

Jemena Gas Networks access arrangement 2025-30: Issues paper

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About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are marginalised and facing disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

Energy and Water Justice

Our Energy and Water Justice work improves regulation and policy so all people can access the sustainable, dependable and affordable energy and water they need. We ensure consumer protections improve equity and limit disadvantage and support communities to play a meaningful role in decision-making. We help to accelerate a transition away from fossil fuels that also improves outcomes for people. We work collaboratively with community and consumer groups across the country, and our work receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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1. Summary and context

The Justice and Equity Centre (JEC) welcomes the opportunity to respond to the Australian Energy Regulator's (AER) Jemena Gas Networks (NSW) access arrangement 2025-30 issues paper (the Paper).

Jemena's access arrangement comes at a critical time for gas networks. Emissions reduction commitments and targets are established, and the rules now require consideration of emissions reduction to be an integral part of decision-making by energy businesses and regulators. The energy transition is well under way and is accelerating to meet the increasingly urgent demands these targets imply.

Jemena has framed this critical issue of emissions reduction as one which needs to be addressed by 2050, and is one characterised by significant uncertainty for Jemena. We consider the timeframes to be much narrower and the uncertainty much more circumscribed.

Australia's climate commitments, and the emissions targets implementing them, require rapid emission reduction by 2030 and 2035. AEMO forecasts and every credible Australian and international assessment indicates this must involve rapid renewable electrification, particularly of household and business gas uses.

We contend this requires Jemena's decisions in this proposal to be aimed at substantive emissions reduction within this timeframe – not by 2050. We also consider this timeframe to be critical for the AERs own consideration of what constitutes credible, prudent decision-making. Decisions assuming conversion of the entire gas network to biomethane or other gases by 2050 do not meet emissions targets, and doing so within the 2035 timeframe is not credible, and would not be in the consumer interest if it were.

In this context uncertainty is not about what role gas will play in 2050, but how quickly it will retreat and how to smoothly and efficiently manage the retreat of residential gas networks, while maintaining and transitioning remnant network areas supporting industrial uses, to provide more renewable products.

We welcome Jemena's early engagement on these issues, and commend them for providing a platform to discuss what gas network businesses can do to commence this process, and effectively manage the transition of their networks. Our submission will explore the engagement undertaken by Jemena, as well as some of the key issues we see as being of critical relevance in responding to the emissions challenge, while promoting the interests of consumers.

Clarification on the role of the JEC

The JEC has been deeply involved in Jemena's process of engaging with its community and developing its proposal. The JEC is a member of Jemena's Customer Council and had a representative participating as a member of the Advisory Board. This engagement has largely been undertaken as part of the JEC's role as a consumer engagement expert and advocate for NSW households, and in service of our objective to ensure decisions which impact NSW household access to energy are grounded in, and shaped by, robust engagement with consumers and the community.

Through the course of this engagement however it has become apparent that stakeholders (including Jemena) do not have a clear and consistent understanding of the two distinct roles the JEC undertakes for NSW households. Given this submission presents perspectives encompassing both roles, it is important to clarify them here.

The JEC role, which is potentially best understood, is as an expert advocate for the interests of NSW households for equitable and dependable access to affordable and sustainable energy. In this role we develop and advocate for positions we consider promote the interests of NSW households. In this advocacy we make clear that we do not 'represent' consumers or their preferences but rather represent and advocate for what we consider best promotes their interests.

Less well understood is our role in shaping, observing and assessing direct consumer engagement. Our purpose in this role is to ensure that parties with an interest in disentangling consumer and community views on regulatory matters can do so. We seek to ensure engagement enables people and communities to 'speak for themselves' and provide the most meaningful expression of their own values, preferences and priorities on these issues. In this work we concentrate on the process of engagement, the principles which underpin it, how it is structured and conducted, and how its results are translated and integrated through decision-making practices. Crucially, in this work our own perspectives on the merits of the matters under consideration, or the results are not considered and should not impact our assessments.

Put simply, we seek to both advocate for the *interests* of NSW households and ensure engagement provides the best opportunity to express their *preferences* on decisions that matter to them.

This distinction is important. It is possible for a robust, 'valid' engagement process to result in an expression of preferences that does not accord with our assessment of the consumer interest. For instance, in the case of Jemena's last access arrangement proposal a robust process resulted in consumers expressing a preference for 'subsidised' new connections. Our assessment to the AER was that this was a valid expression of the community preference at that time. Separately, we continued to argue that we did not consider such an approach to promote the long-term consumer interest. We consider this difference critical, and that ongoing evolution of regulatory processes will need to better consider how to integrate consumer preferences and interests when they may be in apparent conflict.

The JEC is open in expressing our perspective that it is in the best interests of all consumers to embrace rapid household electrification, and support this through business decisions, regulation and policy. While we continue to advocate accordingly (including as a member of Jemena's Customer Council), we have been consistent in ensuring our involvement with Jemena's engagement (through the Advisory Board) has focussed on the quality and robustness of the engagement itself, rather than our view on the merits of any particular decision.

In this submission we seek to present our perspectives in two, clearly separate sections. In the section on engagement, we have sought to focus on:

- the structure of engagement and the interaction of engagement methods, including the interaction between stakeholder and consumer engagement;

- the degree to which engagement reflects good practice, and fulfills the requirements set out in the Better Resets Handbook;
- the robustness of the process and any potential issues with it;
- the clarity and quality of the content utilised.
- Jemena's responsiveness to input and adapting their process; and
- processes for reflecting the results of engagement in final decisions.

The intent is to assess the degree to which the engagement is able to serve as a robust foundation for Jemena's decision-making, and the degree to which we consider Jemena's final proposal meaningfully reflects the consumer and community values and preferences expressed through the course of engagement.

We intend to keep our assessments of the merit of decisions and the degree to which they promote the interests of consumers, separate and present them in sections 3-5 of this submission.

2. Observations on JGN consumer engagement

The JEC's overall assessment of Jemena's engagement is that it was capable of meaningfully establishing the community's values and preferences. Any issues we raise, except in the case of accelerated depreciation, are not with the validity of the engagement itself, or the values and preferences expressed by consumers. They should be regarded as considerations for the AER in assessing the decisions Jemena has made on the basis of these values and preferences, and how Jemena has presented them.

In the remainder of this section, we offer general commentary on the structure and conduct of engagement overall, as well as comment on specific aspects. We also provide direct response to perspectives of Jemena's engagement provided in the AER Issues Paper. Our intent is to provide our qualitative assessment of how the community's values and preferences were derived through engagement, any potential issues or qualification which we consider relevant, as well as our assessment of the translation of those values and preferences to Jemena's decisions.

2.1 General comments on the structure and quality of engagement

In broad terms we agree with the assessment that Jemena demonstrated a genuine commitment to quality engagement. They commenced their engagement process early and committed substantial resources, time, effort and good faith to obtain a meaningful direction from consumers and the community to shape important decisions by Jemena. Particularly commendable aspects included:

- The early commencement of the engagement program, which has provided the time and space to undertake a robust program, including genuinely deliberative processes, informed to some degree by stakeholder input (via the advisory board).
- The representation evident in the general community engagement. This demonstrated great effort to obtain a range of community voices capable of representing the perspectives of all of those in the community. Augmenting this representation with additional measures to introduce the experiences and perspectives of CALD communities and young people was a further

positive, though we do raise issues with how this was undertaken and integrated into the wider engagement program.

- The main engagement program involved a genuinely deliberative process, incorporating many aspects of current best practice. While we do raise issues as to whether current best practice is appropriate to deal with the complex issues under consideration, it provided the time and scope for participants to give considered responses to Jemena. We consider this means that most individual decisions are capable of being regarded as 'supported by customers' to some extent, and aligned with their expressed values and preferences, with reasonable evidence to support this.

Again, we do have some concerns with how some content was presented, how some discussions were framed and what conclusions were drawn, which we consider important considerations for the AER in making its determination.

Comments on consistency

We do have some questions as to whether the process has derived the 'most meaningful expression' of consumer preferences due to our concerns over the lack of a consistent link between the questions under consideration and the key questions of principle and community trade-off which underpin them. We consider there is an important difference between:

- An engagement process which establishes community values and priorities and raises key questions and issues on a 'conceptual' level (such as affordability, sustainability, individual benefit v collective cost, cost now v cost later, etc), before proceeding with the range of options to address those issues in line with expressed community values and preferences –

eg. This approach could have established that the risk of increased costs to remaining consumers through electrification raises equity and intergenerational issues. Community values could be established (for instance user pays, supporting vulnerable consumers, prioritising affordability now and into the future), with Jemena then presenting a suite of potential measures which address the issues and align with these values – this may present accelerated depreciation as an option, but would do so in a wider context of other options, and in relation to how it does or does not meet those values relative to other options.

and,

- An engagement process which presents the community with a series of 'options' Jemena has to address issues it has identified as being amenable to consumer input or direction, and then seeks to establish community values and preferences which may be relevant, as a means of validating a particular decision. –

We consider the handling of accelerated depreciation issue to be a key example of this approach, where Jemena sought community validation for a pre-determined response to an issue (future risk and uncertainty), rather than establishing community values in relation to risk and uncertainty, and testing a range of measures available to Jemena in addressing that issue in line with those values.

This raises some questions for us regarding whether the engagement derived the most robust expression of the community's preferences and values in dealing with the key questions such as future uncertainty and risk, and cost-sharing between current and future consumers and Jemena. In particular it raises questions for how the support voiced by consumers is contextualised. That is, they did not choose these options as their preferred options per se, but validated and supported them when they were explained in the context of values consumer themselves expressed.

We consider it has also contributed to some inconsistency we have observed in answers from the community relating to future risk and cost - for instance in their perspectives on accelerated depreciation (to address future cost and risk) and expenditure on new connections and investment in renewable gas (which may increase future cost and risk). In most cases, we do not consider this invalidates individual results. The fundamental values expressed by the community are clear and are capable of being drawn on for decision making. But the expressions of support for individual decisions, and particularly the 'quantum' of those decisions, should not be regarded as inviolate, but rather read in the context of the underlying values consumers expressed about them.

It does also leave questions for us as to whether more meaningful (and potentially different and more consistent) expressions of consumer preference were/are possible (and potentially more valid) in relation to specific decisions, and how the decisions work together as a whole. If Jemena is seeking to address future risk and uncertainty, then questions of how consistent and robust its responses are, are valid. We also have a number of serious issues in relation to the handling depreciation which we think constitute a fundamental failure of process (we detail these in section 3)

Potential structural gaps in Jemena's engagement

There are some other general or structural aspects of Jemena's engagement which should also act as qualifications to its robustness, and are relevant considerations in assessing the degree to which the decisions made by Jemena represent the best responses to consumers values and priorities. These include:

- The engagement program was exclusively centred on a deep, deliberative engagement process with the community.

Good engagement practice in this space combines a range of engagement platforms (across stakeholder engagement and direct consumer and community engagement), and utilises appropriate platforms for their best purposes. This would include well designed 'quantitative' engagement (through surveys and focus groups), expert stakeholder engagement, key group engagement, and robust deliberative processes.

This practice is well established in regulated processes in energy and water and the JEC has been involved with (and observed and assessed) processes for Hunter Water, Sydney Water, Ausgrid, Essential Energy and Endeavour Energy, over the last 2 years. All have engaged a range of engagement methods in order to ensure a comprehensive assessment of consumer values, priorities and preferences, which can be validated at scale. This approach ensures complex questions establishing and 'trading off' consumer values are considered in

deliberative platforms where biases can be mitigated, understanding built, and difficult issues worked through. It allows values to be tested and validated quantitatively, and specific decisions (particularly those relating to 'quantum') to be tested at scale.

Jemena's program has, to date, had no meaningful quantitative elements and has relied solely on a deliberative platform. This includes answering questions gauging community support for specific responses and quantum of expenditure on specific measures which would normally be tested with appropriately structured surveys. Using 'quantitative' measures of consensus in a deliberative process involving a small group (as Jemena did) is something we regard as problematic when taken in isolation, particularly in relation to decisions which have a material impact on the whole community.

- The engagement program did not have a robust, consistent and effective link to integrate the direct community engagement program with stakeholder engagement, particularly stakeholder oversight of the community engagement program itself.

The advisory board process provided scope for a good initial link between stakeholders and the development of the direct community engagement. However, this was very narrowly curtailed and managed by Jemena and their consultants and was not structured to continue throughout the community engagement processes and the development of Jemena's proposal. The result was a process of direct engagement (and its constituent content) that was often disjointed, overly skewed towards a 'Jemena perspective', sometimes biased, and in some cases lacking important context that could have aided consumer understanding and more meaningful decision-making.

Best practice in regulatory processes in energy and water (including that recently embraced by all NSW electricity DNSPs) involves a robust, ongoing, transparent mechanism to ensure continuity of linkage between stakeholder and consumer engagement. This would see stakeholder engagement structured to assess the content for direct consumer engagement, help shape it and oversee how it was undertaken and then responded to.

For example, all NSW DNSPs had stakeholder groups with two crucial functions:

- Direct discussion of the issues under consideration by the network, assessment of proposed network decisions, and comment on how they meet the interests of consumers. That is, stakeholders engaging on the merit of potential decisions themselves.
- Ongoing discussion of the key questions to be presented directly to consumers, how to present them, comments on the content and structure of engagement, observation of engagement, structured discussion of the engagement and response to input. For instance, NSW electricity DNSPs consistently organised debriefs with stakeholders/observers after consumer engagement sessions to share thoughts and interpret findings. Stakeholder feedback was integrated into official engagement reports to produce a faithful representation of 'what was heard' and reflect the rationale behind these views.

Both of these functions were structured, from the outset, to be continuous and undertaken as needed.

By contrast, the Jemena process did not include a structured means of undertaking the first function (direct discussion of the merit of decisions with key stakeholders), and curtailed scope to undertake the second function by having no clear role for the Advisory Board articulated at the outset to interact with the engagement program, comment on content, and observe and assess the process.

Input during the engagement process was ad-hoc (though the JEC observed all engagement and provided detailed notes – raising all substantive issues presented in this submission), and subsequent meetings of the Advisory Board were ad-hoc and irregular (at Jemena's initiation). This provided limited scope to meaningfully influence the program once commenced and help ensure it was as robust as possible. We contend this was particularly important in relation to the handling of some of the most complex questions, such as accelerated depreciation.

We are particularly concerned that the ad-hoc nature of this structure has curtailed the scope to address any issues which may remain.

Conceptual framing of issues and questions involving value trade-offs

As outlined earlier, Jemena's engagement approach focussed on discrete topics or questions, which represented key issues Jemena was seeking direction on, or validation and quantum for a preferred decision (as was the case with accelerated depreciation). The topic areas were very well presented in their technical detail and involved (in most cases) well-constructed plain language explanation from Jemena's experts. Community participants were given a good opportunity to understand the technical considerations of making a decision in each topic area.

While this approach is valid, and does provide opportunity for the community to express relevant values and priorities, we consider it lacked scope to provide the most consistent and robust basis for establishing fully informed and considered community views on the underlying questions at issue, and how best to direct Jemena's decision-making in responding to them.

Many of the topics had a range of consistent concepts and considerations running through them which could have been explicitly noted and explored. Concepts of future 'risk' to Jemena and the community could have been established as a key issue (for example) with the engagement exploring the range of options Jemena have to address this issue, with the value 'trade-offs' involved in each option discussed. To help participants understand the trade-offs being made, their implications and how their preferences can be reflected most meaningfully in Jemena's decision-making, the process could have established consistent considerations to be applied to each option or decision. For example:

- individual benefit v community benefit/cost
- community affordability v individual choice/optionality
- individual cost/risk v Jemena cost/risk

- Community cost/risk v Jemena cost/risk
- immediate outcomes v long term outcomes
- household costs v industrial benefits/costs
- guaranteed costs now v potential savings/costs later
- prevention v response
- cost to community now v cost to community later
- Emissions reduction now v choice and optionality

Without these we consider there was not enough foundation given to people to build their understanding and provide robust, reasoned, and consistent reflections of their preferences. This left decisions to be considered in isolation, inconsistently, and often only on the basis of a relative cost assessment (rather than in consideration of the full range of important factors). It is possible that some of the decisions on 'level of expenditure' were impacted by this.

The main, consistent framing given throughout the process was one of 'uncertainty'. While this is reasonable, we contend there was not a sufficient exploration of the bounds of that uncertainty, what capabilities Jemena has to manage that uncertainty, and what uncertainty means in the context of decision-making for Jemena.

The link between the actual risk and uncertainty Jemena faces and the tools it has to manage this was not consistently established. There was scope for uncertainty to be explored specifically in relation to each of the topic areas, with a full assessment of the considerations and implications. For instance, that subsidising new connections increases collective exposure to uncertainty, both by 'making the potential future problem bigger' and by doing so at the expense of cost to existing customers.

To reiterate, we do not consider the absence of this framework to in any way invalidate the values and preferences expressed by consumers, or the decisions made in the course of the engagement. However, the AER should consider these factors in assessing how Jemena presents its decisions in response to key questions of risk and uncertainty, and the preferences expressed by consumers.

Issues with the recommendation report

We observed consistent comments and discussion (including in the recommendations provided) during the engagement which indicated the participants developed a strong impression their role was to protect the viability of Jemena as a business. For instance, recommendations on the need for Jemena to 'advertise, sell and advocate for gas' demonstrate for us a potential failure of the process to clearly establish its purpose (importantly, that it is not about telling Jemena how to be a successful and profitable business). We consider this evidence that participants had the (incorrect) assumption that their purpose was to advise Jemena how to maintain their business and be successful. Rather than how to meet the range of challenges on behalf of consumers and make decisions which reflect their values and preferences.

Participants ended with the impression governments and the public need to understand the 'good things' about gas. This likely reflects some issues with the way information was presented, and instances during the engagement where the participants were given the impression the challenge was not how to best manage uncertainty, but how to overcome uncertainty by maintaining and embracing gas network services and advocating for gas-centered future options. We consider it likely this framing and perception has had some impact on decisions and recommendations made during the engagement, including those on accelerated depreciation, abolishment costs, investment in renewable gas, and tariff variation.

We conclude that as a result of some of the issues outlined above (both with structure and process), the recommendation report does not provide a meaningful direction for Jemena's decision making.

The community values expressed in the report can still be drawn on as valid expressions, to help inform Jemena's proposal. Be we regard the recommendations themselves as having little meaningful value. They are often repetitions of broad values expressed at the outset of the process, and in many cases repetitions of the original questions presented to the participants – for instance, 'balance the future with the present' which does not answer the initial question of how to balance the interests of the future and the present. Again, we do not consider these issues to invalidate the engagement but require careful consideration of how results were drawn on and represented in Jemena's proposal. They should, at the very least, result in some qualifications of any claims that specific decisions are derived by or supported by consumers.

Q1: What do you think of the consumer engagement approach undertaken by JGN against the expectations set out in the Handbook in delivering a consumer-centric proposal?

As we have noted above, we consider the engagement program undertaken by Jemena did demonstrate a genuine intent to undertake robust, best-practice community engagement. Having commenced the program very early, Jemena gave ample space for the development and implementation of a robust program. The (mostly deliberative) engagement platforms utilised demonstrated good practice and it was apparent throughout that Jemena had invested significant resources, time, effort and good faith in the process.

However, as we have detailed, there were a number of structural gaps in Jemena's engagement , and some issues with how the process was conducted. In particular we highlight our concern at the lack of consistent, ongoing, robust structured interaction between the 'independent' stakeholder engagement platforms (the Advisory Board) and the direct community engagement program.

We have also noted our concerns with the breadth of Jemena's engagement program, with it relying exclusively on a deliberative engagement platform. This is particularly concerning where the results of the deliberative engagement are presented as indications of 'quantitative' support for measures.

2.2 Nature of the engagement

In this section we provide a direct response to each of the aspects of the nature of engagement set out in the Better Resets Handbook. These should be read in conjunction with detailed commentary already provided.

Sincerity of engagement:

We considered there to be a genuine commitment of business with consistent engagement of executive with the process throughout, and a broad demonstration of a sincere commitment to robust engagement. This assessment was also reflected in the reflections of the consumer participants themselves.

However, the structure of the engagement was arguably not grounded in consumer priorities, but rather a process intended to get consumer direction on decisions Jemena needed to make, and in the case of accelerated depreciation, elicit consumer support for a decision Jemena had already made. This is not invalid but does mean that consumers and their priorities were not setting and shaping agenda but were responding to Jemena's agenda. This is particularly important (and potentially problematic) in the question of accelerated depreciation.

Consumers consistently expressed a strong 'priority' for affordability, which could arguably be regarded as an expression of their agenda. We question whether this priority is reflected consistently in the decisions made by Jemena, in particularly that related to accelerated depreciation.

Consumers as partners

The JEC consider Jemena's engagement to be valid, and broadly robust. But we question whether it can be regarded as one which consistently and meaningfully partnered with consumers. For instance, Jemena had pre-determined a preference to include accelerated depreciation in its proposal and presented it to consumers for agreement (rather than as a potential response to consumer identified priorities). Importantly, in not presenting alternatives to accelerated depreciation (that is, other means of managing risk and uncertainty), or even an option to retain normal depreciation schedules, Jemena arguably removed any meaningful power for consumers to shape their decisions.

Jemena's efforts to empower consumers, through the deliberative engagement and the drafting of consumer derived recommendations, were done in good faith and broadly represented current good practice. However, as we have noted earlier in this submission, flaws in the process rendered much of the recommendations report of little value in providing anything more than a reiteration of consumer values and statements of broad preference – such as establishing the importance of:

- affordability,
- consideration of generational equity,
- support for strong action on emissions reduction,
- costs being paid by users who cause them, and
- supporting vulnerable consumers.

These statements have utility in helping to guide Jemena's decision-making but should not be regarded as a robust platform for collaborative decision-making in our assessment.

Equipping consumers

As we have noted, Jemena invested significant effort, expertise and good faith in creating comprehensive, high-quality technical information to explain the issues under consideration. They made significant efforts to explain issues in plain language and offered significant time and opportunity to ask questions and reconsider information. We consider this was done with a genuine commitment to improving consumer understanding and supporting informed consumer deliberation and decision-making.

'External experts' provided input at regular points to provide a wider scope of information, particularly in relation to the prospective possibilities of various alternative gases. This was broadly done in line with current good practice, but we do question the value it added and in some cases we are concerned it merely added to confusion and increased the potential for confirmation bias (ie. where people pay attention to information which accords with their pre-established position).

It would have been more useful to have additional perspectives on how to consider the questions under consideration (rather than extraneous detail on why one particular future should or should not be pursued). Our observation was that consumers would have benefited from additional perspectives (ie. not Jemena's) on how to think about the concept of uncertainty and risk, and what other questions consumers might ask in thinking about how to assess uncertainty and risk, and what options Jemena has to manage them.

In broad terms we agree Jemena made real efforts to equip consumers and were successful enough to meet the requirement. But we consider more could (and should) be done to be sure consumers have the capacity to interrogate the decision-making considerations on a principles level, as well as a technical level.

Accountability

This aspect of engagement is still ongoing, but to date Jemena has demonstrated ongoing commitment to be accountable to consumers, particularly those who participated in the deliberative process. Assessments of the consumer perspectives of the process were apparently very positive and reflected a positive experience.

2.3 Breadth and depth of engagement

As we have noted, Jemena's engagement demonstrated breadth in the strongly representative group of consumers involved in the deliberative process, and in the extra efforts undertaken by Jemena to elicit robust input from CALD communities and young people.

We reiterate our comments relating to the structure of the engagement program, including some issues with development of recommendations and the assessment of decisions. We also note our concerns with the 'depth' of engagement, in relation to the exclusive reliance on a single engagement platform, with limited interaction with independent/expert consumer stakeholders, and no inclusion of other quantitative engagement platforms to augment deliberative engagement.

We consider deliberative platforms to be most appropriate in establishing community values and preferences for how decisions should be made, and how trade-offs between values should be undertaken. Larger, quantitative platforms are then appropriate to address the quantum of

decisions, and to provide added validation for key results. We consider Jemena's engagement to be lacking the diversity required to ensure the appropriate platforms are being employed where they are most effective in supporting robust outcomes.

The JEC agrees with the CCP's assessment and agree that further work is required to ensure properly informed decisions in relation to the future accommodation of biomethane, and how meaningful and efficient an emission reduction strategy it may be, in comparison to alternatives.

2.4 Clearly evidenced impact

We reiterate detailed comments earlier in this section, noting the difference between engagement which responds to consumer identified issues and values, to identify a range of options which address those issues in a manner aligned with expressed community values. We would argue there are some questions as to whether Jemena's engagement can clearly evidence the impact of consumers, except to point to proposals and explain how they align with values expressed by consumers and were 'approved' by consumers. This is valid. But it is, in our estimation, a poorer, less meaningful level of consumer impact than decisions which evolve and are meaningfully shaped according to consumer values.

Independent consumer support for the proposal

We are not aware of any process so far which is capable of providing an independent assessment of the proposal, the engagement program and how effectively consumer preferences have been identified and incorporated into the proposal.

While Jemena has commissioned assessment of consumer perspectives of the engagement process itself -subsequent to critique of aspects of the engagement program - we do not regard this as either independent or robust, given this work relies on participants self-assessment (and is hence subject to well established issues of self-assessment bias).

We again note the absence of a robust, ongoing stakeholder oversight body (such as those which were employed by Ausgrid and Endeavour as part of their recent proposal process) in a position to comment on the conduct of the engagement program and how its conclusions and recommendations were reflected in the proposal. We regard this as a critical weakness that cannot be overcome through the commissioning of additional 'research' as Jemena has done.

3. Capital base and depreciation

In this section we respond to the AER issues paper directly and present a number of issues relevant to the consideration of Jemena's proposal for accelerated depreciation. We consider the question of whether accelerated depreciation is a reasonable, appropriate or effective response to the future risks facing gas networks to be a critical question for this process, and for assessing what is in the best long-term interests of consumers.

3.1 No accelerated depreciation should be approved

Jemena's request for accelerated depreciation should not be approved.

Jemena's proposal is predicated on the assumption that it is entitled to recover the full cost of their investments. It is essential requesting payment for the risk of asset redundancy, and we contend it has not considered that there are specific rules governing actual capital redundancy which must be considered.

The JEC contends the AERs must consider that:

- Jemena is not automatically entitled to fully recover the costs of investment costs constituting its regulated asset base (RAB). The National Gas Law only entitles Jemena to a “reasonable opportunity” to recover its efficient costs, and rule 85 indicates that in the case of redundancy full cost recovery is not automatic.
- There is no provision that allows for Jemena to be compensated for a mere risk of capital redundancy.
- There is specific provision in the rules to deal with actual capital redundancy. Rule 85 provides for removal of redundant assets from the RAB, while also giving discretion to the AER to provide for a cost sharing arrangement between the network company and consumers. Rule 85 does not state that in the case of redundancy companies bear no investment risks and are entitled to be fully compensated for their investments. It also does not create an initial situation whereby investment risks shifts from network companies to consumers.
- While the AER does have power to vary the depreciation schedule Jemena has not satisfied the regulatory test as provided in Rule 89.

3.1.1 There is no automatic entitlement to recover the full value of the RAB

Jemena assumes that it is entitled to recover the full value of the RAB, either from current customers or future customers.¹ Bringing forward recovery is predicated on an assuming this lessens the future cost recovery ‘burden’ because the total amount to be recovered is fixed (ie. the full value). However, the NGL and NGR do not establish a guarantee of full recovery of the RAB.

As noted in previous AER advice², network businesses are only entitled to a reasonable opportunity to recover costs.

Section 24 of the NGL sets out the Revenue and Pricing Principles (RPP). A network company, ‘should be provided with a reasonable opportunity to recover’ its efficient costs, see s 24(2).

Capital investments form part of the RAB, and in turn can form part of a network company’s efficient costs. Before being added to the RAB the capital expenditure must be demonstrated to be prudent and efficient.³

¹ Jemena Access Arrangement pp. xi, 47, 56.

² See AER [Regulating gas pipelines under uncertainty](#).

³ Rule 79, NGR.

The meaning of the phrase ‘reasonable opportunity’ should be interpreted using principles of statutory interpretation, being the natural and ordinary meaning of the words read in the context in which they appear, with reference to the purpose of the legislation.

The Macquarie Dictionary defines:

- “reasonable” as “not exceeding the limit prescribed by reason; not excessive”
- “opportunity” as “an appropriate or favourable time or occasion”

The context and purpose of the NGL is to establish a framework to enable third parties to access natural gas pipeline services, as well as a framework for efficient investment and use of gas networks, and for the AER to set the rate of return that the monopoly owners of these pipelines will receive on their investments, and for the cost of operating these assets.

A “reasonable opportunity” should be interpreted to mean not a guarantee or certainty, but rather an opportunity that is “not exceeding the limit prescribed by reason; not excessive”.

Rule 85 (capital depreciation) and Rule 89 (depreciation criteria) both indicate that there is no automatic right to recover the full value of the investments.

As discussed below, rule 85 provides for the situation of capital redundancy. While the AER may at its discretion make arrangements for cost sharing between consumers and gas network companies, it is the network that bears the risk of redundancy. Rule 85 indicates that any entitlement to recover the cost of the RAB is not absolute in circumstances of redundancy.

Further, while rule 89 talks about assets being depreciated over their economic lives, rule 89(1)(d) makes specific reference to recovery being subject to the rules on capital redundancy.

3.1.2 Jemena is not entitled to payment for the risk of capital redundancy

There should be no pre-emptive compensation for future capital redundancy, and certainly no payment merely for the risk of redundancy, especially when there is such uncertainty at present as to when and how the risk might materialise.

Jemena bears the risk of stranded assets, as any business undertaking investment does. Accelerated depreciation is in effect a mechanism by which Jemena receives a payment today for the risk of future stranding, and this risk is transferred at least in part from Jemena to consumers.

There is no provision allowing compensation for the mere risk of redundancy. Instead, there is a mechanism in place for the situation where there is actual redundancy. Under rule 85, while the AER can exercise its discretion to provide for cost sharing when actual redundancy occurs, companies continue to bear the risk of stranding (see below).

There is no justification for the AER to provide that customers pay gas companies for the mere risk of stranding, whether through accelerated depreciation, or any other form of assistance.

The argument made (including to consumers) is that accelerated depreciation allows later adjustment when the future of gas becomes clearer. This is presented as an ‘advantage’, over

the alternative of waiting for actual stranding or redundancy to occur and dealing with this as provided for in the rules.

Jemena proposes that the \$300 million it receives today will become a new asset class, named 'Future of Gas – MP Services' with a five year asset life. It proposes to transfer \$265.58 million adjustment to the capital base under 'MP Services.' Jemena also appears to be proposing a change of the asset life to 35 years⁴.

The payment of \$300 million to Jemena represents a windfall payment. The possibility of the AER later requiring the adjustment of the depreciation schedule be reversed is extremely remote and the risk of this not happening is carried by consumers. We do not consider this to be prudent, or in the interests of consumers. It is also not clear if the AER seek to reverse the adjustments to the depreciation schedule, how Jemena could be required to return a proportion of the \$300 million.

3.1.3 Rule 85 provides specific rules for capital redundancy

Rule 85 of the NGR provides specific rules for situations when there is capital redundancy of assets – i.e. asset stranding.

Rule 85 provides:

- (1) An access arrangement may include (and the AER may require it to include) a mechanism to ensure that assets that cease to contribute in any way to the delivery of pipeline services (redundant assets) are removed from the capital base.
- (2) A reduction of the capital base in accordance with such a mechanism may only take effect from the commencement of the first access arrangement period to follow the inclusion of the mechanism in the access arrangement or the commencement of a later access arrangement period.
- (3) An applicable access arrangement may include a mechanism for sharing costs associated with a decline in demand for pipeline services between the service provider and users.
- (4) Before requiring or approving a mechanism under this rule, the AER must take into account the uncertainty such a mechanism would cause and the effect the uncertainty would have on the service provider, users and prospective users.

We contend that Rule 85 indicates there is no entitlement to compensation for redundancy from consumers until such time as there is –

- actual redundancy and assets are removed from the RAB, and
- only then where at that time the AER exercises a discretion to require a cost sharing arrangement between the network company and consumers.

⁴ See Attachment 7.3M, worksheet Capital Base Tracking.

In both the case where the network seeks to remove a redundant asset, or the AER exercises its discretion to remove a redundant asset from the RAB, no provision is made in rule 85 requiring that the company receive compensation in full for the value of its capital investments. Instead, the AER has a discretion to set up a cost sharing arrangement.

Nothing in rule 85 suggests that network businesses' redundancy risk is exclusively borne by users, as it would have to be to provide a justification for accelerating depreciation. It also does not create an initial situation whereby investment risks shift from network companies to consumers.

The existence of rule 85, including the cost sharing discretion, is key to considering the proposal for accelerated depreciation as a tool to 'mitigate' future risk, as was presented by Jemena.

The existence of a specific rule on redundancy means the AER should not vary depreciation schedules under rule 89 at this time to pre-emptively compensate networks for any future capital redundancy, especially given the risk of redundancy sits with networks. (See further rule 89(1)(d)).

Th Rule 85 capital redundancy provisions:

- Are the correct provision under which asset stranding should be dealt with, in a way that does not unreasonably shift excess cost and risk on to consumers now.
- Are a more certain method of cost recovery for assets, given that no adjustment is made until actual stranding occurs and the cost of that stranding is apparent.
- Allow for cost sharing, but this cost sharing is more transparent and allows for a more effective assessment of what is reasonable and fair than accelerated depreciation, again because it occurs at the time of stranding.
- Are flexible, as Rule 86 allows for assets that have been removed from the RAB to be reinstated should a service provider reuse these assets in the future to deliver efficient services.

3.1.4 Jemena has failed to satisfy the criteria in Rule 89(1) and the AER should not adjust the depreciation schedule

Rule 89 sets out the requirement for depreciation schedules.

When considering whether to accept Jemena's proposal for accelerated depreciation under Rule 89 of the NGR, the AER's decision-making must have reference to the NGL, including the NGO and the revenue pricing principles.

The NGO requires the AER to consider how to achieve emissions targets. The achievement of such targets will necessitate reducing domestic (methane) gas use, and by proxy, minimising the role of gas networks. Nonetheless, accelerated depreciation is premised on the unwarranted assumption that gas networks are entitled to full recovery of their investments and bear no risk of redundancy.

Jemena only has an expectation to a 'reasonable opportunity' to recover its efficient costs. It does not have an automatic right to full recovery of all its investment costs.

The JEC view is that Jemena has failed to demonstrate that the variation of the depreciation schedule will meet the criteria of rule 89(1).

Rule 89(1) NGR provides:

(1) The depreciation schedule should be designed:

- (a) so that reference tariffs will vary, over time, in a way that promotes efficient growth in the market for reference services; and
- (b) so that each asset or group of assets is depreciated over the economic life of that asset or group of assets; and
- (c) so as to allow, as far as reasonably practicable, for adjustment reflecting changes in the expected economic life of a particular asset, or a particular group of assets; and
- (d) so that (subject to the rules about capital redundancy), an asset is depreciated only once (i.e. that the amount by which the asset is depreciated over its economic life does not exceed the value of the asset at the time of its inclusion in the capital base (adjusted, if the accounting method approved by the AER permits, for inflation)); and
- (e) so as to allow for the service provider's reasonable needs for cash flow to meet financing, non-capital and other costs.

The criteria in rule 89(1) must all be met for the proposed depreciation schedule to be approved by the AER. Jemena addresses these criteria in Attachment 7.3.⁵

Accelerated depreciation is being proposed by Jemena as a way to deal with a future retreat of gas networks and asset stranding. The variation is not being put forward as a way to 'promote efficient growth in the market for reference services' - Rule 89(1)(a).

Notwithstanding arguments that accelerated depreciation may smooth the path to future deployment of renewable gas, particularly for industrial users, only one of the four future scenarios canvassed by Jemena, the Big Hydrogen scenario, involves a growth in gas services generally. This is not considered by Jemena to be the most likely future scenario. All scenarios, including Big Hydrogen, envisage that in the future residential users will largely no longer use the domestic gas network.

Notwithstanding that the economic life of the gas assets is changing, adjustment at this time is not reasonably practicable – rule 89(1)(b) and (c). Jemena has not adequately described and quantified the stranding risk and continues to assume it bears no risk for any asset stranding.

Practicable adjustments to depreciation schedules will only be possible once there is clear policy direction in NSW as to the future of the domestic gas networks. This includes a description of exactly which industrial uses will be supported to continue, the location of these uses, and whether residential use will be retired and from what date, and how that retirement is expected to

⁵ See Jemena Proposal, Attachment 7.3, Table 3.5.

occur. In any case, practicable adjustments at this time do not seem to align with Jemena's other actions, or form part of a consistent approach to minimising and managing future risk, and current cost to consumers.

Jemena's request for accelerated depreciation must be viewed in conjunction with its request for large amounts of capex to connect new customers and install new meters. This additional capex will enlarge the size of the RAB and increase the risk of stranding at the same time as it is requesting accelerated depreciation to deal with what it states is an existing risk of stranding.

While accelerated depreciation will not result in a network being compensated more than once for an asset – it remains the case that rule 89(1)(d) specifies that the depreciation schedule should be designed in a way that is – subject to the rules about capital redundancy. Jemena does not address at any point rule 85, and the rules on capital redundancy, notwithstanding that this is exactly what asset stranding concerns.

Jemena fails to address the absence in rule 85 of any indication the default is that customers bear the total risk of stranding. Instead, Jemena seeks to be compensated in full for its investments, effectively requesting payment at this time, for future redundancy. Jemena also fails to discuss what cost sharing arrangements between the network and consumers will be appropriate in the case of actual redundancy. This is especially pertinent, when the risk of redundancy for Jemena's assets has been known for a substantial time, given it has known for a number of years that climate change mitigation will mean there will need to be a rapid reduction in greenhouse gas emissions – and where methane gas is both an indirect greenhouse contributor (when burned) and a potent direct greenhouse contributor.

Jemena does seek to explain how accelerated depreciation will improve its cash flow and states that network viability will otherwise potentially be at risk from 2040. However, the risk of redundancy is Jemena's to bear not consumers. Jemena does not explain clearly why consumers, especially today's household consumers, must take on the commercial risk of their company and maintain their cash flow in face of this once-in-a-lifetime shift in energy use. To maintain supply after 2040, it is highly likely Government intervention will be required, absent the AER approving at this time that today's consumers inequitably bear Jemena's commercial risks.

3.2 Jemena's proposal for 'renewable gas' is inconsistent with its request for accelerated depreciation

Jemena submits that its proposal for accelerated depreciation is consistent with its proposed capex program to invest in biomethane gas connections. Namely, Jemena notes that renewable gas 'will help extend the usage for its gas network and therefore lower the risk of asset stranding'. These claims are incongruous and should be rejected by the AER.

Jemena and its stakeholders have a clear, shared understanding of the long-term prospects for residential and business gas use. Demand is forecast to decline for both these cohorts and AEMO forecasts project high-rates of residential electrification over the next 15 years. To the extent that biomethane will be a substitute energy source for fossil gas it is likely this will be for only a small group of industrial and other hard-to-electrify users.

While biomethane use could expand under the unlikely ‘Market Hydrogen’ and ‘Big Hydrogen’ scenarios – Jemena’s customer base increases only in the case of the latter. The identity and location of likely users of biomethane, and the impacts on the network in terms of assets that will need to be retired or will become stranded in this scenario are not detailed in Jemena’s proposal.

Connecting biomethane risks not only unnecessarily expanding the network but misallocating limited economic biomethane supplies with limited (or no) emissions reduction impact, and creating additional asset stranding risks. Put differently, it is contradictory for Jemena to seek money to expand its network and thus enlarge the size of its RAB, while at the same time, seeking payment in the form of accelerated depreciation to compensate for the risk of asset stranding of its own making. As ECA have noted in their submission to this process, Jemena has a range of more effective (and consistent) tools to address future risk of asset stranding, which do not involve accelerated depreciation, and unreasonably increasing costs and risk for consumers.

In the absence of greater detail from Jemena on the intended use of renewable gas, and precise details on which assets will become stranded, no accelerated depreciation should be approved at this time, given the AER cannot properly assess prudence and efficiency of the proposed biomethane connection projects.

3.3 Jemena’s consultation on accelerated depreciation did not provide customers with the basis to form a meaningful decision

The JEC’s assessment is that Jemena’s engagement on accelerated depreciation was undertaken in a way which invalidates its conclusions. We do not consider it capable of underpinning Jemena’s proposal. In addition to issues raised in section 2 of this submission, we note the following critical issues:

- Accelerated depreciation was presented as a pre-determined solution, not a response to consumer provided issues or as a potential response to an established problem. Nor was it responding to consumer expressed values and priorities. While consumers expressed values in the course of considering the question of how much accelerated depreciation to approve (generational equity), the engagement process was effectively one in which Jemena ‘promoted’ the concept of accelerated depreciation to consumers in order to seek validation for Jemena’s pre-determined decision to propose it. Ostensibly, engagement was an exercise in building an argument that consumers supported the decision.
- No alternative to accelerated depreciation was ever presented. More problematically, the process did not properly explain that the ‘default’ alternative is to maintain existing depreciation schedules (the zero option), and that this involves a fair return to Jemena. Consumers were simply with a choice of \$300m, \$500m or \$700m in accelerated depreciation in order to solve a problem Jemena had established existed for consumers (rather than Jemena – as outlined earlier in this section). In our estimation the lack of any zero option, and accompanying explanation as to why acceleration is a departure from the default, invalidates engagement and any conclusions drawn on this topic.
- The implications of accelerated depreciation were presented only in the context of ‘intergenerational equity’, and specifically as a choice for households to pay more now, to help defray costs for households in the future, or risk steep future cost increases. While

'generation equity' is a valid and strongly expressed consumer value and a relevant consideration, it is by no means the only frame through which to consider the question of accelerated depreciation. Further, other means to address the question of 'generational equity' were not presented consistently as alternatives to accelerated depreciation.

- There was no discussion of the (contested) assumption that Jemena is entitled to recover the full value of its investments from consumers, and any potential qualifications which may exist to this (either because Jemena is not in fact entitled to full recovery, or because governments may choose to step in to defray costs at some point in the future as part of electrification strategies). Consumers were presented with the decision in a context which the alternatives were, recover the money from households later, or recover the money now.
- There was no discussion of relative costs shares now, and over time. In particular the disproportionate costs of maintaining a viable gas system, currently being carried by residential consumers (who are arguably more likely to electrify, according to AEMO forecasts), relative to the costs carried by the small number of industrial customers who are more likely to rely on Jemena's network longer into the future. In this context, accelerated depreciation (and costs of enabling new renewable gas connections) involve residential consumers paying more now, to reduce the cost-of-service to future industrial customers. Indeed, during some forums Jemena has noted that retaining residential consumers and recovering costs from them, is required to 'socialise' the costs required to support an ongoing, viable connection to industrial users. This 'cross subsidy' (now and into the future) was not presented adequately to consumers (if at all).
- A realistic assessment of the impact of accelerated depreciation on residential consumers was not presented in full. This includes an assessment of its impact in mitigating the issues identified by Jemena - as outlined in the report accompanying ECA's submission to this process - or an assessment of the cost to each customer of accelerating depreciation (rather than the bill impact), which the AER noted was \$190 per customer, an amount much higher than recently approved for Victorian businesses.
- These concerns were raised directly with Jemena by the JEC in comments on the engagement provided throughout. They were then repeated and discussed with Jemena during a meeting with the Advisory Board, CCP and AER teams. Jemena resolved to return to consumers, ostensibly to address these concerns. However, during this final engagement session the concerns were not presented accurately – the concern was that the engagement was invalid because no 'zero option' was presented, and the full context and implications of accelerated depreciation were not presented. Jemena instead explained there would be continued consideration on accelerated depreciation because the 'consequences' of a zero option were not properly explained. Critically, this discussion was explicitly not opening up the question to consider a zero option, simply re-validating the decision on \$300 million of accelerated depreciation. We regard this as a misleading presentation of the issues and a process which fundamentally did not address the key question. This view was also provided directly to Jemena at the time.

We conclude that Jemena had pre-determined to propose accelerated depreciation and was not open to consumers concluding otherwise, if presented with the option and a comprehensive

explanation of the considerations and alternatives. Accordingly, it is our conclusion that the engagement on this topic cannot be relied upon as a basis for Jemena's proposal.

3.4 Accelerated depreciation shifts risk away from Jemena and onto residential consumers

While questions of price stability, and intergenerational equity are relevant and important considerations of consumer interest, We consider the proposal to deal with this through accelerated depreciation is misguided. As ECA have set out in their submission to this process, there are alternative means to deal with these questions through measures which do not invite added risk or cost for consumers. In any case as, as we have outlined, we contend the proposal steps outside the bounds of what is permissible under the regulatory rules – including ignoring that the rules make specific provision for the case of asset redundancy, represent a windfall for gas companies, and shift investment risks from gas companies to consumers.

Future consumers do not bear the risk of future stranding, and while at the time of redundancy the AER may elect to exercise its discretion to require consumers share some of the costs of redundancy, it is by no means certain it will do so. Moreover, the extent of the risk of redundancy remains uncertain at this time. Therefore it is neither necessary, or appropriate, to seek to bring forward the cost of those future risks.

We share the view of other consumer advocates that framing accelerated depreciation as a payment from today's consumers to tomorrow's is misleading. Accelerated depreciation is, in the first instance, a risk allocation mechanism. As such, it would be more accurate to consider Jemena's proposal a transfer of risk away from the business and onto its existing customers.

Insofar as accelerated depreciation can be viewed as a payment from existing to future customers, it is most likely to be a payment from the approximately 1.5 million residential users to 380 industrial users.

3.5 Accelerated depreciation does little to reduce asset stranding while imposing material costs on consumers

In assessing the price impacts of accelerated depreciation, the AER should not start from the premise that some level of accelerated depreciation is appropriate and/or warranted. Put differently, accelerated depreciation should not be evaluated exclusively (or even primarily) against its relative price impacts or effects on energy affordability.

These considerations should feature in the AER's assessment only once there is evidence of actual (not just speculative) capital redundancy and the proponent has satisfactorily established that accelerated depreciation, rather than the myriad other regulatory tools⁶, is best suited to the issue. As we outline above, we do not consider this the case.

⁶ See AER [Regulating gas pipelines under uncertainty](#).

Jemena has not demonstrated that they have (or will) encounter actual capital redundancy over the coming access arrangement period, nor have they shown that accelerated depreciation is the most appropriate economic tool to address that risk.

Even assuming Jemena satisfied these criteria, there is little evidence to suggest their proposal for accelerated depreciation materially reduces asset stranding risk over the long-term. Jemena could more effectively reduce asset stranding risk through minimising new discretionary expenditure⁷ as we outline below.

These efforts would have the added benefit of reducing existing price pressures on consumer bills. In contrast, Jemena's proposal for accelerated depreciation imposes material costs on consumers in the short-term. As the AER and others note, the costs cited in Jemena's proposal are likely to understate annual bill impacts and the aggregate level of accelerated depreciation per customer.

4. Capital expenditure

In this section we focus on key issues in considering Jemena's proposed Capital Expenditure.

4.1 The AER must consider the amended NGO

In performing or exercising an economic regulatory function or power, the AER must take into account the National Gas Objective (NGO).⁸ Further, Rule 68B(1)(a) NGR states that, 'The provisions of an access arrangement must be consistent with the national gas objective.'

The emissions reduction target is a recent addition to the NGO. Achieving the 'long term interests of customers' requires balancing the considerations of price, quality, safety, security, and emissions reduction.

The NGL explicitly requires that when having regard to the NGO, "a person or body must consider, as a minimum, the targets stated in the targets statement".⁹ The term "as a minimum" indicates scope to consider other relevant targets of a jurisdiction.

The Minister's objective and intent in amending the NGO (as made clear in the 2nd Reading Speeches of the Bill amending the energy laws) was to enable a decarbonised, efficient and reliable energy system, as a driver for efforts to achieve net zero by 2050. Market bodies were given direction that the operation and regulation of energy investment and markets should actively contribute to achieving net zero. Accordingly, consideration of achievement of the emission targets at all levels is relevant to the AER's approval of all expenditure.

In the JEC's view, the AER should consider achievement of emission targets in respect of all expenditure, and not simply proposals to spend money on emissions reduction.

⁷ See Dynamic Analysis, Turning down the gas: Minimising consumer risk.

⁸ NGL s 28(1)(a).

⁹ s 72A(5), NGL; <https://www.aemc.gov.au/regulation/targets-statement-emissions>.

We contend the AER must be satisfied that allowable expenditure is that which a prudent operator would incur consistent with the amended NGO including the emissions reduction objective. Consumers will not be better off where there is imprudent or inefficient investment in networks, which do not contribute to the transition to net zero, which impedes the efficient achievement of targets, or which adds to the RAB and increases the value of asset at risk of stranding (this includes investment which perpetuates or increases emissions).

The NGR was amended to explicitly require consideration of the NGO when determining what expenditure a prudent service provider acting efficiently would incur when providing services.

Rule 79(1)(a) now reads:

(1) Conforming capital expenditure is capital expenditure that conforms with the following criteria:

(a) the capital expenditure must be such as would be incurred by a prudent service provider acting efficiently, in accordance with accepted good industry practice, to achieve the lowest sustainable cost of providing services in a manner consistent with the achievement of the national gas objective; [...]

See also Rule 91(1) with respect to operating expenditure.

In the context of the Jemena proposal, both Commonwealth and New South Wales targets are relevant. The stricter NSW targets should be used in place of less strict Commonwealth targets where the two are not aligned:

The AEMC Emissions targets statement states the following relevant targets:¹⁰

- The NSW target of 50 per cent emissions reduction by 2030
- The NSW target of 70 per cent emissions reduction by 2035
- Net zero by 2050

It is important to not only consider the targets as point in time budgets, but also to consider emission budgets. In the case of gas networks, this is a critical point.

Section 10 of the Climate Change Act 2022 (Cth), sets out that the Commonwealth 43 per cent emissions target by 2030 is both a point in time and emissions budget target. The Australian Nationally Determined Contributions to the Paris Agreement set out that this budget is 4381 million tonnes CO₂-e in the period 2021-2030.¹¹

The AER is required to consider at a minimum those targets in the AEMC target statement. There is, however, no restriction on it considering other relevant targets.¹² The emission budget of 4381

¹⁰ AEMC Emissions Target Statement, June 2024, <https://www.aemc.gov.au/regulation/targets-statement-emissions>; s 9, NSW Climate Change (Net Zero Future) Act 2023, s 10 Climate Change Act 2022 (Cth), Climate Change Act 2022 (Cth).

¹¹ <https://unfccc.int/sites/default/files/NDC/2022-06/Australias%20NDC%20June%202022%20Update%20%283%29.pdf>

¹² s 72A(5), NGL.

million tonnes CO₂-e in the period 2021-2030 is a relevant target set for reducing Australia's greenhouse gas emissions and should also be considered.

This implies that Jemena's emissions reduction timeframes of net-zero by 2050 are likely to be insufficient, and the investment and actions to achieve those, inadequate.

4.2 Renewable connections are not an efficient means of reducing emissions

Jemena's capital expenditure is primarily driven by new connections, which represent 42.8 per cent of net capex. Of the \$338.9 million Jemena proposes to dedicate to new connections, \$80.8 million is reserved for 'renewable connections'. This expenditure will serve to connect eight facilities to supply biomethane and 'renewable gas' blends into Jemena's network.

Jemena suggests renewable gas is 'essential to unlocking the lowest cost pathway to net-zero and avoiding significant detrimental impacts to our customers and the wider economy'. We consider this assertion flawed on both an economic and environmental basis.

If biomethane, green hydrogen, synthetic methane or other natural gas equivalents are used in gas networks, their utility, efficiency and long-term benefit to consumers must be demonstrated, compared in both emission reduction potential and efficiency to the credible alternatives. The future composition of energy networks must evaluate the efficiency of energy and whether a continued role for gas networks in a decarbonised future is in the long-term interests of consumers. In any case, it is relevant to consider the degree to which renewable connections are the most prudent and efficient means of enabling lower emissions energy in the timeframes required to meet emissions targets. In this case the efficiency and immediately lower emissions potential of electrification of residential connections is the relevant comparator.

We question the potential of renewable gas to meaningfully displace natural gas in the distribution network. As ARENA notes in its bioenergy roadmap¹³, 'there is a significant difference between gross theoretical resource potential, representing all the feedstock that may be available, and the resources that are technically, commercially and sustainably accessible'. While some sources of landfill gas may be viable, we question the extent to which it is possible (or desirable) to scale these resources to displace current fossil gas. Our emissions reduction targets and requirements are not promoted through actions which increase these emissions sources, only to attempt to offset them.

IEEFA analysis indicates that 'Jemena's biomethane injection plant at Malabar and green hydrogen hub in Horsley Park could, if running at full capacity, injects 95 terajoules (TJ) of biomethane and 88 tonnes (12.5TJ) of hydrogen per year into the distribution network'¹⁴. It would therefore take more than 950 equivalent biomethane injection plants or 7,250 hydrogen hubs to meet the 91 petajoules (PJ) of gas demand across Jemena's network in 2023. Doing so, even if actually possible, would be prohibitively uneconomic and likely delay emissions reduction, or even impede it altogether.

¹³ See [Australia's Bioenergy Roadmap Report](#), p. 24

¹⁴ See [Eight ways NSW could cut energy bills during the cost-of-living crisis, and beyond](#), pp. 7-8

The emissions reduction impact of blending biomethane, green hydrogen, or synthetic methane in gas networks at low levels is negligible at best (that is in cases where the blended gas is genuinely renewable/zero emissions). Depending on the source of the blended gases, it is likely blending would result in absolute emissions increases. This brings into question consumer support for renewable connections given Jemena's engagement did not make clear to participants that biomethane requires significant offsetting to deliver net zero results, or that electrification is now (and will become) genuinely zero emissions, and at a lower cost.

The questionable benefits should also be weighed against the readily available, proven alternatives such as rapid electrification. The climate and consumer benefits of rapid electrification may be delayed or undermined by pursuing doubtful and costly gas alternatives - for instance, by duplicating fixed network costs and undermining the scope to use heating and water-heating loads to balance the electricity system more efficiently and affordably for consumers. In any case, there is no argument that electrification presents the most rapid, proven and efficient pathway to emissions reduction in the long term interests of consumers

The AER should consider the relative decarbonisation impact of Jemena's renewable gas proposal against energy system alternatives (such as electrification) and the potential for the proposal to impede or undermine less costly, more efficient, and more material decarbonisation by making the full benefits of electrification harder to realise. Where Jemena's case for new renewable gas connection is predicated on serving the long term needs of hard-to-electrify industrial uses, the proposal should seek to locate renewable connections accordingly, and demonstrate long term plans for viability of those connections if required to operate as an isolated network (that is, if the wider residential network no longer exists at scale)

We agree genuinely renewable gas alternatives will have a part to play in supporting emissions reduction in areas which are hard to efficiently electrify, and it is prudent for Jemena to propose expenditure to facilitate this. However, Jemena's proposals must be made with a clear and targeted link to that purpose, and with a transparent indication of who will benefit, and how the costs will be recovered. We do not consider Jemena's proposal does this, and are concerned that Jemena's proposed expenditure on renewable connections does not support the most significant, most rapid, and best value emissions reduction for NSW consumers. This expenditure is not founded on a principle that the beneficiary pays and does not protect consumers from risks and costs related to the development of a fuel production industry that they are unlikely to benefit from, and is not in their long term interests.

4.3 Further information disclosures are necessary to ensure meter replacements are efficient and consistent with objectives

Outside of new connections, meter replacements represent the largest capital investment in Jemena's proposal. The \$158.6 million expenditure is a 49.2 per cent increase on Jemena's actual and estimated expenditure on meter replacements in the 2020-25 period. This increase is driven in part by the proposal to replace 8,000 mechanical meters with digital meters.

Digital meters are required in the electricity system to unlock cost-reflective network pricing and improve network utilization, amongst other reasons. However, the same is not true in gas distribution networks where the benefits of digital meters are limited to potentially improved leak

detection, and remote readings which could help limit operational expenditure dedicated to manual metering reading and reduce reliance on usage estimates.

While Jemena proposes to limit digital replacements to meters that are prohibitively difficult to access, we question whether these replacements are prudent when 70 per cent of customers are likely to disconnect from the network in the next 20 years.

Standard (i.e. non-digital) replacements are justified where there is a demonstrated safety issue or compromised functionality such that the meter is no longer capable of accurately measuring gas consumption. Jemena claims its meter replacement plan is consistent with its asset class strategy 'to ensure the reliability of gas meter families for accurate billing of residential customers and to reduce estimated meter readings'.

This claim does not inspire confidence given information on meter volumes is confidential and Jemena does not publish details on the condition, failure modes, and risks relating to its metering stock. It is unclear why gas distributors are exempt from providing such information given the requirement for electricity distributors to do so.

The AER should address this discrepancy in the short-term by requiring Jemena publish this information as part of its revised proposal. Doing so would assist stakeholders better understand the uncertainty around the future of gas and ensure that decisions on meter replacements reflect the long-term interests of consumers.

Jemena should also be required to demonstrate that advanced metering is a prudent and efficient approach in the identified cases, by comparing the cost to alternative approaches, such as providing the lowest cost simple, standard (non-digital) meters in cases of meter malfunction or danger to safety. In conjunction with this, Jemena could expand a simple self-service meter-reading platform to allow consumers to provide their own readings in cases where access is difficult. Digital meters could be offered, at full cost to the customer, as an option only. Though this would have to come with transparent information regarding the cost and the potential risks.

The upfront per-connection cost of digital metering should be clearly comparable to other, more efficient alternatives, such as abolition of the connection and electrification of the residence. Given the level of expenditure Jemena is proposing, arguably the more 'prudent and efficient' investment would be to support consumers to electrify, and both avoid the ongoing additional gas connection costs, and the emissions. Where Jemena is asserting these connections are particularly expensive to maintain, this would be a reasonable alternative response.

5. Reference services and reference tariffs

The engagement undertaken by Jemena, in support of its tariff proposals, was robust and did well in explaining and discussing complex issues and considerations. However, we do consider there to be issues with the way questions of reference services and tariffs were addressed in the wider context of the engagement. We noted a consistent perception expressed by consumers, throughout the engagement, that their role was to ensure Jemena remained a viable business. This does raise the question for us as to the degree this overarching consumer perception had any influence over decisions in how risk should be shared through tariffs.

5.1 All volume risk should be borne by Jemena, not consumers

Jemena proposes to adopt a hybrid tariff variation mechanism that incorporates elements of both price cap and revenue cap regulation. Under this mechanism, Jemena bears volume risk up to an agreed threshold level, and shares volume risk equally with customers beyond the threshold. Customers would accordingly split the costs/benefits of any revenue over- or under-recovery driven by volumes that are more than 5 per cent higher or lower than forecast with Jemena.

Customers generally supported Jemena's proposed hybrid tariff variation mechanism. However, we do have questions about the engagement underpinning this expression of preference and share the concerns raised by the AERs Consumer Challenge Panel (CCP) as they relate to matters of risk sharing. While Jemena submits they tested not only *how* but *whether* risk should be shared between customers and the business, this was framed in the context of needing 'to ensure the ongoing business viability of Jemena'¹⁵.

The AER should consider this expression of preference with the above context in mind. We strongly recommend the AER discount this element of Jemena's engagement program and not treat it as an unqualified marker of legitimate consumer preference. We do not consider it in the long-term interest of consumers to take on any level of volume risk nor do we support Jemena's proposal to deviate from price-cap regulation.

Jemena has the greatest scope to manage volume risk and can do so by improved forecasting in conjunction with planned measures to facilitate long-term reductions to demand.

Jemena submits that a hybrid tariff variation mechanism would contribute to lower price volatility. While we consider price volatility within a regulatory period an important consideration given the consumer preference for predictable prices, the same is not true for price volatility between periods, which is seldom attributable to any one factor. Put differently, price volatility is a relevant consideration primarily in the short-term, where there are predictable and relatively controllable tools to manage it. Jemena has ample opportunity to address price volatility through its expenditure proposal. The same cannot be said of volatility between periods, where myriad other factors could override any notional stability that may be enabled by changes to the variation mechanism.

We note the AER's view that Jemena's hybrid tariff variation mechanism reflects the changed context for provision of gas transportation services in view of the amended NGO which incorporates emissions reductions objectives. That is, revenue cap regulation does not incentivise network service providers to grow the volume of gas carried by their networks, in contrast to price cap regulation which does.

As we argue above, the AER should give due consideration to the amended NGO. However, we do not consider Jemena's proposed tariff variation an appropriate or efficient mechanism to address emissions reductions objectives. As we note elsewhere, mitigating expenditure and enabling efficient electrification where possible is likely to produce better outcomes for both consumers and climate.

¹⁵ See Jemena Proposa, Attachment 2.1, p. 19

5.2 Tariff structures should align with Jemena's changing role

Jemena engaged meaningfully with consumers on tariff structure changes and reflected consumer preferences in its decisions to flatten its declining block structure, streamline location classifications, and rebalance cost-recovery between small and large volume customers. We regard this aspect of Jemena's engagement to be the most commendable and well structured, particularly within the difficult time constraints imposed on them.

We remain concerned that in the long-term a declining block structure inappropriately incentivises higher gas use and disproportionately benefits customers with large loads. We question whether this structure remains appropriate in light of the amended NGO, but accept that under current circumstances retail practices mean that a change in structure would be unlikely to have the intended effect. Consequently, we support Jemena's proposal to maintain a declining block structure, while making efforts to address this issue through reducing the number of tariff blocks from six to four. Tariff forum participants overwhelmingly supported this change on grounds that it reduces the incentive to increase gas use.

Jemena also proposes to remove the coastal/country split and adopt a small/large user split. This structure ensures that large volume market customers pay a fairer share of fixed costs which are currently disproportionately recovered from small residential consumers. This forms part of a broader effort to rebalance Jemena's tariffs to rebalance revenue from the volume market to the demand market.

We strongly support these proposals as promoting the long-term interests of consumers. We further consider these changes as a commendable example of how engagement can inform a more productive approach to managing the risks associated with the changing nature of Jemena's business.

While we welcome Jemena's efforts to promote more equitable cost recovery, we note that greater transparency is needed to assess Jemena's cost allocation method. For example, stakeholders do not currently have access to sufficient information to understand why Jemena's industrial customers are charged a significantly lower price per joule of gas compared to residential and commercial customers.

The rationale behind the markedly different disclosure requirements between electricity and gas networks as outlined in the Dynamic Analysis report¹⁶ appended to ECA's submission is unclear. We support the report's call to rectify this information asymmetry. In the short-term, Jemena should provide these disclosures as part of their revised proposal.

5.3 Abolishment charges should provide a least-cost option to make safe

Consumers expressed a clear preference for cost-reflective reference tariffs and a user-pays approach to cost recovery. Jemena submits this feedback informed its decision to maintain its current approach to setting abolishment charges. While we consider this decision a valid response to the consumer preferences expressed through the engagement, we reiterate our

¹⁶ See Dynamic Analysis, Turning down the gas: Minimising consumer risk, pp. 16-17

question as to whether all considerations were presented equally as part of Jemena's engagement on this issue.

Namely, we are concerned that support for full cost recovery at the point of disconnection was at least partly premised on an understanding that the role of consumers in the engagement process was to advise Jemena on how to best maintain the long-term viability of its business. This was apparent in comments throughout the process, and in the recommendations report, and was a misapprehension which also appeared to influence consumer feedback on other areas of expenditure such as new and renewable connections.

Furthermore, the difference between disconnection and abolishment was not always clear in engagement. That is, consumers may have taken abolishment and disconnection as different means to achieve the same end. This raises the question whether consumers meaningfully distinguished between these services when expressing their preference on Jemena's approach to cost recovery.

We support cost-reflective pricing and share the view that the cost of abolishment should be recovered only from the consumer and connection in question. However, we note that connection abolishment charges for people leaving the gas network should not include payment for any infrastructure on the street side of the connection. An abolishment service must provide consumers with a least-cost, efficient option to make their connection safe.

It is unclear how Jemena's proposed reference tariff apportions these costs and whether it recovers costs from consumers for shared network assets. We encourage Jemena to detail the costs that are included in its abolishment charge as part of its revised proposal.

Abolishment costs should be managed under a comprehensive plan for network wind-down to ensure unused gas connections are managed safely. The significant cost differential between disconnection and abolishment charges is likely to produce issues like those observed in Victoria where customers actively avoid paying abolishment charges by incorrectly stating they intend to reconnect or by simply not engaging with their retailer following their final meter read.

NSW consumers arguably have a greater disincentive to request an abolishment service given Jemena's abolishment charge of \$1,472 is 50 per cent higher than the cost-reflective equivalent in Victoria. We are interested in the AER's view on the reasons for this discrepancy.

If consumers that no longer want a reticulated gas supply choose to disconnect rather than abolish their connection this could result in gas connection pipes being left in situ with gas in them. This creates a potential risk to public safety and where this creates an unsafe gas network may contravene clause 7 Gas Supply (Safety and Network Management) Regulation 2022.

These issues could benefit from AER guidance setting out strong, transparent criteria around how disconnection and abolishment charges are determined and a requirement for gas networks to offer consumers an efficient, minimum, safe abolishment option.

6. Further engagement

We would welcome the opportunity to discuss these matters further with the AER and other stakeholders. If you have any queries about this submission please contact Douglas McCloskey, Program Director, Energy and Water at dmcloskey@piac.asn.au