



Jemena Gas Networks (NSW) Ltd

Revised 2020-25 Access Arrangement Proposal

Attachment 15.3

Response to the AER's draft decision - Revisions to 2020 RSA



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Abbreviations

AA	Access Arrangement
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
DSCC	Deemed Standard Connection Contract established under NECF
FRO	Financially Responsible Organisation
JGN	Jemena Gas Networks (NSW) Limited
NECF	National Energy Customer Framework
NGO	National Gas Objective
NGR	National Gas Rules
RMP	Retail Market Procedures (NSW and ACT) published by AEMO
RSA	Reference Service Agreement
STTM	Short Term Trading Market

RSA versions

In this response, we use the following terminology:

- **2015 RSA** or **current RSA**: Reference Service Agreement approved by the AER in June 2015, forming part of the 2015-2020 Access Arrangement
- **June 2019 RSA**: proposed amended RSA included as part of our 2020-25 AA Proposal
- **January 2020 RSA** or **proposed RSA**: proposed amended RSA included as part of our Revised 2020-25 AA Proposal.

Overview

As part of our 2020-25 AA Proposal, we proposed a number of amendments (**proposed amendments**) to the Reference Service Agreement (**RSA**) forming part of the approved 2015-20 Access Arrangement (**AA**). In the draft decision, the Australian Energy Regulator (**AER**) proposes to accept some of our proposed amendments and in relation to the other proposed amendments requested that Jemena Gas Networks NSW Ltd (**JGN**)¹:

1. continue to engage with stakeholders on issues raised in submissions relating to the proposed amendments, and
2. provide further justification for the proposed amendment to clause 30 of the RSA (security requirements for non-retailer users).

Engagement with stakeholders following release of draft decision

Following the release of the draft decision, we approached the three retailers who had made submissions on our proposed amendments, inviting them to continue to engage with us on the terms of the RSA. This is discussed in section 1.3.

Security requirements for non-retailer users

Section 6 of this response provides further discussion about the proposed change to security requirements for non-retailer users. Section 6.3 discussed our engagement with Brickworks in relation to its submission on the proposed amendments.

Notes

1. To assist in understanding the changes we are proposing to the 2015 RSA, we have provided:
 - a marked-up version of the January 2020 RSA, showing the amendments we are proposing to the 2015 RSA (Attachment 15.4)
 - a version of the January 2020 RSA showing changes we have made to the June 2019 RSA following consultation with users (Attachment 15.5).
2. As with the proposed June 2019 RSA, these marked-up versions do not show the following nomenclature changes:
 - “Service Provider” has been simplified to “JGN”
 - “Regulator” has been updated to AER
 - “Operational Schedules” has been corrected to “Operational Schedule”.
3. Unless stated otherwise, references in this document to RSA clauses are references to the clause numbers in the January 2020 RSA. Some clause numbers have changed from the 2015 RSA.
4. In the January 2020 RSA we have maintained the practice of putting “Not used” where a clause has been deleted. This maintains consistency of numbering with the 2015 RSA and is intended to make it easier for readers to understand the changes we are proposing. We will update the numbering for the final RSA which will form part of the approved 2020-25 AA.
5. Where we have quoted provisions from the 2015 RSA or the January 2020 RSA, capitalised terms in the quoted provisions have the meaning given to them in the those documents as applicable.

¹ AER, *Attachment 11: Non-tariff components | Draft decision – JGN Access Arrangement 2020-25*, November 2019, page 7

1. What our users said about our proposed amendments

1.1 Which users made submissions on our draft proposal

From a total of more than 20 network users, only four users made submissions on our proposed amendments:

- three of 13 retailer users (AGL, EnergyAustralia, Origin Energy) made a number of comments
- one of 11 self-contracting users (Brickworks) commented on a single clause.

This is consistent with the level of responses we received to the draft RSA we circulated to users for comment in February 2019, where two retailers provided detailed comments, one retailer commented generally on several matters and one non-retailer user advised that they were comfortable with the proposed changes.

In developing our proposed amendments and engaging with users in response to their submissions, we have proceeded on the understanding that if no user objected to, or commented on, an existing clause or a proposed amendment, the clause or proposed amendment is agreed.

1.2 What users said

The draft decision identifies the following issues raised by retailers in their submissions:

- liability (scope/definition of the term “loss”, indemnities and liabilities limitations)
- increases/decreases in chargeable demand
- authorised/unauthorised overruns
- gas quality, including issues relating to gas specification, responsibilities, exemptions and testing
- deletion of delivery points from the customer list
- disconnection/abolishment of delivery points
- measuring equipment, including issues relating to access
- meter reading measurement and data
- charges/invoicing (including issues relating to theft of gas)
- interruptions and curtailments
- security for non-retailer users.

Additionally, Brickworks made a submission in relation to the proposed change to clause 30 (security for non-retailer users).

1.3 Updating the proposed RSA in response to submissions on our 2019 June RSA

Following receipt of their submissions on the proposed amendments, JGN engaged with AGL, EnergyAustralia and Origin Energy during August – November 2019. As a result of those discussions, we and these retailers agreed to a number of changes to the June 2019 RSA. In early December 2019 we invited these retailers to participate in further discussions in response to the AER’s draft decision. That invitation was accepted by AGL and EnergyAustralia. We also engaged with Brickworks in relation to their submission on clause 30.

As a result of this engagement, we believe that the updated RSA forming part of this response (**January 2020 RSA**) is generally agreed except for a very limited number of issues as follows:

- users' responsibility in relation to gas quality specification
- impact on network charges where we are not able to disconnect when requested by a retailer
- limited aspects of the liability regime (potential liability for consequential loss, liability caps)

In sections 3 - 5 below we discuss the areas which are still outstanding, and provide an explanation of why we believe the proposed RSA is reasonable and meets the requirements of National Gas Rules (**NGR**) including rule 100. We understand the AER is considering holding a roundtable on the RSA and we will participate in this exercise.

Due to the relatively short time between the release of the draft decision and the submission of this response, neither we or retailers have been able to undertake a final, comprehensive review of the drafting of the agreed changes. It is possible that some further minor drafting changes may be identified following submission of the January 2020 RSA.

2. Approach

2.1 Our philosophy in proposing amendments to the 2015 RSA

As noted in the AER's draft decision, the NGR requires an AA to specify the terms and conditions on which each reference service will be provided. NGR rule 100 requires that these must be consistent with the National Gas Objective (**NGO**), the NGR and the relevant procedures in force. In proposing amendments to the approved 2015 RSA, we also had regard to the regulatory and statutory environment in which we and users operate, and the existing risk allocations reflected in the 2015 RSA.

Our key focus in preparing the June 2019 RSA was simplifying the 2015 RSA. Where we have proposed a change in risk allocation, this has generally been in users' favour (see section 2.3 below). The proposed RSA is based on an assessment of our ability to meet our obligations under the RSA. It reflects the maximum allocation of risk that we are reasonably able to manage within the regulatory framework (including cost allowances).

2.2 User responses

We explained the reasons for our proposed amendments in Attachment 9.2 of our 2020-25 AA Proposal. Based on our engagement with retailers in relation to their submissions on the June 2019 RSA, it seems that they had not had regard to that explanation when preparing their submissions, meaning that submissions did not address these reasons. In addition, some of the comments in submissions reflected a lack of understanding of the terms of the 2015 RSA and/or a misconception of the nature or effect of the proposed amendments. This meant that:

- existing clauses and existing risk allocations were challenged, with no explanation of why the existing clause or risk allocation should change (eg. clause 10 in relation to responsibility for gas quality)
- the significant rebalancing of the liability regime (reduction in users' potential liability and increase in our potential liability) was not recognised
- drafting changes were seen as changes to risk allocation (eg. improving clarity around the interaction between gas quality specification and the Short Term Trading Market (**STTM**)).

2.3 Risk

2.3.1 Allocation of risk

We agree with the AER that the NGO is generally best served where a risk is borne by the party best able to control or manage it.

The 2015 RSA reflects the allocation of risk approved by AER less than five years ago. We consider that the risk allocation under 2015 RSA should only be changed by the AER if market, regulatory or other changes mean another party is better able to manage the risk. None of the user's submissions have demonstrated there have been changes of this sort requiring or justifying a change in the risk allocation approved by the AER in 2015.

2.3.2 Changes to risk allocation proposed in June 2019 RSA and January 2020 RSA

In relation to the outstanding matters (see section 1.3 above) our June 2019 RSA and the January 2020 RSA make no change to the risk allocation in relation to gas quality specification and the consequences of our inability

to disconnect. Our proposed change to the risk allocation under the liability regime is favourable to users. Table 2–1 sets out the risk allocation under the current approved RSA and the January 2020 RSA:

Table 2–1: Risk allocation under the current approved RSA and the January 2020 RSA

Topic	Requirement/issue	Risk allocation under 2015 RSA	Risk allocation under January 2020 RSA
Gas quality specification	Responsibility to ensure that gas provided to JGN for delivery on behalf of a user meets the gas quality specification	User	User
	Responsibility if gas procured through STTM does not meet the gas quality specification	User	User
	Responsibility to ensure that gas delivered to customers meets the specification, subject to gas that meets the quality specification being delivered into the network	JGN	JGN
	Responsibility for gas quality testing	User	User
	Responsibility to notify users of change to gas quality specification	JGN – obliged to use reasonable endeavours to provide notice prior to the change	JGN – obliged to provide notice prior to the change
Impact on network charges where we are unable to disconnect	Whether network charges are payable where a site remains connected	Network charges remain payable.	Network charges remain payable.
Liability	JGN liability for insured events	Amount recovered under insurance proceeds	Amount recovered under insurance, or the amount that would have been recovered but for JGN's failure to maintain insurance or comply with the policy.
	User liability for insured events	Uncapped	Amount recovered under insurance, or the amount that would have been recovered but for the user's failure to maintain insurance or comply with the policy.
	JGN liability for uninsured events	Nil	\$5 million per user per year, up to \$50 million per year to all network users
	User liability for uninsured events	Uncapped	Capped at \$5 million per year (subject to certain exclusions)

Topic	Requirement/issue	Risk allocation under 2015 RSA	Risk allocation under January 2020 RSA
Liability for consequential loss suffered by JGN	Consequential loss arising from delivery of gas into the network that doesn't meet the gas quality specification	User	User
	Consequential loss arising from failure to deliver gas into the network within the specified pressure range	User	User
	Consequential loss arising from failure to deliver sufficient gas into the network to meet the user's withdrawals on a day	User (to the extent the failure to deliver sufficient quantities was the result of failure to meet gas pressure requirements)	User
	Consequential loss arising from other matters	User not liable	User not liable
Liability for consequential loss suffered by user	User's loss of revenue arising from delivery of out-of-specification gas to a delivery point due to JGN's negligence of wilful default,	JGN	JGN
	Other consequential loss	JGN not liable	JGN not liable

2.4 Market wide issues affecting RSA

In the draft decision, the AER notes the submission from Energy Networks Association that the broader industry should be engaged to develop a solution to the issue of network disconnections, and states that “[it] is interested in stakeholders’ views as to whether they would support such an approach, particularly for some of the broader industry-wide issues that are often contentious in access arrangement reviews”².

We agree that some of the issues raised by retailers in their submissions are industry-wide, rather than specific to our RSA. For these matters, any change the existing balance of rights and obligations should be advanced through the usual processes for regulatory reform, rather than through revising the drafting of the RSA. We consider this applies to:

- obligations in relation to gas quality specification (see section 3)
- consequences of inability to disconnect on retailer request (see section 4).

2.5 Key performance indicators (KPI) regime

During our December 2019 discussions one retailer indicated that they would like to see the RSA contain some form of KPI regime in relation to the timeframes for:

- delivery of consumption data
- disconnections
- new connections.

² AER, *Attachment 11: Non-tariff components | Draft decision – JGN Access Arrangement 2020-25*, November 2019, page 6

The retailer indicated that they would revert to us with details of what they would like to discuss. To date, we have not received any further information.

Our June 2019 proposal, and our response to the draft decision, does not include a KPI regime in relation to these or other matters. As with the broader issues discussed in section 2.4 above, we consider that any KPI regime should be developed in the wider market, rather than being seen as part of the RSA – for example, the Energy Charter provides an opportunity to work on industry-level performance measures.

3. Gas quality

3.1 Gas quality regulation in NSW

In Victoria, NGR Part 19 establishes a detailed regulatory framework for management of gas quality in the Declared Wholesale Gas Market. That framework applies to all market participants, including the Australian Energy Market Operator (**AEMO**), the operator of the declared transmission system and all registered market participants. In contrast, the regulatory framework for gas quality in NSW is less comprehensive.

In NSW, the relevant obligations are contained in the *Gas Supply (Safety and Network Management) Regulations 2013 (NSW) (Gas Supply Regulations)*. For the purposes of the RSA, Regulation 23(1) prohibits JGN from conveying non-compliant natural gas through our network and Regulation 26(1) prohibits us from conveying natural gas through our network unless we have tested or caused the gas to be tested to ascertain whether it is compliant.

We cannot control the quality of gas provided to us by users and we are not party to upstream gas production or gas supply arrangements. This means that we are dependent on other parties, including users, to ensure that gas provided to us for delivery to our customers meets the gas quality specification, and that we do not breach our obligation under the Gas Supply Regulations. The obligations in the current and proposed RSA reflect this.

3.2 RSA clauses re gas quality (clause 10)

3.2.1 Proposed RSA

Clause 10 of the proposed RSA maintains the concepts in the 2015 RSA in relation to our and users' obligations in relation to gas quality. As discussed in Attachment 9.2 to our 2020-25 AA Proposal, we have made some drafting changes to improve the clarity of the clause. Other than the change to clause 10.8 (see section 3.6 below) these changes did not alter the existing rights and obligations as between JGN and users.

3.2.2 Users' submissions in relation to gas quality specification

Generally, the retailers' submissions identified the following concerns with clause 10:

- users' obligation to ensure that gas provided by them complies with the specification, particularly where they procure some or all of their gas through the STTM (see section 3.4 below)
- users' obligation to test the quality of gas (see section 3.5 below)
- the consequences of the Director General issuing an exemption under the *Gas Supply (Safety & Network Management) Regulation* (see section 3.6 below)
- our obligation to notify users if we exercise our discretion to modify the quality specification (see section 3.7 below)

3.3 Engagement with users

During our engagement with retailers during August-November 2019, we discussed their concerns about their ability to comply with these obligations, and the rationale for the allocation of risk under the current and proposed RSAs. None of the retailers have identified changes in the market or regulatory framework that mean we are better able to manage these matters than we were in 2015 when the AER approved the existing regime.

We understand that while the retailers do not fully support the clauses, they are accepting of a continuation of the existing risk allocation. For completeness, we have set out below (sections 3.4 - 3.7 below) a high level response to the comments made by retailers.

3.4 Users' obligation to ensure gas meets the quality specification

One retailer objected to the amendment to clause 10.1 of the June 2019 RSA on the basis that it made them responsible for the quality of all gas provided to us for delivery to their delivery points, including gas they procure in the STTM. We do not agree that the amendment has this effect – under the current RSA, users are responsible for the quality of all of their gas, including gas they procure through the STTM. For example, clause 10.4(e)(ii) of the current RSA provides that a user's proportion of out-of-specification gas includes amounts allocated to the user under the STTM.

This position was explicitly approved by the AER in its Final Decision on the 2015-20 AA as follows (emphasis added):

*Clause 10.1(d) deals with liability for out of specification gas. Our amendment to the clause specified that a user was only responsible for out of specification gas that the user was responsible for causing to enter the network. JGN has made amendments to this clause and added clauses 10.1(e)–(g). It argued that these amendments are required because, due to the functioning of the short term trading market, JGN does not have visibility of which user caused what gas to enter the network. JGN's amendments include a method of apportioning responsibility for out of specification gas between users at the affected receipt point. Origin Energy raised concerns with how these changes apportion responsibility. **We acknowledge Origin Energy's concerns that JGN's apportionment method may result in a user, who did not cause out of specification gas to be put in the network, to be held partially responsible for that gas. However, given that there is no method available for JGN to accurately determine responsibility, we consider that JGN's proposed clauses 10.1(d)–(g) are an appropriate and balanced method for apportioning responsibility for out of specification gas given JGN's difficulties in identifying the specific user responsible for the gas. Therefore we accept JGN's amendments**³.*

The only change we have made in relation to gas procured through the STTM was to amend clause 10.1(a) to make users' obligations more transparent. This change was made in response to queries from several new users who had asked us how the obligations in the RSA in relation to gas specification applied to gas they procured through the STTM.

3.5 Responsibility for gas testing etc

The current RSA and the June 2019 RSA contained a number of clauses relating to gas quality as set out in Table 3–1. The three retailers who made submissions on our June 2019 RSA raised concerns with these clauses, arguing that the obligations should be removed or modified, including in relation to gas they procure through the STTM. We have retained the clauses in the proposed RSA as the obligations already exist in the current RSA and the retailers' submissions did not provide any reason why the existing allocation of risk should be changed.

Through our engagement with retailers we agreed to changes to several clauses, qualifying our discretion to require evidence of certain matters. The clauses now generally provide that any request for information must be reasonable, and the information is to be provided to our reasonable satisfaction (previously, there was no

³ AER, *Attachment 12: Non-tariff components | Final decision – JGN Access Arrangement 2015-20*, June 2015, page 12-8

qualification on the circumstances in which we could request information or the standard of information to be provided by users.

Table 3–1: Current RSA and the June 2019 RSA clauses relating to gas quality

Clause	Current RSA	Proposed RSA
10.5	<p>If requested by JGN, the user must provide:</p> <ul style="list-style-type: none"> evidence to JGN's satisfaction that facilities and plans exist to enable measurement of gas quality at all network receipt points and all points at which gas is introduced into any upstream pipeline system facilities to enable JGN to continuously monitor the quality of gas evidence that gas quality measurement equipment is maintained and calibrated in accordance with good industry practice/standards access to maintenance records 	<p>Modified to provide that:</p> <ul style="list-style-type: none"> JGN request must be reasonable evidence is to be provided to JGN's reasonable satisfaction access to maintenance records is to be provided at a time and place agreed between JGN and the user, acting reasonably.
10.6	<p>The user must have, and must satisfy JGN, that it has contractual or other legal rights and procedures in place to prevent out-of-specification gas being delivered to a network receipt point.</p>	<p>Modified to provide that:</p> <p>JGN request must be reasonable</p> <p>User's obligation is modified from "satisfying JGN" to "demonstrating to JGN's reasonable satisfaction"</p>
10.9	<p>User must notify JGN of the contractual source and possible physical source of gas prior to the gas entering the network, and provide the information required under clauses 10.5 and 10.5 where there is a change to the source of gas</p>	<p>No change.</p>
10.10	<p>The User is responsible to test gas, or cause it to be tested in accordance with JGN's Safety and Operating Plan</p>	<p>No change. This obligation is designed to ensure that JGN complies with its obligations under Regulation 26(1) of the Gas Supply Regulation</p>
10.11	<p>Obligations on user to keep a register containing gas test results, to maintain testing equipment, to notify the Director-General and JGN if they become aware that gas to be delivered to a network receipt point does not meet the specification..</p>	<p>No change.</p>

3.6 If an exemption is issued by the Director General

The Gas Supply Regulations contain a mechanism for the Director-General to issue an exemption to a reticulator, permitting the delivery of gas which does not meet the prescribed quality specification⁴.

In our June 2019 RSA, we relocated clause 10.1(a)(iii) of the 2015 RSA to clause 10.8. This was intended to make it clear that we will not be in breach of our obligations to users if we deliver out-of-specification gas pursuant to a direction or exemption from the Director-General under the Gas Supply Regulation.

During engagement with retailers, they raised concerns that proposed clause 10.8 clause was one-sided and meant that users could be in breach of the RSA if they delivered gas which met the parameters of an exemption issued by the Director-General. We have revised the drafting so that clause 10.8 applies to both us and users where the Director-General issues an exemption.

⁴ The same provision was also contained in the *Gas Supply (Network Safety & Management) Regulations 2008*, and the preceding 2002 regulations.

One retailer queried whether clause 10.8 related to our Western Sydney Green Gas Trial. As noted above, clause 10.8 is a restructuring of concepts in the current RSA, particularly clause 10.1(a)(iii). It is not related to the hydrogen trial.

3.7 Notice of change to specification parameters

Clause 10.2 of the current RSA and the proposed June 2019 RSA provides us with discretion to change the gas quality specification in relation to parameters not covered by the Australian Standard. The clause currently requires that we use reasonable endeavours to notify users prior to making such a change. In the course of our engagement with retailers, retailers expressed concern that this could mean that a parameter was changed without them receiving prior notice. We have revised the clause to specify that we must provide notice prior to making any change.

4. Impact on network charges if we are unable to disconnect

4.1 When we are unable to disconnect

Like all gas distribution network operators, we are only able to satisfy a user's request for disconnection if we are able to obtain safe access to the metering equipment. There are a number of reasons why we may not be able to disconnect a delivery point, as outlined in Attachment 9.2 to our 2020-25 Proposal. These include:

- actions by the customer or third party (eg. installation of locked gates, installing a cage or other enclosure over the meter, building manager installing a security system)
- customer details not being provided by the retailer
- customer or building manager refusing to provide access
- customer threats
- inaccurate address details, including where addresses are not updated when sites are redeveloped or where street numbers are updated (eg. from lot number to street number)
- presence of animals
- internally located meters (while these meters were installed in accordance with the building design code applying at the time of installation, we are conscious that this has created legacy issues for us and retailers.)

4.2 Impact on network tariffs if we are unable to disconnect

4.2.1 Proposed AA and RSA

Under our proposed 2020-25 AA, network charges cease to apply to delivery points which have been disconnected. This is reflected as follows:

- the demand forecast removes customers and associated consumption for disconnected sites (refer to Attachment 13.1, on our revised demand forecast, for discussion).
- under the proposed RSA the delivery point is removed from the RSA Customer List from the date of disconnection (see clauses 12(a) and 12(b)) and network charges cease from that date (see clause 12(e)(ii)).

Where we have been unable to disconnect a site, network charges continue to apply. This is reflected as follows:

- the demand forecast includes the customers and associated consumption for all sites which have not been disconnected
- RSA clauses 12(a) and 12(b) do not apply – the delivery point remains on the RSA Customer List, and network charges continue.

This approach continues the risk allocation under the 2015 AA and preceding AAs, other than one change in users' favour as highlighted (in bold text) in Table 4–1.

Table 4–1: Risk allocation on disconnections under previous AA/RSA and proposed AA/RSA

		Position under previous AA and RSA	Proposed 2020-25 AA and RSA
Delivery point disconnected	AA and demand forecasts	No adjustment to customer numbers of volumes for disconnected sites.	Forecast removes disconnected sites (customer numbers & volumes)
	RSA	Network charges continued to apply ⁵ .	Network charges cease to apply from date of disconnection.
JGN unable to disconnect	AA and demand forecasts	No adjustment to customer numbers or volumes for sites which we are unable to disconnect	As per 2015 AA
	RSA	Network charges continue to apply.	As per 2015 RSA

4.2.2 User feedback

Two retailers have proposed that network charges should cease to apply to delivery points which we have been unable to disconnect on retailer request. We have not included this change in our proposed RSA for several reasons:

- the retailers' proposal would significantly change the existing risk allocation under the 2015-20 AA
- the proposed RSA reflects the current regulatory environment
- the change proposed by the retailers is not simply a matter of revising drafting in the RSA – such a change would need to be supported by market and regulatory changes.

We discussed many of these reasons in Attachment 9.2 to our 2020-25 Proposal. For convenience, we have set out they key points below.

4.2.3 Retailers' proposal would change the existing risk allocation

Where we are unable to disconnect a delivery point, this creates the risk that the retailer for the delivery point will be unable to recover their charges from the customer. The current and proposed AA and RSA allocate this risk to retailers as they are better able than us to manage the risk. As outlined in section 4.2.4 below, our network tariffs are based on a demand forecast that assumes we continue to recover network charges from all delivery points which have not been disconnected. If we are required to forego network charges for the deemed disconnected sites, we have no ability to revise our network tariffs to recover that shortfall.

In contrast, retailers are better able than us to manage the risk, through recovering their unrecovered revenue in relation to these deemed disconnected sites through their general cost stack.

Changing the RSA so that network charges cease to apply if we are unable to disconnect is not just a drafting change – it would be a significant change in the existing risk allocation, resulting in us not being unable to recover our efficient costs.

⁵ The current RSA provides that a disconnected delivery point is removed from the Customer List (and network charges cease) from a date agreed between us and users. No mechanism had been agreed since the commencement of the 2015-20 AA and RSA, so network charges continued to be payable by users. We voluntarily initiated a change in 2019 to cease applying charges 20BD after the date of disconnection.

4.2.4 RSA reflects the current regulatory environment including the AA

There are three aspects of the regulatory environment which are relevant to the treatment of delivery points which we are unable to disconnect:

- as discussed in section 4.2.1 above, our demand forecast reflects the fact that there is a customer at the delivery point and gas is being consumed. If network charges are to cease for sites which we are unable to disconnect, then our demand forecast would need to be revised to reflect the deemed removal of the delivery point from our network. If our forecasts were not adjusted in this way, we would not be given the opportunity to recover the efficient costs of owning and operating the network.
- NGR Rule 72(1)(d) requires us to forecast pipeline capacity and utilisation for the AA period. It is not clear that the NGR as currently drafted would permit us to adjust our forecasts to remove customers and consumption for “deemed” disconnected sites, as the delivery point remain connected to our network and gas continues to be consumed by the occupant, regardless of the fact that a retailer has asked us to disconnect the site.
- even if the retailer was relieved from the obligation to pay network tariffs for a deemed disconnected site, we continue to be obliged to continue to deliver gas to the delivery point, read the meter and publish consumption data to the market.

4.2.5 Market and system considerations

For as long as a delivery point remains connected to our network, the delivery point remains active in the market. The fact that a retailer has requested us to disconnect the delivery point does not change how the delivery point is treated in the market – for example, we are still required by the RMP to read the meter and publish consumption data to the market. If network charges are to cease applying to these “deemed” disconnected delivery points, changes to the current market processes, including the RMP and underlying build-packs, would be required. For example:

- the RMP do not contemplate a delivery point which is active in the market but is treated as disconnected as between us and a retailer
- if the cause for disconnection was remedied (eg. debt paid, new customer account established at the delivery point), it would be appropriate that network charges resume. This would require the retailer to notify us of the change, so that network charges could resume. There are currently no regulatory requirements, and no processes, for retailers to provide this notification.

In developing the processes, consideration would have to be given to whether different “rules” should apply in different scenarios – for example:

- would different arrangements apply where there is a known customer at the site (meaning the retailer could pursue that customer for debt) compared to sites where the customer’s identity is unknown (where it will be difficult or impossible for the retailer to pursue the customer for debt)?
- would different arrangements apply depending on the reason for no-access – for example, would there be a difference where the meter was installed in an inaccessible location (including internally located meters) compared to the situation where the customer or a third party has done something that prevents our access (such as installing a locked gate or making the building inaccessible without a security pass)? If such a distinction is to be drawn, significant costs would be incurred by us (and possibly retailers) in order to ensure that our metering database for all customers accurately identified the location of the meter and the reason for it not being inaccessible.
- would different arrangements apply if the meter is inaccessible compared to sites where the meter is accessible but the customer insists we cannot come on to their property or threatens our technicians?
- if the customer churned to a new retailer, would the new retailer also be relieved of liability for network charges, even though the new retailer will not have incurred any debt or taken steps to disconnect the delivery point for some period after the date of churn?

We believe that a whole of industry approach is required to address the underlying issues of some customers electing not to pay their bills or failing to comply with their NECF obligation to establish a retail account on moving into premises. This is a whole of market issue, and not one that should be addressed through drafting changes to the RSA for an individual network.

4.3 Proposed new clause 15.9(c)

In our June 2019 RSA we included a new clause 15.9(c) to make it clear that we will not be in breach of a contractual obligation under the RSA where we are unable to obtain safe access to the metering equipment to disconnect. We made this change because there could be dispute under the current RSA whether we are in breach of the RSA if we are unable to disconnect. Among other matters, this potential ambiguity is inconsistent with the AER's recognition of *"the need to ensure clarity and certainty"*⁶ in the terms and conditions of access. We do not consider that the change altered the existing risk allocation under the RSA.

Retailers' feedback was that they were unhappy with the clause because they consider that it absolve us of responsibility to complete disconnections, or that inability to obtain access to metering equipment was due to deficiencies in our processes and assets. We do not agree with this feedback. The new clause simply clarifies the contractual position if we are unable to satisfy our obligation under clause 15.9(a) to disconnect a delivery point on retailer request. The clause also does not reduce our obligation under clause 16.6 to co-operate with the user to obtain access to a delivery point, or reduce our incentive to disconnect premises when we can in order to ensure that customers do not consume gas without paying for it.

Through our engagement with the retailers, we agreed to amend the clause to make it clear that the clause applies only where we would have been unable to disconnect if we had acted reasonably.

⁶ AER, *Attachment 11: Non-tariff components | Draft decision – JGN Access Arrangement 2020-25*, November 2019, page 6

5. Changes to liability and indemnity provisions

5.1 Approach in proposed June 2019 RSA

In our proposed RSA we sought to simply and clarify the liability and indemnity regime which applies under the 2015 RSA. We also proposed several changes to the benefit of users as follows:

- reduction in the number of indemnities given by users
- re-balancing of the limitations (caps) on our and users' liability – we have proposed reducing users' potential liability to us and increasing our potential liability to users as follows:
 - under the current RSA, a user's liability is uncapped whereas our liability is capped at the amount we recover under our insurance policies
 - under our proposed RSA, liability for both parties will generally be capped at the amount recoverable under insurance policies or otherwise at \$5M per year, with an overall annual cap of \$50M per year for JGN across the whole network.

These changes were discussed in detail in section 4 of Attachment 9.2 of our 2020-2025 AA proposal.

5.2 User feedback on our proposed changes

Of the three retailers who made submissions on our proposed RSA, two retailers (EnergyAustralia and Origin Energy) made comments about the proposed changes in relation to the liability regime. No non-retailer users made any comments on the liability provisions. This is consistent with the responses to the draft RSA we circulated in February 2019, where only one retailer provided feedback on the proposed liability revisions.

We have addressed EnergyAustralia's (**EA**) and Origin Energy's (**OE**) comments in Table 5–1. As discussed in section 2.2 above, it appears that these comments were made without an understanding of the liability regime under the current approved RSA or the explanation of the proposed liability regime contained in Attachment 9.2 to our 2020-25 AA Proposal. No detailed reasons were provided to support the comments, including why our proposed changes are not reasonable, or why the allocation of risk under the 2015 RSA should be changed by the AER.

Table 5–1: Feedback on proposed changes to the liability regime

Clause/topic (Retailer)	Retailer comment	JGN response
General (OE)	OE seeks clarification from JGN regarding the rationale for the application of the indemnity and liability provisions and the assignment of responsibilities between users and JGN	Attachment 9.2 to our 2020-25 AA Proposal (pages 19 – 24) included a detailed discussion of the rationale for the liability provisions.

<p>General (EA) (OE)</p>	<p>Liability and indemnity provisions are generally heavily in favour of JGN.</p>	<p>The allocation of risk under the proposed RSA is more favourable to users than the allocation of risk approved by the AER under the 2015 RSA. This is detailed in Attachment 9.2 to our 2020-25 AA Proposal.</p> <p>In particular:</p> <ul style="list-style-type: none"> • the number of indemnities given by users has been reduced • users now benefit from a cap on their liability (see section 2.3.2 above) • users now benefit from an increase in the cap on JGN's liability (see section 2.3.2 above)
<p>Limitation of liability (EA)</p>	<p>Liability (even for negligence) is limited to the insured sum and for \$5M in all other cases. The consequence is that JGN has little commercial incentive to observe its duty of care in connection with the contract.</p>	<p>The 2015 RSA approved by AER limited our liability to the amount we recovered under our insurance policies. If insurance did not respond (including for breach of the RSA), our liability was zero. In the June 2019 RSA and the proposed RSA, we have changed this so we are liable for up to \$5 million per year per user for non-insured events.</p> <p>We do not agree that potential liability for \$5M per year means that we have little commercial incentive to observe our obligations under the RSA.</p> <p>Under the June 2019 and the proposed RSA, users' liability is also generally capped at the insured sum or \$5M per year. It is unclear if EA is implying that they and other users have little commercial incentive to observe their contractual obligations because of this cap.</p> <p>Further, we face potential exposure of to multiple users, which we propose capping at \$50 million across the network.</p>

<p>Consequential Loss (EA) (OE)</p>	<p>We do not think it is reasonable that the user should have to accept exposure to Consequential Loss.</p>	<p>Liability for consequential loss is excluded by clause 27.2(a) of the proposed RSA, other than in the very limited circumstances of clause 27.4(a)(ii).</p> <p>In respect of users' potential liability for consequential loss, the proposed RSA is generally consistent with the 2015 RSA.</p> <p>In its Final Decision on our 2015-2020 AA, the AER specifically approved users being liable for consequential loss suffered by us arising from a user's failure to ensure that gas meets the quality specification and is delivered into the network within the required pressure range.</p> <p>Under the proposed RSA, we have maintained this position. We have also revised the drafting so that consequential loss can be recoverable if a user fails to deliver sufficient gas into the network on a day to meet their withdrawals (this is the corollary of the position under the current RSA in relation to a user's failure to deliver gas into the network at the specified pressure)⁷</p>
<p>Definition of "Loss" (EA)</p>	<p>The term "Loss" is very specifically and comprehensively defined. It includes items which would ordinarily be within the definition of Consequential Loss and therefore be excluded from a general liability regime.</p> <p>The definitions should be amended to reflect JGN's 2015-2020 RSA definitions</p>	<p>The definitions in the proposed RSA are clearer than those under the 2015 RSA, meaning that the terms are more certain. The change in definitions do not alter the risk allocation as between the current and proposed RSA.</p> <p>As the same definition applies to JGN and users, it means both parties face liability for, and the potential to recover, the same range of losses.</p>
<p>Definition of "Loss/Consequential Loss" (OE)</p>	<p>Loss/consequential loss is very specifically and comprehensively defined.</p>	

⁷ If a user fails to deliver sufficient gas into our network, we may be required to interrupt or curtail customers, resulting in consequential loss (eg. loss of revenue)

Definition of “Loss/Consequential Loss” (OE)	OE is concerned with the inclusion of the following items in the definition and seeks further clarification:	As the same definition applies to JGN and users, it means both parties face liability for, and the potential to recover, the same range of losses.
	<ul style="list-style-type: none"> insurance premiums 	We have updated the definition to remove the reference to insurance premiums
	<ul style="list-style-type: none"> advisor costs on an indemnity basis 	These type of costs are commonly included within the definition of Loss or Damage (for example, the 2015 RSA includes “legal costs on a full indemnity basis” within the definition of “Damage”).
	<ul style="list-style-type: none"> penalties and fines – Origin note that it is often not possible to pass these on under law 	<p>Consistent with the 2015 RSA, “penalty” is included in the definitions of “Damage” and “Consequential Damage”</p> <p>The proposed RSA provides that such costs are only recoverable to the extent that recovery is not against public policy or prohibited by law.</p>
	<ul style="list-style-type: none"> unascertained losses – we question how JGN can claim such losses when it is unclear what they are 	Applies to both – whether JGN or the user sought to recover such losses, they would have to demonstrate to court that loss had been suffered.
General (EA)	The indemnity extends to Consequential Loss flowing from property damage.	Consequential loss is generally excluded by clause 27.2(a) of the proposed RSA other than in very limited circumstances of clause 27.4(a)(ii).
General (EA)	The exclusions in clause 27.4 mean that the limitations in clause 27.2 do not apply to amounts payable under an indemnity	The limitations in clause 27.2 apply to all liabilities of JGN and users to each other, subject to the carve-outs in clause 27.4.
General (EA)	Delete clause 26.2(b)	<p>Under clause 26.2(b) users and JGN indemnify the other party for loss arising from breach of the RSA, except to the extent the loss is caused by the other party’s negligent act/omission or wilful misconduct.</p> <p>The current RSA contains a mutual indemnity for breach of the RSA (see 2015 RSA clauses 26.1(a)(iii) and 26.2(b)(iii)). In its draft decision on the 2015-2020 AA, the AER stated that a mutual indemnity for breach of the RSA (and other mutual indemnities) were appropriate because they allocated the risks equally between JGN and the user⁸.</p> <p>Clause 26.2(b) maintains the existing position.</p>

⁸ AER, Attachment 12: Non-tariff components | Draft decision – JGN Access Arrangement 2015-20, November 2014, page 12-14

Third Party Claims – (OE)	Is it symmetrical	The definition applies symmetrically.
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6. Security for non-retailer users

6.1 What we proposed in the June 2020 RSA

In our June 2019 RSA, we proposed increasing the amount of security that we can request from a user who is not an authorised retailer. Our proposal was to increase this from an amount equal to two consecutive billing periods to six consecutive billing periods. We proposed this higher amount as it enables us to allow the user more time to pay before having to call on the security or disconnect the user.

6.2 Why this is reasonable

In making this change, we have had regard to the following:

- the credit support regime under NGR Part 21 Division 4 (Rules 513-519) applies to authorised retailers, but not to self-contracting users and exempt retailers
- the retailer insolvency regime under the NGR (Rule 520) only provides us with a remedy in the event of insolvency of an authorised retailer – the regime does not apply where the user is an exempt seller or a self-contracting user
- we have removed network user failure as a cost pass-through event under section 3.4 of the 2020-25 AA
- as set out in the draft decision⁹ charges for month(t) are typically payable by the end of month(t+1). This means that by the time a user is late in paying their charges for month(t), we have already provided services to them for most of month(t+1) – to avoid exposure to unpaid charges for months(t+2) and beyond, we would call on the security or disconnect the customer early in month(t+2).

6.3 Engagement with Brickworks

In their submission, Brickworks submitted that the proposed change was unreasonable, including because of the relatively small credit risk created by non-retailer users' distribution costs compared to retailers. We consider that this is not persuasive:

- while non-retailer users' network charges are small compared to retailers' charges, they are currently approximately \$20 million per year. We do not agree that this is non-material.
- we are seeing an increasing number of users entering into RSAs which are not covered by the retailer insolvency regime in the NGR - Rule 520 does not apply to self-contracting users or exempt sellers.

During our engagement with Brickworks on their submission, they advised that six months' security is more than the amount required by the four other gas distribution businesses require deal with¹⁰. In light of this, the proposed RSA reduces the period of six months to three months.

⁹ AER, *Attachment 11: Non-tariff components | Draft decision – JGN Access Arrangement 2020-25*, November 2019, page 10

¹⁰ For example, Multinet's 2018-22 Access Arrangement refers to 3 months' security, as does AGN's 2018-22 Access Arrangement for its Victorian/Albury gas network.

7. Other key changes agreed with retailers

During our engagement with retailers we have agreed a number of changes to the June 2019 RSA. These are reflected in the proposed RSA.

Some changes JGN considers worth mentioning specifically (in addition to those already outlined above) are described further below.

7.1 Disconnection process for demand customers

We have restructured the drafting in clause 15.9 to provide greater clarity around the process for us to make an offer to disconnect of demand customers, and what is to be included in the offer we make to the retailers (see new clause 15.9(b1)). We have also amended the clause to provide that we must make an offer to perform the disconnection as soon as practicable (see clause 15.9(b)(ii)).

7.2 Change of retailer obligations in relation to providing access to customer premises and delivery stations

Clauses 16.4 – 16.6 deal with various matters relating to our access to measuring equipment at delivery points. We have amended the clauses so that retailers are not required to provide us with access to delivery points and the associated, but to provide reasonable assistance to us.

We have agreed to these changes to better reflect that, as the retailers stated in their submissions, the establishment of the deemed standard connection contract under the National Energy Customer Framework (**NECF**) means that we and well as retailers are party to a contract with end-customers.

We have also amended clause 15.9(f), which gives us the ability to request a representative of the retailer to be present when we disconnect a large customer. Following discussions with the retailers, we have qualified the circumstances in which we can request a representative to be present.

7.3 Obligations requiring JGN to consult/provide information

We have amended a number of provisions (including clauses 4.7(j), 6.1(c), 15.9(f), 16.2, 16.5(e) and 16.7(d)) to require us to consult with the user and/or to provide supporting information when we propose to exercise our rights under the RSA.

7.4 Increased flexibility for reduction in Chargeable Demand

Clause 4.7 of the current RSA provides that Chargeable Demand for a site can not be reduced less than 12 months after the last Demand Reset Date period. During our engagement with retailers, we have included a new clause 4.7(i) to provide flexibility to reduce the Chargeable Demand within that 12 month period if exceptional circumstances apply to the customer.

7.5 Overruns (clauses 5.4-5.6, clause 6)

We have updated clauses 5.4 – 5.6 to improve the clarity of the drafting, and also to ensure that the clause is consistent with the east-coast gas market timetable.

7.6 Clause 16.7 (access to measuring equipment)

Following discussions with retailers, we have made several changes as follows:

- we have updated clause 16.7(a) to reflect that the RMP contain detailed provisions dealing with the estimation of gas consumption where an actual meter read cannot be obtained
- we have re-drafted clauses 16.7(c) (now covered in clauses 16.7(c) and 16.7(d)) to make the clause clearer, and to also require us to consult with the user before taking action, other than in emergency situations.

7.7 UAG

We have identified that the RSA and the AA used the term “UAG” to refer to slightly different matters:

- in the AA, “UAG” is used to refer to the quantity of gas which is lost from the network
- in the RSA, “UAG” was used to refer to the gas which we purchased to replace that lost gas.

We have therefore changed the RSA term “UAG” to “Replacement Gas” to more accurately reflect that the RSA clauses relate to the gas which is to be purchased to replace lost gas. The operation of the clause is not affected by this correction.