



EnergyAustralia

LIGHT THE WAY

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Energy Ministers Secretariat
GPO Box 858
Canberra ACT 2601

Lodged electronically: gas@industry.gov.au

EnergyAustralia Pty Ltd
ABN 99 086 014 968

Level 19
Two Melbourne Quarter
697 Collins Street
Docklands Victoria 3008

Phone +61 3 8628 1000
Facsimile +61 3 8628 1050

enq@energyaustralia.com.au
energyaustralia.com.au

Energy Ministers – Extension of AEMO Functions and Powers – September 2022

EnergyAustralia is one of Australia's largest energy companies with around 2.4 million electricity and gas accounts across eastern Australia. We also own, operate and contract a diversified energy generation portfolio across Australia, including coal, gas, battery storage, demand response, wind and solar assets, with control of over 4,500MW of generation capacity.

We appreciate that energy ministers have requested urgent reforms to manage risks to gas supply ahead of winter 2023. The draft amendments to extend AEMO's powers have been prepared in a very short timeframe and we are now responding constructively to assist the secretariat, again in a very short timeframe, in implementing changes that best serve the long-term interest of consumers. Various reforms arising in response to the recent crisis and its lasting effects are in addition to the much larger 'underlying' reform program relating to the energy transition. The current capacity of stakeholders to properly consider detailed legislative drafting matters is therefore limited. Overall, this process carries a high risk of regulations being put in place that may not adequately address ministers' concerns and with negative unintended consequences. This adds to compliance burden for market participants and direct costs for AEMO, all of which ultimately lead to higher costs for consumers.

The gas volumes negotiated under the Heads of Agreement now appear to exceed the annual shortfalls for 2023 identified in AEMO's most recent risk assessment report¹, which ministers released on 17 October. This may reduce the urgency in establishing a full set of powers and functions for AEMO in the coming months.

Our responses are set out in the attached stakeholder template, and for completeness include views from our prior submission of 7 October regarding proposed amendments to the National Gas Law. Our main observations on the proposed package of amendments are:

- We accept there is potentially a role for AEMO in undertaking 'last resort' procurement of gas and infrastructure services. However this is a critical and complex matter, and so we recommend that corresponding rule amendments be delayed and properly consulted as part of further regulatory changes proposed for 2023.

¹ <https://www.energy.gov.au/sites/default/files/2022-10/Gas%20Supply%20and%20System%20Adequacy%20Risks%202022-2023.pdf>

- The proposed information gathering powers need to be thoroughly assessed and streamlined. The value of some data is questionable in terms of monitoring and responding to reliability and security of supply risks, which will likely depend more on AEMO forecasts rather than on participant data.
- The rules around administering directions and compensation should be refined and cater for various operational complexities in gas markets.

If you would like to discuss this submission, please contact me on 03 9060 0612 or Lawrence.irlam@energyaustralia.com.au.

Regards

Lawrence Irlam
Regulatory Affairs Lead

Attachment D – Extension of AEMO Functions and Powers - Stakeholder feedback template

Submission from EnergyAustralia

A. Proposed initial reforms

Number	Question	Reference to section in the draft bill/regulations/rules (if applicable)	Feedback
Overarching functions			
1	Do stakeholders have any comments on the scope of AEMO's new reliability and supply adequacy functions and the related rule-making powers as outlined in the draft Bill?		<p>In principle we support the scope of AEMO's proposed powers.</p> <p>We have practical concerns that are generic to the establishment of backstop powers for any system operator, particularly thresholds around intervention that require clear frameworks for risk identification and tolerance. These and other important matters are identified as 'future' reforms to be developed over 2023. The urgent creation of powers for the coming winter will add uncertainty and distort efficient market responses to arising risks. AEMO is likely to be risk averse in making directions or in its direct procurement, with the potential to add significant costs for consumers. This is underlined by the intention that AEMO be pro-active in addressing risk, rather than reactive in emergency situations, and so differs from the approach used in electricity.</p>
2	Does the definition of east coast gas system exclude anything that should come within scope of the new function?		<p>We consider it is critical that LNG exporters are included within the scope of AEMO's functions. To that end, there needs to be more clarity on how AEMO would interact with the powers of the Commonwealth Resources Minister under the Australian Domestic Gas Security Mechanism and Heads of Agreement.</p> <p>The scope of AEMO's gas functions need to accommodate broader energy system risks i.e. those arising in electricity and other adjacent markets. A key example of this is monitoring of coal-fired generation (including fuel supply) and weather patterns that influence wind and solar generation, all affecting gas powered generation and gas fuel demand.</p>
3	Do stakeholders consider any additional requirements should be specified in the rules in relation to the		<p>Rules need to be developed around AEMO's trading powers, and this should be deferred for fulsome consultation over 2023.</p> <p>The gravity of providing AEMO powers to trade in natural gas or to purchase pipeline or storage services in section 91AD(f) has not been appreciated in the draft amendments nor in the accompanying</p>

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	manner in which AEMO exercises its functions?		<p>consultation paper. AEMO's powers to trade in the market should be subject to guidance or boundaries in the same way as AEMO's power of direction in the proposed section 91AF. Rules could require AEMO to act in accordance with principles similar to those in NER clause 3.20.2 governing AEMO's reliability and emergency reserve trader function, namely minimising market distortions, maximising customer benefits and having regard to customers' willingness to pay. Rules should also provide for detailed procedures that identify matters such as:</p> <ul style="list-style-type: none"> ▪ when trading can take place (ideally as a last resort emergency power) ▪ how AEMO eventually dissolves any trading position it takes ▪ how this role fits in with AEMO's governance and other accountabilities, which may extend to appropriate ring-fencing of internal functions ▪ how it communicates its actions to the market ▪ risks and mitigating interventions over different timescales e.g. procurement volumes as well as flow rates, 'shape' etc. <p>Rules should provide for obligations on AEMO to report on particular events across these new functions or on a periodic basis. Such reports should be made public. The draft section 91AE provides for reporting to ministers only, which does not provide sufficient transparency or accountability on the prudence of AEMO's performance, including costs to consumers and its approach to risk management.</p>
4	Do stakeholders consider that AEMO should develop any specific procedures or guidelines for its new functions?		<p>Yes. On information gathering specifically, it seems prudent for AEMO to consult on and specify its requirements in procedures rather than having these prescribed in the gas rules. Information reporting will inevitably be streamlined and having this done as a rule change each time will be cumbersome. As outlined below, there is a high risk of the current expedited consultation process will produce rule requirements that are overly burdensome, so refinements in the short term should be anticipated.</p> <p>AEMO will need to establish a credible, systematic approach to monitoring and informing the market of supply and reliability risks. The proposed rule requirements appear to assume that AEMO will simply aggregate and publish all the forecasts produced by market participants. In reality, risk assessments will involve a combination of methods and data from a variety of sources, including sensitivities for credible risk events. Guidelines or procedures would need to be published in order to provide transparency in its approach. This would be critical in assisting participants in developing their own market-led responses, particularly where circumstances depart from data or assumptions in AEMO's assessments.</p> <p>AEMO's proposed trading role should also be subject to detailed procedures, developed in accordance with prescriptive rules.</p>

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5	Do you think a review of this regulatory package after three years is appropriate?		Three years would be a suitable timeframe where rule amendments had been appropriately consulted upon and tested with stakeholders. Furthermore, it seems likely that the anticipated consultation on substantive reforms over 2023 will identify the need to amend the package of rules that are being urgently progressed now.
Transparency – Regarding the proposed additional information requirements set out in Table 1 of the consultation paper:			
6	Do the proposed additional reporting requirements provide sufficient daily and monthly information to enable AEMO to monitor and signal potential threats to east coast gas system adequacy over a sufficient forecast period?		<p>The scope and frequency of data reporting goes well beyond what AEMO would reasonably require to discharge its proposed functions.</p> <p>Typically in regulatory consultations, the initiating party would provide clear justifications and example uses of the type of information being requested, with the degree of justification reflecting the likely burden and compliance cost, which appears high in this case. The consultation paper states that AEMO's existing information gathering powers and new data arising under the gas transparency measures will be inadequate. However without further elaboration on the nature of information gaps, it is difficult to understand how the proposed reporting requirements have been developed and whether they are proportionate to the cost burden for the sector (and ultimately customers).</p> <p>Requiring highly granular and rolling daily forecasts seems a dramatic increase in reporting and analytical burden, given supply adequacy risks will arise at an aggregate level over seasonal timeframes. The paper also notes AEMO may still need additional ad hoc information which seems more likely to arise under emergency situations affecting reliability, including intra-day information. Outside of emergency and seasonal timeframes, the need for higher frequency reporting and market signalling seems limited. It may be feasible for AEMO to gather and automate the publishing of unadjusted daily forecasts from participants, however as noted above this would likely provide a poor indication of emerging risks. Rolling daily forecasts of GPG demand in particular could be highly variable over relatively short timeframes, and depend significantly on assumptions that will differ across participants. It may be that automated analytics and reporting can be established over time (e.g. similar to PASA type assessments, to be potentially consulted on from 2023) however implementing appropriate systems with the intent of mitigating supply risks arising for winter 2023 seems challenging. Affected entities will also need appropriate time to invest in information gathering and reporting systems in proportion to the very high civil penalties for misreporting these data.</p>
7	Do stakeholders have any comments about the proposed additional information reporting and disclosure arrangements, and related transitional timeframes?		<p>The transitional provisions would allow one month between rules being made and reporting obligations to take effect. Participants have had around 3 weeks' notice of the type of requirements that might apply. This compares to the package of gas transparency measures, which were developed over more than 2 years of consultation, with staggered implementation of requirements ranging from around 6 to 10 months of the rules being made.</p> <p>Accordingly we have not had sufficient time to assess the business impact of the proposed information reporting. We appreciate the secretariat has provided indicative timeframes and further consultation</p>

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			<p>steps in section 5 of its consultation paper. Given the limited preparation that has gone into the draft rule requirements, and the prospects of significant amendments from here, we cannot realistically commence preparation for reporting obligations now. Lead times similar to the gas transparency measures, of at least six months, is realistic and only once we have full certainty on the final amendments.</p> <p>If ministers are minded to impose a very short implementation timeframe, reporting entities should be provided leeway in the completeness and quality of information provided to AEMO. This could be done by waiving penalty provisions for a transitional period.</p> <p>Even following this transitional period, the reporting obligations should recognise that the data provided are forecasts and so are provided on a 'best endeavours' basis. The rules should also provide some recognition that AEMO accepts and acts on the knowledge that the quality of forecasts will depend on uncertainties and market developments that can change in very short periods of time. Draft rule 683(3) applies too strict a requirement on participants to update and notify AEMO of the need to update data as facts or circumstances change. This needs to reflect some form of materiality threshold, for example in terms of the materiality of the change, or in reflection of data being updated with high frequently. The intent behind draft rule 683(4) is unclear and suggests reporting entities are responsible for the 'accuracy' of information provided, which as noted above needs to be taken in the context of forecasting uncertainty.</p> <p>Draft rule 683(1) potentially allows for AEMO to publish commercially sensitive information provided by reporting entities and should be subject to conditions, for example that published information can only be aggregated or not revealing of individual participants.</p> <p>The proposed amendment to clause 19 of the National Gas Regulations, to prescribe ministers and departments, gives rise to issues in the disclosure of protected information. The secretariat should consider consequential amendments (possibly to the NGL) given the list of agencies already listed in NGL section 91GC(2) have narrowly defined functions around energy and consumer protection, whereas ministers and departments have a much broader range of functions that could see protected information inappropriately used under section 91GC(3). These powers include as operators of government-owned market participants, hence the receipt and use of protected information could be detrimental to competition and customer outcomes.</p>
8	Should there be any specific limits on who should be captured by disclosure obligations or ways to minimise compliance obligations such as thresholds, reporting party		No response.

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	definitions, or links to other regulatory reporting requirements?		
Transparency – regarding the further more granular information set out in the consultation paper (subject to further consultation in 2023):			
9	What are your views on: a) The categories of information, and are they appropriate for real-time or hourly reporting? b) What is the optimal approach to the collection of the categories of information listed in the interests of minimising costs and ensuring efficient data transfer?		Any proposals to expand data collection should be justified on the basis of a quantitative cost benefit assessment. Real-time reporting of some data could feasibly build from existing AEMO systems and may be low cost. Where this is not the case, compliance costs are likely to outweigh benefits to the system and to customers.
Signalling – regarding the signalling framework which aims to provide a practical but flexible approach to allow AEMO to notify market participants of threats to system reliability and supply adequacy:			
10	What are your views on formalising and extending AEMO's ability to hold Gas Supply Adequacy and Reliability Conferences?		This seems reasonable however we question whether some civil penalty provisions attached to obligations are proportionate e.g. provision and updating of contact details.
Directions Powers – regarding the initial broad powers to be provided to AEMO to take necessary action to manage the risk of gas supply shortfalls in winter 2023:			
11	Are there particular principles which should guide AEMO's expanded powers of direction?		Example principles applying to AEMO interventions would include a preference for market outcomes, being least distortionary to the efficient operation of the gas market, minimising costs for consumers and acting in a transparent and accountable manner. Other elements would include: <ul style="list-style-type: none"> ▪ AEMO having regard to contract impacts e.g. where a direction causes a participant to breach contractual obligations ▪ establishing a clear framework for prioritising different directions ▪ ex post reporting on directions

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			<ul style="list-style-type: none"> provisions for participants to refuse directions in certain circumstances, e.g. if it is damaging to plant or causes other safety risks.
12	Are there any other approaches that could be undertaken to elicit market responses ahead of directions powers?		No response.
13	How should AEMO work with stakeholders in giving directions?		No response.
14	Are there technical matters that should be considered in the issuing of directions powers?		No response.
15	Are there any entities that should not be subject to directions or certain types of directions?		No response.
Cost recovery and compensation			
16	Do the proposed changes to the cost recovery framework enable AEMO to appropriately recover costs in relation to its east coast gas market reliability and supply adequacy functions?		<p>We consider it may be suitable for the AEMC to take a role here, as per compensation arrangements for electricity.</p> <p>The draft rule 696(3) that give entities 10 business days to lodge a compensation claim is shorter relative to equivalent provision under the NER, but should be longer, in reflection of additional complexities in gas markets. The proposed \$20,000 threshold for claims is likely too high for smaller market participants, noting the corresponding threshold in the NEM is \$5,000.</p>
17	What costs should parties who must comply with directions be able to seek compensation for? (e.g. direct costs, opportunity costs)		<p>The rules should allow for both direct and opportunity costs to come into the scope of directions compensation, subject to detailed AEMO procedures and consultation with stakeholders.</p> <p>Compensation for gas directions will be complex, for example, where commodity volumes are drawn from storage or line-pack and so reflect a blend of (direct) purchasing costs over time. The ability to store gas enables participants to make more complex decisions to ration or manage contract positions over scarcity events (i.e. opportunity costs), which will otherwise be disrupted by AEMO interventions.</p> <p>Participants develop investment cases on the back of pricing opportunities that are above direct costs, notably during infrequent scarcity events. Hence it will be important to recognise opportunity costs to ensure supply/ investment adequacy for the longer term.</p>

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			These reforms increase the prospect of AEMO intervening ahead of and specifically avoiding such events, thereby materially affecting returns on investment. Investment in (identified as necessary by AEMO ²) will be further discouraged where AEMO's powers are loosely defined.
18	How should the costs of compensation be apportioned and recovered from the market?		The apportionment of costs should reflect elements of causer pays where this is possible.
19	Should there be financial limits on individual claims, or on claims overall within a financial year?		No response.
20	Is the proposed \$35m initial trading allocation appropriate?		There is insufficient information on likely risks that cannot be mitigated by market responses, directions and other interventions (including by ministers) and so the residual need to draw on such a fund. At current commodity prices, \$35 million may be sufficient to address a reliability event but not address supply adequacy.
21	How should the trading function be funded?		The carrying cost to AEMO, and ultimately customers, of a \$35 million fund is material and avoidable. Notably, the proposed fund would be rarely used and could take the form of a standing debt facility, with AEMO paying administrative costs but not interest unless the fund is drawn from. Making this a debt facility may also provide flexibility in the total fund amount.
22	What principles, if any, should guide AEMO's trading functions?		AEMO taking a trading position should strictly be a last resort, when it is clear the market is in a state of dysfunction or there is an obvious emergency situation. The market cannot function effectively, including in self-managing supply risks, unless AEMO's powers are clearly defined. Other principles and considerations are listed in response to question 3 above.

² AEMO, Gas Supply and System Adequacy Risks, July 2022, p. 4.