

Our ref: EMO0042

24 February 2022

Mr Sean Sullivan
Chair
Energy Senior Officials

By email: sean.sullivan@industry.gov.au

Dear Mr Sullivan

Review of the National Gas and Retail Regulatory Frameworks for the introduction of hydrogen and renewable gas

On 24 August 2021, Energy Ministers tasked the Australian Energy Market Commission (AEMC) with a review of the National Gas Rules (NGR) and National Energy Retail Rules (NERR) to develop initial rules that will extend the regulatory frameworks to include low-level hydrogen blends and renewable gases (the Review). The Terms of Reference set out that, among other objectives, the AEMC is to:

"inform Senior Officials of its views on any required changes to the National Gas Law (NGL) and National Energy Retail Law (NERL) and the prioritisation of any identified gaps so that these can be reflected in the legislation to be prepared by Officials and legislative amendments can be provided to Energy Ministers for agreement by mid-2022."

This letter sets out the work that the AEMC has undertaken, closely working with the external consultants advising Officials, to identify any required law changes, including its involvement in the Gas Working Group and close collaboration with other market bodies. It outlines the AEMC's strong support for the drafting instructions prepared for Senior Officials by its consultants provided on 3 February 2022. It also sets out three further amendments to the NGL which the AEMC recommends to Senior Officials. These recommended amendments are intended to:

- allow the AEMC to make rules in relation to pipeline service providers' curtailment methodology;
- limit the potential for unintended application of the Gas Statement of Opportunities' (GSOO) requirements to prescribed covered gases; and
- enable AEMO to collect information for the purposes of the Victorian Gas Planning Report and capacity modelling from facilities that do not otherwise participate directly in the Declared Wholesale Gas Market (DWGM).

Review progress

Since the receipt of the Terms of Reference, the AEMC has committed substantial resources to the Review and a related rule change request from the Victorian Minister for Energy, Environment and Climate Change proposing to include distribution connected facilities in the DWGM. This rule change request seeks to make changes to the NGR to allow the market participation of such facilities. These facilities may include pipelines and production, storage or blending facilities that deal with gases including natural gas, hydrogen, biomethane and other renewable gases. There are significant synergies between the Review and the rule change request and accordingly it was decided that both should be run concurrently.

On 21 October 2021, the AEMC published consultation papers for both the Review and rule change request. The consultation paper noted that the parts of the NGR and NERR that the AEMC considers are within the scope of the Review are:

- economic regulation of pipelines — issues on the operation of economic regulation, ringfencing arrangements and the rights of natural gas equivalents and constituent gases suppliers to connect to pipelines
- market transparency mechanisms — the application of the reporting obligations for the Bulletin Board, GSOO and Victorian Gas Planning Report
- facilitated gas markets (the DWGM and the short-term trading market (STTM)) — potential changes to registration categories, managing settlement and allocation and trading natural gas equivalents and constituent gases through the facilitated markets
- regulated retail markets — potential changes to registration categories, impacts on settlement, metering and billing
- consumer protections — managing issues relating to the sale and supply of natural gas equivalents that may arise between retailers, distributors and customers such as pricing, notification requirements and billing data
- regulatory sandbox framework — how this new framework can be used for trial projects relating to natural gas equivalents.

Following the publication of the consultation paper, stakeholders had the opportunity to provide submissions until 2 December 2021. With respect to the Review, the AEMC received 23 submissions from stakeholders to the consultation paper and a further 10 submissions with respect to the rule change request. A number of meetings have been held with stakeholders, including widely attended workshops that were run over 13, 14 and 15 December. During the preparation of the consultation paper and the consultation period, the AEMC has worked closely with market bodies and jurisdictional regulators – the Australian Energy Market Operator (AEMO), the Australian Energy Regulator (AER), the Western Australian Economic Regulation Authority (ERA), the Victorian Essential Services Commission (ESC), the Victorian Department of Environment, Land, Water and Planning (DELWP) and Energy Safe Victoria. The AEMC has also met with jurisdictional technical regulators.

Drafting instructions for the Law and Regulations

The AEMC has also worked closely with external consultants advising Officials, namely Axiom Economics, Seaton Legal and Catriona Webster Consulting. This included actively working with these consultants in assessing the existing legal framework and considering the nature of legislative changes required to extend the regulatory frameworks to hydrogen and other renewable gases. It also included providing feedback on the drafting instructions that were provided to Officials on 3 February 2022.

These drafting instructions provide for the following proposed amendments to the Law and Regulations:

National Gas Law

- New terms to define the new gases and gas blends and identify when they are 'covered' by the NGL
- Amendment of existing terms (including the National Gas Objective) and other provisions to extend the framework to covered gases
- New concept of blend processing services with associated light-handed access framework
- Extension of pipeline ring-fencing provisions to the new gases
- Extension of facilitated market provisions to allow for markets relating to any covered gas and blend processing service providers
- Changes to the DWGM provisions to allow for injections into declared distribution systems
- Changes to permissible registration categories for facilitated markets and regulated retail markets to extend the relevant categories to covered gases and permit the registration of blend processing service providers in the DWGM and regulated retail markets where required
- Changes to regulatory sandboxing to allow trial projects relating to gases or gas blends before they are 'covered'
- Some new heads of power for rules, including rules with respect to transition of supply to new gas products

National Gas Regulations

- A new regulation to define prescribed covered gases – hydrogen, biomethane, synthetic methane and gas blends that aren't natural gas equivalents
- The list of civil penalty and conduct provisions to be updated

National Energy Retail Law

- Changes to defined terms to extend the NERL to 'natural gas equivalents' and any prescribed covered gas specified by the National Energy Retail Regulations to be a gas under the NERL
- Allow for separate authorisation, exemption, Retailer of Last Resort (RoLR) appointments, Rules, etc for natural gas/natural gas equivalents as a group and other gases
- Enable rules to be made with respect to transition of supply to new gas products
- Transition existing gas authorisations, exemptions and RoLRs to natural gas equivalents

National Energy Retail Regulations

- Amend transitional provisions to clarify application of regulations to different gas products.

The AEMC strongly supports these proposed amendments and considers that these will be necessary in order for the AEMC and other market bodies to properly exercise their functions and powers with respect to natural gas equivalents, their constituent gases and other covered gases. The AEMC also considers that some of the proposed amendments would facilitate the solution sought in the DWGM rule change request, namely changes to allow for injections into declared distribution systems.

Other potential changes to the NGL and NERL

As part of the review and the DWGM rule change, the AEMC has considered, across the workstreams, whether any changes need to be made to the NGL and NERL in addition to those contemplated by the current drafting instructions for the Law and Regulations. At this stage we have identified three additional changes that we recommend be made to the NGL, which are intended to:

- allow the AEMC to make rules in relation to pipeline service providers' curtailment methodology
- limit the potential for unintended application of the GSOO requirements to prescribed covered gases
- enable AEMO to collect information for the purposes of the Victorian Gas Planning Report and capacity modelling from facilities that do not otherwise participate directly in the DWGM.

These changes are described in further detail below.

It is worth noting that once we complete the next round of consultation in May 2022 we may identify other changes that need to be made to the Law and Regulations (including to the list of civil penalty and conduct provisions in the Regulations). If this occurs, then the AEMC will advise Officials of the required changes so that they can be considered prior to submitting the final package to Energy Ministers.

Curtailment methodology

The first additional change that the AEMC has identified at this stage is to amend s74 of NGL (or Schedule 1 of the NGL) to allow the AEMC to make rules in relation to the curtailment methodology that pipeline service providers employ in relation to suppliers of natural gas, natural gas equivalents and constituent gases. This issue was raised in the AEMC's consultation paper and based on the feedback received, we consider that there would be value in amending the NGR to require:

- service providers of scheme and non-scheme pipelines to publish their supplier related curtailment methodology in their user access guide
- service providers of scheme pipelines to have the curtailment methodology approved by the regulator as part of the access arrangement.

GSOO

The second change that the AEMC has identified relates to the proposed amendments in the drafting instructions provided to Officials on 3 February 2022.

The proposed amendment to section 91D inserted a new subsection (3) as follows:

(3) In subsection (2)—

(a) a reference to gas means a reference to natural gas and natural gas equivalents and to the extent provided for in the Rules, any prescribed covered gas;

(b) a reference to pipeline services means services provided by pipelines hauling natural gas or natural gas equivalents or to the extent provided for in the Rules, any prescribed covered gas.

The AEMC has identified the need for additional changes to this section to address areas of potential unintended requirements for the GSOO to extend to prescribed covered gases under section 91D(2), once that subsection is extended to covered gases and the covered gas industry. We propose a different approach that would omit new subsection (3) and instead amend s91D(2) to state that the GSOO must contain the matters outlined in the subsection for any covered gases specified in the NGR. This change will also simplify the drafting.

AEMO's powers to collect information for the VGPR and other capacity-related modelling

The final amendment the AEMC has identified relates to the Victorian Gas Planning Report (VGPR) and other capacity-related modelling conducted by AEMO, for which information may be required from facilities that do not otherwise participate directly in the DWGM.

One option is to extend the DWGM registration categories so that these facility operators register and are subject to the DWGM information provisions. However, the AEMC proposes instead that amendments be made to the NGL to allow the Rules to require information to be provided to AEMO for specified purposes without also requiring the facility operator to be registered. This is similar to the approach taken for the STTM under section 91FEA of the NGL and is intended to reduce the administrative burden for parties that do not need to be registered for market purposes, but from whom AEMO may need to obtain information for defined purposes.

To achieve this outcome, the AEMC propose that new provisions be included in the NGL that would (subject to the Rules) require a person who has possession or control of information in relation to the natural gas industry to give the information to AEMO if the information is reasonably required by AEMO to perform the following two of its declared system functions (refer to section 91BA):

'(c) to monitor and review the capacity of the declared transmission system and the trends in demand for the injection of gas into, and the withdrawal of gas from, that system;

(d) to provide information and other services to facilitate decisions for economically efficient investment in markets for natural gas.'

Other considerations

The AEMC also considered whether further amendments may be required for:

- AEMO's functions in relation to gas quality
- the liability and immunity provisions in the NERL for the quality of gas supplied by retailers and distribution network service providers to consumers.

Following extensive engagement with stakeholders, the AEMC does not propose to recommend any law changes with respect to these areas.

Questions

If it would be assistance, we would be very happy to arrange a call to discuss the Review and the law change recommendations. Please contact James Tyrrell at james.tyrrell@aemc.gov.au if you would like us to arrange a time.

Yours sincerely

A handwritten signature in black ink, appearing to read "Anna Collyer". The signature is fluid and cursive, with the first name "Anna" written in a larger, more prominent script than the last name "Collyer".

Anna Collyer
Chair
Australian Energy Market Commission