

COMMONWEALTH OF AUSTRALIA

National Gas (New South Wales) Act 2008

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No 5 of 2010

RE: APPLICATION UNDER SECTION 245 OF THE
NATIONAL GAS LAW FOR A REVIEW OF A
FULL ACCESS ARRANGEMENT DECISION
MADE BY THE AUSTRALIAN ENERGY
REGULATOR IN RELATION TO JEMENA
GAS NETWORKS (NSW) LTD PURSUANT TO
RULE 62 OF THE NATIONAL GAS RULES

BY: JEMENA GAS NETWORKS (NSW) LTD

DETERMINATION

TRIBUNAL: Justice Finkelstein (President)
Professor David Round
Mr Ray Steinwall

DATE OF ORDER: 30 June 2011

WHERE MADE: Melbourne



THE TRIBUNAL DETERMINES THAT:

1. The decision of the Australian Energy Regulator (**AER**) under rule 64(4) of the National Gas Rules (**NGR**), dated 28 June 2010, and entitled, *Decision: Access Arrangement: JGN's NSW gas distribution networks 1 July 2010 – 30 June 2015, June 2010 (Access Arrangement Decision)* be varied by deleting the first paragraph on page 3 under the heading "Decision on the access arrangement", and inserting the following the words in its place:

“In accordance with rule 64(4) of the NGR and section 259(2) of the NGL, the Access Arrangement, including the Access Arrangement Information and Reference Services Agreement, for the JGN NSW gas distribution networks is as set out in Annexure A to the determination of the Australian Competition Tribunal dated 30 June 2011.”

2. The decision of the AER under rules 72(1), 77 and 79 of the NGR to disallow an amount of \$4.6 million (\$2004-05) in the opening capital base in respect of mine subsidence expenditure in the regulatory period 2005-10 and to reallocate the \$3.1 million forecast expenditure on mine subsidence to forecast operating expenditure is to be remitted to the AER to make the decision again in accordance with the following direction:
- (a) mine subsidence expenditure other than “monitoring” expenditure that was incurred during the regulatory period 2005-10 be included in the opening capital base for the regulatory period 2010 - 2015;
 - (b) forecast mine subsidence expenditure in respect of the regulatory period 2010 – 2015 other than “monitoring” expenditure be allocated as forecast capital expenditure;
 - (c) the inclusion of the mine subsidence “monitoring” expenditure in the opening capital base for the regulatory period 2010 – 2015 and the allocation of forecast “monitoring” expenditure in the forecast capital expenditure be reconsidered by the AER, taking into account the following issues:
 - the nature of “monitoring” and its cost;
 - the degree of connection between “monitoring” and mine subsidence expenditure that is of a capital nature for the purposes of rules 72(1), 77 and 79 of the NGR; and
 - if there is no connection, whether the cost of “monitoring” can be sufficiently determined so that it can be separated from mine subsidence capital expenditure.
 - (d) in considering the above issues regarding mine subsidence monitoring expenditure the AER shall take into account additional information (if any) submitted by JGN provided the additional information relates only to the three issues mentioned in subparagraph 2(c).
 - (e) in making the decision on mine subsidence expenditure again, the AER may take into account relevant information relating to the amount of any reimbursement or compensation from the Mine Subsidence Compensation Fund that has been determined as payable to JGN by a Court (or otherwise by agreement between JGN and the Mine Subsidence Board) and quantified as at the date of the AER’s re-made decision (the award amount), which is to be considered in light of any amounts that JGN is required to pay out of the award amount to any other party;



- (f) as part of making the decision on mine subsidence expenditure again in accordance with (a) to (d) above, the AER will make any consequential amendments to the reference tariff variation mechanism, such amendments to be only to the extent necessary to reflect the AER's remade decision with respect to mine subsidence expenditure. For the avoidance of doubt, any such adjustment is to be NPV-neutral and calculated as if the AER's remade decision applied from 1 July 2010; and
- (g) the AER is to use its best endeavours to make the decision on mine subsidence expenditure again within three months of the date of this order.

3. There be no order as to costs.

Date entered: 30 June 2011



[Handwritten Signature]
DEPUTY REGISTRAR
Australian Competition Tribunal

Annexure A: Access Arrangement for the JGN NSW gas distribution networks (including Access Arrangement Information and Reference Services Agreement)

