



20 July 2011

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**Confidential**

Dear Warwick

**Jemena Gas Networks (NSW) Ltd (ACT File number 10 of 2010): Remitter of mine subsidence matter – mine subsidence compensation**

We refer to the email from Scott Haig dated 11 July 2011 in relation to the Australian Competition Tribunal's (**Tribunal**) determination in *Application by Jemena Gas Networks (NSW) Ltd*, which was made on 30 June 2011, and the remitter of the mine subsidence matter to the Australian Energy Regulator (**AER**).

We understand that the AER is seeking certain information from Jemena Gas Networks (NSW) Ltd (**JGN**) in relation to the matters raised in paragraph 2(e) of the Tribunal's determination. Set out below is JGN's response to the questions listed in the email of 11 July 2011.

**1 What action JGN has taken to recover compensation from the Mine Subsidence Board following the High Court's decision**

By way of background, JGN initiated proceedings in the Land & Environment Court of NSW (**LEC**) in 2009 under Class 3 of the *Land and Environment Court Act 1979* (NSW) (**LEC Proceedings**). The LEC Proceedings relate to works conducted on the northern side of Mallaty Creek in the South Campbelltown Mine Subsidence District, where subsidence has occurred as a result of the long-wall mining activities of BHP Billiton (**BHPB**).

The LEC Proceedings were initially resolved by a judgment made by Justice Sheahan on a preliminary question of law on claims made under section 12A(1)(b) of the *Mine Subsidence Compensation Act 1961* (NSW). This judgment was overturned on 1 June 2011 by the High Court of Australia in *Jemena Gas Networks v Mine Subsidence Board* (2011) 277 ALR 257 (**High Court Case**). The High Court held that JGN is entitled to an amount from the mine subsidence compensation fund to meet its proper and necessary expenses of preventing and mitigating damage to that portion of the pipeline to the northern side of Mallaty Creek.

Following the High Court Case, the LEC Proceedings have been revived. On 15 July 2011, the LEC made directions standing the LEC Proceedings over until 5 August 2011 so as to give the Mine Subsidence Board (the **Board**) further time to consider an additional claim made by JGN also in relation to the portion of the pipeline to the northern side of Mallaty Creek. On 5 August 2011, directions will be made for the further conduct of the LEC Proceedings.

## **2 The amount that JGN is seeking in compensation from the Board**

In the LEC Proceedings, JGN is currently claiming \$2,770,644 in compensation from the Board. However, the actual quantum of any compensation that will be paid by the Board will be determined in the LEC Proceedings. Since the LEC Proceedings were first initiated, JGN has made a further interim claim to the Board {c-i-c}

Separate to the LEC Proceedings and the further claim that the Board has yet to determine (also in relation to the northern side of Mallaty Creek), JGN has made further claims against the Board for mine subsidence works {c-i-c}

## **3 If JGN has already received compensation from the Board, the amount of that compensation**

As at the date of this letter, JGN has not received any compensation from the Board. The amount of any compensation that JGN might receive in connection with the High Court Case is to be determined in the LEC Proceedings, or may be determined by way of settlement between the Board and JGN.

{c-i-c}

The quantum of mine subsidence expenditure that JGN proposed to be rolled into the opening regulatory asset base for the 2010-15 regulatory period was calculated net

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{c-i-c}

of capital contributions.

{c-i-c}

Given that the LEC has not yet awarded any compensation, it is not possible to make any definitive statement regarding the amount of compensation that JGN is likely to receive. Also, as the response to the next question will show, it may not be possible for JGN to provide any further clarity on this issue for some time.

**4 If JGN has not yet received any compensation, when it expects to do so**

{c-i-c}

**5 Whether JGN has any other court proceedings ongoing or envisaged that may result in compensation relating to mine subsidence, and if so, details of those proceedings**

In addition to the LEC Proceedings which have been discussed above, JGN has initiated judicial review proceedings in the NSW Supreme Court in respect of certain decisions of the Board relating to other compensation claims made for mine subsidence work. The claims are for mine subsidence work conducted to {c-i-c} **(Supreme Court Proceedings)**. The Supreme Court Proceedings were also stood over until after the High Court Case, as there were some issues common to both the LEC Proceedings and the Supreme Court Proceedings.

The Supreme Court Proceedings are listed for directions on 29 July 2011 at which time directions will be made for the further conduct of the proceedings.

{c-i-c}

JGN notes that the responses above in relation to the timing of various court proceedings and the likely timing of any decisions are accurate based on the status of those proceedings as at the date of this letter. Should there be any relevant developments in those proceedings, JGN will provide the AER with an update.

Yours sincerely

A handwritten signature in black ink that reads "Sandra Gamble". The signature is written in a cursive, flowing style.

**Sandra Gamble**  
General Manager Regulation and Strategy