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By online submission

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Patrick Loughrey
Australian Energy Market Commission
Level 15, 60 Castlereagh Street
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Dear Patrick

Draft rule determination – Compensation and dispute resolution frameworks

Jemena welcomes the opportunity to make this submission in response to the Australian Energy Market Commission's draft rule determination on compensation and dispute resolution frameworks. Jemena owns and operates multiple non-scheme gas transmission pipelines throughout eastern and northern Australia.

We acknowledge the analysis and consultation undertaken by the Commission to date in relation to the gas market compensation and dispute resolution frameworks. Broadly, we consider that the Commission's proposed approach of establishing a framework for the expert review of compensation claims is likely to be preferable to the initial approach adopted as part of the East Coast Gas System (**ECGS**) reforms.

Below, we have set out comments in relation to two aspects of the Commission's draft determination.

Proposed exclusion of consequential costs

We do not support the Commission's proposal to exclude the costs of consequential damage to equipment from eligibility for compensation under the framework. This approach is unlikely to incentivise market participant co-operation with AEMO directions, potentially undermining the effectiveness of the ECGS framework's ability to address supply adequacy and reliability risks.

The Commission's draft determination notes that the National Gas Law contains provisions allowing a pipeline operator to refuse to comply with an AEMO direction if compliance would not be consistent with a law of a participating jurisdiction. We agree that in some circumstances a pipeline operator may have—and be able to clearly and immediately identify—grounds for a refusal to comply with an AEMO direction on this basis. However, there may be other circumstances where, given the criticality of the situation and very short timeframes likely to be involved in the issuing of such a direction, it may not be practicable for a pipeline operator to reasonably assess the likelihood of compliance being not consistent with a jurisdictional law or of compliance causing damage to equipment—for example, a direction to compress gas in excess of a pipeline's capacity. A pipeline operator that is directed to take an action which may be damaging or dangerous but which does not clearly breach a jurisdictional law may therefore be incentivised to adopt a conservative approach to avoiding non-compensable losses.

Furthermore, while we agree that the risks of such damage occurring *should* be managed through prudent market practice and communication, we do not agree that the ECGS framework provides sufficient certainty that this will be able to occur. While pipeline operators may advise AEMO that a

proposed direction carries safety or equipment damage risks, Part 27 of the NGR does not absolutely require AEMO in all circumstances to take this information into account. We note that this non-absolute requirement for AEMO to take this information into account was identified as a concern by a number of stakeholders during consultation on the ECGS reforms, however given the final ECGS provisions ultimately provide AEMO with discretion as to the content of directions (therefore leaving some residual risk that a direction may result in equipment damage costs), we do not agree that it is appropriate to exclude eligibility of such costs from the compensation framework.

Clarification of proposed rule 706

We suggest that proposed rule 706 be modified to better clarify that such behaviour must be intentional or reckless to contravene the rule, as follows:

A relevant entity must not intentionally (or being reckless, as to the probability) exacerbate the direct costs incurred or likely to be incurred by the relevant entity or another person as a direct result of AEMO issuing an east coast gas system direction, without reasonable cause.

Should you have any questions regarding this submission, please contact James Harding, Gas Markets Regulation Manager, at james.harding@jemenas.com.au.

Yours sincerely



Ana Dijanosic
General Manager Regulation