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Mr Steve Rodgers
Governance Section
National Energy Market Branch
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Dear Mr Rodgers

Exposure Draft of Declared Wholesale Gas Market Rules

Jemena Ltd welcomes the opportunity to provide comments on the draft of the Declared Wholesale Gas Market Rules to the Ministerial Council of Energy. This response is on behalf of Jemena Pipelines and Jemena Gas Networks (NSW).

We understand from industry briefing sessions that these Declared Wholesale Gas Market Rules are not intended to apply beyond the Victorian PTS. While these Rules are not immediately applicable to our gas distribution network in NSW, we are responding in the context of potential future convergence or application to our business.

Jemena's comments are in the Attachment.

Should you have any questions on the Attachment please feel free to ring me on (02) 9270 4512.

Yours sincerely

Sandra Gamble
Group Manager Regulatory

Comment Nos	Clause	Clause Text	Issue/Comment	Recommendation
1.	MSOR 1.1.7	<p>No <i>Participant</i> shall be liable to <i>VENCorp</i> or another <i>Participant</i> for any <i>indirect losses</i> suffered by <i>VENCorp</i> or another <i>Participant</i> which arise out of or relate to the conduct provisions of these Rules or the performance or breach of the conduct provisions of these Rules.</p> <p>Indirect losses means Indirect losses (whether in contract, warranty or tort) including loss of profit or anticipated profit, business interruption, loss of revenue, loss of use loss of contract, loss of good will, loss of business opportunity or exemplary and punitive damages.</p>	<p>Jemena is unable to find an equivalent provision in the new gas law and rules. Presentations at industry forums have suggested that the changes to the MSOR were minimal.</p> <p>From a transmission stand it is important as an interconnected pipeline that participants continue to be afforded the protection from indirect losses that may be afforded under haulage agreement terms. This provision should be re-instated and apply to any infrastructure owner – distributor or transmission business.</p>	<p>We suggest this clause be inserted into the new part in the Rules.</p>
2.	Rule 1	<p>(1) This Part contains rules applicable to the operation of a declared transmission system and a declared wholesale gas market.</p> <p>(2) A person described in section [91B] of the Law must register with AEMO in accordance with Division 2, unless otherwise specified in Division 2.</p> <p>(3) This Part applies to:</p> <p>(a) a person who is registered as a Participant under</p>	<p>Jemena is concerned regarding the new Rule 1:</p> <ul style="list-style-type: none"> • Its application appears broad, clause (3) (c) may include any other person and is not linked to the need to be a registered participant in the declared wholesale gas market. • Terms such as declared transmission system and declared distribution pipeline are undefined terms. A jurisdiction could state that these Rules apply to specific pipelines at a future date. We understand the intent is that these declared wholesale market Rules only apply to the PTS in Victoria, however the drafting does not support this restriction. • Nothing in these Rules should prevent any person from establishing and operating new pipelines on a 	<p>Reinsert clause 1.1.6 of the MSOR and make it clear that these Rules apply to participants only in respect of the declared transmission system and declared distribution systems.</p>

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		Division 2; (b) a person who has ceased to be registered as a Participant, in respect of any obligation or liability arising before that person's deregistration; and (c) any other person to the extent that a provision of this Part is expressed to apply to that person, or to a category of persons to which that person belongs.	commercial basis. The MSOR clause 1.1.6 should be re-inserted.	
3.	Rule 150	Nothing in this Division is to be taken to limit the ability of AEMO to take any action or follow any process under this Division which AEMO considers in its absolute discretion to be necessary: (a) to maintain and improve the reliability of gas supply; (b) to maintain and improve the security of the declared transmission system or a declared distribution system; or (c) in the interests of public safety.	The current MSOR has no such broad powers for VENCORP unless they need to take action to protect the public or property. Jemena does not support these powers being introduced into the declared wholesale market. During an emergency AEMO should be required to comply with the MSOR chapter 6 in accordance with long standing processes. Commercial haulage contracts are based on the provisions and risks of the current chapter 6 arrangements. Such market intervention as enabled under these provisions could lead to a reduction in further pipeline investment due to the increased level of regulatory risk in the market.	Make Rule 150 consistent with MSOR 6.3.1 (b)
4.	Rule 151	(1) An <i>emergency</i> will be deemed to occur when:	Jemena strongly supports the market being left alone to manage supply reliability risks as far as possible. Jemena does not support AEMO having such expanded emergency powers. Where AEMO do	Make Rule 151 (1) (a) consistent with the MSOR

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		<p>(a) AEMO reasonably believes there to be a situation which may threaten:</p> <p>(i) reliability of gas supply;</p> <p>(ii) <i>system security</i> or the security of a declared distribution system; or</p> <p>(iii) public safety,</p> <p>and AEMO in its absolute discretion considers that the situation is an <i>emergency</i> and declares there to be an <i>emergency</i>.</p>	<p>intervene in the market in an emergency, then AEMO must take responsibility for the intervention. AEMO must not leave the infrastructure operator in a position where they are not able to meet their responsibilities anymore.</p> <p>Commercial transmission pipelines operate on long term contracts, any change to the risk balance created by regulators and policy makers can discourage further investment in the energy industry. This does not lead to an improvement in the gas market objective where unnecessary variations in the Rules may serve as a disincentive for investment at a time where investment in the gas sector should be increasing to support future carbon reduction.</p> <p>Commercial haulage arrangements are based on government agencies declaring an emergency such that force majeure clauses are invoked. Where AEMO uses such broad emergency powers, participants may not be covered in long standing haulage arrangements.</p>	<p>clause 6.2.1 (a) (1)</p>
5.	Rule 152	<p>(1) AEMO must make available the <i>emergency procedures</i> to each <i>Participant</i> within 7 days after each occasion on which the <i>emergency procedures</i> are updated.</p> <p>(2) AEMO, declared transmission system <i>Service Providers, Interconnected Pipeline Service Providers, Distributors, Retailers</i> and <i>Traders</i> must comply with the <i>emergency procedures</i>.</p>	<p>MSOR Chapter 6 provided more underlying details in relation to emergencies which are now being provided for in another instrument eg categories of emergency, requirements to consult with safety regulators and the requirement to ensure that procedures must be consistent with a participant’s safety management plan etc.</p> <p>Given our concerns with the expanded powers of AEMO outlined above, where AEMO’s emergency procedures are not consistent with Jemena’s safety management plans and AEMO make directions that are inconsistent with these safety management plans then the liability of the actions taken in respect of these directions must rest with AEMO and not with the participant.</p>	<p>Where AEMO prepares and reviews emergency procedures, these must comply with the relevant jurisdictional instruments</p>