



10 November 2009

Mike Buckley
General Manager
Network Regulation North Branch
Australian Energy Regulator

by email: nswactgas@aer.gov.au

Dear Mr Buckley,

RE: JEMENA GAS NETWORKS ACCESS ARRANGEMENT PROPOSAL

Origin appreciates the opportunity to comment on Jemena Gas Networks' (Jemena's) proposed Access Arrangement for July 2010 to June 2015 (FY11 to FY15).

1. Removal of terms for large customers

Origin supports changes whereby fixed contract terms for large customers will be phased out. Under current arrangements, when a large customer ceases taking gas, retailers can be faced with a contractual liability relating to the remainder of a contract for haulage. Renewing contracts each year also creates an administrative burden.

2. Bulk transfer of legacy services

Origin notes that Jemena proposes to increase tariffs for legacy services by 40 percent under the new Access Arrangement, as an incentive for customers to move to the new services. Origin seeks greater clarity on the implications to its business arising from the transfer to the new tariff structure and the justification for the 40 percent increase.

Retailers may or may not find bulk transfers easy to effect in practice, but Origin would question the need for such a high increase as an incentive, particularly in light of the short two month period allotted for retailers to transfer customers across. It is not clear whether this reflects a genuine risk that customers will not want to move across to the new tariff structure, or whether the quantum of the increase reflects large increases in prices for large customers under the new Access Arrangement – which could make the new tariff classes less attractive to customers. A sunset clause for the old tariff classes could be one way to ensure customers move from the old tariffs to the new, while obviating the need for punitively high price increases.



3. *Uncertainty around invoice frequency*

In section 22.1 of the Reference Service Agreement (RSA), Jemena proposes to invoice network users at a frequency determined at Jemena's absolute discretion. In Origin's view this creates an unacceptable level of uncertainty relating to the frequency of Jemena's invoices.

The Retail Support Contract in the *First Exposure Draft* of the National Energy Customer Framework (NECF) envisages one month as the default billing period, with payment by the tenth business day in the subsequent billing period.¹ Origin would propose putting a minimum billing frequency in Jemena's RSA of one month, in order to achieve national consistency.

4. *Due date for payment*

In section 22.3 of the RSA, Jemena proposes that the user be required to pay their invoice within *14 days* of the *invoice date*.

As a general principle, Origin would contend that periods for payment are better represented in business days, this being standard practice in the National Framework. More specifically, the NECF *First Exposure Draft* proposes *ten business days* from the *receipt of the invoice* as a window for payment of network bills, rather than *14 calendar days* from the *date of the invoice*, as proposed by Jemena.²

Once a delay is factored in to allow for the delivery of an invoice and this is added to the effective difference between business days and calendar days, Jemena's proposed payment period could be significantly shorter than the period contemplated in the national framework. In the context of the emerging national framework, Origin would argue that moving towards the national model is desirable.

5. *Rate of interest on overdue payments unacceptably high*

In section 22.5 of the RSA, Jemena proposes that interest on overdue payments should be set at a rate that is two percent plus the rate for corporate overdrafts applied by the Commonwealth Bank of Australia (CBA).

Currently, the CBA Corporate Overdraft rate plus two percent would total over 11 percent. This rate is closer to Jemena's own rate of equity (12.06 percent) than to Jemena's own rate of debt (8.08 percent).³ Origin sees the corporate overdraft rate as an unacceptably high rate, as Jemena offers no justification for why it requires this high rate of interest, and given that the rate selected already includes an additional two percent margin. While some very short term funds on call attract

¹ National Energy Customer Framework *First Exposure Draft*, schedule 1, *Dictionary*; and schedule 3, clause 4.4, *Retail Support Contract*

² National Energy Customer Framework *First Exposure Draft*, schedule 3, clause 5.

³ Jemena presentation at AER Public Forum on the Jemena Gas Networks Access Arrangements, 29 September 2009, p.18



interest rates above 12 percent, it seems reasonable that Jemena would have working capital facilities in place to fund payment shortfalls at a rate closer to their standard cost of debt.

By comparison, the NECF First Exposure Draft⁴ proposes the bank bill swap rate – a more common measure of debt rates – plus a margin of two percent. This would currently be equal to around 6 percent. This approach was adopted in Victoria for the period 2008-12.⁵

Origin proposes a measure based on the bank bill swap rate.

6. *Disputing payment*

In section 22.6 of the RSA, Jemena proposes that network users be required to raise any dispute with respect to invoices within ten calendar days of receiving the invoice. This is in the context of section 22.3 of the RSA (outlined at point 4, above), whereby Jemena proposes that network users be required to pay within 14 calendar days of the date of invoice.

As outlined above, Origin proposes that periods be represented in business days instead of calendar days, as this is the approach adopted in the National Framework and, in any event, users cannot dispute a payment on a weekend.

Origin also contends that the ten day period is too short, as the National Framework proposes that network users have up until the due date for the invoice to dispute a payment.⁶ Origin supports this approach.

Also in section 22.6 of the RSA, Jemena proposes that network users be required to pay the full amount of their invoice, including amounts that are in dispute, unless the amount is “manifestly wrong”.

Origin contends that “manifestly wrong” is an unreasonably high benchmark to reach before a network user can withhold a portion of their payment. Origin accepts that, for the purpose of maintaining cash flow, Jemena may need to limit the proportion of an invoice amount that a network user can withhold in relation to a payment dispute. In the *First Exposure Draft* of the National Framework, the amount that a network user can withhold relating to a dispute is determined through a comparison of the size of the disputed amount and 80 percent of the last undisputed bill.⁷ If Jemena adopted a similar approach then having a benchmark set at “manifestly wrong” would be unnecessary.

⁴ National Energy Customer Framework *First Exposure Draft*, Schedule 1, *Dictionary*

⁵ See for example *SP Ausnet Part A of the Access Arrangement for the Distribution System, 2008-2012*, p.13

⁶ National Energy Customer Framework, schedule 3, clause 5.2(a), Disputed statements

⁷ National Energy Customer Framework, schedule 3, clause 5.2(c), Disputed statements



7. *Under charging and over-charging*

Origin notes that under section 22.8(c) of the RSA, a Party may not claim from the other Party any amount over-charged or under-charged if more than two calendar years have elapsed since the date of the relevant invoice. Section 22.8(d) of the RSA states that if there is any inconsistency between this clause 22.8 and the Network Code, the provisions of the Network Code will prevail.

Origin sees the reference to two calendar years at 22.8(d) in the RSA as creating inconsistency, as there are already requirements in the Network Code and state regulations relevant to this point:

- In respect of under charging, the Network Code⁸ states that if a network under-charged a customer as a result of a data error, the network can recover the amount only if the error occurred within 12 months of the retailer informing the customer of the error. The relevant regulations covering small gas customers in NSW⁹ align with this, stating that the retailer can only recover an amount resulting from undercharging if the error occurred less than 12 months from the date the retailer informs the customer; and
- In respect of over-charging, the Network Code¹⁰ states that the network must return an amount that was over-charged regardless of how long ago the error occurred. The relevant regulations covering small gas customers in NSW¹¹ align with this, stating that the retailer must return an amount resulting from overcharging regardless of when the error occurred.

The two year limit provided at 22.8(c) seems unnecessary, in light of the caveat at 22.8(d). Furthermore, the two year limit contradicts the alignment between the Network Code and the Gas Supply Regulations. If the two year limit was ever to apply, the retailer could be required to pass on amounts to networks that the retailer could not recover from the customer. Thus it is important that the retailers and networks rights to recover under-charged funds are aligned. (For this same reason, it is important that the 12 month limit for networks is calculated on an equivalent basis as the 12 month limit for retailers, that is, the 12 months is measured retrospectively from a day no earlier than when the network first raised the issue with the retailer. Origin notes that the Code and Regulations currently converge on the how the 12 months is calculated.)

In light of the above, the RSA does not need to include a reference to two years, and should instead note that:

- A network cannot seek recovery of funds resulting from undercharging when the retailer will be precluded by its regulatory obligations from recovering these funds from the customer because of the time period that has elapsed.

⁸ Gas Network Code clause 12.2

⁹ GAS SUPPLY (NATURAL GAS RETAIL COMPETITION) REGULATION 2001, regulation 26

¹⁰ Gas Network Code clause 12.1

¹¹ GAS SUPPLY (NATURAL GAS RETAIL COMPETITION) REGULATION 2001, regulation 27



8. *Requiring a security*

In section 30 of the RSA, Jemena proposes that it should be allowed to require a security deposit whenever it deems appropriate. Origin thinks this is unacceptable. Generally, security deposits are required from particular network users based on their credit record. The *First Exposure Draft* of the NECF¹² envisages the distributor requiring credit support in accordance with the Australian Energy Regulator (AER) Credit Support Guidelines.¹³

The approach in the NECF implies that a set of criteria will need to be fulfilled before a distributor can require a security, rather than this being at the distributor's complete discretion. Origin supports some sort of criteria like these. Until the AER Credit Support Guidelines are developed, an arrangement could be adopted as in Victoria, whereby a security can be required in instances where a user has an inadequate credit rating or a record of not paying successive bills.¹⁴

9. *X factor*

Origin notes that, as a result of below forecast volumes in the current period; Jemena has under-recovered compared to its approved revenue. Origin notes also that Jemena proposes to adopt a weighted average price cap (WAPC) as the annual tariff variation mechanism under the *National Gas Rules*.¹⁵

Origin seeks some further clarification with respect to indicative and likely price increases under the Access Arrangement as proposed by Jemena, in light of the following:

- In Jemena's presentation to the AER on September 29, Jemena made reference to increases in tariffs for small customers of 34.3 percent plus CPI; and an increase in metering charges of 49 percent plus CPI.¹⁶ These are large and significant increases.
- On pages 53 and 164 of the *Access Arrangement Information* document ('AA Information document'), Jemena states that its X factors and price path are provided in Section 13.8. However, in Section 13.8 (p.177) Jemena provides no x factors specified as such, but a price path showing increases in the average price per gigajoule of gas hauled, of between 2.34 and 14.34 percent, with the largest increase coming in the first year.
- The only 'x factor' recognised as such in the AA Information Document is an x factor of 1.96 percent, provided in section 15.4.1 (p.201), however it is unclear whether this is consistent over all years, and what the relevant Po

¹² National Energy Customer Framework, Part 4, Division 6

¹³ See Envestra Access Arrangement 2006-10, amended version, section 6.4(e)

¹⁴ See for example SPAusnet *Gas Access Arrangement Revision 2008-12 Terms and Conditions*, clause 7.8, Credit Support - Bank Guarantee

¹⁵ Part 9, Division 8, clause 97(2)(b)

¹⁶ NECF First Exposure Draft, Part 4, Division 6.



increase is. This x factor of 1.96 percent was also referenced in the presentation of September 29.

- Annual increases in the *total* building block revenue figures in Table 13-2 range from around 2.9 percent to 4.6 percent, however Table 13-2 does not provide an increase between FY2010 and FY2011.

It would be helpful if the X factor for each year of the Access Arrangement period was clearly labelled as this, as well as the Po increase in FY2011 over FY2010.

Origin recognises the X factor is primarily a mechanism for smoothing increases in prices that result from changes in the building block revenue requirement from year to year. However, as the key input to the WAPC equation, the X factor is also a useful way to gauge the broader impact on end prices arising from proposed increases in revenue. Furthermore, if small customers face increases of over 30 percent in the first year, but the x factor is less than 2 percent, this does not imply a smooth price path, but rather a dramatic increase followed by minimal increases in subsequent years, or negative increases for other customers.

In Origin's view greater clarity on the implications of the price path is important, in light of the significant increases in prices foreshadowed in Jemena's presentation of September 29.

10. *Chargeable Demand*

Origin understands that Jemena's proposal for a new measure of demand called "Chargeable Demand" is proposed in part as a means to move away from the current system whereby customers can be charged retrospectively for unauthorised overruns.

Under this new approach, Chargeable Demand will be the key measure for determining Demand Charges, as per the tariff tables laid out in Part F Schedule 2 of the proposed Access Arrangement.

Origin supports the move away from retrospective charges for overruns, but seeks further clarification on how Chargeable Demand is set.

Origin understands that in an instance where a customer uses only their maximum daily quantity (MDQ), the chargeable demand should be set at the level of MDQ. Where the customer frequently exceeds their MDQ, Chargeable Demand can be reset to reflect this - according to specific formulae. Once Chargeable Demand has been changed, the new rate can be applied to determine the customer's charges going forward.

Clause 4.5 (c) and (d) of the proposed Reference Service Agreement state that chargeable demand must always be greater than the larger of the customer's MDQ and ten times the customer's MHQ.¹⁷ This creates some ambiguity, given Origin's

¹⁷ Except where except where MHQ has been stable for the last five years, where chargeable demand needs only to be greater than MDQ.



understanding that in cases where the customer has kept within their MDQ, the customer's chargeable demand should to be equal to their MDQ, not greater than it.

Clause 4.6(e) states that Jemena can increase chargeable demand to satisfy the requirements in 4.5 (c) and (d), but only to the extent necessary to meet these requirements. Origin seeks clarity as to the precise circumstances under which Jemena can increase customer's chargeable demand beyond their MDQ.

If you have questions relating to this proposal, please speak to Steven Macmillan on (03) 8665 7155 in the first instance.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Randall Brown". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Randall Brown
Regulatory Development Manager