

NATIONAL GAS LAW

Undertaking to the Australian Energy Regulator given for the purposes of section 230A of the National Gas Law 2008

by

Jemena Gas Networks (NSW) Ltd (ACN 003 004 322)

Person giving this undertaking

1. This undertaking is given to the Australian Energy Regulator (the **AER**) by Jemena Gas Networks (NSW) Ltd (**JGN**) of Level 16, 567 Collins St, Melbourne, Victoria 3000 for the purposes of section 230A of the *National Gas Law* (the **NGL**).

Background

2. JGN provides natural gas transportation and associated services to users via a gas distribution network in New South Wales.
3. JGN's gas distribution network is made up of four covered gas pipelines: NSW Distribution System; Central West Distribution System; Wilton-Newcastle trunk pipeline (the 'northern trunk'); and Wilton-Wollongong trunk pipeline (the 'southern trunk'). These four covered pipelines are classified as distribution pipelines and are dealt with in a single consolidated access arrangement for the purposes of the NGL.
4. Section 7 of the *National Gas (New South Wales) Act 2008* (NSW) provides that the NGL, as set out in the Schedule to the *National Gas (South Australia) Act 2008* (SA), applies as a law of NSW. Section 26 of the NGL gives the National Gas Rules (**NGR**) the force of law in NSW.
5. The AER is responsible for the economic regulation of JGN's gas distribution network under section 27(1)(e) of the NGL and is empowered to make and revise access arrangements under Part 8 of the NGR.
6. On 3 June 2015 the AER published the *Final Decision – Jemena Gas Networks (NSW) Ltd Access Arrangements 2015-20 Overview, June 2015, including attachments* (**JGN**

Final Decision) pursuant to rule 62 of the NGR including the revisions the AER proposed to the access arrangement for JGN's gas distribution network in accordance with rule 64 of the NGR.

7. The *Access Arrangement, JGN's NSW gas distribution networks 1 July 2015 – 30 June 2020 (June 2015)* including the reference service agreement as revised in accordance with the JGN Final Decision (**JGN's AA**), and supporting access arrangement information, reflecting the JGN Final Decision forms Schedule 1 of this undertaking.
8. On 24 June 2015, JGN filed an application to the Australian Competition Tribunal (the **Tribunal**) seeking leave to apply to the Tribunal for review of the JGN Final Decision in accordance with s.245 of the NGL.
9. On 30 July 2015 the Tribunal gave leave to JGN to seek review of the JGN Final Decision.
10. Pursuant to s. 259(2)(c) of the NGL, on 26 February 2016 the Tribunal determined that the JGN Final Decision be set aside and remitted to the AER to make the decision again in accordance with its directions on:
 - a. cost of debt;
 - b. estimated cost of corporate income tax (γ);
 - c. capital expenditure; and
 - d. any other appropriate variations necessary in light of the other directions given by the Tribunal.
11. On 24 March 2016 the AER applied to the Federal Court for a judicial review of the Tribunal's decision.
12. In light of the ongoing legal proceedings, there was expected to be a significant delay in the AER remaking its decision with respect to JGN's revised access arrangement. This delay was expected to create some uncertainty for users about applicable reference tariffs and the legal effect of the terms and conditions of access to reference services.
13. Therefore, on 20 April 2016 JGN proffered an enforceable undertaking (**2016 EU**) which required JGN, for the period 1 July 2016 to 30 June 2017, to:
 - a. impose reference tariffs consistent with the initial reference tariffs identified in the Schedule of reference tariffs and charges 1 July 2015 to 30 June 2016, which formed Schedule 2 of the 2016 EU; and
 - b. otherwise provide reference services in accordance with all aspects of JGN's AA, including but not limited to:
 - i. Reference service agreement;

- ii. Efficiency carryover mechanism; and
 - iii. Pass through provisions
14. On 20 May 2016 the AER accepted the 2016 EU.
 15. Since the 2016 EU was accepted by the AER, the AER's application for judicial review of the Tribunal's decision has been heard by the Full Federal Court. However the Court has not yet handed down judgment in this matter.
 16. JGN acknowledges that until such time as there is resolution of the judicial review and the matters covered by the Tribunal's remittal, there may be a significant delay in the AER remaking its decision with respect to JGN's revised access arrangement. Such a delay may create uncertainty for users about applicable reference tariffs and the legal effect of the terms and conditions of access to reference services for the period 1 July 2017 to 30 June 2018.
 17. To ameliorate this uncertainty, JGN has agreed to proffer this undertaking to the AER in respect of reference tariffs and other terms and conditions of access to reference services for the period 1 July 2017 to 30 June 2018.

Acknowledgements

18. JGN and the AER each acknowledge that:
 - a. the reference tariffs provided for under the 2016 EU and this undertaking are 'placeholder' reference tariffs, to apply while the legal proceedings are being resolved and the AER is remaking its decision with respect to JGN's revised access arrangement;
 - b. as part of remaking its decision with respect to JGN's revised access arrangement, the AER will determine a revised revenue allowance for the current access arrangement period (i.e. the five-year period from 1 July 2015), and make adjustments to the X-factors for the remainder of the period to ensure that the total revenue allowance is equal to expected revenue over the five-year period, in NPV terms. The determination of tariff adjustments will reflect the application of a weighted average price cap form of control for the entirety of the current access arrangement period to ensure that JGN bears the demand forecasting risk (positive and negative) for the entirety of the current access arrangement period;
 - c. the AER will make this undertaking publicly available including by publishing it on the AER's website; and

- d. the AER will, from time to time, make public reference to the undertaking including in news media statements and in AER publications.

Undertaking by JGN

19. JGN undertakes for the purposes of section 230A of the NGL that for the period from 1 July 2017 to 30 June 2018 JGN will:

- a. impose reference tariffs that have been set in accordance with the reference tariff variation mechanism in clause 3 of JGN's AA, subject to the following:
 - i. the Variation Notice to be submitted under clause 3.6(a) in respect of variations to reference tariffs to apply from 1 July 2017 is to be submitted on or before 18 May 2017;
 - ii. for the purposes of assessment of the Variation Notice referred to in subparagraph (i), the time periods referred to in clause 3.8 of JGN's AA are amended as follows:
 - A. the time period referred to in clause 3.8(a) and in line 1 of clause 3.8(c) is shortened to 20 Business Days;
 - B. the absolute time limit referred to in clause 3.8(c) is shortened to 30 Business Days;
 - C. the time period referred to in clause 3.8(d) is shortened to 30 Business Days;
 - iii. in determining variations to reference tariffs to apply from 1 July 2017, the reference tariff variation mechanism specified in clause 3.2 of JGN's AA is to be applied with the following modifications:
 - A. t is the period 1 July 2017 to 30 June 2018;
 - B. p_t^{xy} is the proposed tariff for component y of Reference Tariff x for the period 1 July 2017 to 30 June 2018;
 - C. p_{t-1}^{xy} is the tariff for component y of Reference Tariff x that was imposed by JGN for the period 1 July 2016 to 30 June 2017 pursuant to the 2016 EU;
 - D. q_{t-2}^{xy} is the quantity of component y of Reference Tariff x that was sold in the period 1 July 2015 to 30 June 2016;
 - E. CPI_t means 1.48 per cent;
 - F. X_t means 0.07;

- G. A_t and PT_t are zero;
- b. otherwise provide reference services in accordance with all aspects of JGN's AA, including but not limited to:
- i. Reference service agreement
 - ii. Efficiency carryover mechanism
 - iii. Pass through provisions

Commencement and expiry of undertaking


20. This undertaking comes into effect when:
- a. the undertaking is executed by JGN; and
 - b. the AER accepts the undertaking so executed.
21. Upon the commencement of this undertaking, JGN undertakes to assume the obligations set out in paragraph 19, to the extent that those obligations do not prevent JGN from complying with an applicable access arrangement made under Part 8 of the NGL.
22. Pursuant to section 230A(2) of the NGL, JGN may withdraw or vary this undertaking at any time with the consent of the AER.
23. Subject to paragraph 22, this undertaking expires immediately prior to revisions to JGN's access arrangement coming into effect in accordance with the AER's remade decision, or on 30 June 2018 (whichever is the earlier).

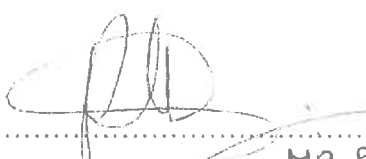
Withdrawal of 2016 EU

24. With the execution of the undertaking, the AER accepts the withdrawal of the 2016 EU effective 1 July 2017.


Executed by

Jemena Gas Networks (NSW) Ltd ACN 003 004 322, by its authorised officers pursuant to section 127(1) of the Corporations Act 2001


.....
Director MRS JOANNE PEARSON


.....
Director MR PAUL ADAMS
This... 18th... day of... MAY... 2017

ACCEPTED BY THE AUSTRALIAN ENERGY REGULATOR PURSUANT TO SECTION 230A OF THE NATIONAL GAS LAW


.....
Chair PAULA CONBOY
This... 31st... day of... MAY... 2017

SCHEDULE 1