



7 February 2023

## Submission: Proposed legislative changes to incorporate an emissions reduction objective into the National Energy Objectives

### Priority Feedback

- APGA is strongly supportive of the proposed reforms, which are an important first step towards enabling the AER to rule in favour of capital expenditure enabling delivery of renewable energy via regulated gas infrastructure.
- Two proposals within the Consultation risk the robustness of the Objectives and subsequent Rules and Regulations, both of which APGA recommends against:
  - Consideration for emissions targets *stated publicly as a matter of policy* introduces regulatory uncertainty. Uncertainty could be reduced by removing consideration for public statements of policy or only considering public statements of policy with legal validity reflected in legislation or regulation.
  - While change will need to be made to Rules and Regulations to give full effect to amended Objectives, APGA does not consider any change to be sufficiently time sensitive to warrant excursion from the rigor of standard AEMC practice.

The Australian Pipelines and Gas Association (APGA) represents the owners, operators, designers, constructors and service providers of Australia's pipeline infrastructure, connecting natural and renewable gas production to demand centres in cities and other locations across Australia. 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 Federal Department of Climate Change, Energy, the Environment and Water (DCCEEW) Consultation on proposed legislative changes to incorporate an emissions reduction objective into the National Energy Objectives (the **Consultation**). APGA is strongly supportive of the proposed reforms which will help enable gas customers to access renewable energy via regulated gas infrastructure.

APGA supports a net zero emission future for Australia by 2050<sup>1</sup>. Renewable gases represent a real, technically viable approach to lowest-cost energy decarbonisation in Australia. As set out in Gas Vision 2050<sup>2</sup>, APGA sees renewable gases such as hydrogen and

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<sup>1</sup> APGA, *Climate Statement*, available at: <https://www.apga.org.au/apga-climate-statement>

<sup>2</sup> APGA, 2020, *Gas Vision 2050*, [https://www.apga.org.au/sites/default/files/uploaded-content/website-content/gasinnovation\\_04.pdf](https://www.apga.org.au/sites/default/files/uploaded-content/website-content/gasinnovation_04.pdf)

biomethane playing a critical role in decarbonising gas use for both wholesale and retail customers. APGA is the largest industry contributor to the Future Fuels CRC<sup>3</sup>, which has over 80 research projects dedicated to leveraging the value of Australia’s gas infrastructure to deliver decarbonised energy to homes, businesses, and industry throughout Australia.

### Summary of APGA Feedback

- Emissions objective supports renewable energy delivery via gas infrastructure
- Risks to the robustness of the National Energy Objectives; APGA considers the following aspects of the proposed amendments should be revisited:
  - Question 5: Inclusion of targets *stated publicly as a matter of policy*
  - Question 13: Consideration for concurrent rule by Minister-made

### Emissions objective supports renewable energy delivery via gas infrastructure

The proposed reforms are an important first step in removing a key barrier preventing gas customers accessing renewable gas as a cost-competitive option for decarbonisation.

The Consultation considers introduction of an emissions objective within the existing ‘economic-efficiency’ framework. Question 1 of the consultation considers:

*“Do you consider incorporating the emissions reduction objective into the existing ‘economic-efficiency’ framework is an effective way of integrating the concept into the decision making of energy market bodies?”*

APGA agrees with this approach.

The National Gas Objective (NGO) and subsequent aspects of the National Gas Rules (NGR), based on the NGO, have been cited by the Australian Energy Regulator (AER) as grounds to deny investment in hydrogen delivery capability within Australia’s regulated gas infrastructure. The introduction of an emissions objective has the potential to support gas customer decarbonisation, by changing future decisions around hydrogen-enabling investment.

The outcomes of the AER’s current understanding of the NGO and NGR have most recently been seen within the *Final Decision APA Victorian Transmission System (VTS) Access Arrangement 2023 to 2027*<sup>4</sup>. Within its final decision, the AER concluded:

*“The current Rules do not provide for the carriage of hydrogen, nor do they provide for the inclusion into the regulated asset base (RAB) of expenditure proposed by a network service provider to enable the change from carrying only natural gas in its network to carrying any covered gas (e.g. any amounts of natural gas, hydrogen, or renewable gases).”*

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<sup>3</sup> Future Fuels CRC: <https://www.futurefuelscrc.com/>

<sup>4</sup> Australian Energy Regulator, 2022, *Final Decision APA Victorian Transmission System (VTS) Access Arrangement 2023 to 2027 (1 January 2023 to 31 December 2027) Attachment 5 Capital Expenditure* <https://www.aer.gov.au/system/files/AER%20-%20Final%20Decision%20-%20APA%20VTS%202023-27%20Access%20Arrangement%20-%20Attachment%205%20-%20Capital%20Expenditure%20-%20December%202022.pdf>

Further to this, the AEMC notes within its *Review into extending the regulatory frameworks to hydrogen and renewable gases - Final Report* that:

*“Rule 79(2)(c) also provides for capital expenditure to be justifiable if it is necessary to maintain and improve the safety of services, maintain the integrity of services, comply with a regulatory obligation or requirement, or maintain the service provider’s capacity to meet levels of demand for services existing at the time of the capital expenditure. A voluntary transition to another gas is not expected to be justifiable on any of these grounds.”*

Despite having the potential to enable substantial<sup>5</sup>, cost competitive emissions reduction<sup>6</sup>, the current state of the NGO and NGR may prevent the AER from approving the inclusion of hydrogen enabling projects within the regulated asset base of regulated gas infrastructure.

The Consultation Paper recognises that the continuing use or repurposing of gas infrastructure could be important for both gas and electricity users.<sup>7</sup> It is therefore essential that we have the right regulatory settings to enable the benefits of decarbonisation to be captured in market body decision-making.

The introduction of an emissions objective within the NGO could be a positive first step in this direction. For example, the AER could potentially rule in favour of expenditure supporting delivery of cost competitive renewable energy via gas infrastructure once an emissions objective is included alongside existing objectives and subsequent rule changes have occurred.

## **Risks to the robustness of the National Energy Objectives**

Legislative amendments generally aim to implement improvements, while minimising the risk of introducing regulatory uncertainty or undermining the robustness of existing frameworks. While most aspects of the proposed reforms are low risk in this regard, APGA considers the following aspects of the proposed amendments should be revisited:

- Question 5: Inclusion of targets *stated publicly as a matter of policy*; and
- Question 13: Consideration for concurrent rule by Minister-made rule.

APGA considers the proposals covered by each question a) may not enact the intent of the reforms and b) introduce risk of greater regulatory uncertainty or undermining framework robustness.

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<sup>5</sup> ENEA, 2023, *2030 Emission Reduction Opportunities for Gas Networks*, <https://www.energynetworks.com.au/miscellaneous/2030-emission-reduction-opportunities-for-gas-networks-by-enea-consulting-2022/>

<sup>6</sup> APGA, 2022, *Supply chain analysis methodology for Total Customer Cost*, Summary: <https://www.apga.org.au/sites/default/files/uploaded-content/website-content/supplychainv5.pdf>

Study: [https://www.apga.org.au/sites/default/files/uploaded-content/website-content/supply\\_chain\\_analysis\\_methodology\\_for\\_total\\_customer\\_cost\\_-\\_final.pdf](https://www.apga.org.au/sites/default/files/uploaded-content/website-content/supply_chain_analysis_methodology_for_total_customer_cost_-_final.pdf)

<sup>7</sup> DCCEEW, 2022, *Incorporating an emissions reduction objective into the national energy objectives*, p.8, <https://www.energy.gov.au/sites/default/files/2022-12/ESOM%20OOS%20Nov%202022%20ATT%20B%28a%29%20-%20Consultation%20paper%20-%20incorporating%20an%20emissions%20reduction%20objective%20in%20the%20national%20energy%20objectives.pdf>

### **Question 5: Inclusion of targets stated publicly as a matter of policy**

The Consultation considers including emissions targets *stated publicly as a matter of policy* within each definition of *targets for reducing Australia's greenhouse gas emissions to which the Commonwealth, a State or a Territory has made a public commitment*.

It is unclear what could be considered as being *stated publicly as a matter of policy* based on the proposed amendments. Industry must be able to determine the boundaries of the laws which they must comply with. Emissions targets *stated publicly as a matter of policy* is undefinable, hence it is not possible for industry to comply with laws and rules determined on this basis. APGA contends that being *stated publicly as a matter of policy* does not provide the certainty required for industry within the otherwise robust frameworks derived from and informed by National Energy Objectives.

Question 5 considers:

*"Does the inclusion of 'public commitments' including 'publicly as a matter of policy,' as well as legislated targets, provide sufficient certainty for effective consideration of an emissions objective by market bodies?"*

Despite the best of intentions, emissions targets *stated publicly as a matter of policy* are not required to conform to any level of assurance, commitment, or integrity. Rather, it is often the case that legislation that passes into law relating to a position *stated publicly as a matter of policy* is materially different to the original policy statement.

Retaining this aspect of the proposed amendments will see public statements of policy being taken into consideration in the decisions being made by the AER at a point in time. Many of these decisions have fixed impacts over multiple years, including the Access Arrangement process for regulated energy infrastructure (each of which have a 5-year lifespan).

The risk of basing 5-year access arrangement determinations upon matters *stated publicly as a matter of policy* can be summarised through the following potential series of events:

- 1) Minister makes public statement about a matter of policy with the best of intentions;
- 2) AER bases 5-year access arrangement determination upon this public statement;
- 3) Either:
  - a) Government abandons the policy;
  - b) Parliament passes legislation no longer fully aligned to the public statement; or
  - c) Parliament passes legislation contrary to the public statement.
- 4) 5-year access arrangement determination is inconsistent with legislation.

Introducing such a direct source of outcomes potentially inconsistent with legislation cannot be seen to be in the best interests of the consumers which the national energy laws seek to protect. Regulatory uncertainty further impedes investment, further undermining the needs of customers.

To address the above risks, APGA recommends either:

- a) Consideration of emissions targets *stated publicly as a matter of policy* be removed from the National Energy Objectives; or
- b) Emissions targets *stated publicly as a matter of policy* be defined to only consider public statements of policy with legal validity reflected in legislation or equivalent regulation.

### **Question 13: Consideration for concurrent rule by Minister-made rule**

The Consultation contemplates amending rules, such as the National Gas Rules, through use of a Minister-made rules or via the existing AEMC rule change process. APGA does not consider there to be grounds to deviate from the robust established processes of the AEMC.

The Consultation paper notes:

*“Any amendments to the rules can be made by either a Minister-made rule (which would require an appropriate rule-making power to be included in the final Bill – not included currently), or by the AEMC (which would require a rule change request to be submitted to the AEMC as per the existing rule change process – this is Officials’ current preference).”*

Question 13 considers:

*“Do you have views on any rules that would benefit from a concurrent change within the current Bill process? If so, please provide details of the changes and the reasons why they would benefit from a concurrent change.”*

While APGA anticipates rule changes will follow amendment to National Energy Objectives, such rule changes require careful consideration. Importantly, no rule change associated with proposed amendments is anticipated to be sufficiently time-sensitive to require excursion from proper AEMC process and governance.

APGA recommends against amendment to rules via Minister-made rule.

To discuss any of the above feedback further, please contact APGA National Policy Manager, Jordan McCollum, on +61 422 057 856 or [jmccollum@apga.org.au](mailto:jmccollum@apga.org.au).

Yours Sincerely,



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