

14 October 2021



Mr Sean Sullivan
Chair
Energy Senior Officials
Department of Industry, Science, Energy and Resources
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Dear Mr Sullivan

Gas pipeline reforms – draft legal package

Jemena Gas Networks (NSW) Ltd welcomes the opportunity to provide a submission on the draft legal package for the gas pipeline reforms. Our network distributes gas to over 1.4 million residential, business and industrial sites in Sydney, Newcastle, the Central Coast, Wollongong and more than 20 regional centres.

Overall we understand the objective to implement a more efficient, effective and integrated regulatory framework that supports the efficient operation of the gas market and the long term interests of gas users; and is fit for purpose, targeted and proportionate to the issues it is intended to address.

However, we have identified several unintended consequences in regards to how the draft legal package applies to scheme distribution networks. These consequences arise as the one-size-fits-all approach doesn't take into account key differences between both scheme and non-scheme pipelines or distribution networks and transmission pipelines.

While we are supportive of making information more readily accessible for users, the adoption of a single information disclosure regime presumes all pipelines and networks have the same scope, size, form of regulation and types of users. A uniform approach is unlikely to meet all user needs, is duplicative and requires scheme pipelines to unnecessarily publish commercially sensitive customer information. Further, it will result in a greater administrative burden for the AER and service providers as well as creating additional complexity for users, who will have to navigate multiple information sources and publications.

Imposing the same information disclosure obligations on scheme and non-scheme pipelines and in particular, distribution networks, dismisses the strengths of the current regulatory framework which:

- features an existing robust information disclosure regime (including a standardised set of demand and financial information from 2011 – with an ongoing obligation to provide annual updates until at least 2030¹); and

¹ Available [here](#).

- places a general emphasis on the importance of including customer and stakeholder voices in the ongoing running of a covered (scheme) pipeline and the development of an access arrangement proposal.

It also fails to recognise that given our customer base, distribution networks (and in particular gas distribution networks) are experienced in communicating key information to users and customers as well as identifying deficiencies in those information communication channels. This is demonstrated by the last two Energy Network Consumer Engagement awards being won by scheme distribution pipelines, Jemena in 2019 and AGIG in 2020.

We consider that an alternative approach that capitalises on existing, well established regulatory processes can better achieve the policy goals of a more efficient, effective, targeted and proportionate regulatory framework.

We propose that information disclosure commitments be developed by scheme pipelines in conjunction with their customers, users and other stakeholders and submitted to the AER for approval as part of the access arrangement process. This will address user needs while being sufficiently flexible to account for the information differences between scheme pipelines – leading to better outcomes for customers, users, the AER and service providers. The information disclosure requirements would work as a backstop where the access arrangement process failed to attain the requisite information disclosure objectives.

Overall we consider that targeted consultation with scheme distribution networks is required to ensure the pipeline reforms are workable, fit-for-purpose and proportionate. As an example, amendments are required to align financial disclosure reporting years with regulatory years. As it stands, JGN would be required to publish financial information on a January-to-December basis as part of the disclosures while reporting information in the RIN on a June-to-July basis. This differences will cause confusion and increases costs (for example, two rather than a single audit would be required).

Attachments 1 and 2 provides further detail on the information flows that are already occurring, differences in requirements between scheme distribution and transmission pipelines (particularly around the nature of non-reference services) and our concerns with a single information disclosure framework. We also provide comments on the definition of small shipper. Attachment 3 and 4 provides suggested drafting to implement a solution that better addresses the information disclosure objectives with respect to distribution networks and to align reporting years.

Should you have any questions please do not hesitate to contact James Turnley, Gas Networks Regulation Manager, on (02) 9867 8659.

Yours sincerely,


Ana Dijanosic

General Manager Regulation

Attachment 1 – Further information

Information disclosure requirements

The policy problem to be addressed

The Decision Regulation Impact Statement (**Decision RIS**) outlined that the purpose of information disclosure requirements in the current regulatory framework is to:

- enable shippers to make a more informed decision about whether to seek access and to assess the reasonableness of a service provider's offer; and
- reduce the degree of information asymmetry and imbalance in bargaining power that shippers can face in negotiations with service providers and, in so doing, facilitate more timely and effective negotiations.

The Decision RIS noted that full regulation pipelines are not required to publish any information on non-reference services and that there are some inconsistencies in what information they are required to report (compared to pipelines subject to Part 23 and light regulation). The RIS concluded (emphasis added):²

...the lack of information on non-reference services can hinder the ability of shippers to negotiate effectively, impose additional search and transaction costs on shippers and make them more susceptible to exercises of market power, particularly on transmission pipelines where non-reference services are more commonplace.

The policy decision

Under option 3B, the preferred option, service providers will be required to disclose the following information:³

- basic information, including pipeline information, pipeline service information, service availability information, service usage information and standing terms for each offered service;
- historical financial and demand information; and
- information on the prices paid by other shippers to be based on the individual prices (including key terms and conditions) paid by shippers.

Further disclosure requirements have been amended to address alleged information deficiencies, improve the quality and reliability of information and improve accessibility and usability of the information disclosed.

Information currently provided

Attachment 2 sets out the information scheme distribution networks already provide. It is clear when a comparative analysis is undertaken that distribution networks largely already provide the information proposed to be required in Part 10 of the NGR.

² Energy Ministers, Decision Regulation Impact Statement, Options to Improve Gas Pipeline Regulation, p.70

³ Unless an exemption is obtained. See Energy Ministers, Decision Regulation Impact Statement, Options to Improve Gas Pipeline Regulation, p.85

Non-reference services provided by distribution pipelines

Ultimately in the context of a scheme pipeline, the information disclosure requirements support access negotiations for non-reference services. In contrast the prices, terms and conditions for reference services are set under the access arrangement process.

It is important to take into account the context of, and the kind of, non-reference services that are provided by scheme distribution networks.

For JGN non-reference services are extremely uncommon. We only provide a single non-reference service (the operation and maintenance of a bespoke facility) with reference services making up around 99.98% of JGN's pipeline service revenue.

We have not sought to publish information on non-reference services (such as standing terms) as these services are rarely sought and rather than being on offer are developed *in response* to customer needs or a bespoke request.

Accordingly, we consider the comprehensive information disclosure regime proposed is not targeted or proportionate given the context and materiality of non-reference services offered by scheme distribution networks.

Inconsistencies in reporting requirements across pipelines are not regulatory gaps

The decision RIS has identified inconsistencies between the information disclosure requirements for pipelines subject to full regulation and those subjected to Part 23 and light regulation pipelines.

In reviewing these inconsistencies, it is clear from the perspective of scheme distribution pipelines, there is no regulatory gap. In particular:

- while scheme pipelines do not currently publish weighted average prices, this would have no value as all users pay the price listed on our tariff schedule for reference services;
- while there is no rule requirement for scheme pipelines to publish detailed historical demand and financial information, extensive information is reported to the AER and published as part of the reset and annual RIN processes; and
- while we do not have standing prices and terms and conditions for non-reference services, these are rare and developed in response to user needs.

The draft legal package

The draft legal package implements the policy decision via the introduction of a single information disclosure regime applying uniformly to scheme and non-scheme pipelines and distribution and transmission pipelines.

We understand that the intention is to apply an effective and efficient solution to reducing complexity, confusion and avoiding imposing unnecessary costs on service providers and shippers. A single information disclosure regime does not achieve these aims.

Instead, it has the potential to create issues in regulatory processes that are otherwise well established and are fit for purpose with no material benefits to regulatory transparency or for users. In particular the single information disclosure regime:

- does not take into account user needs (e.g. price, terms and conditions for access to reference services provided by scheme distribution networks are not negotiated);
- requires scheme pipelines to unnecessarily publish commercially sensitive customer information in relation to capacity and usage, putting our self-contracting users at a

disadvantage compared to their competitors which may contract through a retailer or use alternative energy sources. Publishing this information is not needed as all users pay the prices listed on our tariff schedule (as prices are not individually negotiated);

- duplicates several elements of information which is provided elsewhere in more meaningful forms (see Attachment 2 for the information that is already provided and which will be provided as part of the information disclosure requirements); and
- creates a secondary set of information and disclosures which will result in unnecessary confusion and, contrary to the intent of the reforms, reduce accessibility. An unintended effect of duplicating information reporting is that it will increase rather than reduce search costs. Including scheme and non-scheme distribution and transmission pipelines will also increase the complexity of the information disclosure guideline and the administrative costs of the AER.

Adopting a one-size-fits-all approach also fails to recognise the strengths of the regulatory framework which includes:

- an existing robust information disclosure regime; and
- focuses on customer and stakeholder voices in the development of access arrangement proposals.

An alternative approach

We have identified an alternative approach to achieve the information disclosure policy objectives while retaining the strengths of the current regulatory framework.

We propose that scheme pipelines engage with their users on what information would be useful to be disclosed as part of the established and well tested access arrangement process which allows for both user feedback and AER approval.

This approach will enable service providers to:

- develop a set of information disclosures which fits user requirements and individual pipeline circumstances. This can include how information on non-reference services will be provided including how price and cost information will be reported or standing terms and conditions' and
- take into account the existing robust information disclosure requirements to avoid duplication.

Importantly, this will provide the flexibility to apply a proportionate and targeted approach for both scheme distribution pipelines (which may offer no or limited non-reference services) and scheme transmission pipelines (where non-reference services are more common). In the case of the latter, the AER would have the power to impose the entirety of the information disclosure requirements set out in the Rules if it was not satisfied that the information disclosure commitments proposed satisfied user needs.

Accordingly and in any event, the new information disclosure requirements should come into effect for the next access arrangement.

Proposed drafting to implement this approach is set out in Attachment 3.

Further consultation is required

Overall we consider that further scheme distribution network specific consultation is required to ensure the pipeline reforms are workable, fit-for-purpose and proportionate.

While our alternative approach resolves most issues, we note that there are several areas where changes should be made so that the pipeline information disclosures work for scheme distribution networks. Examples include:

- aligning the reporting years of the information disclosures with regulatory years. While JGN's financial year operates on a January-to-December basis, regulatory reporting is on a June-to-July basis. Reporting the same information but across

different timeframes will lead to discrepancies and increase confusion as well as costs, as any synergies in reporting (for instance audit costs) will not be able to be realised; and

- extending the reporting timeframe from 4 months to 5 months, consistent with the AER's RINs, to account for distribution network periodic meter reading and billing. For instance, JGN reads most meters on a quarterly basis. As a result, actual demand usage and revenue is not known until at least 3-4 months after the end of a year (once all meters have been read and billing has occurred). This means that this information cannot be collated, reviewed, audited and published until 5 months after the end of the year. If a 4 month reporting timeframe is maintained greater reliance on assumptions and estimates will be required.

Proposed changes are set out in Attachment 4.

Small shippers

We do not support the proposed definition of a small shipper with a daily capacity of threshold of 5 TJ/day for several reasons:

1. The proposed threshold takes no account of the size or sophistication of the prospective user—what is defined is not a 'small shipper' but a 'small access request'. This therefore does not appear to reflect the policy intent behind the introduction of the 'small shipper' measures.
2. Large users do not need to initially seek access for a large amount of capacity or to supply a large number of customers. For instance, a retailer may seek access to a network before running a large campaign to encourage a large number of customers to switch from other retailers.
3. It is not clear how the thresholds apply to distribution networks where there is often no daily capacity right.

Accordingly, we suggest that a measure which accounts for the size of a shipper's business is more appropriate.

If this approach is not adopted then an alternative test for distribution networks could be a developed based on annual throughput and customer numbers (or delivery points). For instance a threshold of less than 10,000 customers and annual throughput less than 0.75 PJs – which is about the median consumption of our self-contracting users.

Attachment 2 – Information currently provided by distribution scheme pipelines

Scheme distribution networks already provide most, if not all, of the information that the proposed reforms require distribution networks to duplicate as part of the Part 10 information disclosure obligations. In JGN's case we provide the information through the following channels:

- Access Arrangement Proposals / Access Arrangement Information – Sets of documents which provide the information for users and prospective users to understand the background to the access arrangement and to understand the basis and derivation of various elements of the Access Arrangement;
- Access Arrangement and Reference Service Agreement – Documents which set out the terms and conditions of access to our reference service (as approved by the AER);
- Tariff variation notices / tariff schedules – Documents which reveal the prices paid by all customers to use our reference service;
- Basic information – Pipeline information, pipeline service information, service usage information.
- Additional pipeline information – Information frequently requested by customers, for instance average gas consumption by Local Government Area.⁴
- RINs responses which:
 - provide extensive sets of information covering our expenditure, network characteristics (customer numbers, throughput, network length, city gates/regulators), service quality (reliability etc.) and financial information (income, revenue, capital base etc.).
 - are provided in a manner set by the AER, including information quality assurance controls such as audit requirements and the reporting on the application of Cost Allocation Methodologies;
 - are fit-for-purpose for distribution pipelines;
 - imposes consistency in reporting across both scheme pipelines⁵ and time – data has been reported on a consistent basis from 2011 and will be required to be provided annually until at least 2030;
 - empowers users to engage in the Access Arrangement process; and
 - are reported and analysed by the AER as part of its preparation of its annual distribution performance report (first report to be published by the end of 2021) and profitability reports, in addition to the usual analysis conducted as part of a access arrangement process.

In addition, JGN also provides additional information in a variety of forums. These include:

- our annual large customer forum⁶;
- Ad-hoc virtual workshops (for instance on renewable gas in August 2021 or on-going engagement on the development of a Gas Network Innovation Scheme).

⁴ This information is available [here](#).

⁵ It is not the case as suggested in the Decision RIS that “RINs tend to reflect the systems and processes that individual service providers have in place which differ markedly across service providers.” as can be seen in the RIN responses published on the AER's website [here](#).

⁶ Invitees to the large customer forum also include shippers and consultants.

- ad-hoc information requests from the AER, Governments, users, customers, other stakeholders;
- regular Customer Council meetings.
- one-on-one engagements (including regular meetings with all shippers, including retailers and self-contracting users);
- AEMO forums such as the Gas Retail Consultative Forum.
- customer, stakeholder and retailer engagement as part of the development of our access arrangement proposal (we note that our most recent engagement program won the 2019 customer engagement award); and
- on request by users or customers. For instance, we are currently developing a standard set of performance standards on service orders which we intend to regularly report on direct to users.

Additional information is also published by the AER in making its Access Arrangement decision.

Attachment 3 – Proposed alternative to address information disclosure objectives

See proposed amendments in red to the relevant provisions of the proposed National Gas Rules.

48 Requirements for full access arrangement (and full access arrangement proposal)

- (1) A full access arrangement must:
- ...
- (j) if there is to be an *expiry date* – state the *expiry date*;
- (k) in relation to a *distribution pipeline*, having regard to the *pipeline information disclosure guidelines* and information already provided to *users* and *prospective users*, identify the form and location for publishing the following additional information for *users* and *prospective users*:
- (i) the kind of service and access information in rule 101B;
- (ii) the kind of financial information, historical demand information and a cost allocation methodology specified in rule 101D;
- (l) include a user access guide that meets the requirements of rule 105B(6).

Note:

A full access arrangement may contain an *expiry date* if it is a voluntary access arrangement (but not otherwise) – See rule 49.

Part 10 Prescribed Transparency Information

Subdivision 2 Exemptions from information disclosure requirements

New 102(8)

- (8) A service provider for a scheme pipeline is taken to be exempt from this Part 10 if the service provider's access arrangement specifies an alternative form of information disclosure for some or all of the information required to be disclosed in accordance with this Part.
- (9) Notwithstanding rule 102(8), the *AER* may exempt a service provider for a scheme pipeline from the requirement to comply with Part 10 where there will be no material benefit to a user from the service provider complying with this Part 10.

Part 11 Access negotiation framework

105 Definitions and interpretation

New (5)

- (5) For the purposes of this Part, a service provider for a scheme pipeline will be taken to have complied with this Part if any required information is published in accordance with the service provider's access arrangement.

Attachment 4 – Proposed alternative to align reporting years

See proposed amendments in red to the relevant provisions of the proposed National Gas Rules.

100 Definitions and interpretation

(1) In this Part:

...

... **financial information, historical demand information and cost allocation methodology** means the information published under rule 101D.

financial year means:

(a) in the case of non-scheme pipelines, the financial year of the service provider; and

(b) in the case of scheme pipelines, the relevant regulatory year as determined by reference to the scheme pipeline's access arrangement.

flow rate means the rate at which gas flows past a point on a pipeline in an hour, expressed in GJ/hour

...

101A Obligation to publish information

...

(2) The information referred to in subrule (1) must be published at the following times.

...

financial information, historical demand information and cost allocation methodology	Annually no later than four five months after the end of the financial year. of the service provider for the pipeline.
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...