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To whom it may concern

Statutes Amendment (National Energy Laws) (Rules) Bill 2017

Jemena thanks the COAG Energy Council for the opportunity to provide feedback on the Statutes Amendment (National Energy Laws) (Rules) Bill 2017 (**the Bill**).

Jemena owns and operates a diverse portfolio of gas and electricity distribution and transmission assets across the east coast of Australia. We broadly support the Finkel Review's blueprint, and are committed to helping address the energy trilemma to ensure energy is affordable, reliable and environmentally sustainable.

Furthermore, as an owner of more than \$10 billion of energy infrastructure, we also have a strong interest in the governance arrangements of the energy market.

Jemena supports Energy Networks Australia's submission on the Bill, and we have provided additional comments below.

Clear and stable roles and responsibilities of Australia's energy market governance institutions are critically important to providing investors with confidence, and for ensuring outcomes in the long-term interests of energy consumers. The *Review of Governance Arrangements for Australian Energy Markets* highlighted that Australia's energy market governance is in line with international best practice, and relies upon key principles including the institutional separation of different powers and responsibilities.¹ Although the South Australian Energy Minister is currently able to make some rules, the Australian Energy Market Commission (**AEMC**) has clear responsibility and accountability for energy rule-making. If the proposed mechanism for rule-making was to be relied upon frequently or as a 'business-as-usual' alternative to the AEMC's existing rule making process, this could reduce the high levels of accountability and independence currently associated with Australia's energy rule-making process.

We recognise that eastern Australia's energy market is currently in a state of significant transformation. A strong and predictable governance framework which promotes institutional accountability through clearly-defined roles is necessary to ensure rules made are in the long-term interests of energy consumers.

That said, in principle, and particularly in the case of the increasingly dynamic conditions in the wholesale National Electricity Market (**NEM**), it may be appropriate

¹ Review of Governance Arrangements for Australian Energy Markets, Final Report, October 2015, p. 23.

in some circumstances to allow the South Australian Minister to make a rule upon recommendation of the Energy Security Board (**ESB**) and unanimous agreement of the COAG Energy Council. However, we consider it important that the Bill clarifies some particular elements of the proposed mechanism, as set out below.

Clarifying the scope of the proposed mechanism

The intended scope of the proposed mechanism's operation should be clarified to ensure it does not undermine or become a regularly-used alternative to the existing AEMC rule change processes. To ensure appropriate levels of transparency and consultation, the proposed mechanism should be confined only to circumstances where it can be demonstrated that reliance on the existing rule-making process would likely result in outcomes that would compromise the immediate security or reliability of the energy system or market—most likely due the existing urgent Rule process² being unable to address an issue quickly enough. This could be achieved by the Bill requiring the ESB to demonstrate (including providing reasons) that a proposed rule could only be implemented through the proposed mechanism, due to:

- the time taken to implement the rule under the existing rule-making processes (including the urgent Rule provisions in the National Electricity Law (**NEL**) and National Gas Law (**NGL**)), in the face of an imminent threat to the security or reliability of the NEM, a local electricity system or the supply of gas; or
- the need to ensure a high degree of coordination between market governance bodies (members of the ESB) which could otherwise not be achieved through existing (and, we note, quite extensive) consultation procedures which form part of the current rule-making process.

Furthermore, the Bill proposes to allow rules to be made through the proposed mechanism if they are in connection with “long-term planning” for the NEM or in relation to investment in, and operation and use of, natural gas services. The intended purpose and scope of this “long-term planning” limb is unclear—if it was intended to cover subjects such as long-term wholesale market generation capacity or national transmission planning, then these should be more clearly specified in the Bill.

Providing for efficient consultation on proposed rules

Requirements for consultation on rule changes proposed by the ESB should be specified in the Bill. Such requirements should be consistent with best-practice stakeholder engagement principles, but also set out specific consultation requirements. Effective consultation is crucial to ensuring proposed rules are given thorough consideration in the long-term interest of consumers, and that consumers and industry participants—both of whom are well-placed to comment on the appropriateness of outcomes under a proposed rule change—can provide input to rule making processes which will ultimately impact on them.

It is therefore vital that the proposed changes to the NEL and NGL mandate stakeholder consultation on any proposed rule change and which reflects principles of effective stakeholder engagement, such as those recently included in the Australian Energy Regulator's (**AER**) Final Revised Stakeholder Engagement Framework, including:

² We note the Bill proposes to lengthen these processes.

- communicating in a clear, accurate and timely way
- being accessible, proactive and inclusive
- being transparent and accountable.

Similarly, the existing rule-making processes followed by the AEMC provide opportunities for comprehensive stakeholder consultation, including through the publication of explanatory determinations and proposed rule drafting. To reflect best-practice consultation principles, while balancing the need to address time-critical issues, the proposed mechanism's consultation procedures should require the publication of a draft rule and explanatory statement (including a clear statement of the proposed rule's objective), with a minimum of two weeks provided for stakeholder feedback in the case of an urgent issue, and a minimum of four weeks for any non-urgent issue. Any final rule should also be accompanied by a statement of reasons or explanatory statement, which should include a clear explanation (including any analysis) of why the final rule is in the long-term interest of energy consumers.

Applicability of gas rule changes in non-NEM jurisdictions

The Bill's arrangements with respect to National Electricity Rules (**NER**) changes provide for differential rules to be made, to distinguish between national and local (for example, the Northern Territory) electricity systems. This is appropriate, as it reflects the ESB's intended objective of overseeing the Finkel Review's blueprint, which relates to the NEM.

To the extent a change to the National Gas Rules (**NGR**) is proposed to support security or reliability under circumstances specific to the NEM, it may not be appropriate to apply this rule in the Northern Territory, given the Territory's electricity systems are not interconnected with the NEM (and despite the fact that the Territory will become interconnected with the eastern Australian gas market upon commissioning of the Northern Gas Pipeline). As such, the Bill's arrangements with respect to NGR changes should also allow for differential rules to be made for non-NEM jurisdictions.

Should you have any questions about this submission, please contact Alex McPherson, Acting General Manager Regulation, on (02) 9867 7229 or via email: Alex.McPherson@jemen.com.au.

Yours sincerely



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