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Via online submission

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### **GRC0025: Setting the opening capital base—JGN submission on the consultation paper**

Jemena Gas Networks (**JGN**) welcomes the opportunity to respond to the Australian Energy Market Commission's (**AEMC**) consultation paper on the 'setting the opening capital base' rule change request (**rule change**).

The rule change proposes to modify the National Gas Rules (**NGR**) to permit the Australian Energy Regulator (**AER**) to adjust the opening capital base to remove any benefit or penalty arising out of any difference between estimated and actual capital expenditure in the final year of an access arrangement period. For simplicity we refer to the AER making such an adjustment as a '**WACC clawback**'<sup>1</sup>.

JGN considers the rule change would better meet the National Gas Objective (**NGO**) because it provides certainty to the rules.

JGN supports the more preferable rule change as outlined in section 6.1 of the consultation paper. This provides clarity that any adjustment is confined to return on capital.

JGN supports the need for the rule change as it provides certainty to the NGR. Unambiguous rules are desirable given the two varying interpretations of the current rules from the Australian Competition Tribunal (**Tribunal**) outlined in the consultation paper. Providing certainty improves administrative efficiency as it provides a common understanding between the AER and the regulated businesses—thereby reducing the potential for appeal.

As a general rule, JGN does not support rule changes that apply from a date earlier than an AEMC decision as this can have a negative impact on market confidence. However, exceptions can be appropriate in certain limited circumstances. Such an instance is where the possibility of a retrospective action is clearly flagged to the

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<sup>1</sup> WACC is the weighted average cost of capital.

participants in advance. JGN is aware that Ofgem applies this criterion in the United Kingdom.<sup>2</sup>

JGN considers this rule change to be non-controversial. The AER foreshadowed the change on 20 September 2013 following the Tribunal's decision in APA GasNet<sup>3</sup> and the rule change has been in the public domain since the AEMC published it on 17 April 2014. Therefore, there would be added certainty to those currently preparing access arrangement proposals were the rule change to apply from the date the AEMC published the rule change.

If you wish to discuss the submission please contact me on (03) 8544 9000 or at [robert.mcmillan@jemena.com.au](mailto:robert.mcmillan@jemena.com.au)

Yours sincerely

A handwritten signature in blue ink, appearing to read 'R. McMillan', is positioned above the typed name.

**Robert McMillan**  
General Manager Regulation  
Jemena Limited

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<sup>2</sup> See Ofgem Guidance on Code Modification Urgency Criteria here:  
<http://www.gasgovernance.co.uk/sites/default/files/Ofgem%20Guidance%20on%20Code%20Modification%20Urgency%20Criteria.pdf>

<sup>3</sup> See AER media release following the Tribunal decision in APA GasNet here:  
<https://www.aer.gov.au/node/21868>.