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Ms Michelle Croker  
Gas Market Development Section  
National Energy Market Branch  
Department of Resources, Energy and Tourism  
GPO Box 1564  
Canberra ACT 2601

Dear Michelle,

## **Consultation on National Gas (Short Term Trading Market) Amendment Rules 2009**

### **1. Introduction**

Jemena appreciates the opportunity to provide comments to the MCE on the National Gas (Short Term Trading Market) Amendment Rules 2009 (the **rules**).

This submission has been prepared by Jemena on behalf of its owned gas network and pipeline assets; namely, Jemena Gas Networks (NSW) Ltd (**JGN**), Jemena Eastern Gas Pipeline (**JEGP**) and Jemena Queensland Gas Pipeline (**JQGP**).

On 8 July 2009, Jemena made a submission to the MCE's consultation on the National Gas (Short Term Trading Market) Amendment Bill 2009. Issues raised in that consultation which we reiterate below include the proposed size of the liability cap and the appropriate role for STTM procedures.

### **2. Jemena issues – pipelines and networks**

Jemena seeks to avoid new risks and resulting costs arising for pipeline operators and network operators (**operators**) as a result of implementation of the STTM - including the proposed rules amendments, amendments to retail market procedures (**procedures**) and in additional regulations.

#### ***Liability cap***

In its submission of 8 July, Jemena supported a cap on liability, but submitted that the proposed cap of \$400,000 per claimant per event was, in Jemena's opinion, far too high. Given that there could be multiple claimants for an event lasting several days, this would create a total liability of many millions. Jemena suggested that an annual cap not exceeding \$400,000 should apply.

Jemena is therefore most concerned that the cap has been increased to \$2 million per claimant per event. It appears that SCO has made a decision to align with the NEMMCO electricity cap rather than consider an appropriate cap for gas on a stand-alone basis. Further, this cap will be defined in regulations, not the law, meaning that it can be increased

at any time. We recognise arguments for consistency with electricity, but the result is that operators are now exposed to new and unacceptable risks. Jemena submits that this liability decision should be reviewed to avoid unsustainable costs to operators and ultimately to the gas market itself.

### **Procedures**

In its 8 July submission, Jemena noted that AEMO's powers under the NGL were very broad, and submitted that some formal processes should be in place to guide the use of these powers. Jemena also considered that most of the relevant STTM requirements should be placed in the rules, rather than the procedures. We advocated that there should not be an open-ended power for AEMO to alter the STTM design via procedural change, without adequate industry participation.

Jemena again notes that the current listing of procedures for development is very extensive, which may end up placing too much unfettered discretion with AEMO. Once the procedures are drafted, market participants should be able review the balance between the rules and the procedures to ensure that the procedures have not become de facto rules.

### **3. Jemena Gas Networks – key issues**

#### **Rule 419 (4)**

Rule 419(4) creates an obligation on shippers concerning provision of information, records and access to facilities related to their management of gas quality. This obligation is aligned with and draws from certain obligations of network users as set out in JGN's current access arrangement. So long as rule 419(4) remains an obligation additional to those set out in the access arrangement, then JGN supports the inclusion of the rule subject to the following changes:

- (a) Shippers (trading right holders for facility services) who have not complied with this rule should not be able to offer in gas to the STTM. It would be a perverse outcome if shipper deliveries continued to be scheduled by AEMO when that shipper was not measuring or managing the quality of gas sources it was bringing to the market. The rules should allow AEMO to not accept offers under a trading right where AEMO is aware of a material failure to satisfy this clause;
- (b) Network users (third parties and also JGN) should be able to rely upon rule 419(4) and initiate action to enforce it. JGN understands that this rule is intended to be made into a conduct provision;
- (c) JGN has no knowledge of, or relationship with, shippers. For rule 419(4) to be enforceable, additional rules are needed to ensure that AEMO can notify JGN of:
  - all active shippers (trading right holders for facility services) at the Sydney hub; and
  - any changes to the physical or contractual sources of gas used by those shippers to supply gas to the hub, with sufficient advance notice being given to JGN.

JGN also seeks confirmation that reference to a 'trading right holder for a registered facility service' in rule 419(4) includes a reference to any STTM shipper (for example, contract holders, sub-contracted rights holders, and producers injecting on their own behalf).

#### **Rule 419 (5)**

Rule 419(5) requires that any STTM user (who is not a trading right holder of facility services) has no liability to provide the information described in rule 419(4) to the STTM distributor at the Sydney hub.

JGN submits that this requirement is not necessary and only adds ambiguity to the effectiveness of clause 419(4).

In particular:

- (a) a STTM user is a contract holder for distribution services - not facility services - and therefore a STTM user will not have any obligation under 419(4) unless that party is also registered in the capacity of a STTM shipper. In the case where a party is also a STTM shipper, then rule 419(4) will continue to apply and 419(5) will have no effect. Hence, 419(5) will never have any effect in reducing the obligations under 419(4);
- (b) However, as the obligation under 419(4) is additional to the obligation on network users in JGN's access arrangement, rule 419(5) may have the effect of creating ambiguity and conflict with the agreed terms of network access. Given that rule 419(5) has no effect on reducing the obligations under 419(4) and simply creates ambiguity and uncertainty, JGN submits that it should be deleted.

Under 419(5), a STTM user could avoid an obligation under 419(4) if the user was part of a corporate group using different legal entities (related parties) to register as both a STTM shipper and STTM user. In that case the STTM user would have no responsibility under 419(4) even though the corporate entity was also registered as a shipper. This further illustrates the ambiguity and uncertainty warranting the deletion of 419(5).

### **Conclusion**

Based on the above discussion, JGN strongly submits that:

- rule 419(5) should be deleted
- enforcement provisions should be added to the rules to support the effectiveness of rule 419(4).

## **4. Jemena pipeline operators – key issues**

### ***STTM pipeline operational capacities***

During the market design process, Jemena pipelines proposed having available an optional facility to provide iterative operational capacity. This was based on the fact that a relatively accurate operational capacity forecast for the pipeline capacity at the hub is dependent on the nominations of all the shippers on the pipeline. This includes shippers upstream of the hub, many of whom may or may not exercise their firm and non-firm contractual rights on any gas day.

Jemena is concerned that without this proposed option, the transparency in the market may be reduced. We request that the issue be re-examined by means of an addition to the market review processes noted in Division 11 of the rules amendments.

### **Support for APIA submission**

Jemena pipelines support the submission made by the Australian Pipeline Industry Association (APIA) on behalf of the STTM pipelines. The following is a brief summary of some of the issues raised by APIA.

### ***NSW Gas Supply Continuity Scheme***

The rules should be seen as effective replacements for the NSW gas supply continuity scheme, and therefore the STTM contingency gas procedures should be adapted from that scheme.

### ***Carbon Pollution Reduction Scheme and other regulatory costs***

CPRS costs and any other regulatory imposed costs imposed by changes to legislation and regulation should be passed through in a manner similar to the GST clauses included in rules 489-490.

***STTM interface protocol (rule 367)***

It is not clear what the outcome will be if the STTM interface protocol results in differing views being put forward by participants or if the views put forward are otherwise not adequately reflected in the protocol. Jemena supports AEMO including a statement that it will consult and attempt to reflect key points made in the consultation, but if not, publish reasons why certain substantive points were not accepted.

***Market Operator Service (Division 6)***

Rule 401 requires that a person must not submit a MOS offer unless they are an eligible contract holder, which would generally exclude pipelines. However the original agreed STTM design allowed for pipeline operators to register as a trading participant and submit MOS offers. The Rules should be amended to reflect the agreed design.

Additionally, the definitions of the *MOS increase stack* and *the MOS decrease stack* infer that the pipeline operator is to allocate MOS gas according to the order it appears in the MOS stack.

This does not reflect recent discussions between AEMO and pipeline operators where operators were advised they have some discretion in allocating MOS.

***Capacity information (rule 415)***

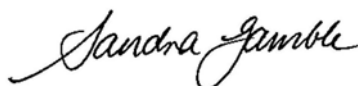
Rule 415 requires that the STTM facility operator must notify AEMO of the quantity of gas it expects, in good faith, that the STTM facility will be able to deliver to the relevant hub. In other STTM documentation, the word 'estimate' is used instead of 'expects' to describe this function. Given the inherent uncertainty of forecasts, pipeline operators believe that the word 'estimate' should also be used in the rules.

***Liability for scheduling errors (rule 451)***

Operators seek the same no- liability for scheduling errors that AEMO has been given, ie AEMO liability is limited to the participant compensation fund. Operators are in effect undertaking a function of the market operator, because it is more efficient and effective for them to do so, and so they should receive the same liability limitation.

Should you wish to discuss this submission please contact Sandra Gamble, Group Manager Regulatory, on (02) 92704512 or email: [sandra.gamble@jemena.com.au](mailto:sandra.gamble@jemena.com.au).

**Yours sincerely**



Sandra Gamble  
**Group Manager Regulatory**