



EnergyAustralia

LIGHT THE WAY

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Gas Market Consultation
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Exposure Draft – Competition and Consumer Amendment (Gas Market) Bill 2022

EnergyAustralia is one of Australia's largest energy companies with around 2.4 million electricity and gas accounts in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory. EnergyAustralia owns, contracts, and operates a diversified energy generation portfolio that includes coal, gas, battery storage, demand response, solar, and wind assets. Combined, these assets comprise 4,500MW of generation capacity.

We welcome the opportunity to provide a submission to the Exposure Draft Bill (Draft Bill).

While we understand this consultation is about the drafting of the framework for the new Gas Market Instruments, we make the following points on the overall policy behind the Bill and the part it plays in the broader Energy Price Bill Package:

- **Critical issue of gas transport is not covered** - We acknowledge that the Energy Price Relief Plan is not intended to be a "magic bullet" solution. However, it is still very unclear whether the Plan will result in material downward pressure on both wholesale and retail prices for customers. Incremental supply is ultimately required to bring down wholesale prices. For gas, this relates to having sufficient pipeline capacity contracts into southern markets to transport gas from Queensland. The problem is that there is not much uncontracted pipeline capacity available during periods of high demand, and the day-ahead mechanism to purchase unused capacity does not match the way a residential or commercial customer would use gas and how retailers buy it. The issue of transport is not canvassed in the Draft Bill, as there is no ability for the Gas Market Code or Gas Market Emergency Price Order (Price Order) to compel capacity to be offered.
- **Exclusion of spot markets** - The exclusion of spot markets (DWGM/STTM) might mean producers may be disincentivised from selling any available gas under contracts (subject to the cap of \$12) and opt to sell in spot markets for higher value instead. The implications of this should be considered.

We reserve our comments on the Price order and the Gas Market Code for later consultations. On the drafting of the Bill:

- **Uncertainty created by Reasonable Pricing Provision and any future explicit regulated price** - The Draft Bill outlines that the Gas Market Code may include rules about

the price for the supply of gas and “rules requiring a price to be reasonable”. The Consultation Paper refers to providing “a basis for producers and buyers to negotiate domestic wholesale gas contracts at ‘reasonable prices’, which reflect the cost of domestic gas production”.

Our primary concern is that the Reasonable Pricing Provision could create uncertainty and delay for gas producers and buyers negotiating commercial pricing for future periods, as they consider how their pricing will comply with this new requirement. It could also create considerable uncertainty over longer term investments, as investors try to estimate what reasonable pricing based on the “most likely new domestic project” is. We will expand on these issues in our February submission.

- **Lack of criteria when making the Gas Market Code and Price Order** – The Draft Bill clearly outlines what the Gas Market Code and Gas Market Emergency Price Order can cover. The matters it can cover are far reaching and can have a significant impact on the gas market and gas customers. At the very least, given that the Gas Market Code is intended to be ongoing, the Minister should be made to have regard to its effect on the gas market. i.e. whether the rules in the Code promote efficient investment in, and operation of national gas services for the long term interests of customers (similar to the National Gas Objective under the National Gas Law). In addition, the Minister should be required to consult with the ACCC before they make the Code, in line with the process for the Price Order.¹
- **No requirement to consult on the Draft Gas Market Code and changes to the Code** – The Draft Bill does not require the Minister to consult on the Draft Gas Market Code. While the Consultation Paper outlines the proposed approach for the Gas Market Code, we strongly urge the Draft Bill to include a requirement for the Minister to publish and consult on the Draft Gas Market Code. This will provide businesses affected by the Code an opportunity to review the details of how the obligations are codified. Similarly, any variations to the Code should be subject to consultation. This is especially important given the Draft Bill provides that the Reasonable Pricing Provision can evolve to setting an explicit regulated price in the future.
- **Review process should be clearly legislated** – We note that the power to make a Price Order has a sunset clause in the Draft Bill and that the price cap will be reviewed in mid-2023 (but the requirement to review does not appear to be in the Draft Bill). Regarding the Gas Market Code, there is no explicit sunset clause nor is there a legislated review requirement. The Consultation Paper states the Gas Market Code will be an ongoing measure, with key elements subject to review on the basis of changes to market structure and that it will be reviewed after a year. We urge the review requirement be legislated, with a sunset provision if that review finds the Code is no longer necessary.
- **Related parties and joint ventures** - The Gas Market Code can regulate Gas Market Conduct and Gas Market Participants, and it appears this covers both related parties and joint ventures. We seek certainty, including the identification of which related parties and joint ventures are intended to be covered by the definitions and how it applies. E.g. presumably for gas supplied under the joint venture only.
- **Definition of Gas Market Conduct** – Section 53C(1)(vii) states that refusing to supply or acquire gas, issue or receive an Expression of Interest etc is included in the definition of *Gas Market Conduct*. This definition then interacts with the definition of *Gas Market Participants* (Section 53D(1)(a)) which states that a person who engages in *Gas Market Conduct* is a Gas Market Participant which the Gas Market Code can apply to. This might inadvertently capture businesses that do not actually supply or acquire gas.

¹ Proposed section 53M(4)

If you have any questions in relation to this submission, please contact me (Selena.liu@energyaustralia.com.au or 03 9060 0761).

Yours sincerely,

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