



7 October 2022

Attention: Energy Ministers Secretariat

Submitted by email: gas@industry.gov.au

Dear Sir/Madam,

NGL Consultation – Extension of AEMO Functions and Powers

The Australian Financial Markets Association (AFMA) is responding to the consultation on amendments to the National Gas Law (NGL) to extend AEMO functions and powers to allow it to manage east coast gas adequacy. This consultation raises important issues and proposes significant changes to AEMO's powers, given the significance of these changes a two week consultation period is manifestly inadequate and encourage energy ministers to ensure that future in future they provide at least 4 weeks for consultations.

AFMA is the leading industry association promoting efficiency, integrity and professionalism in Australia's financial markets. AFMA has more than 120 members reflecting a broad range of participants in financial markets, including a number of energy companies who are active in Australian energy markets.

The recent unprecedented disruptions in electricity and gas markets have highlighted the need to review the markets regulatory arrangements to ensure they remain fit for purpose. AFMA appreciates Energy Minister's desire to ensure adequate supply of gas to the east coast but we have reservations about; the potential impact of the proposed reforms on the energy market and the proposed information powers. We will address most of our concerns in our response to your consultation on the draft regulations and rules but feel that there are two issue regarding the sharing of protected information with ministers and their departments and the scope of AEMO's power to trade in natural gas that need to be addressed in the NGL.

1. Protected information

The AER and AEMO regularly received commercially sensitive information from market participants to allow them to perform their functions. They are required to use and disclose the information in accordance with the law and rules. It has been a clear feature of the energy laws that market bodies do not have general powers to share information with ministers or their departments. The policy rational for this is that ministers and their departments did not need the information to perform their functions and that they are not subject to the same confidentiality obligations as the market bodies.

Australian Financial Markets Association

ABN 69 793 968 987

Level 25, Angel Place, 123 Pitt Street GPO Box 3655 Sydney NSW 2001

Tel: +612 9776 7993 Email: secretariat@afma.com.au

This approach is important in ensuring market confidence in the appropriate handling of confidential information by market bodies. It is particularly relevant when ministers have responsibility for government owned businesses that are participants in the energy market; in this case it will generally be inappropriate for ministers and their departments to receive commercially sensitive information about companies that compete with the government owned businesses they are responsible for.

The proposed amendments to the National Gas Regulations change this approach by adding ministers and their departments to the list of prescribed bodies that AEMO is permitted to share information with under s91GC(2)(h) of the NGL. Section 91GC is written very broadly to facilitate cooperation between market bodies performing functions under the NGL and operating under equivalent information protection obligations to AEMO. We do not consider that this is an appropriate mechanism to use for sharing information with ministers and their departments as there is effectively no restriction on the information that may be shared and no restriction on how the information can be used.

AFMA has not been able to identify an explanation for the change in the consultation paper but we understand the intention is to allow AEMO to share information with government to assist in the coordination of minister's and AEMO's emergency management powers. We note these reforms do not change minister's existing emergency management powers and that they are currently able to exercise them without receiving confidential information from AEMO, generally by relying on information powers in their own legislation. But if policy makers feel that there is a need for ministers and their departments to have access to confidential information held by AEMO we think that new provisions should be inserted into the NGL to specifically provide for this. The provisions should:

- a) limit AEMO's ability to disclosure information to where it is necessary to allow a minister to use their powers under jurisdictional gas legislation to assist in the management of an actual or potential threat
- b) limit the use of the information to managing the response to the actual or potential threat
- c) impose equivalent confidentiality obligations on anyone receiving the information to those that apply to AEMO
- d) require the return of the information to AEMO once the actual or potential threat has subsided

2. Trading in natural gas

Energy ministers wish to give AEMO a last resort power to trade in natural gas to ensure the reliable supply of gas. But there is a risk that allowing AEMO to participate in the gas market could increase uncertainty in the market if there is no a clear framework for AEMO will use this power. The current draft amendments do not contain such a framework.

AFMA proposes that AEMO's power to trade in natural gas or to purchase pipeline services or services provided by a storage provider in s91AD(f) should be restricted by a requirement that this activity must be conducted in accordance with the National Gas Rules (NGR). The NGR should then contain a framework setting out how AEMO can use these powers. The framework should:

- a) Be linked to AEMO's function of identifying actual or potential threats
- b) Make clear that the power is only to be used as a last resort and that a market response is always preferred
- c) Require AEMO to publish information about actual or potential threats and allow the market to respond, before it can use these powers

- d) Provide clear criteria about when AEMO will use the powers
- e) Prevent AEMO from holding positions for greater than 12 months to reduce the risk of AEMO interventions becoming a permanent feature of the market

AFMA would welcome the opportunity to discuss the extension of AEMO functions and powers. Please contact me on 02 9776 7994 or by email at lgamble@afma.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lindsay Gamble', written in a cursive style.

Lindsay Gamble
Policy Director