

Jemena Gas Networks (NSW) Ltd

Pass through application

NGR rule 531 'Pass through of unpaid distribution charges'

Public

8 August 2016



An appropriate citation for this paper is:

Pass through application

Contact Person

Chris Stewart
Senior Regulatory Adviser
Ph: 02 9867 7290
christopher.stewart@jemena.com.au

Jemena Gas Networks (NSW) Ltd

ABN 87 003 004 322
Level 9-15, 99 Walker Street
North Sydney NSW 2060

Postal Address

PO Box 1220
North Sydney NSW 2060
Ph: (02) 9867 7000
Fax: (02) 9867 7010

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ABBREVIATIONS

AA	Access Arrangement
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
COAG	Coalition of Australian Government
DSCL	Distribution Service Charges Liability
Go Energy	Go Energy Pty Ltd
JGN	Jemena Gas Networks
NEM	National Electricity Market
NER	National Electricity Rules
NGR	National Gas Rules
STTM	Short Term Trading Market
Tribunal	Australian Competition Tribunal

1. INTRODUCTION

1.1 PURPOSE

1. GoEnergy Pty Ltd (**Go Energy**) was an electricity and gas retailer with licences to operate in the National Electricity Market (**NEM**) and the gas Short Term Trading Market (**STTM**).
2. Go Energy was late paying its December 2015 and January 2016 invoices issued by Jemena Gas Networks (NSW) Limited's (**JGN**) and has not paid its overdue March 2016 and April 2016 invoices. The unpaid invoices amount to **[c-i-c]**.
3. Go Energy was suspended from the NEM by the Australian Energy Market Operator (**AEMO**) for failing to comply with AEMO requirements. Go Energy's authorisation to trade in the NEM was revoked from 12am Saturday 2 April 2016.
4. On 4 April 2016, the Australian Energy Regulator (**AER**) revoked Go Energy's authorisation as a gas retailer following the appointment of external administrators (on 1 April 2016) and subsequent suspension from the STTM by AEMO (on 4 April 2016).
5. Clause 531 of the National Gas Rules (**NGR**) provides JGN the opportunity to pass through unpaid distribution service charges due to a 'retailer insolvency event' which means:

“the failure of a retailer during an access arrangement period, to pay a distributor an amount to which the service provider is entitled for the provision of reference services, if:

 - (a) an insolvency official has been appointed in respect of that retailer; and
 - (b) the distributor is not entitled to payment of those charges in full under the terms of any credit support provided in respect of that retailer.”¹
6. JGN is therefore seeking a pass through of **[c-i-c]** equivalent to the unpaid distribution service charges of Go Energy.

1.2 APPLICABLE ACCESS ARRANGEMENT

7. While the AER can make its pass through determination under the NGR, the mechanism for JGN to reflect this in our tariffs is set out within JGN's Access Arrangement² (**AA**). However, on 26 February 2016, the AA was set aside by the Australian Competition Tribunal (**Tribunal**) and remitted to the AER for further consideration.
8. On 24 March 2016, the AER applied to the Federal Court for judicial review of the Tribunal's decision. Resolution of the judicial review and remittal process will not conclude by the due date for this pass through application.³
9. On 20 April 2016, JGN executed an undertaking that from the period of 1 July 2016 to 30 Jun 2017 JGN will:

¹ NGR r 531(4).

² The Access Arrangement: JGN's NSW gas distribution networks, 1 July 2015 – 30 June 2020, published 3 June 2015.

³ Pursuant to NGR, rule 531(2) a distributor must submit its application to the AER within 90 business days of the occurrence of a retailer insolvency event.

1 — INTRODUCTION

- 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 forms Schedule 2 of that undertaking; and
 - otherwise provide reference services in accordance with all aspects of JGN's AA, including but not limited to:
 - a) the Reference Service Agreement
 - b) efficiency carryover mechanism
 - c) pass through provisions.
10. The undertaking was accepted by the AER on 16 May 2016. This pass through application is therefore consistent with this undertaking. Pursuant to the AA, JGN will engage with the AER on how to incorporate any determined pass through amount⁴ in future tariff variation notices.

1.3 RETAILER-DISTRIBUTOR CREDIT SUPPORT REQUIREMENTS RULE CHANGE PROCESS

11. The Australian Energy Market Commission (**AEMC**) is currently considering four rule change proposals to the NGR and National Electricity Rules (**NER**) on retailer-distributor credit support requirements.⁵ The rule changes are relevant to the intent of the existing rules.
12. The rule changes have been raised by the Coalition of Australian Government (**COAG**) Energy Council, AGL, and JGN. The proposals include, consistent with the position of the COAG Energy Council's policy, to make it explicit that gas distributors can recover unpaid distribution charges where a retailer becomes insolvent.⁶
13. COAG's proposal is to the NER and seeks amendments to remove the current NER requirement for a retailer insolvency event to meet the materiality threshold (as defined in the NER). This issue does not arise in the case of the NGR, as—consistent with the policy position—pass through relief for retailer insolvency events is not subject to any materiality threshold requirement.
14. It is expected that the AEMC will finalise its position with a rule change by the end of 2016—outside the timing of this pass through application. At its 31 May 2016 workshop, AEMC staff drafted an option for a retailer default fund that included pass through arrangements with no materiality threshold and the recovery of foregone distributor revenue in the event of a retailer failure. This AEMC option is consistent with the principles in this pass through application and our understanding of the current NGR.

1.4 SUBMISSION STRUCTURE AND AA COMPLIANCE

15. JGN has structured this submission to demonstrate compliance with each relevant requirement in Part 21 of the NGR and additionally considers AA requirements as follows:
- section 2—considers the **AA requirements**

⁴ As defined in JGN's AA and adjusted for the impact of inflation.

⁵ The AEMC has received proposals from AGL (GRC0032 and ERC0183), COAG Energy Council (ERC0172) and JGN (GRC0035), which have been consolidated to be considered under a single rule change process. An AEMC draft decision is expected late July 2016.

⁶ JGN, Retailer Insolvency costs and pass through provisions – rule change proposal, GRC0035, 25 September 2015.

- section 3—**Credit support**—sets out the credit support calculation for Go Energy (rules 516-518 of the NGR)
- section 4—**Pass through application**—sets out JGN’s requested pass through of unpaid distribution service charges

1.4.1 SUBMISSION VALUES AND TERMINOLOGY

16. This submission employs the following standards, unless otherwise stated:
- all dollar values are expressed in \$2016
 - a reference to a clause or a rule is a reference to a clause of the NGR
 - a reference to the AA is a reference to the AA approved by the AER on 3 June 2015.

1.5 CONFIDENTIALITY

17. Table 1–1 sets out specific sections of JGN’s tariff variation notice that JGN claims to be commercial-in-confidence and the basis of the claim. JGN has applied the rationale for claiming information as commercial-in-confidence as set out in the AER’s confidentiality guideline consultation materials available at the time of submission.

Table 1–1: Confidentiality claims

Document/ Paragraph number	Description	Topic	Category	Why information falls into category	Why would detriment occur if disclosed	Why detriment outweighs public benefit of disclosure
Page 1, paragraphs 2 & 6 Page 9-10, Table 4.1 (2 instances)	Pass through amount	Retailer billing	Personal information	This is our customer’s private information	This is our customer’s private information	This is our customer’s private information
Page 6, paragraph 22	Credit support requested by JGN	Credit support	Personal information	This is our customer’s private information	This is our customer’s private information	This is our customer’s private information
Page 6, paragraph 22 Page 7, paragraph 30	Distribution service charges liability amount	Credit support calculation	Personal information	This is our customer’s private information	This is our customer’s private information	This is our customer’s private information
Page 8, Table 3.2	Invoice amounts	Retailer billing	Personal information	This is our customer’s private information	This is our customer’s private information	This is our customer’s private information

Document/ Paragraph number	Description	Topic	Category	Why information falls into category	Why would detriment occur if disclosed	Why detriment outweighs public benefit of disclosure
Appendix A	JGN request for credit support	Credit support	Personal information	This is our customer's private information	This is our customer's private information	This is our customer's private information
Appendix B	JGN invoices to Go Energy	Retailer billing	Personal information	This is our customer's private information	This is our customer's private information	This is our customer's private information

2. ACCESS ARRANGEMENT REQUIREMENTS

18. JGN's AA contains a 'network user failure event', which means an event where:
- a) a Retailer of Last Resort (**RoLR**) Event as defined in section 122 of the National Energy Retail Law (**NERL**) has occurred, and
 - b) the Service Provider incurs costs in responding to the RoLR event in accordance with its obligations under the NERL, NERR, NGL or NGR (including Guidelines and procedures that are binding under those instruments), and
 - c) the costs are not recoverable by the Service Provider under other provisions of the NERL, NERR, NGL or NGR as in force at the time of the event, including but not limited to rule 531 of the NGR and other pass through events in this Access Arrangement. (**Network User Failure Event**).

Note for the avoidance of doubt, in making a determination on a Network User Failure Event pursuant to clause 3.4(j) of the AA, the AER will have regard to, amongst other things, the extent to which the Service Provider has taken steps to minimise the costs associated with its responsibilities in a RoLR Event, both prior to, and after, the RoLR Event was triggered

19. JGN is not seeking the AER approve a network user failure event under the AA because we consider that foregone revenue is recoverable under rule 531 of the NGR (titled 'Pass through of unpaid distribution charges').
20. It is currently unclear whether JGN will recover any funds from the Go Energy administrators and we are therefore making this pass through application now. JGN has completed all available processes at this point in time to recover funds from Go Energy, including lodging proof of debt with the administrators. Once the administrator completes a full assessment of available funds to pay out creditors they will notify JGN of what, if anything, is available. If this pass through application is successful and where we subsequently recover an amount from the Go Energy administration, we will submit a negative pass through claim at that time.

3. CREDIT SUPPORT CALCULATION UNDER THE NGR

3.1 SUMMARY

21. This section sets out the credit support calculation under the NGR.
22. In summary:
 - While Go Energy was paying its bills, JGN was not entitled to ask Go Energy for credit support under the NGR—the NGR provided Go Energy a credit allowance of \$84,403,272, which exceeded their distribution service charges liability (**DSCL**), which was no greater than **[c-i-c]**
 - When Go Energy failed to pay two consecutive invoices, JGN exercised the right under rule 522 to seek credit support from Go Energy of **[c-i-c]** prior to the company being entered into administration—however, the requested credit support was not provided.
23. Table 3–1 sets out the relevant section of the NGR and where we address these in this pass through application.

Table 3–1: Elements of unpaid distribution services charges pass through

NGR rule	Description	Submission reference
516(1)—Determining required credit support amount	The credit support amount is the amount by which the distribution service charges liability (DSCL) of a retailer exceeds their credit allowance	Section 3.4
518—Calculating retailer credit allowance	Provides the calculation for a retailer's credit allowance	Section 3.3
517—Determining a retailer's DSCL	Provides the calculation for a retailer's DSCL	Section 3.4
519—Distributor's maximum credit allowance	Provides the calculation for the maximum credit allowance	Section 3.3
520—Credit rating for retailer	The credit rating provided by the retailer has been used	Section 3.3
522—When no credit allowance will be extended to the retailer	Provides the circumstances of late of failed payment in which no credit allowance is extended to the retailer and a distributor can seek credit support	Section 3.5
523—Retailer to provide credit support	Sets out that a retailer must provide credit support when requested by a distributor and the form of that support	Section 3.5
531— Pass through of unpaid distribution service charges	Sets out the process for determining pass through in a retailer insolvency event	Section 4

3.2 JGN CAN ONLY ASK FOR CREDIT SUPPORT WHERE DSCL EXCEEDS CREDIT ALLOWANCE

24. Rule 516 sets out how distributors must determine retailers' required credit support. The credit support amount must be calculated as the amount that the DSCL of a retailer exceeds the credit allowance of that retailer.

3.3 NGR PROVIDED GO ENERGY A CREDIT ALLOWANCE OF \$84.4 MILLION

25. Rule 518 of the NGR provides the calculation for the credit allowance:

A retailer's credit allowance is calculated as follows:

$$CA = MCA \times CA\%$$

where:

CA means the credit allowance for a retailer;

MCA means the maximum credit allowance for that distributor and equals TARC x 25%

CA% (the credit allowance percentage for a retailer) is the figure expressed as the applicable percentage in the Table in Schedule 1 to this Part (which corresponds to the credit rating applicable to the retailer) or, where either rule 520(3) or rule 522 applies, is zero.

TARC or total annual retailer charges means the total annual amount of distribution service charges billed by the distributor to all retailers as most recently reported by the distributor to the AER.

26. The JGN TARC level for 2014-15 is \$638.21 million.⁷ Therefore, the MCA is \$159,552,500.
27. Go Energy's Dun and Bradstreet dynamic risk score was 'low', which equates to a CA% of 52.9%.
28. This provides for a credit allowance for Go Energy of \$84,403,272.

3.4 DSCL DOES NOT EXCEED CREDIT ALLOWANCE

29. Rule 517 sets out how to calculate the DSCL for Go Energy based on their average billed and unbilled distribution service charges liability.
30. JGN has not estimated a DSCL for Go Energy of above **[c-i-c]**. This is substantially less than Go Energy's credit allowance of \$84,403,272, meaning JGN could not have requested any credit support from Go Energy unless Go Energy triggered an instance where no credit allowance is extended under the NGR (i.e. where rule 522 applies).

⁷ TARC values are available on the AER website here: <https://www.aer.gov.au/retail-markets/other-retail-roles/total-annual-retailer-charges>

3 — CREDIT SUPPORT CALCULATION UNDER THE NGR

3.5 JGN SOUGHT CREDIT SUPPORT WHEN TWO CONSECUTIVE STATEMENT OF CHARGES WERE UNPAID

31. Rule 522 of the NGR provides for occasions where no credit allowance will be extended to the retailer and JGN would have been able to ask for credit support. This includes if:
- within the previous 12 months, the retailer has failed to pay in full:
 - the charges contained in 3 statements of charges by the due date for payment; or
 - the charges contained in 2 consecutive statements of charges by the due date for payment; or
 - the charges contained in 1 statement of charges within 25 business days of the due date for payment; or
 - AEMO makes a claim on any credit support held by AEMO in respect of the retailer's obligations to AEMO under these Rules.
32. Table 3–2 sets out the timing of JGN's invoices to Go Energy, due dates and the timing of payment.

Table 3–2: Go Energy invoice timeline

Invoice period	Invoice amount	Due date	Date paid
December 2015	[c-i-c]	19 Jan 2016	25 Feb 2016
January 2016	[c-i-c]	16 Feb 2016	25 Feb 2016
February 2016	[c-i-c]	16 Mar 2016	16 Mar 2016
March 2016	[c-i-c]	18 Apr 2016	Unpaid
April 2016	[c-i-c]	21 Apr 2016	Unpaid

33. In response to the late payment of the December 2015 and January 2016 invoices, JGN invoked rule 522(1)(a)(i) and rule 522(1)(a)(ii) to request credit support of \$145,649.09 on 2 March 2016. This was because Go Energy failed to pay:
- the December 2015 invoice within 25 business days (being by 24 February 2016)
 - two consecutive statement of charges by the due date for payment (being the December 2015 and January 2016 invoices).
34. JGN's request for credit support is provided at **Attachment A**. The unpaid invoices are provided at **Attachment B**.
35. JGN did not receive credit support following its request.
36. On 1 April 2016, Go Energy appointed an external administrator and was suspended from the STTM on 4 April 2016.

4. PASS THROUGH APPLICATION

- 37. Rule 531 ‘Pass through of unpaid distribution service charges’ of the NGR sets out the rules for gas distributors to pass through unpaid distribution service charges. This pass through application is made under Rule 531(1) and seeks AER approval against its terms.
- 38. As noted in section 2 above, this application is made solely under rule 531 of the NGR and the pass through arrangements under the AA do not apply.
- 39. Table 4–1 sets out how the JGN application meets the NGR requirements.

Table 4–1: Pass through application rule requirements and JGN application

NGR rule	Requirement	Compliance check
531(1)	Pass through can occur where a retailer insolvency event occurs.	A retailer insolvency event has occurred (see below)
531(2)	JGN must submit within 90 business days of the retailer insolvency event	90 business days from 1 April 2016 is 9 August 2016
531(2)(a)	The application must include the pass through amount	JGN is seeking a pass through of [c-i-c] in invoiced, but unpaid, statement of charges. This pass through amount would be adjusted for the time value of money to account for the delay in the collection of revenue.
531(2)(b)	The application must include the portion of that amount we propose to pass through in each year and how we propose to vary reference tariffs.	For simplicity, and given the relatively small level of the pass through, JGN proposes to pass through the full amount at the next annual tariff variation. JGN would adjust the tariffs in accordance with the tariff variation mechanism in our AA.
531(2)(c)	Evidence related to the pass through amount	JGN’s unpaid invoices are provided at Attachment B. In addition, JGN incurred administrative costs to manage the impact of the insolvency, but has incorporated these as business as usual costs and is not claiming any additional direct costs. As set out in section 3, no credit support was provided by Go Energy at the time of their insolvency. As set out in section 3, JGN was entitled to zero credit support under Part 21 of the NGR. JGN has so far received no payment and has not been made aware of any likely payment from the administrators appointed to Go Energy.

4 — PASS THROUGH APPLICATION

NGR rule	Requirement	Compliance check
531(3)	The distributor must propose a retailer insolvency pass through amount	<p>JGN's proposed pass through is [c-i-c].</p> <p>This pass through amount would be adjusted for the time value of money to account for the delay in the collection of revenue. It does not include:</p> <ul style="list-style-type: none"> amounts recoverable from the retailer or guarantor (those amounts being zero); or amounts JGN may be entitled to under a retailer of last resort cost recovery scheme distributor payment determination.⁸
531(4)	<p>Definitions:</p> <p>A retailer insolvency event means the failure of a retailer during an access arrangement period, to pay a distributor an amount to which the service provider is entitled for the provision of reference services, if:</p> <p>(a). an insolvency official has been appointed in respect of that retailer; and</p> <p>(b). the distributor is not entitled to payment of those charges in full under the terms of any credit support provided in respect of that retailer.</p>	<p>A retailer insolvency event has occurred because:</p> <ul style="list-style-type: none"> On 1 April 2016, Go Energy Pty Ltd appointed an external administrator, satisfying rule 531(4)(a) As set out in section 2, no credit support was provided by Go Energy and JGN has no recourse to seek payment of charges via credit support, satisfying rule 531(4)(b).

⁸ Where JGN subsequently makes a payment under a RoLR cost recovery scheme distributor payment determination, JGN will seek that pass through under the provision in the National Energy Retail Law (South Australia) Act 2011 (section 167).

Attachment A

JGN request for credit support

Attachment B JGN invoices