



7 October 2022

## **Extension of AEMO functions and powers to manage supply adequacy in the East Coast gas market.**

The Australian Pipelines and Gas Association (APGA) represents the owners, operators, designers, constructors and service providers of Australia's pipeline infrastructure with a focus on high-pressure gas transmission. APGA's members build, own and operate the gas transmission and processing infrastructure connecting natural and renewable gas production around the country to demand centres in cities and elsewhere. Offering a wide range of services to gas users, retailers and producers, APGA members ensure the safe and reliable delivery of 28 per cent of the end-use energy consumed in Australia and are at the forefront of Australia's renewable gas industry, helping achieve net-zero as quickly and affordably as possible.

APGA welcomes the opportunity to contribute to the Department of Climate Change, Energy, Environment and Water's consultation process on the extension of AEMO functions and powers to manage supply adequacy in the East Coast gas market.

As this consultation is rapid and multi-staged, APGA has attempted to confine comments in the submission to the National Gas Law amendments. There are several areas where key issues are likely to be addressed in the National Gas Rules but there are important principles to highlight as early as possible and comments are provided on these also. Importantly, there are some issues that the consultation paper flags will be addressed in the rules that APGA considers appropriate to be signalled in the head instrument, such as the need to compensate market participants affected by a direction.

### **Importance of addressing stakeholder concerns**

APGA recognises a significant amount of work has gone into developing the draft legislation in under two months since the Energy Ministers Meeting in August and that the timelines for finalisation remain extremely tight. As a small measure, APGA recommends that any future processes following a similar timeframe provide an earlier signal to stakeholders of intent to consult. A general message to stakeholders at the start or middle of September that a key, rapid consultation will occur in early October would have provided some opportunity to prepare that may have allowed stakeholders to provide higher quality feedback. As it is, even with some days advance notice of the consultation, APGA finds itself able to raise concerns but not offer useful solutions to all concerns.

In such a rapid process, it is critical that the key issues raised by stakeholders are adequately considered and addressed rather than dismissed due to limited time. There is an

increased likelihood of unintended consequences, the costs of which will ultimately be borne by gas consumers, when extensive new powers are introduced rapidly.

At this point in the energy transition, it is vital to maintain and improve market confidence as it remains clear major investment is required to address the fundamental issue. That investment will be delivered in large part through bi-lateral contractual agreements and this reform delivers AEMO the ability to override contracts.

## **This reform does not deliver increased supply**

The consultation paper and draft legislative package set out market transparency measures and extended powers to a market body, continuing the trend of gas market reform delivering market transparency and increased powers to market bodies in an attempt to address gas supply issues over the last decade.

Despite extensive and continuous reform commencing prior to the ACCC's East Coast Gas Inquiry in 2015/16, 2022 has seen the highest gas prices and greatest challenges in the East Coast gas market. APGA understands the need to extend powers to AEMO to act at times of crisis. Unfortunately, times of crisis are more likely due to ineffectiveness of previous reforms.

Great care needs to be taken in extended such powers that it does not further damage the investment environment. More investment, in natural gas and increasingly in renewable gas, is critical to addressing the fundamental issues in the East Coast gas market, high prices and a challenging market for supply of gas. This reform, while important, must be progressed in the manner that preserves the greatest confidence in the investment environment.

## **Key issues**

The framework for AEMO exercising its new powers of direction will be developed over time and will provide much of this confidence. APGA flags two issues that need to be considered at this first stage of the policy process:

### **1. The power to direct is too broad**

#### **No requirement for presence of actual or potential threat**

The broad power to direct granted to AEMO by 91AF(1) is too broad. It provides no restraint on AEMO's power of direction, allowing AEMO to issue a direction to improve reliability or adequacy of supply without an actual or potential threat being present. Such a broad power introduces a new, albeit small, risk that future Governments have the option of unprecedented levels of intervention in the gas market. This damages the investment environment.

Further, there is potential for AEMO to use the power to direct to support its other functions. APGA is particularly interested in understanding further the interaction that may be allowable or envisaged between the function set out at 91AD(e), the function to direct, and 91AD(f) the function to trade or purchase services. While it is assumed AEMO is act as a normal market participant in engaging in the acquisition of market services, it is apparent that the broad drafting of 91AF(1) would enable it to direct relevant parties while exercising its trading and purchasing function.

APGA believes this issue could be addressed by modifying 91AF so that the requirement at 91AF(2)(b) that a direction MAY:

*Be given to prevent, reduce or mitigate an actual or potential threat to the reliability or adequacy of the supply of natural gas within the east coast gas system*

currently specifically included as not limiting 91AF(1), be redrafted to be a relatively minor limit on 91AF(1) by requiring that a direction MUST ONLY

*Be given to prevent, reduce or mitigate an actual or potential threat to the reliability or adequacy of the supply of natural gas within the east coast gas system*

APGA appreciates the intent of the current drafting is to avoid a threshold for intervention by AEMO that might slow its response in an emergency. It is our understanding that a 'potential threat' is a very low threshold that at least provides some limitation on a currently unlimited power for AEMO to direct market participants.

### **AEMO has the power to direct capital expenditure**

As currently drafted, it appears AEMO will have the power to direct capital expenditure by relevant entities if it serves the purpose of maintain or improving reliability or adequacy of supply of natural gas.

This is highly concerning and does not appear in line with any other powers AEMO has in any market. APGA considers it is unlikely to be the intent of the draft legislation that AEMO could direct a natural gas industry facility to undertake capital expenditure. If this is correct, it is appropriate to make this explicit in the NGL.

### **Interaction between power to direct and trading function**

There is potential for AEMO to use the power to direct to support its other functions. APGA is particularly interested in understanding further the interaction that may be allowable or envisaged between the function set out at 91AD(e), the function to direct, and 91AD(f), the function to trade or purchase services. While it is assumed AEMO is act as a normal market participant in engaging in the acquisition of market services, it is apparent that the broad drafting of 91AF(1) would enable it to direct relevant parties while exercising its trading and purchasing function. This is unlikely to contribute to effective or efficient market outcomes.

## **2. Care must be taken to ensure the extended powers do not undermine the reliability and quality of contract services**

The gas market is based on bilateral contracts between producers, retailers, infrastructure service providers and large users. Bilateral contracts have proven to be extremely reliable in ensuring contracted positions are met. Many, if not all, market participants mitigate major supply risks through contracts.

The ability for AEMO to issue directions that override these contracts and direct gas to parties without contracted positions has implications for the reliability of contracts in extreme circumstances:

- Some market participants may understand they are to be prioritised in an emergency and will not contract to cover their requirements in all circumstances.
- Some market participants may understand they are to be de-prioritised in an emergency and will be unwilling to contract to cover their requirements in all circumstances.

The risk that behaviour changes is real and material. Some remedies include:

- Requiring AEMO to only issue directions in extreme circumstances.
- Requiring AEMO to consider the contracted and uncontracted positions of market participants when issuing directions.
- Ensuring the opportunity costs of market participants with contracted positions are eligible for compensation. If they are not, AEMO's power of direction significantly devalues having contracted positions to manages supply adequacy issues, which is highly counterproductive.
- Having obligations on market participants to ensure contracts are in place to cover extreme circumstances.

## **3. The importance of transparency and engagement should be recognised in the National Gas Law**

It is vital to the effective market function that participants:

- Are aware when directions are being issued; and
- Are engaged to the greatest extent possible as directions are being contemplated or issued.

For the first, APGA considers it necessary that the National Gas Law does far more than require AEMO to provide Ministers an annual report on the use of its extended functions. AEMO directions may cause contracts to be breached, may lead to some market participants having more information than others and may have indirect effects on many market participants. Market participants should be given as much information as possible, as close to real time as possible, on what interventions are occurring in the market. Placing such a requirement on AEMO in the NGL demonstrates recognition of the importance of this issue and the potential for intervention through direction to disrupt markets.

For the second, the consultation paper sets out the intention and expectation that AEMO will consult when and where possible. This would be adequately recognised in the NGL through a 'best endeavours' requirement as part of AEMO's power of direction. Given it is the intention and expectation, it is appropriate to recognise this in the head instrument. This is consistent with the experience of AEMO and market participants in managing gas market issues is that engagement leads to effective solutions.

This would be adequately recognised in the NGL through a 'best endeavours' requirement as part of AEMO's power of direction. Given it is the intention and expectation, it is appropriate to recognise this in the head instrument.

#### **4. Directions to infrastructure service providers must consider title to natural gas**

In relation to directions, APGA would like to raise an issue specific to infrastructure service providers. An Infrastructure service provider does not typically own the gas transported or stored in its assets.

A direction to an infrastructure service provider to deliver gas or make its facilities available without an equivalent order to owners of the natural gas raises some issues:

- The infrastructure service provider may be placed in the untenable position of deciding which contract/s to break.
- Customers of infrastructure service providers may not understand or follow directions.
- If following a direction requires curtailing some customers, an infrastructure service provider may inadvertently exacerbate the market issue leading to the direction.

It is possible to envisage a multitude of different scenarios in which directions will be made to the market. It is highly likely in most scenarios that directions to infrastructure service providers should be considered secondary to directions to parties that have title to the natural gas in an infrastructure asset.

APGA covers these and other issues in more detail in the submission template attached and is available to discuss them in more detail in the time available.

Yours sincerely



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Chief Executive Officer