

# *Consultation Paper: Extension of AEMO Functions and Powers to Manage Supply Adequacy in the East Coast Gas Market*

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## RECOMMENDATIONS AND KEY POINTS

### Key Recommendations

1. Postpone the introduction of the *National Gas (South Australia) Amendment (East Coast Gas System) Bill 2022* to allow further consultation and development of its contents.
2. Undertake further analysis and consultation, including examination of the total cost to industry on the requirement to provide data to AEMO. As part of this process, examination of industry-wide effects of AEMO's increased powers, particularly with regards to contracts should be investigated.
3. Undertake a formal review of the effectiveness of the GSG prior to increasing the powers and functions of AEMO.

### General comments on the Consultation Paper

- APPEA notes the lack of industry consultation as part of this process. The Energy Ministers' meeting occurred on the 12 August 2022, yet industry has only had two weeks to comment on the significant changes which are contained in the draft Bill. This is inadequate time for considered consultation to occur.
- The urgency for the amendment to the *National Gas (South Australia) Amendment (East Coast Gas System) Bill 2022* is said to be because of the forecast shortfall in winter 2023. However, as the recent Heads of Agreement has been designed to prevent a gas supply shortfall and secure competitively priced gas for the domestic market, this appears to lessen the urgency for a draft Bill with such a short turnaround.
- In addition to the short timeframe for consultation, the consultation period itself overlapped with several other consultations on similar matters, including GSOO data requests from AEMO. The volume of consultation and information requests in the past three months has been significant. It is not possible for companies to provide appropriate consideration and feedback to so many time-intensive, concurrent requests, especially as the same (or very similar) internal resources are drawn upon for each. We recognise the importance of this work, and companies want to participate and provide valuable feedback, but this is extremely challenging within the current timeframes.
- Increasing AEMO's functions and powers to "manage" supply adequacy in the East Coast gas market is unnecessary, duplicative in nature and generates an additional burden on the industry. Further analysis is required to include clear parameters on all participants to ensure there is a level of accountability in the market.
- There is a lack of detailed information in the draft Bill. For example, the requirement to provide AEMO with data is not clear on the format this will need to be presented in. This poses a large administrative burden on industry players. Additionally, the inclusion of potential penalties for non-compliance requires further consultation.
- The directive powers for AEMO contained in the draft Bill appear to be broad and undefined. From the information contained in the Bill, it would seem that AEMO could direct a market



player to transfer their gas supply to AEMO, it is unclear how this would affect contracts that are currently in place.

- Section 294(H) of the Bill will allow the South Australian Minister to make a further suite of rules for a period of six months from the commencement of the Bill. It is unclear as to why this clause is needed. Additionally, it would seem to give the South Australian Minister carte blanche to make changes to the Bill/add to the Bill. The consultation paper asserts that this will enable the Rules to be refined to ensure the effective operation of the initial package. APPEA considers that it would be preferable to postpone the Bill for at least six months to enable the Bill to be effective from commencement.
- The Gas Supply Guarantee was an effective mechanism utilised to ensure that gas supply was not interrupted during winter 2022. The consultation paper does not make a strong case for the additional powers the Bill would provide AEMO. APPEA suggests that a formal review of the effectiveness of the GSG be undertaken prior to increasing powers and functions of AEMO.
- Little evidence is provided in the consultation paper of market failure in the east coast gas market that would justify the level of intervention proposed by this legislative package. Consequently, government intervention through AEMO is likely to result in a sub-optimal outcome for energy users and participants. The Australian east coast gas market is mature and functional; the market will ensure there is enough gas. As is stated in the consultation paper, market-led solutions are preferable.
- An alternative to setting up a way for AEMO to intervene in the market, is to increase supply of gas in the East Coast market, particularly in Victoria and NSW. This would alleviate the need to direct gas from Queensland to the south at times when there is a perceived shortage.



## INTRODUCTION

The Australian Petroleum Production & Exploration Association (APPEA) is the peak national body representing Australia's oil and gas exploration and production industry. It has around 60 full member companies. These are oil and gas explorers and producers active in Australia. APPEA members account for around 95 per cent of the nation's petroleum production. APPEA also represents around 140 associate member companies that provide a wide range of goods and services to the upstream oil and gas industry.

APPEA welcomes the opportunity to provide comment on the *Extension of AEMO Functions and Powers to Manage Supply Adequacy in the East Coast Gas Market* Consultation Paper (the consultation paper) released by the Department of Climate Change, Energy, the Environment and Water on 26 September. In addition to this Submission, a number of APPEA members have made individual submissions on the consultation paper. This response should be read in conjunction with submissions from APPEA members. APPEA's submission addresses specific aspects of the consultation paper, focussing on those areas of particular importance for the upstream oil and gas industry.

## RECENT ENERGY MARKET DEVELOPMENTS AND THE ROLE OF GAS

The recent review of the Australian Domestic Gas Security Mechanism (ADGSM) found that it was gas-fired power generation – and the action of the gas industry to ramp-up supply at extremely short notice – that ensured energy security when coal-fired and renewable power generators were unavailable or unable to respond to high demand.

The recently signed Heads of Agreement between the three east coast LNG projects and the Commonwealth, demonstrates the industry's commitment to Australian homes and businesses. LNG exporters will first offer uncontracted gas on competitive market terms to the domestic market before it is offered to the international market. Additionally, LNG exporters will comply with a newly published *Australian Gas Industry Code of Conduct*, which will boost transparency in the market. LNG exporters will also provide data to the ACCC and publish information on uncontracted gas volumes to give domestic gas customers more visibility of gas available to the market. The industry has shown its strong commitment to Australia.

As part of the Heads of Agreement process, the Minister for Resources and Northern Australia announced that there is no need to activate the ADGSM as there is enough gas to supply the domestic market while honouring our export contracts and trading relationships.

APPEA remains committed to working constructively with the Australian Government to ensure more natural gas developments take place on the east coast, particularly in the southern states.

The industry has demonstrated over many years that it works constructively with government on voluntary, industry-led solutions, to ensure ongoing and secure supply to the domestic market.

The focus of all stakeholders must now be to continue to build confidence in the oil and gas sector and support further investment. Investment, not ongoing intervention is key to increasing supply and will underpin future industry growth.



## COMMENTS ON KEY ISSUES RAISED AND QUESTIONS ASKED IN THE ISSUES PAPER

The following sections set out APPEA comments on key areas of the consultation paper. As a general comment on the questions in the consultation paper, there is not enough information or time to make a substantial response to the questions.

### The Draft Bill – Overarching Functions and Rules

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?*

The powers proposed in the Bill appear undefined, as is the mechanism with which AEMO will utilise these new powers. For example, the paper notes that if the industry's response is inadequate, AEMO will intervene, but the criteria it would use to assess whether a response is (or is not) adequate is not well defined. In addition, how will AEMO keep industry informed of its processes and decisions? Will the decision to intervene be solely based on AEMO's assessment?

2. *Does the definition of east coast gas system exclude anything that should come within scope of the new function?*
3. *Do stakeholders consider any additional requirements should be specified in relation to the rules in relation to the manner in which AEMO exercises its functions?*

Industry requires more information as to the process involved, for example what information will AEMO use to make its decisions, how will AEMO set targets, how will it resolve inter-jurisdictional directions.

4. *Do stakeholders consider that AEMO should develop any specific procedures or guidelines for its new functions?*

Yes, APPEA and its members consider that AEMO should develop specific procedures and/or guidelines for its new functions. Further detailed consultation is required as part of this process.

5. *Do you think a review of this regulatory package after three years is appropriate?*

Yes, APPEA and its members consider that a review of the proposed regulatory package is appropriate after three years if not sooner. Specifically, a review should be undertaken after 12 months and a sunset clause of three years should be included.

### Transparency

*Regarding the proposed additional information requirements set out in Table 1*

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?*
7. *Do stakeholders have any comments about the proposed additional information reporting and disclosure arrangements, and related transitional timeframes?*



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 definitions or links to other regulatory reporting requirements?*  
No comment.
9. *Regarding the further more granular information set out in the section above (subject to further consultation in 2023), Senior Officials welcome views on:*
- (a) The categories of information, and whether they are appropriate for real-time or hourly reporting?*
  - (b) What is the optimal approach to the collection of the categories of information listed above in the interests of minimising costs and ensuring efficient data transfer?*

The proposed requirement for industry players to provide AEMO with data for it to be able to perform its new task is arduous, costly and an additional administrative burden on our members. There is no acknowledgement of this or compensation for this cost. The amount of data AEMO is seeking is very significant. We further note that the market participants must provide AEMO with updates to their data when circumstances or conditions change, this is a significant request and would involve substantial resources from our members.

Industry players are already burdened with significant requests to provide data, it would be beneficial for this data collection to be undertaken by government in a more coordinated manner. The industry has always supported transparency but the proposed requirements are inefficient and unnecessarily burdensome.

Additionally, there is no consideration of the commercial nature of a lot of the data that AEMO is seeking, and in particular how will the data be presented and if it will be possible to identify individual participants. We also note that AEMO may elect to disclose the information it receives on the Gas Bulletin Board or in the Gas Statement of Opportunities.

Sensitive data may need to be handed over to AEMO who may then share with, for example, Queensland power generators. Queensland power generators are government owned corporations and are competitors to private generators and participants in the power sector.

The consultation paper also includes the expectation that AEMO may need additional, ad-hoc information to provide further insight on system adequacy issues. Again, this is expected to be a significant administrative burden on our members.

APPEA also notes that the draft Bill specifies a transition period of a month from commencement of the rules, after which disclosure obligations will be live. This is unlikely to provide our members adequate time to prepare the data AEMO is after and devote resources to the task.

APPEA questions whether a lot of the requested data is already available to AEMO from different institutions, for example, ASX.

The draft Bill includes AEMO applying penalties when market participants do not provide required information, do not provide it in a timely manner or to the required standard. This is unreasonable,



particularly during the initial start-up of the process, as it would be expected that it would take some time to smooth out the process. Additionally, the market participants have not been provided with a proforma or template, etc so they can set up potential systems to be able to provide AEMO with the requested data in a format that is deemed acceptable.

**APPEA considers that there is a considerable amount of work that needs to be undertaken on the collection of data before the draft Bill is presented to the South Australian Parliament.**

#### Gas Supply Adequacy and Reliability Conferences

10. *What are your views on formalising and extending AEMO's ability to hold Gas Supply Adequacy and Reliability Conferences?*

The formalising of these conferences, in particular the allowance of "AEMO to seek a market response and, if no response is forthcoming, take more interventionist actions to address the threat" requires further consideration. There is no discussion or information on the success of the current GSG framework, APPEA considers that a formal evaluation of the GSG framework should be undertaken with Government and market participants prior to establishing a new, potentially interventionist regime. Additionally, more information is required as to what procedures and guidelines will be enforced.

#### Directions powers

11. *Are there particular principles which should guide AEMO's expanded powers of direction?*
12. *Are there any other approaches that could be undertaken to elicit market responses ahead of directions powers?*
13. *How should AEMO work with stakeholders in giving directions?*
14. *Are there technical matters that should be considered in the issuing of directions powers?*
15. *Are there any entities that should not be subject to directions or certain types of directions?*

APPEA has concerns with the directions, for example "It is not intended for the first stage of reforms to contain specific or comprehensive procedural requirements or limits on AEMO..." and "it is intended that subsequent rules could be developed in the second stage of the reforms, if necessary...". APPEA notes the significant power that appears to be given to AEMO through these provisions. There is a lot of detail that industry players require to understand what AEMO's powers could be, for example if the gas is contracted does AEMO have the power to instruct that gas to be placed in the east coast market, and as such what does that mean for the contracts that have already been entered into. Additional consultation is required on the relationship between AEMO and contractual provisions.

The GSG was primarily restricted to gas powered generation, APPEA notes that through this process AEMO's powers and functions are extended and in effect the GSG will apply to the whole of the east coast gas market. This is a significant change to the existing system and consequently requires further consultation and analysis.



### Cost recovery and compensation

16. *Do the proposed changes to the cost recover framework enable AEMO to appropriately recover costs in relation to its east coast gas market reliability and supply adequacy functions?*
17. *What costs should parties who must comply with directions be able to seek compensation for? (eg direct costs, opportunity costs)*
18. *How should the costs of compensation be apportioned and recovered from the market?*
19. *Should there be financial limits on individual claims, or on claims overall within a financial year?*
20. *Is the proposed \$35m initial trading allocation appropriate?*
21. *How should the trading function be funded?*
22. *What principles, if any, should guide AEMO's trading functions?*

As noted earlier, APPEA is concerned that the draft Bill does not propose compensation being provided to industry players to cover their considerable costs of providing AEMO with data as contained in the draft Bill. The draft bill also does not contain compensation for market participants for the opportunity costs that may be generated by AEMO's directions or the costs to exporters.

It is important that market players are able to access compensation for opportunity costs from following AEMO's directions. Without including recognition for opportunity costs in cost recovery and compensation, market players behaviour may be inefficient and skewed away from contracts as they are not compensated for their losses should they be required by AEMO to break their contracts. This will result in a significant change to the way the whole market operates. Further consultation and assessment on behavioural responses needs to be undertaken.

AEMO's directions may force exporters to redirect their products to the domestic market. This will potentially cost the exporters in terms of broken contracts and a loss of export parity pricing. Such an outcome, which the Heads of Agreement recently agreed with the Australian Government sought to specifically avoid, would do immense damage to Australia's reputation as a dependable exporter. This may flow on to future contracts. The Bill must avoid such an outcome.

Instead of giving AEMO trading functions, consideration could be given to an umbrella approach, whereby participants seek a pre-determined outcome as an industry, ie AEMO announces an outcome it wants to achieve and the industry works together to reach that outcome.. The trading function aspect needs further consultation and analysis.

## CONCLUSIONS/NEXT STEPS

APPEA remains committed to working with the Australian Government. We continue to encourage the industry and all governments to work constructively and collaboratively to ensure Australia continues to enjoy a secure and stable energy system. APPEA recommends that further





consultation with industry and Government take place to ensure that the most optimal solution can be reached.