



Mr Sean Sullivan
Deputy Secretary
Department of Climate Change, Energy, the Environment and Water

7 October 2022

Re: APA Submission to Extension of AEMO Functions and Powers Consultation Paper

Dear Mr Sullivan,

Thank you for the opportunity to comment on the *Extension of AEMO Functions and Powers to Manage Supply Adequacy in the East Coast Gas Market Consultation Paper* (Consultation Paper) published on 26 September 2022. Whilst we appreciate the urgency with which the Energy Ministers wish to implement mitigations to supply constraints prior to winter 2023, the limited consultation allowed is far from ideal, constraining in-depth review, debate and constructive feedback on these significant reforms.

APA is an ASX listed owner, operator, and developer of energy infrastructure assets across Australia. Through a diverse portfolio of assets, we provide energy to customers in every state and territory on mainland Australia consistent with our purpose to strengthen communities through responsible energy solutions. As well as an extensive network of natural gas pipelines, we own or have interests in gas storage and generation facilities, electricity transmission lines, and over \$750 million in renewable generation.

Given the importance of gas to the Australian economy, we fully support measures that will improve the reliability of supply for both residential and commercial customers. Australia is blessed with significant natural gas reserves. Gas shortfalls would have serious ramifications for the domestic gas industry and put its social licence at risk.

That said, it is important that we maintain incentives for the gas industry to continue to invest in new gas infrastructure and new gas supplies. Whilst we support the intent of the reforms, a framework that is founded on facilitating a market response is the best way to continue to underpin confidence and investment in our east coast gas system. Only in extreme circumstances, when all other options have been exhausted, should a directed response be adopted.

We are concerned that the proposed amendments, as drafted, provide the Australian Energy Market Operator (AEMO) with unfettered powers to intervene in the operation of the east coast gas market, without the necessary safeguards to protect and maintain investor confidence. This risks undermining future investment to support the continued development of the east coast gas markets, at precisely the time these markets are needed to support the withdrawal of coal capacity through the energy transition.

Without careful consideration around the application, limits and oversight of AEMO's proposed powers, there is a risk that gas supply and market capacity will decline at a faster pace than is currently anticipated, undermining the intent of these reforms.

These concerns, as well as suggested amendments to the draft legislation, are outlined below. We will provide further feedback in relation to the draft Regulations and Rules for 21 October 2022 and look forward to the phase 2 consultation by the AEMC. It is critical that these reforms are designed and implemented with due care to avoid creating unintended consequences, inefficiencies, lack of confidence in the gas markets, and asset title risk.

Due to the short timeframe to review and provide comments on the draft legislation, APA has not had the opportunity to fully consider the draft legislation (including the potential consequences arising from the draft legislation). Accordingly, APA has only sought to raise some of its initial key issues in this submission.

AEMO's Ability to Give Directions & Potential Risk (Questions 1 and 10)

The Consultation Paper states that:

"[w]here the market does not or cannot respond to AEMO's signalling and an actual or potential threat emerges, the framework provides for comprehensive directions powers."

However, as drafted, the powers of AEMO to issue directions are not constrained to circumstances where the market does not or cannot respond as needed.

Section 91AF(2)(b) states that directions may be given to "prevent, reduce or mitigate an actual or potential threat" to reliability or adequacy of supply but the subsection is expressed to be without limitation to subsection (1). This suggests AEMO may issue a direction even in the absence of an actual or potential threat, which does not seem appropriate or consistent with the policy objective.

The legislation should be consistent with the policy objective and provide, where possible, for an escalation of response by AEMO, from advising the market of the forecast shortfall to exhausting market responses through to declaring an event. If a market solution is still not forthcoming, only then should AEMO deploy directions. This approach would be consistent with the policy objective, placing a market response as the most efficient and effective means of resolving supply and demand mismatches, and maintaining confidence in the investment and contractual structure of our east coast gas markets.

Further, the term "potential threat" in the current drafting does not appear to have adequate consideration to the likelihood of a threat materialising. By having AEMO *declare a threat*, APA believes AEMO should be required to justify the expected or likely risk of the supply constraint materialising and communicate the facts on which that conclusion has been reached. This is consistent with approaches adopted for AEMO's functions in the Victorian Declared Wholesale Gas Market (DWGM) and National Electricity Market (NEM).

Recommended amendment

Section 91AF includes express terms 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;
- AEMO uses best endeavours to achieve a market response before giving directions
- AEMO declares a *potential threat*, assesses risk of potential threats and communicates potential threats prior to giving directions where possible

Directions to be Given to the Most Appropriate Person (Question 15)

AEMO will have a broad discretion as to which "*relevant entities*" it will issue a direction to for the purpose of maintaining or improving the reliability or the adequacy of supply. It is unclear who directions will be issued to (and how this will be decided) and how directions will be coordinated between relevant entities.

For example, as currently drafted, it is technically possible that AEMO could:

- direct infrastructure operators, without making corresponding directions to shippers/gas producers with contracted positions; or
- give directions in circumstances where shippers/gas producers do not have contracted positions.

This would not be the optimal outcome from a regulatory or contractual perspective, given infrastructure operators do not own natural gas and cannot sell/supply natural gas to end users. AEMO should consider the contracted and uncontracted positions of shippers/gas producers when issuing directions.

Further, if directions relate to making gas available at a specific location, directions should primarily be given to market participants who have title to the gas and have the right to utilise relevant infrastructure. Once

those directions have been issued, market participants would then make nominations to the relevant infrastructure owners in most circumstances and preserve contractual arrangements.

This approach is consistent with the existing Gas Supply Guarantee approach and Contingency Gas framework for the Short Term Trading Markets (STTM). As an infrastructure operator, APA has no title to the gas, but under the draft legislation could be put in a position where it has to choose which shipper's gas or right to transport should be utilised and which shippers to curtail to comply with a direction. This puts infrastructure operators in a precarious position of contravening its contractual obligations. For many reasons, this is not an optimal outcome.

Recommended amendment

Section 91AF (10) includes express terms that:

- Clarifies who directions will be issued to (and how this will be decided) and how directions will be coordinated between relevant entities.

Scope of Directions (Question 1)

As currently drafted, it appears that AEMO has the ability to direct infrastructure owners to carry out capital works if this is for the purpose of maintaining or improving the reliability of supply or the adequacy of supply.

The Consultation Paper states that the intent is to allow AEMO to direct “*an entity that owns, operates, or controls transport capacity to make that capacity available (for example, to ensure gas supply can be transported to specific locations within the interconnected network).*”

The right to direct that capital works are carried out does not appear to be consistent with the policy objectives. Accordingly, a direction to an infrastructure operator should be limited to requiring infrastructure operators to make existing capacity available to market participants where technically and operationally feasible to do so in a safe manner.

External Oversight & Transparency in AEMO's use of Direction Powers (Question 1)

As currently drafted, the Laws provide AEMO with extensive and broad powers of direction to be utilised at their discretion. AEMO is also empowered to draft its own guidelines, procedures and metrics, before reporting confidentially to the Ministerial Council on Energy (MCE) on its performance in use of its powers of direction. There is currently no external oversight or transparency envisaged by the Laws on AEMO's use of powers of direction, efficiency, effectiveness, or consequences when applied.

APA proposes that external oversight of AEMO's functions in east coast reliability and supply adequacy be included in the Laws and that AEMO should be obligated to prepare and publish publicly available impact reports post use of direction powers. In addition, AEMO's conclusions and advice on reliability and supply adequacy to the MCE should be made public (confidential information excluded) for consideration and response by relevant entities. This is not dissimilar to AEMO's Gas Supply and System Adequacy Risks report.

Recommended amendment

New section in 91 which includes express terms that:

- An external oversight body to AEMO, such as the Australian Energy Market Commission or Australian Energy Regulator as examples, assess and review AEMO's powers of directions in the rules, procedures and guidelines against AEMO's post declared events reports. This ensures an

assessment of whether AEMO has acted in accordance with the laws, rules and procedures and gives industry an opportunity to comment.

Section 91AE includes express terms that:

- Conclusions about the east coast gas system reliability and supply adequacy provided by AEMO to the MCE is made public excluding confidential or protected information.

Section 91AF includes express terms that:

- AEMO must publish publicly reports post the declared event assessing the circumstances leading up to the event, actions taken to assess a market response, outcomes of the event and consequences of actions taken.

A Direction Must Give Consideration for Safety and Basis to Object to Direction

Section 91AF deals with what elements AEMO in giving a direction must or may consider. Currently missing from this list under 91AF is consideration for safety of people or property. Similarly, Section 91AF (8) states “A person to whom a direction under this section applies must comply with the direction.” There is no ability for a person to object on safety grounds as there is in the Victorian Declared Transmission System NGL provisions in Section 91BC (2) (b). This should be addressed.

Recommended amendment

Section 91AF (8) includes express terms that:

- A person must comply unless it cannot due to safety reasons

Cost Recovery & Compensation Framework (Questions 3, 4 & 16)

In Schedule 1 (11) and (13) of the proposed Law changes, reference to an “*equitable and efficient framework*” should be inserted in both clauses. This allows for the National Gas Rules on cost recovery and compensation to take account of the most efficient and effective methods of costs flowing through ultimately to the end user. Without consideration of an efficient and equitable cost recovery and compensation framework, duplication in costs could emanate between market participants and infrastructure operators. In terms of compensation, without such consideration, an inefficient compensation framework could result where infrastructure owners are unable to recover costs contractually through customers, resulting in multiple entities applying for compensation related to the same direction. This ultimately is not an ideal outcome for consumers.

Recommended amendment

Schedule 1 (11) includes express terms that:

- The payment of fees and charges under section 91E to enable AEMO to recover costs gives consideration of an efficient and effective structure

Schedule 1 (13) includes express terms that:

- Arrangements to pay compensation to relevant entities adversely affected by AEMO’s exercise or performance of its east coast gas system functions gives consideration of an efficient and effective structure.

Inconsistent Terminology between Victorian Market Provisions & East Coast System Provisions

The Consultation Paper states these reforms have been based on AEMO’s declared system functions in Division 2 of the NGL (excluding AEMO’s role as operator of the declared transmission system). Despite this, terminology between Division 2 – AEMO’s declared system functions and the proposed Division 1A

AEMO's east coast gas system reliability and supply adequacy functions differs. In the declared system functions section, security of supply is the operative term whereas it is now changed to supply adequacy in Division 1A. Neither term is defined in the Law and therefore will result in confusion in application between the two markets.

Reliability as a term is defined in the Consultation Paper as "whether the required volume of gas can be delivered to a location at the time it is needed". However, reliability is not defined in the Law. Typically, in industry, reliability refers to the percentage of time firm services are available and customer nominations can be delivered on an asset (pipeline). APA has a very strong reliability record: our most recent Annual Report noted our customers' gas transmission nominations were delivered 99.9% of the time, underscoring the reliability of our operations. But this is a different measure from "whether the required volume of gas can be delivered to a location at the time it is needed" – which is ultimately determined by customer (shipper) nominations. Inconsistency between how reliability is defined or used under the law versus in common industry practice risks creating confusion and misinterpretation both of the problem and of the outcome AEMO is seeking.

Recommended amendment

Section 2 Definitions insert definitions as they relate to the east coast gas system for:

- Supply adequacy
- Reliability

If you have any questions about our submission, please contact Rebecca Mason on (07) 3512 5854 or marketsmanager@apa.com.au.

Regards,



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