



17 February 2020

Mr Sebastian Roberts  
General Manager, Transmission and Gas  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

Email: [JNGAAR2020-25@aer.gov.au](mailto:JNGAAR2020-25@aer.gov.au)

Dear Mr Roberts

**RE: AER DRAFT DECISION AND REVISED REGULATORY PROPOSAL FOR JEMENA GAS NETWORKS (NSW) ACCESS ARRANGEMENT 2020-25**

Origin Energy appreciates the opportunity to provide a submission to the Australian Energy Regulator's (AER) assessment of the regulatory revenue proposal submitted by Jemena Gas Network (JGN) for its NSW gas distribution network for the period 2020-25 and the associated revised proposal.

On 25 November 2019, the AER released its draft decision on the access arrangement that will apply to JGN for the 2020–2025 period. The AER proposes a total allowed revenue of \$2,157.6 million for the 2020–25 period, \$185.7 million (7.9%) less than the \$2,343.3 million initially proposed by JGN assets.

Origin supports the significant progress that the AER has made in driving JGN towards achieving more efficient expenditure levels and the resultant impact on affordability. Origin believes the AER draft determination contributes positively to affordability and a reduction in JGN consumers' network bills. We are therefore supportive of the JGN revised proposal being largely in line with the AER's recommendations.

In its draft decision, the AER noted that a number of JGN's proposed amendments to its Reference Service Agreement (RSA) are contentious (such as network disconnection of customers). The AER acknowledged that JGN was continuing to engage with stakeholders on these issues with a view to developing an updated version of the RSA as part of its revised proposal. The AER indicated that it will review these outstanding issues once the revised RSA is received.

Origin acknowledge that JGN has sought to engage with stakeholders with a view to gaining consensus over amendments to its RSA prior to re-submitting it to the AER. While Origin is appreciative of JGN's engagement, we remain concerned with aspects of the RSA, in particular the process surrounding disconnections and associated allocation of risk and accompanying incentive for JGN to expedite retailer requested disconnections.

Our comments regarding the revised JGN proposal are provided in detail below.

## **Capital expenditure**

Origin note that JGN provided the AER with additional information on its proposed capital expenditure program with the aim of demonstrating the prudence and efficiency of the proposed expenditure. In responding to JGN's initial proposal (June 2019) we noted that JGN expected to significantly underspend capital expenditure across all expenditure categories (with the exception of connections) in the 2015-20 access arrangement period relative to the AER allowance.

Origin remain concerned at the proposed increase in capital expenditure in the context of the significant underspend in non-connections capital expenditure the current regulatory period. Accordingly, we request that the AER rigorously examine JGN's revised capital expenditure program and supporting information to ensure the prudence and efficiency of proposed expenditure, the deliverability of expenditure and confirm tangible customer benefits.

## **Accelerated depreciation**

In its draft decision the AER rejected JGN's proposal to reduce the asset lives of JGN's trunk mains, and medium pressure mains and services in response to declining gas utilisation and the heightened risk of decarbonisation and consequent risk of asset stranding. The AER indicated that it did not consider that there was sufficient evidence at this time that the economic lives of these assets has reduced.

In its revised proposal JGN provides additional evidence in support of its case for applying accelerated depreciation to these assets. In particular, JGN states that:

- the reduction in asset lives is required to maintain efficient investment incentives;
- the proposal is consistent with the National Gas Law and the depreciation criteria in the National Gas Rules;
- there is little downside risk in acting early rather than waiting for more conclusive evidence and that JGN's proposal will result in lower gas prices in future and help maintain the long-term viability of the industry; and
- the proposal is consistent with the preferences expressed by JGN customers during JGN's consumer engagement process.

While we consider that JGN makes some valid arguments, Origin remains concerned with JGN's proposed request for accelerated depreciation. Our concerns revolve around the uncertainty associated with the introduction of decarbonisation, the gas industry response and the potential impact on customers. We consider that there remains too much uncertainty at this time to introduce accelerated depreciation.

From a customer perspective, the proposal will increase costs to consumers in the short term, at a time when energy affordability is a major concern for the industry and customers as revealed from JGN's consumer engagement process. Our preference is for reduced gas prices to maintain the competitiveness of gas. Further, we note that JGN's proposed capital expenditure program appears to factor in long term excess capacity, suggesting that JGN remain optimistic about the future of its network despite the potential decarbonisation.

Origin considers that any request for accelerated depreciation must be systematically examined by the AER, particularly since any decision has the potential to set a precedent for the treatment of depreciation in future regulatory reviews. We consider that any decision to provide for accelerated depreciation should not be taken lightly. In particular, we would be concerned if a situation were to arise where the economic lives of assets are continuously reviewed in response to potential upcoming events. This would not only be destabilising for industry and customers but would also add unnecessary complexity and uncertainty to the regulatory process.

While we appreciate that any case for accelerated depreciation needs to be examined on its own merits and will necessarily involve some degree of judgement, we encourage the AER to develop a principle-based approach to assessing such proposals. In doing so, the AER needs to be mindful of a wide range of issues, including:

- the materiality of the potential event for the network business and other industry participants;
- the degree of certainty both for the introduction of the event and the industry response;
- customer impacts including price impacts and the impact on gas utilisation and demand; and
- the applicability of the decision to future proposals for accelerated depreciation.

### **Price path**

Origin notes JGN's proposal to tailor the 2020-25 price path with a view to providing smooth retail prices. We consider that the AER should retain its focus on setting network tariffs (rather than retail tariffs). Origin appreciate that the AER's tariff setting is constrained by a number of competing objectives, including minimising within-period tariff volatility and minimising revenue divergence in the final year of the regulatory period. We consider that attempting to target retail price outcomes by foreshadowing movements in other parts of the supply chain introduces unnecessary complexity and uncertainty to the AER's tariff setting process.

### **Ancillary service charges and timeframes**

Origin is concerned that a number of JGN's ancillary charges and timeframes for completion of services are excessive compared with both previous estimates and other service providers. For example, JGN's hourly charge for non-standard user-initiated requests and queries has increased from \$100 per hour in 2015-16 to \$153 per hour in 2020-21 – well in excess of the corresponding rate of inflation or wage growth. Similarly, JGN propose to charge \$1,038 to abolish a supply point. In comparison, APA/AGN quote for abolishment work, with the average cost of completion approximately \$444.72. In terms of time for completion of work, JGN's handbook provides an indicative timeframe for a street disconnection of 20 business days from the date of receiving the order, whereas APA/AGN complete the street disconnection within 5 business days. We note also that information provided in JGN's handbook is not legally binding and therefore there is no commitment to meet the stated timeframes.

The excessive cost and time associated with a number of JGN's ancillary services appears unjustified and is detrimental to both retailers and their customers. We request that the AER conduct a thorough review of the provision of ancillary services by JGN to determine if these are cost reflective and acceptable (meeting our customer expectations), particularly compared to other network service providers.

### **Reference Service Agreement**

#### *Clause 12 - Deletion of Delivery Points from Customer List*

With reference to clauses 12(a)(i) and 12(b), JGN has proposed a further change such that Volume Customer Delivery Points will be deleted from the Customer List with effect from the date of disconnection. Origin support the latest proposal to provide for deletion of Volume Customer Delivery Points from the Customer List from the date of disconnection.

#### *Clause 15.9 – Disconnection and abolishment of Delivery Points*

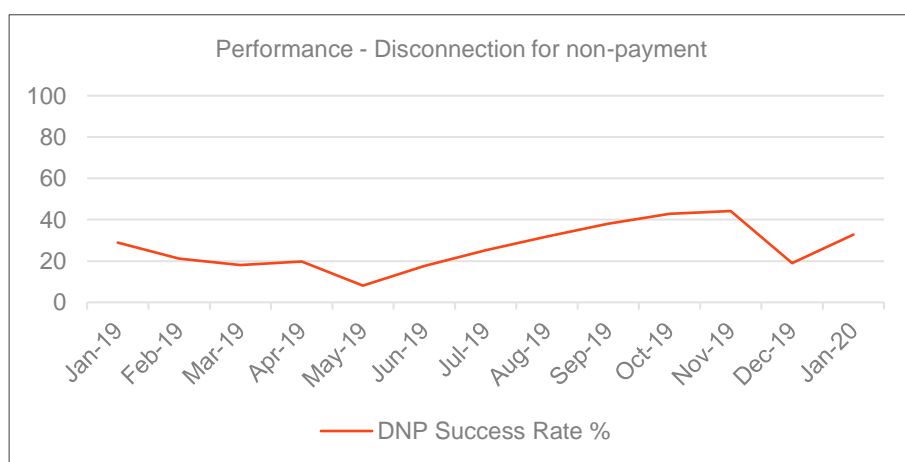
Origin's submission to JGN's June 2019 RSA proposal highlighted the issues associated with JGN's failure, or refusal, to disconnect gas sites within its New South Wales gas distribution network for which Origin is financially responsible. Origin has been having discussions with JGN for over two years to try to address poor disconnection performance outcomes for sites within JGN's network. Specifically:

- JGN has, over a long period of time, been unable (or unwilling) to disconnect (e.g. non-payment and vacant consumption) sites when requested by Origin and has billed for continued charges for disconnected and unable to locate meter sites;

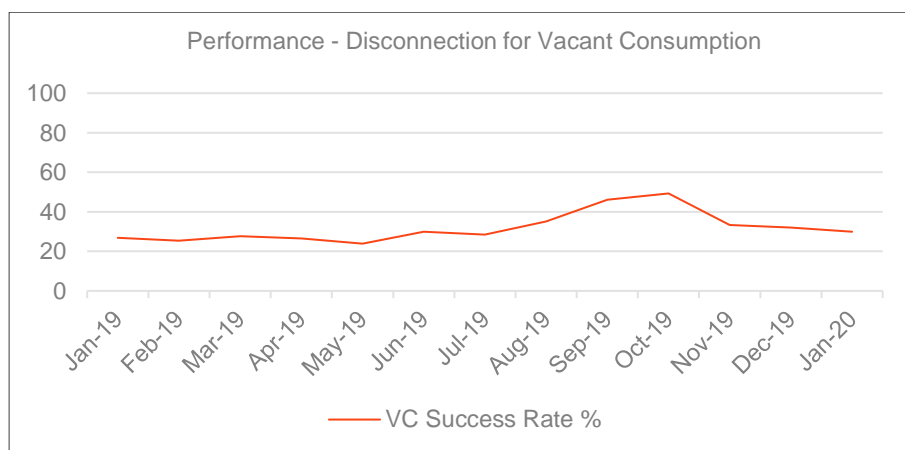
- in many cases, multiple disconnection service orders were raised by Origin and were automatically rejected, without JGN proposing or pursuing any alternative solution to enable the disconnection to be completed. These “auto-rejections” are largely due to JGN infrastructure limitations and/or system rules (e.g. service orders with no customer contact details or street address details with lot numbers); and
- despite these discussions, disconnection performance for non-payment and vacant sites remains poor.

JGN’s recent disconnection performance in relation to Origin disconnection requests is highlighted in Charts 1 and 2 below.

**Chart 1: JGN disconnection for non-payment**



**Chart 2: JGN disconnection for vacant consumption**



As a consequence of this under-performance Origin has incurred, and continues to incur, significant financial losses. It continues to be billed network charges by JGN and continues to incur wholesale energy costs, and typically is unable to recover these charges as these are sites at which there is no identifiable customer or where the customer is not paying its bills.

Origin's specific comments in relation to JGN's most recent amendment to clause 15.9 of the RSA are provided below.

#### *Clause 15.9(a)*

Clause 15.9 sets out the core obligations of JGN to disconnect delivery points on Origin's request. Under the revised RSA JGN has amended clause 15.9(a) to indicate that JGN is required to use reasonable endeavours to disconnect supply or abolish a Volume Customer Delivery Point promptly or, if a later date is nominated by the User when making the request, in accordance with that request. Origin consider that the latest proposed changes to this clause, together with proposed new clause 15.9(c) (see below), represent a weakening of the obligation to disconnect, as compared to both the current 2015-2020 RSA and the original June 2019 proposal.

The earlier versions of the RSA make it an absolute obligation to complete the disconnection, unless the specific exception relating to preconditions under Law or the Customer Connection Contract applies. In contrast, the latest version, in effect, reduces the obligation to "reasonable endeavours". Origin consider that JGN's latest revisions to the RSA would exacerbate, rather than alleviate, the existing problems associated with JGN's disconnection performance and the application of the automatic rejection process by effectively watering-down JGN's obligation to disconnect. In particular, rather than increasing the incentives for JGN to maximise its disconnection performance in the overall interests of consumers, we consider that the latest changes are likely to weaken those incentives further.

Given the issues that have been encountered with JGN's poor disconnection performance during the current regulatory period, Origin consider that it is not appropriate to introduce a new "reasonable endeavours" standard for disconnections.

Similarly, Origin consider that clause 15.9(a) in its current form (as proposed in JGN's June 2019 proposal) is also unacceptable. Origin consider that the term 'reasonably determines' in clause 15.9(a) is not acceptable as it imposes little obligation on JGN to disconnect.

#### *Clause 15.9(c)*

Clause 15.9(c) is related to the proposed changes in clause 15.9(a) described above but takes this further by expressly relieving JGN of liability where it is unable to obtain clear and safe access to the Delivery Station.

The amended clause is the same as the June 2019 proposal, except that the words "despite using reasonable endeavours and prudent operating practices" have been added. While this represents a marginal improvement against the June 2019 proposal, this latest change does not address the core issue, and the proposed clause continues to represent a significant weakening of JGN's obligation to disconnect relative to the current RSA for 2015-2020.

Origin consider that clause 15.9(c) of the RSA removes any liability on JGN for a disconnection when it is unable to obtain clear and safe access to perform the work required for disconnection or abolishment. Origin find this clause absolves JGN of any responsibility to complete disconnections and is unacceptable.

For these reasons, Origin consider that clause 15.9(c) should be deleted, consistent with the position under the current RSA for 2015-2020.

#### *Liability for ongoing network and energy charges*

Origin consider that the most significant issue is not so much whether a failure by JGN to successfully complete a disconnection constitutes a failure to meet its obligations, but who bears the financial risk where this occurs. The RSA addresses the question of when network charges cease upon the

successful disconnection of a Delivery Point (see comments on clause 12 above), but not in the event that a disconnection is requested but not completed.

JGN's revised proposal (Attachment 15.3) acknowledges the issues identified in our submission in relation to clause 15.9 but suggests that the current allocation of risk is appropriate i.e. the retailer continues to be responsible for network charges in the event of a failure to disconnect. Origin consider there is a fundamental mismatch between the allocation of responsibility for disconnections and the consequences for failure to disconnect i.e. the risk associated with failure to disconnect. Specifically, the primary responsibility to disconnect resides with JGN, however, the financial consequences of a failure to disconnect fall on the retailer. Compounding this issue, the retailer has no means of mitigating this financial risk. Origin considers that JGN is not appropriately incentivised, financially or otherwise, to disconnect when requested to do so by a retailer. We consider that this conclusion is supported by JGN's historic disconnection performance as presented in Charts 1 and 2.

Origin is seeking a means to incentivise JGN to disconnect expeditiously to minimise financial consequences for retailers. We consider that, at present, there is no incentive for JGN to efficiently and effectively perform disconnections. Origin accept that there can be difficulties disconnecting customers under certain circumstances. Our concern however is with the sustained poor performance by JGN and the apparent lack of incentive to improve that performance. This is not to suggest that JGN should bear disproportionate risk for issues beyond its control – but similarly, Origin and other retailers should not be adversely impacted for risks which it is unable to mitigate.

Under both the current RSA for 2015-2020 and JGN's proposals for 2020-2025, there is no express regime for allocating financial risk where a disconnection is not completed. As a result, the main avenue for Origin to try to argue that network charges should cease (and/or energy charge compensation should be provided) is to assert that JGN has breached its RSA disconnection obligations. In the absence of a clear rule under the RSA or in relevant regulatory instruments as to how financial risk should be allocated this can be a difficult process. Origin consider that if JGN's proposed changes to clause 15.9(a) and 15.9(c) are implemented, the extent of this problem will increase.

One possible solution is that the RSA expressly incorporate a similar principle to that set out in rule 105 of the National Energy Retail Rules (NERR) as to financial liability for sites which have not been successfully disconnected.

That rule provides that where a distributor fails to de-energise a customer's premises within any required timeframes for de-energisation under an applicable distributor service standard, and the failure is not due to an act or omission of the customer or retailer, the distributor must:

- waive any network charges applicable to the premises after the date on which the de-energisation was required to be completed; and
- pay energy charges for consumption at the premises if the retailer has used all reasonable endeavours to recover the charges from the customer and has been unable to do so.

Origin acknowledge that currently there are no applicable service standards for gas in New South Wales, meaning this rule currently has no practical operation under the NERR regime (this can be compared with electricity disconnections in New South Wales, where a distribution service standard has been set for completion of retailer-requested disconnections). Given the ongoing and persistent nature of this disconnections issue and the associated financial consequences, we request the AER's assistance in developing a mutually agreeable service standard for disconnections.

#### *Recommended approach to disconnections*

As discussed, Origin consider that the current JNG process for disconnections does not provide adequate incentive for JGN to disconnect customers and unreasonably penalises Origin, via ongoing network charges, for JGN's inability/unwillingness to disconnect. We consider the current disconnection

process is unacceptable. Accordingly, Origin seek the implementation of, and adherence by JGN to, an adequate process for disconnections going forward. This would include, amongst other things:

- a) the introduction of a 'street disconnection' service for a reasonable charge;
- b) JGN ceasing to apply network charges (and compensating Origin for energy usage) where disconnections are unsuccessful or declined by JGN;
- c) an improved process for escalating high-value sites; and
- d) where a meter has been removed or is unable to be located, further network charges to not apply and revise consumption for the affected period.

In order to facilitate these recommendations, we seek the AER's involvement in the development of a disconnections service standard incorporating a mutually agreeable timeframe for requested disconnections that delivers an appropriate sharing of risk and incentivises the disconnection process.

#### *15.9(e)(ii) (formerly 15.9(b)(ii))*

Origin note that the scope of the obligation under clause 15.9(e)(ii) was broadened in JGN's June 2019 proposal so that it would also apply to providing sufficient information to enable JGN to access the site and perform the work. The scope of the obligation remains the same as in the June proposal, but the standard to be met by Origin has been somewhat softened from "must...provide...sufficient information" to "must do such things as are reasonably in its power to provide...information". In addition, we note the related insertion at clause 16.5 of a new provision requiring Origin to provide customer details held by Origin if requested by JGN.

Origin consider that the words "and to access the site and perform the work" should be deleted (those words do not appear in the current 2015-2020 RSA). Origin consider that there are already sufficient general obligations in relation to cooperation and sharing information within the RSA and under the NERR, and that this additional inclusion only serves to blur the lines as to responsibility for completing a disconnection. This is particularly so, given the absence of any express provisions dealing with the allocation of financial risk between the parties where a disconnection is not successfully completed, and given that many of the access issues within JGN's network are due to factors more within JGN's own control than the retailer's control (e.g. location of meters, maintenance of information in JGN's own systems etc.).

#### *Clause 16.5(d)*

Origin notes that our current sales agreements cover the distributors access to a site without approval and in instances of an emergency. The agreements however, also require that Origin consult and gain consent from the customer for any additional metering equipment. Accordingly, the clause may raise issues under these circumstances. In particular, while Origin have a broad ability to pass on distributor costs to our customers, there is no specific reference to additional metering equipment. As a consequence, Origin may experience difficulties recouping associated costs from customers.

Origin propose that JGN and Origin share responsibility and act reasonably to rectify access to metering equipment. Further, Origin suggest that JGN be required to consult with the customer and user (to gain consent) for any additional metering equipment before proceeding.

#### *Clause 16.7*

Origin notes that it does not control the customer site and is therefore unable to identify safe access points or warrant other options on behalf of customers. As a result, Origin could potentially be liable if it fails to discuss the issue with the customer and the replicated location for the equipment causes the customer some type of loss. Similar to the above, Origin believes that the consequence of no site access should be shared with JGN such that JGN engage with the user and the customer and review access options available.

*Clauses 27.2(b)(C) & (D)*

Origin is concerned that these clauses may expose retailers to financial losses. In particular, there is no indication of how liability would be shared amongst claimants. For example, if JGN pay out \$50 million to a retailer in the first 6 months of the year, it appears that no other claims could be paid for the remainder of the year – this is unreasonable. Similarly, if there were an issue with the pipeline and all retailers suffered some loss, it is not clear how the \$50 million would be apportioned as between retailers. Origin consider that it is JGN's responsibility to manage their potential exposure to their many users – that should not limit a retailer's right to recover amounts to which they are entitled. Accordingly, we request that JGN reconsider the clauses in light of these issues.

If you have any questions regarding this submission, please contact Gary Davies in the first instance at [gary.davies@originenergy.com.au](mailto:gary.davies@originenergy.com.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sean Greenup', written over a light grey rectangular background.

Sean Greenup  
Group Manager Regulatory Policy  
(07) 3867 0620 [sean.greenup@originenergy.com.au](mailto:sean.greenup@originenergy.com.au)