQ/MDQ relationship with a relationship between Chargeable Demand and MHQ. Deleting clauses 4.5(c) and (d) would remove the financial disincentive on users from reserving arbitrarily high MHQs and in turn would result in less efficient investment in capacity expansion based on inflated contractual capacity rights and obligations.</p>

<sup>110</sup> JGN, *Jemena Gas Networks (NSW) Ltd Initial response to the draft decision*, 19 March 2010, s. 14.2.17, pp 282-283.

Clause	Submission	JGN Response
4.6	Increase in Chargeable Demand to be limited to immediately preceding 12 month period	This is a matter of drafting only. JGN notes that clause 4.6(d) states that the increase in Chargeable Demand will occur with effect from the start of the month after the consumption used in the calculation occurred. Hence the increase in Chargeable Demand will always occur in the month immediately following the 12 month period of consumption used in the calculation – and therefore already achieves the objective proposed by EA. The word “any” in JGN’s original drafting adds clarity by reinforcing that calculations will be on a continuous rolling 12 month period, and also allows Chargeable Demand and network charges to be correctly adjusted where revised metering data becomes available from earlier months.
4.7	Needs to be easier to access a reduction in Chargeable Demand	<p>The process to be followed in order to reduce Chargeable Demand is quite straightforward. The process involves:</p> <ul style="list-style-type: none"> <li>• lodging a Reduction Request which: <ul style="list-style-type: none"> <li>– nominates the proposed reduction in Chargeable Demand</li> <li>– is lodged within the specified period</li> </ul> </li> <li>• satisfying JGN that the reduction is permanent, by providing a letter from the relevant Customer as required by clause 4.7(b)(vi)</li> <li>• assessment of the request by JGN in accordance with clause (d)</li> <li>• if JGN consents to the request, implementation with effect from the first Day of the Calendar Month immediately following the date of receipt of the complete Reduction Request.</li> </ul> <p>The limitations on the extent to which a reduction in chargeable demand can be sought that are included in the clause are required in order to maintain the safe and reliable operation of the network and reduce administrative costs associated with processing and implementing temporary reductions for small volumes of gas. It should be noted that Chargeable Demand is based on the ninth highest withdrawal, not on peak demand, therefore a high degree of flexibility for end customers is already incorporated into the Chargeable Demand mechanism. As stated during the round-table forum the criteria concerning 90% and permanent and material reductions are intended to reduce current levels of administrative effort (among JGN, retailers and customers) that goes into managing MDQ charges. Users are in a position to manage their chargeable demand requirements within these parameters.</p> <p>The AER considered this clause in detail in its draft decision<sup>111</sup> and JGN has made the amendments required by the AER with one minor grammatical modification<sup>112</sup>.</p>
6.1	JGN should not have the right to install flow control mechanisms without giving the user an adequate opportunity to revise the MDQ.	<p>Clause 6 only applies where an Overrun is not authorised. It does not apply to Authorised Overruns.</p> <p>JGN needs the ability to install flow control mechanisms as provided in clause 6.1(b) to enable it to properly manage network capacity, queuing and system security and safety. This is consistent with the national gas objective.</p> <p>The RSA provides adequate opportunity for a user to revise their MDQ or MHQ well before an unauthorised Overrun occurs or to request an Authorised Overrun<sup>113</sup>.</p>
6.1	Chargeable demand should be reduced to reflect the restricted quantity of gas the customer is able to take.	This assumes that the user is entitled to take the Unauthorised Overrun and that this entitlement forms part of the Chargeable Demand and that the installation of flow control mechanisms will reduce the user’s capacity. This assumption is incorrect. Under clause 6.1(b), the flow control mechanism can only restrict withdrawals to the Capacity Entitlement for the relevant Delivery Point for the relevant Hour/Day. The Capacity Entitlement is the MDQ or MHQ <sup>114</sup> .

<sup>111</sup> AER, *Draft Decision - Jemena Access arrangement proposal for the NSW gas networks, 1 July 2010 - 30 June 2015*, February 2010, s 14.2.6 pp. 326-329.

<sup>112</sup> JGN, *Jemena Gas Networks (NSW) Ltd Initial response to the draft decision*, 19 March 2010, s. 14.2.6, p.275 (Amendment 4.13, and amended clause 4.7 in the RSA).

<sup>113</sup> RSA, clauses 4 and 5.

<sup>114</sup> RSA, clause 1.1, Definitions.

Clause	Submission	JGN Response
7.4	Clause 7.4 be amended to require JGN to implement an industry scheme.	JGN's response in relation to clause 7.4 above is relevant here too. JGN will implement the STTM or any other scheme that it is required to implement by law and clause 7.4 is not intended to operate so as to impose obligations on JGN or the user which are inconsistent with the obligations imposed on either of them by law including the STTM. It is intended to ensure the ongoing safety and security of the physical operation of the system and supply of gas, which is consistent with the national gas objective.
7.5	AER amendments to be implemented in full	The AER's amendment to clause 7.5 (Amendment 14.16) in its draft decision used the words: "And clauses 7.5(c)-(f) only apply insofar as the AEMO or a relevant industry scheme does not set out a timetable". Of clauses 7.5(c)-(f), only clause 7.5(f) relates to a timetable for the provision of Forecast Withdrawals. The AER's amendment relates only to compliance with a timetable set out in the AEMO or industry scheme <sup>115</sup> References to clauses 7.5(c)-(e) did not have any meaning and so JGN omitted those references from its revised access arrangement proposal
22.1	Invoicing should stay as per current commercial arrangements	JGN's response in relation to clause 22.1 above is relevant here too.
22.1	Add obligation to provide details of total quantities at each delivery point as per Multiple Delivery Point agreement	No amendment is required. This is covered by RSA clause 17.1(k) which requires JGN to provide all meter readings to users.
25.4; 25.2(d)	User is solely responsible for ensuring cessation or reduction in taking of gas (in the event of a scheduled interruption or curtailment) and must ensure the user and customers comply with directions. Previous best endeavours obligations to be reinstated.	The "best endeavours" obligation in the current agreements referred to by EA is accompanied by an absolute obligation on the part of the user to cease delivery or taking of gas in accordance with the procedure and sequence of priorities set out in JGN's current access arrangement <sup>116</sup> . Clause 25 of the RSA incorporates this obligation and these procedures within the clause. Clause 25.4 is therefore consistent with the current agreements. With respect to clause 25.2(d) JGN notes that, in the case of a scheduled interruption, users will be given advance notice and then have every opportunity to arrange the cessation or reduction in services through their relationship with their customer.
26.1(b)(i v)	Delete 26.1(b)(iv)	JGN's response in relation to clause 26.1(b)(iv) above is relevant here too. This provision is included in JGN's existing General Terms and Conditions. <sup>117</sup>

<sup>115</sup> JGN, *Jemena Gas Networks (NSW) Ltd Initial response to the draft decision*, 19 March 2010, s. 14.2.8, p. 277

<sup>116</sup> JGN General Terms and Conditions for Tariff Reference Services (Version 3), clauses 24.4(b) and (c); JGN General Terms and Conditions for Non-Tariff Reference Services (Version 3), clauses 23.4(b) and (c)

<sup>117</sup> JGN General Terms and Conditions for Tariff Reference Services (Version 3), clause 21.1(b)(iv); JGN General Terms and Conditions for Non-Tariff Reference Services (Version 3), clause 24.1(b)(iii).



Clause	Submission	JGN Response
27.2	Delete JGN's ability to terminate	<p>The RSA forms part of JGN's access arrangement and should not grant contractual rights beyond the term of the access arrangement.</p> <p>Instead of terminating on expiry of the access arrangement, JGN has proposed that the contracts between JGN and a user will only be terminated where the access arrangement revision results in a change to reference services, which is not contemplated by the contract. In such circumstances, the access arrangement revision will contain terms and conditions suited to the new reference services and the old contract will no longer be relevant to provision of reference services. Hence termination of the old contract is consistent with the national gas objective and the access framework. With respect to changes in law generally, clear and definitive timelines for negotiation of contractual changes are in the interests of all parties and consistent with the national gas objective. Clauses 27.2(a)(ii) and 27.2(b) require JGN to act in good faith and to act reasonably, and in the event that JGN still did not provide EA with a reasonable opportunity to maintain services to its customers then EA would also have remedies available under the dispute resolution provision of the contract and possibly also dispute provisions under the NGL generally. The existing clause 27.2 therefore provides means to serve the interests of both JGN and of users.</p> <p>EA's proposal to delete clause 27.2 is not consistent with the national gas objective as the contract would not provide any structure for dealing with material changes.</p>
<b>Response to EnergyAdvice's submission dated 28 April 2010</b>		
4.7	Reduction in Chargeable Demand – Remove "permanent and material" reduction. Allow smaller reductions in Chargeable Demand (95% instead of 90%). Add words "consent not to be unreasonably withheld".	<p>See above.</p> <p>These changes would reduce clarity and increase administrative burden. They would create an increased volume of routine transactions whereas JGN's proposal was to reduce levels of routine transactions and associated administrative burden and cost.</p> <p>Note: that the exclusion of all peak withdrawals except the ninth highest already provides a large degree of flexibility for customers.</p>
<b>Response to Origin's submission dated 28 April 2010</b>		
4.5	Clause 4.5(c) should state that CD is equal to the MDQ or 10 times the MHQ.	Chargeable Demand levels are not set exclusively by clause 4.5(c) but can also be varied through the effect of clauses 4.6 and 4.7. Where clauses 4.6 and 4.7 apply then Chargeable Demand may not be equal to MDQ or 10 times MHQ, and Origin's proposed wording would cause clauses 4.5(c) to be in conflict with other sub-clauses of clause 4.5.
6	Unauthorised overruns and flow control – Questions whether it is necessary for JGN to be able to install flow control equipment for safe and reliable operation of the network.	<p>JGN is responsible for the safety and integrity of the network. It is consistent with the national gas objective that JGN has the means available to achieve those ends. Origin's proposal to rely on legal process, financial incentives and negotiation with customers would not provide JGN with adequate means to maintain safety and reliability of the network and would not be consistent with the national gas objective.</p> <p>Note that Origin's reference to Division 2 of Part 12 of the NGR is not relevant as this clause does not give JGN the right to refuse services on safety grounds (rather it deals with the process by which safety matters may be brought into consideration during determination of an access dispute). Also, Origin's comments concerning the financial incentives created by Chargeable Demand have no benefit if a control on hourly flows is needed.</p>
7	Gas balancing – Questioning need for alternate balancing in the RSA.	JGN's response in relation to clause 7 above is relevant here too.

Clause	Submission	JGN Response
15.11	Repair of Basic Metering Equipment – Origin proposes that there should be 2 days to repair basic metering equipment – not “within a reasonable time”.	<p>It is not efficient or practical to specify a simplistic time for repair. Reasons include:</p> <ul style="list-style-type: none"> <li>• “Basic Metering Equipment“ comprises the whole meter set including meters, regulators, filters etc. The scope of the activity of “repair” is not as simple as changing a meter like for like. The scope of repair may vary from a simple adjustment through to a complete rebuild of a meter set.</li> <li>• JGN has a large number of different configurations of meter sets in service (as would be expected from the age, history and complexity of the network). It is not possible to stock “replacement kits” for all types. Meter sets that have been customised to meet customers’ specific requirements (eg: special delivery pressures, flow characteristics or physical site constraints) could not be stocked.</li> </ul> <p>Origin’s proposal would significantly increase JGN’s costs in order to maintain stores to be prepared for 2 day repair time for all configurations of meter set, all locations and all scope of repairs.</p> <p>“Within a reasonable time” provides an obligation on JGN to conduct repairs in a timely fashion (to meet user and customer needs), however it also allows JGN to manage repair and network logistics efficiently.</p>
22.1	Invoicing frequency should be regular and not at discretion of JGN. Discretion is not existing contractual practice.	JGN’s responses in relation to clause 22.1 above are relevant here too.