

Energy Ministers

Submitted online: [gas@industry.gov.au](mailto:gas@industry.gov.au)

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**Submission to Extension of AEMO Functions and Powers to Manage Supply Adequacy in the East Coast Gas Market: Consultation Paper**

The Australian Energy Council welcomes the opportunity to make a submission to the Extension of AEMO Functions and Powers to Manage Supply Adequacy in the East Coast Gas Market: Consultation Paper (Consultation Paper).

The Australian Energy Council (AEC) is the peak industry body for electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. AEC members generate and sell energy to over 10 million homes and businesses and are major investors in renewable energy generation. The AEC supports reaching net-zero by 2050 as well as a 55 per cent emissions reduction target by 2035 and is committed to delivering the energy transition for the benefit of consumers.

In this submission the AEC will argue that there is no factually compelling case for the rushing through of the proposed rules nor the need to employ a process that subverts the established rule making process. This process has undermined participants' confidence in established market governance processes and raises questions as to how future market reforms will be conducted. The AEC believes that the proposed rules should be developed through the AEMC rule change process. Nevertheless, if Energy Ministers elect to continue with the process presented in the Consultation Paper, the AEC has addressed the questions in that document.

The AEC understands that the recent events in electricity and gas markets have raised concerns within government as to the operation and functioning of these markets. However, the AEC is concerned with the reactive and rushed approach to introducing significant changes to the East Coast Gas Market (ECGM). Two weeks of consultation on the law changes and four weeks for the rule changes are manifestly inadequate consultation periods. Furthermore, the proposed rules actually remove another layer of consultation in that AEMO will not be required to consult on its proposed Procedures as would have been required under the current gas rules (ie, 135EE and 135EF).

In contrast, the NEM has taken 25 years to evolve the powers that are cited as equivalent. They have been carefully developed and considered and include many associated checks and balances on them. The proposed rules represent a worrying departure from this approach towards energy market development and they are unlikely to improve the functioning of the ECGM, will reduce investor confidence in the governance of the market, are likely to result in unintended consequences and will ultimately increase costs for consumers and businesses.

Access to relevant and robust information creates the scope for better decision making. However, the unlimited approach in the Consultation Paper to information gathering powers for inherently uncertain information is unlikely to improve decision making and may ultimately lead to poor decision making due to the trap of false precision. Instead, the information that can improve decision making should be defined and that should be the focus of the proposed rules.

The proposed rules appear to assume the ECGM operates in the same way as the NEM and seek to impose the National Electricity Rules (NER) onto the ECGM. In reality both markets have major differences which should preclude the imposition of NER type rules on the ECGM. The most obvious difference is the instantaneous nature of electricity where interventions are naturally short-term and their resultant distortions short-lived and contained, whereas interventions in gas markets will affect commercial outcomes potentially for entire seasons. Furthermore, in other parts of the proposal particularly around limiting AEMO's power, accountability and provisions to protect participants the proposed rules diverge from the NER and the DWGM rules.

Recent issues in the ECGM arose due to different market settings in the DWGM and the STTMs and particularly periods where NSW prices were higher than the Administered Price Cap that was applying in Victoria. This cause of the security concern can be readily and surgically addressed, yet governments are proposing instead an extreme response to deal with its consequences. It could be mitigated by aligning the market settings across the different regions in the ECGM and the AEC has recently proposed this in its submission to AEMO's Gas Market Parameter Review 2022.<sup>1</sup>

Another key argument presented to justify the proposed rules, is the ACCC's identified 56 PJ shortage in winter 2023.<sup>2</sup> Yet this problem has been addressed already with the government negotiating successfully for the LNG exporters to provide an additional 157 PJs to the ECGM.<sup>3</sup> In addition to this there has been a recent expedited rule change that is expected to allow AEMO to secure all unused capacity at the Dandenong LNG storage facility and inject when necessary, which the AEC broadly supported.<sup>4</sup>

The Consultation Paper notes the recently introduced gas transparency measures and reforms to the gas pipeline regulatory framework (introduced to the SA Parliament in September 2022), the AEC believes these should be given a chance to operate before rushing through these significant rule changes. The AEC is concerned about the constant and overlapping reforms addressing gas market transparency.

With all of this in mind the AEC believes there is no justification for rushing through these significant market reforms and rather they should be considered as part of the standard AEMC rule change process.

### **Overarching Functions**

1. The AEC considers these rushed rule changes (in their current form) to be unnecessary, onerous for market participants operating in a competitive market and are unlikely to yield benefits commensurate with these issues.
2. No comment.
3. There needs to be checks and balances on the proposed regime. For example, what is the threshold when AEMO can exercise these powers? Where is the accountability if AEMO overreacts to a perceived issue?
4. AEMO must define thresholds for exercise of these powers and it also must conduct independent ex post reviews when it has exercised these powers. The AER could possibly be the body responsible for these reviews.

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<sup>1</sup> <https://www.energycouncil.com.au/media/2tvf11bx/20221007-aec-sub-aemo-gas-mkt-parameter-review-final.pdf>

<sup>2</sup> <https://www.accc.gov.au/publications/serial-publications/gas-inquiry-2017-2025/gas-inquiry-july-2022-interim-report>

<sup>3</sup> <https://www.minister.industry.gov.au/ministers/king/media-releases/australian-government-secures-gas-supply>

<sup>4</sup> <https://www.energycouncil.com.au/media/azrabzra/20220929-aec-sub-vic-lng-final.pdf>

5. If implemented, the AEC believes a review of this package should commence at the end of 2023.

### **Transparency**

6. The AEC disagrees with AEMO collecting daily information because it implicitly assumes that issues in the ECGM rapidly evolve over daily time periods. Yet in practice supply issues in the ECGM evolve over months and when a shortage is likely to occur it is clearly telegraphed many months before the expected shortfall is expected to eventuate.<sup>5</sup> Clearly there is no utility to be gained from the collection of daily forecast data. We consider a quarterly cycle of data is more appropriate for the ECGM.

With respect to emergency situations due to major equipment failure for example, the power for AEMO to collect daily and possibly intra-day data to manage the situation would be appropriate.

7. Other issues with the proposed information reporting:
  - a. Duplication. For example, the generation information is already collected by AEMO in its electricity role.
  - b. Compliance costs which could also create a barrier for new participants.
  - c. From the timeline in the Consultation Paper (p. 7), it appears that participants will have a month or at best two months to implement the necessary changes to comply with the proposed rules. This is unlikely to be achievable. The timeline should be six months.
  - d. Why does the information have to be prescribed in extreme detail as opposed to more broad framing that requires AEMO to justify requesting data.
  - e. The AEC notes that the data that will be requested by AEMO will be forecasts. The AEC believes that AEMO is best placed to undertake this exercise rather than participants
8. No comment.
9. The AEC does not see a need for real time reporting and with respect to the second part of this question we have already stated our views above.

### **Signalling**

10. The AEC considers formalising and extending AEMO's ability to hold Gas Supply Adequacy and Reliability Conferences to be a sensible change as it is an approach that more accurately reflects how issues in the ECGM actually evolve.

### **Directions Powers**

11. The broad powers of direction that will be granted to AEMO need to be refined. For example, the DWGM has a baseline that defines what normal are market operating conditions hence decisions to direct can be made on the basis of divergence from that state. The DWGM also has other provisions to guide the choice to direct.

One of the powers enables AEMO to direct a participant to curtail. However, there are no provisions to protect a directed participant from the implications of breaching their contractual arrangements with a counterparty.

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<sup>5</sup> Noting equipment failures do have an immediate effect but this is not the purpose of the proposed rules.

12. No Comment.
13. No comment.
14. No comment
15. No comment

### **Cost recovery and compensation**

16. No comment
17. The AEC is unsure as to why the minimum claim for compensation is \$20,000 whereas in the NEM it is \$5,000. This proposed higher threshold will be likely to disadvantage smaller participants. Also, can the claim be made on a cumulative basis (ie, on a series of directions) or is the minimum claim based on each direction even if multiple directions were issued to a participant.

The AEC believes direct and opportunity costs should be allowed for and that consideration should be given to the AEMC being involved in the process. The AEC also notes that these compensation calculations are likely to be extremely complex for example how do you value compensation for changes in line pack or being directed to inject from storage when this undermines the participant's risk profile.

18. Cost recovery in gas will be challenging because unlike electricity every GJ is not traded in a spot market.
19. No.
20. With the directions powers that are proposed for AEMO it is unclear why AEMO needs to have the ability to be a gas trading participant. As noted previously, AEMO is likely to have control of all unused capacity at the Dandenong LNG facility in the DWGM and this combined with the broad directions powers proposed here it is problematic for AEMO to also have the ability to act a gas trader. As will be described in our next response we do not believe a specific amount should be prescribed in the rules.
21. Nevertheless, if this proposal is to be implemented there is no need to provide a specific cash holding for AEMO to maintain (ie, \$35 million) to support this facility. The AEC considers establishing a permanent fund is unnecessary, will be more expensive than AEMO financing its activity through a debt facility and runs the risk of AEMO not having access to adequate capital to fund necessary trading activities. It would be more appropriate for AEMO to fund its trading activity using a debt facility such as it currently utilises for managing operating and capital expenses.

The AEC considers that the preferable alternative is for AEMO to utilise a commercial debt facility where, in exchange for a relatively modest facility fee, it has approval to access funds up a pre-approved limit but only begins paying interest when it draws down on the facility. For example, AEMO's most recent annual report indicates it has a \$535m unsecured variable rate syndicated debt facility provided by commercial banks and that the facility was drawn to \$358.2m— leaving \$176.8m undrawn and available.

22. Under these proposed rules AEMO will have access to all the market data and plans of ECGM participants. And it is now proposed to have the ability to trade. While the AEC is uncertain of how the law works in this situation, it does appear that they would have an unfair informational advantage and a conflict of interest.

### **Feedback on specific proposed rules**

#### Division 1A 91AE

The AEC is concerned with this rule as it enables a Minister of any jurisdiction can request information from AEMO and there appears to be no provisions relating to the sharing of this information once Ministers receive it.

#### The enfeeblement of National Gas Rules (NGR) Part 15B 135EE and 135EF

The transitional provisions in the proposed rules expunge the consultation on procedures requirements for AEMO in the NGR under Part 15B 135EE and even 135EF (the expedited version). The result being that AEMO will not have to consult on its proposed Procedures and impact and implementation report. The AEC believes at very least AEMO should be required to publish interim Procedures prior to implementation and that the consultation requirements under either 135EE or 135EF apply after implementation.

### **Conclusion**

This paper has clearly demonstrated that the justifications (presented in the Consultation Paper) for the proposed rules combined with inadequate consultation and inadequately limited approach to information gathering powers are not valid due to recent market developments. The AEC recommends that the energy ministers reconsider their approach if they want to preserve the integrity of the ECGM and the established processes that provide confidence in the overall governance of the market. The rigour of these established processes will minimise the risk of unintended consequences, overlapping/duplication, inefficiency, compliance costs and ultimately costs to consumers while ensuring the desired outcome is achieved ie, the NGO.

Any questions about our submission should be addressed to Peter Brook, by email to [peter.brook@energycouncil.com.au](mailto:peter.brook@energycouncil.com.au) or by telephone on (03) 9205 3103.

Yours sincerely,



**Peter Brook**

Wholesale Policy Manager

Australian Energy Council