



20 October 2021

Dr Kris Funston
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Lodged via email to: [regulatoryinnovation@aer.gov.au](mailto:regulatoryinnovation@ aer.gov.au)

Dear Mr Funston,

AER's consultation on the Better Resets Handbook

Jemena Ltd. (**Jemena**) owns and operates the Jemena Electricity Networks (Vic.) Ltd (**JEN**) in Victoria and the Jemena Gas Networks (NSW) Ltd. (**JGN**) in NSW. These businesses are regulated under the National Electricity Rules and National Gas Rules (respectively) and administered by the AER.

Jemena welcomes the opportunity to respond to the Australian Energy Regulator's (**AER**) consultation on the better regulation handbook (**Handbook**). We strongly support the AER's continued work to develop better regulatory processes and strengthen the relationship between customers, Network Service Providers (**NSPs**), and the AER. Overall, we consider the objectives set out in the Handbook will contribute towards achieving the long-term interests of consumers.

Jemena has been a strong advocate of customer engagement in the price reset processes. When *Consumer Engagement Guideline for Network Service Providers* (**Guideline**) was released in 2013, Jemena commenced a deep engagement with our customers through the price reset processes running at the time. Since then, we have improved our customer engagement capabilities, exploring new ways of engaging with our customers. In the most recent price reviews for JEN and JGN, the quality of our customer engagement activities was recognised by the industry peak body—the Energy Networks Australia—by winning the coveted customer engagement award for 2019. Further recognition for JEN's People's Panel was achieved through the International Association for Public Participation annual awards process shortlisting, the only NSP to achieve an award from a consultation body.

Jemena strives to meet our customer expectations, even outside of the price reset process, taking on a leadership role in The Energy Charter. Jemena's managing director, Frank Tudor, is the current Chair of the CEO Council that oversees The Energy Charter. As an industry leader and from the top-level down at Jemena, Frank has driven a commitment to achieve better outcomes for customers and the industry more broadly.

Notwithstanding our overarching view, we wish to bring several topics to the AER's attention which we believe will further strengthen processes employed in the Handbook and also bring about better outcomes for customers.

Further incentives for participation are necessary – The Handbook outlines several benefits for NSPs who follow the targeted review process; these include:

- Reputational enhancements through the AER's public recognition of NSPs that undertake the targeted review process, *and*
- Procedural incentives.

These incentives are designed to induce greater participation in the targeted review process, and those NSPs who do not participate are still expected to regard the procedure outlined in the Handbook.

Essentially, the Handbook encourages NSPs to bring forward their price reset processes, engage with customers early, and bring those views captured in the initial proposal rather than have customers respond to the NSP's initial proposal following submission. This approach brings additional risks to the price reset process, because early engagement can mean that events that arise late in the process are not captured in the regulatory proposal. This risk is especially heightened with the rapidly changing energy system.

We consider that there is opportunity to improve the incentives outlined in the Handbook so they are more commensurate with the risk faced by the NSP. We suggest the following further incentives are provided and/or made clear in the Handbook:

- Procedural incentives require clarification. In the draft version of the Handbook, there is no description of these incentives. Clarity around the benefits of the procedural incentives is necessary for NSPs to know and understand what benefits are afforded for participating in the targeted review.

- Further discretion around other assessments, for example, the AER has adopted “materially differences” of one to two per cent for accepting operating expenditure proposals relative to the AER’s alternative estimate.^{1,2} In the Handbook, greater tolerances could be afforded.
- Giving those NSPs that have already provided well-regarded customer engagement in the price reset processes the opportunity to participate in targeted reviews. We elaborate on this incentive in more detail below.
- A greater emphasis on the entire regulatory proposal as a package, rather than the constituent decisions.

By clarifying incentives and aligning with the broader customer engagement objectives, the customer voice will be more prevalent in the price reset process, and there are stronger linkages to the incentive regulation as set out in the National Electricity Law³ and National Gas Law.⁴

Criteria for selecting candidate NSPs to participate in the targeted review – The Handbook has identified AER resource constraints as the primary reason not all NSPs can participate in the targeted review process and the need to establish a set of criteria for selecting those NSPs that can participate. Taking a range of factors into account, Jemena recommends the following criteria be adopted:

- A mix of electricity and gas NSPs, both large and small, should be afforded an opportunity to participate in the targeted review. In the draft Handbook, the AER has identified an objective of refining and learning from each iterative application.⁵ One of the best ways to learn is taking a broad range of NSP types, thereby having a greater opportunity to learn.
- Selecting those NSPs that have already provided highly regarded customer engagement in prior price resets. Consistent with the learning theme noted above, the faster way to learn is to work with those NSPs leading the way. This criterion is also compatible with offering incentives towards the Handbooks’ goals.

We note that the overarching objective of establishing a set of criteria is to shortlist a group of NSPs so that the AER’s limited resources can get across the price reset projects in more detail. Whilst it is not the intent, excluding some NSPs and not others can have unintended consequences, including having some customers benefiting more than others. To overcome these challenges, we consider

¹ AER, *Final Decision, SA Power Networks Distribution Determination 2020 to 2025, Attachment 6, Operating expenditure*, June 2020, section 6.4.

² AER, *Final Decision, Jemena Distribution Determination 2021 to 2026, Attachment 6, Operating expenditure*, April 2021, section 6.4.

³ National Electricity Law, s7A(3).

⁴ National Gas Law, Division 2, s24(3).

⁵ AER, *Draft Better Resets Handbook, Towards Consumer Centric Network Proposals*, September 2021, Pg. 1.

other forms of grouping and segmentation that can better address resource constraints and allow the broader base of benefits to be realised. Alternative approaches include:

- Grouping NSPs within the same round of price reviews and with a high degree of joint ownership (>50%) as the interactions between NSPs, customers and the AER can be communicated internally within the NSP's group.
- Grouping by functional areas. For example, during the 2021-26 price reset activities in Victoria, the NSPs worked together to consult collectively on a standard set of tariff arrangements.

In the context of Better Reset discussions, we would see the lifting of the watermark for all NSPs.

Notwithstanding consideration of these broader approaches, it may be that some NSPs do not participate in the targeted review program, not because of a lack of willingness but because they have not been selected within the targeted review group. In these cases, and where the NSP has met the intent of the Handbook, then we consider the AER should undertake its review as though the NSP had undergone a targeted review to the extent possible, including AER board members and senior staff participation in the customer engagement programs.

Partial targeted review – In the public forum concerning the draft Handbook (held on 6 October 2021), we heard the AER is open to considering a partial targeted review where some elements of a proposal are capable of acceptance, and some may require further investigation. We welcome this discussion, noting price reset proposals are complex activities, and as a result, not everything in a proposal may be non-contentious. To ensure that expectations are clear, we suggest that final version of the Handbook makes it clear that a targeted review can be undertaken of component parts of a proposal.

Consideration of the Tariff Structure Statement expectations in the Handbook – The Handbook identifies several expectations around network tariffs and the Tariff Structure Statement (TSS).

At the same time the AER is consulting on the Handbook, we note that there is a consultation taking place on the export tariff guideline and that there are references within the draft version of the export tariff guideline that refer to the Handbook, particularly concerning customer engagement. It's not clear that the Handbook applies the same threshold of stakeholder support for the TSS and the proposal as a whole. For example, the TSS section suggests "broad stakeholder support" is required. This language is not replicated in section 4 or elsewhere in the Handbook. Changes to

network tariffs under revenue caps have winners and losers. Introducing export charges is a polarising issue, and some stakeholders will not be satisfied that the transition to cost-reflective tariffs is occurring fast enough while others will consider it too fast. The Handbook should recognise that a good proposal may require DNSPs to take a well-balanced position, where (in accordance with new rule requirements⁶) all concerns raised are transparently aired and adequately addressed.

More specifically, concerning the TSS section of the Handbook, we note:

- Case study 10 makes several statements which we consider the AER may want to rethink:
 - It suggests two pricing principles are “the most important” (tariffs based on LRMC and considering customer impacts). This does not appropriately characterise how the NER sets out the pricing principles. For example, the jurisdictional pricing principle means that if jurisdictional requirements vary from the two “most important” pricing principles the AER identifies, then meeting the jurisdictional requirements takes precedence.
 - It goes into how price should differ at different times of the week, which seems an overly specific point not directly related to pricing principles. For example, this would suggest a critical peak price (no variation within most weeks) may not comply.
- Section 8.2.4 suggests reducing customer choice is a trigger for targeted review. Choice is not a rule requirement and is likely to be an inhibitor to achieving cost-reflective tariffs in several circumstances. Ideally, the AER would recognise that choice:
 - can be a tool to assist in transitioning to cost-reflective network tariffs in accordance with the rules, but it is not the only way.
 - matters to customers is that which occurs at the retail level.

We believe that these items should be characterised as discussion topics rather than expectations.

With a proven track record in customer engagement, an ongoing commitment to improving our customer engagement activities and notwithstanding the feedback we provide on the Handbook, we wish to advise of our intentions to apply for a targeted review for JEN and JGN in the next round of price reviews. As the Handbook matures from draft to final, we will engage with the AER in more detail regarding our intentions and plans for our upcoming customer engagement.

⁶ NER 6.8.2(c1)(2).

At the same time as releasing the Handbook for consultation, the AER commenced a consultation on retiring the Guideline, which was published as part of the Better Regulation Reform Program in 2013, once the Handbook is finalised. As part of the consultation, the AER stated it considered the Handbook effectively supersedes the information in the Consumer engagement Guideline.

Since its initial release in 2013, the Guideline has served customers and NSPs well by developing a foundation on which the voice of the customer has contributed to the process that involves making decisions on their behalf. Over time, there has been a significant uplift in the NSPs customer engagement capabilities and broadening engagement activities. The Guideline, however, is quite dated and may no longer be fit for purpose. Further, the more recent developments of customer engagement are captured in the Handbook (specifically section 4) and other instruments that the AER manages, such as the Export tariff guidelines for distribution network export tariffs currently being consulted on.

With this modernised approach to customer engagement, we considered the AER's recommendation to retire the Guideline is appropriate, noting the principles and objectives of customer engagement permeate a broad range of the AER's consultation.

If you have any questions regarding this letter, please get in touch with Matthew Serpell on (03)9173-8231 or matthew.serpell@jemena.com.au

Kind regards,



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Jemena