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Mr Russell Pendlebury
Project Leader
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Dear Mr Pendlebury

Re: GRC0052 Draft Rule Determination –National Gas Amendment (NT Emergency Gas Supply Arrangements) Rule 2019

The Northern Territory Department of Treasury and Finance (DTF) is pleased to make this submission to the Australian Energy Market Commission's (AEMC) Draft Rule Determination on the National Gas Amendment (NT Emergency Gas Supply Arrangements) Rule 2019.

The Northern Territory Government rule change request and AEMC draft rule determination

The Northern Territory gas market became connected to the East Coast gas market upon commencement of the Northern Gas Pipeline on 3 January 2019. Consistent with the AEMC's 'Improvements to Natural Gas Bulletin Board' rule determination, operators of gas transmission pipelines and production facilities in the Northern Territory that are not remote Bulletin Board facilities and have a nameplate rating of more than 10 terajoules (TJ) per day were required to apply to the Australian Energy Market Operator (AEMO) for registration of their facilities by 6 May 2019 and to commence reporting Bulletin Board information from the date of their registration.

As a result of consultation by AEMO on amendments to the Bulletin Board Procedures in early 2018, the Northern Territory Government became aware that AEMO had interpreted the AEMC's determination as extending Bulletin Board reporting requirements to the interconnected upstream pipeline and production facilities of the Northern Territory liquefied natural gas (LNG) projects. This interpretation was despite LNG facility operators not being entities obliged under the National Gas Law (NGL) to report information to AEMO for the purpose of the Bulletin Board. At that time the Northern Territory Government became concerned that Bulletin Board reporting requirements may undermine the commercial incentives for NT LNG projects to maintain their connections to the Northern Territory gas market and, more specifically, to continue with emergency backup supply arrangements with the Power and Water Corporation (PWC) which underpin security of gas and electricity supply in the NT.

Like the East Coast LNG projects that participated in the AEMC's East Coast Wholesale Gas Market and Pipeline Frameworks Review, Northern Territory LNG projects have expressed concern that publication of their facility information on the Bulletin Board may affect their competitive position in the international LNG market. ConocoPhillips (COPA) has stated:

> *COPA believes having information published on the Bulletin Board may affect the management of Gas Supply Agreements (GSA's) with buyers. DLNG believes this could impact its competitive position in the global LNG market. For example, it is not uncommon for GSA's to include clauses that require sellers to source and provide gas to the buyer from the LNG global market. If the LNG market becomes aware the seller is in a distressed position, they could*

leverage the information to apply a premium to the spot cargo bought by the seller to meet a buyer's contractual requirements.[1]

In February 2018, the Northern Territory Government sought clarification from AEMO, the Australian Energy Regulator (AER) and AEMC on the application of the 'Improvements to Natural Gas Bulletin Board' rule changes to Northern Territory LNG projects. The Northern Territory Government subsequently requested that the AER, as the regulator, provide formal guidance on the reporting requirements that would apply to Northern Territory LNG projects under the new rules following commencement of the Northern Gas Pipeline.

The AER's guidance, received in July 2018, was that:

- the 'Improvements to Natural Gas Bulletin Board' rule changes will impose Bulletin Board reporting requirements on the Northern Territory LNG projects
- the changes to the Bulletin Board requirements have been designed to remove most avenues for reporting exemptions and the circumstances, whereby Northern Territory LNG projects are connected to the domestic grid via emergency pipelines, do not provide cause for exemption from Part 18 of the National Gas Rules (NGR)
- the emergency pipelines exceed the threshold for Bulletin Board reporting (10 TJ per day) and classification of the emergency pipelines as Bulletin Board pipelines means interconnected upstream facilities, that also exceed the reporting threshold, may be captured by Part 18 of the NGR.

Notwithstanding its conclusions, the AER's advice acknowledged that the circumstances surrounding the Northern Territory LNG projects appear unique and required a particular interpretation under the NGR and NGL. The AER's advice noted that if there are concerns that the NGR are not fit for purpose in the context of the Northern Territory as it transitions to the national arrangements, the AER recommended the most appropriate course of action may be to seek a rule change.

Northern Territory Government rule change request

The Northern Territory Government subsequently submitted a request to the AEMC in November 2018 that changes be made to the NGR such that LNG related facilities upstream of the Northern Territory LNG projects' connections to the Northern Territory gas market, and which may be captured by registration and information provision requirements within Part 18 of the NGR, are exempt from such provisions to the extent the facilities are:

- principally operated as part of an LNG operation; and
- connected to the Northern Territory gas market solely through a pipeline facility at the location of the LNG producing operation.

The Northern Territory Government's intent in making the rule change request was that all of the Northern Territory LNG projects' facilities upstream of their connections to the Northern Territory gas market be exempt from Part 18 of the NGR. Information about these facilities would consequently not be published on the Bulletin Board.

The Northern Territory Government proposed that information relevant to the Northern Territory gas market, such as the gas flows from notional production facilities at the point of connection of the Northern Territory LNG projects to the Northern Territory gas market, could be reported and published

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[1] ConocoPhillips 2019, *Submission to AEMC Consultation Paper – National Gas Amendment (NT Emergency Gas Supply Arrangements) Rule 2019 – Attachment 1 Stakeholder Feedback Template*, 14 March, p. 2.

under Bulletin Board reporting requirements that are fit for purpose for the Northern Territory gas market. Specifically, such gas flows could be reported by another Bulletin Board participant (for instance, the owner or operator of the emergency pipelines), negating any need for the Northern Territory LNG projects to register for the Bulletin Board.

Under this proposal, the Northern Territory Government argued that irrelevant information related to the production and transportation of gas from upstream facilities to the Northern Territory LNG projects would not be reported or published. These changes would streamline the administration of the Bulletin Board and improve the relevance of the Bulletin Board to Northern Territory gas market participants.

AEMC draft rule determination

In response to the Northern Territory Government's rule change request, the AEMC's draft determination of 23 May 2019 is to make what it considers to be a more preferable rule.

The draft rule proposed by the AEMC would provide an exemption for the Northern Territory LNG facilities upstream of their connection points with the Northern Territory gas market based on these facilities not interacting with the domestic market except in the event of emergency backup gas supply.

Under the draft rule, if the AER is satisfied that certain events have occurred it may issue a notice to an exempt Northern Territory LNG facility that it is no longer exempt from the Bulletin Board reporting requirements. These events are:

- natural gas flows from the Northern Territory gas market to a Northern Territory LNG project after 31 December 2019 (to allow for commissioning gas to Ichthys LNG in 2019)
- natural gas flows to the Northern Territory gas market on a day when there was no planned or unplanned outage of the Blacktip facilities, including the Bonaparte Pipeline
- natural gas flows to the Northern Territory gas market on a day when there was a planned or unplanned outage of the Blacktip facilities, including the Bonaparte Pipeline, but the volume of gas flows from the Northern Territory LNG projects was more than reasonably required to cover the relevant outage or the duration of the gas flow was materially greater than the duration of the relevant outage.

The AEMC has indicated that it considers that its draft rule addresses the same issues as identified by the Northern Territory Government, but provides for circumstances in which the AER may determine that the exemptions no longer apply.[2] Further, the AEMC has stated that the draft rule is a more preferable rule because the exemption is limited to the extent of outages of the Blacktip facility and because PWC would be required to provide details of the use of the emergency backup supply arrangements.[3]

The AEMC's draft rule represents an improvement over the status quo but is not a more preferable rule

DTF considers the AEMC's draft rule represents an improvement to the NGR and would further the National Gas Objective compared with the status quo. This is because the draft rule and the proposed exemption, if implemented, would preserve, or at least not completely negate, commercial incentives for the Northern Territory LNG projects to continue with the emergency backup gas supply

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[2] AEMC 2019, *Draft Rule Determination – National Gas Amendment (NT Emergency Gas Supply Arrangements) Rule 2019*, 23 May, p. ii.
[3] AEMC 2019, *Draft Rule Determination – National Gas Amendment (NT Emergency Gas Supply Arrangements) Rule 2019*, 23 May, pp. 4-5.

arrangements which underpin gas and electricity supply security in the Territory, at least for the terms of the existing agreements.

However, DTF respectfully disagrees that the draft rule is preferable to the Northern Territory Government's requested rule change. This is because the draft rule:

- may pose a material barrier to the trade of gas between the Northern Territory gas market and Northern Territory LNG projects and unnecessarily impede the Northern Territory's economic growth and diversification
- may result in reporting of information to the Bulletin Board which is irrelevant to the domestic market and unnecessarily exposes Australian exporters to commercial detriment
- does not make the Bulletin Board reporting requirements fit for purpose for the Northern Territory gas market.

The AEMC's draft rule may unnecessarily impede the Territory's economic growth and diversification

Under the AEMC's draft rule, the exemption for Northern Territory LNG facilities could be removed by the AER in the event that non-emergency gas flows were to occur between the Northern Territory gas market and the Northern Territory LNG projects. The commercial detriment that would be incurred from the lifting of the exemption (from Bulletin Board reporting) following any non-emergency gas flows would create a barrier to trade between the Northern Territory LNG projects and domestic market participants.

The potential for non-emergency gas trades between the Northern Territory gas market and Northern Territory LNG projects were expressly highlighted in the Northern Territory Government's rule change request. At present, the only arrangements that DTF is aware of for non-emergency trade between the Northern Territory gas market and the Northern Territory LNG projects are for non-firm gas sales by PWC to Ichthys LNG in instances where PWC has surplus gas which it is unable to sell to domestic gas market participants.

However, any rule change should take into account future developments in the Northern Territory gas market, which could occur in the next few years. In this timeframe, there may be the potential for more opportunities for trade between the Northern Territory gas market and Northern Territory LNG projects. In September 2018, the Northern Territory Government announced the Northern Territory Gas Strategy to drive the Northern Territory Government's vision to develop the Northern Territory as a world class hub for gas production, manufacturing and services by 2030. The strategy includes five targets:

1. Expand the world-scale Darwin LNG Export Hub.
2. Grow the Northern Territory's service and supply industry.
3. Establish a gas-based processing and manufacturing industry.
4. Grow local research, innovation and training capacity.
5. Contribute to Australia's energy security.

In the context of the Northern Territory Gas Strategy, DTF has been made aware of a number of prospective opportunities for gas trades between the Northern Territory gas market and either existing or prospective LNG projects, which if realised, could offer significant benefits to gas consumers and the Northern Territory economy. The potential trades include:

- minor non-firm gas sales by PWC to Ichthys LNG — the economics of the sale of Northern Territory gas to Ichthys LNG mean that it is only ever likely to occur where a gas wholesaler has contracted to receive gas for which they have not been able to secure a purchaser in the domestic gas market

- the use of Northern Territory gas to assist the restart of LNG projects following shutdowns — under certain conditions, the availability of an external source of gas can expedite the process of restarting an LNG project resulting in increased economic output, income and taxation revenue
- offtake from Northern Territory LNG projects to the Northern Territory Gas market to provide fuel stock for gas-based processing and manufacturing — it is an aspiration of the Northern Territory Government to develop a gas-based processing and manufacturing industry in the Territory and offtake agreements with Northern Territory LNG projects would facilitate this
- supply of gas from Northern Territory LNG projects to the Northern Territory gas market to smooth peak gas demand for electricity generation — at present, Northern Territory gas supply and pipeline capacity to Darwin needs to be held in reserve to meet peak electricity demand periods in the Darwin-Katherine electricity system. It has been proposed that offtake from Northern Territory LNG projects during peak electricity demand periods could allow more Northern Territory gas to be sold on a firm basis to east coast gas consumers (at present, high transport costs and lower spot prices for non-firm sales may be limiting opportunities for Northern Territory gas to flow to the east coast).

These or other innovative proposals may be unlikely to ever develop if barriers, such as the draft rule, are put in place which discourage trade between the Northern Territory gas market and the Northern Territory LNG projects.

The extent to which opportunities for mutually beneficial trade are likely to be forgone will depend on the relative benefits of the trade opportunities to LNG projects and the detriment to LNG projects from being subject to Bulletin Board reporting requirements. With respect to these trade-offs, DTF notes:

- the volume and value of gas produced and consumed by the Northern Territory LNG projects far exceeds the volume produced and consumed for the Northern Territory gas market, indicating that potential trade opportunities are likely to be of minor importance to the Northern Territory LNG projects and so the potential lifting of the proposed exemption as allowed for under the draft rule may be a material barrier to trade
- the draft rule provides no mechanism for the proposed exemption for Northern Territory LNG projects to be reinstated once removed, such that a Northern Territory LNG project would need to assess the benefits of an opportunity for trade with the Northern Territory gas market against all future economic detriment which may result from Bulletin Board reporting.

DTF considers that the imposition of any barriers to trade between gas market participants is inconsistent with the National Gas Objective, specifically, promoting efficient investment in, and efficient operation and use of, natural gas services.

The AEMC's draft rule may result in reporting of irrelevant information to the Bulletin Board to the commercial detriment of Australian exporters

Under the AEMC's draft rule, any non-emergency gas flows between the Northern Territory gas market and the Northern Territory LNG projects may result in the revocation of the proposed Northern Territory LNG project exemption from reporting to the Gas Bulletin Board. This would result in the reporting and publication of information on the Gas Bulletin Board related to the pipeline and production facilities upstream of the Northern Territory LNG projects' connections to the Northern Territory gas market.

A principal argument made in the Northern Territory Government's rule change request and submissions made by Inpex and ConocoPhillips to the AEMC's consultation paper is that information related to the upstream pipeline and production facilities of the Northern Territory LNG projects is irrelevant to Northern Territory and east coast gas market participants.

This is because, at present, the Northern Territory LNG projects only periodically produce limited amounts of natural gas for the domestic market and the vast majority of the information related to the upstream facilities that would be reported to the Bulletin Board would be related to LNG production for export. Even if some of the potential gas trading opportunities identified in the previous section are realised, owing to the likely continued disparity in size of LNG production compared to natural gas production, these developments would be unlikely to alter the irrelevance of this information to the domestic market.

This is why the Northern Territory Government's rule change request specified that an exemption for the interconnected upstream facilities of the Northern Territory LNG projects should be provided to the extent the facilities are 'principally operated as part of an LNG producing operation'[4]. The corollary is that, if at some future point the facilities are not principally operated as part of an LNG producing operation but are instead principally operated as part of a natural gas producing operation, the exemption should no longer apply.

The argument that the publication of information related to the upstream facilities of tho Northern Territory LNG projects is irrelevant to the domestic market appears to have been accepted by the AEMC in its draft determination, in which it stated:

> *In relation to information that is not pertinent to the domestic market, such as the daily production and offshore pipeline flows associated with the LNG projects, the Commission finds that the costs of reporting, while difficult to quantify, can be expected to be greater than zero. The benefits of reporting this information however would be minimal, because of the limited bearing that it has on the domestic market. At present, the key considerations for the domestic market are the overall capacity of emergency supply and the actual flows as they occur.*[5]

In its rule change request, the Northern Territory Government acknowledged that gas flows between the Northern Territory gas market and Northern Territory LNG projects may be of relevance to Northern Territory gas market participants. In an attempt to make the existing NGR work for the Northern Territory LNG projects such that only relevant information related to their activities would be reported to the Bulletin Board, the Northern Territory Government's request was for the Northern Territory LNG projects be treated analogous to integrated production facilities or major gas users, depending on whether gas flowed to or from the LNG facility (while acknowledging that under the current NGL, major users are not subject to the Bulletin Board reporting requirements).

The Northern Territory Government argued that under this arrangement, information relevant to the Northern Territory gas market, such as the gas flows from notional production (or major user) facilities at the point of connection of the Northern Territory LNG projects to the Northern Territory gas market, could be reported and published under Bulletin Board reporting requirements that are fit for purpose for the Northern Territory gas market. Specifically, given the limited interaction of Northern Territory LNG projects and Northern Territory gas market and the likely intermittency of any gas flows, the Northern Territory Government proposed that such gas flows could be reported by another Bulletin Board participant (for instance, the owner or operator of the emergency pipelines), negating any need for reporting by Northern Territory LNG projects.

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[4] Northern Territory Government 2018, *Northern Territory Government Request to Change the National Gas Rules – Northern Territory Emergency Gas Supply Arrangements*, November, p. 1.
[5] AEMC 2019, *Draft Rule Determination – National Gas Amendment (NT Emergency Gas Supply Arrangements) Rule 2019*, 23 May, p. 12.

These changes would streamline the administration of the Bulletin Board and improve the relevance of the Bulletin Board to Northern Territory gas market participants.

Notwithstanding its view that the information related to upstream Northern Territory LNG facilities is irrelevant to the domestic market, DTF notes that the AER, in its submission to the AEMC's consultation paper, indicated that information related to the Wickham Point Pipeline was a substitute for information related to the upstream Northern Territory LNG facilities:

> *We acknowledge that reduced transparency, from any exemptions applying to NT LNG facilities, is potentially mitigated by data reporting by the Wickham Point Pipeline (WPP). Bulletin Board data from the WPP may reflect some of the gas flow activity at NT LNG facilities.*[6]

If at a future point in time, information related to the pipeline and production facilities upstream of the Northern Territory LNG projects' connections to the Northern Territory gas market became relevant to domestic market participants, such as if the facilities were primarily operated for the purpose of natural gas production, then it would be open to any party to make a rule change request that the exemptions be removed.

DTF notes that neither the AEMC nor any submitter to this rule change process has clearly outlined the relevance of information related to the upstream pipeline and production facilities of the Northern Territory LNG projects for domestic market participants, or how this information would be more relevant than information that would be reported to the Bulletin Board by other facility operators.

The AEMC's draft rule does not make the Bulletin Board reporting requirements fit for purpose for the Northern Territory gas market

As illustrated by the AEMC in its draft determination, there is considerable uncertainty and potential disparity in the likely reporting requirements of each of the Northern Territory LNG projects if they were subject to Bulletin Board obligations:

> *The exemption under 164(2) is clear. Data that is reported elsewhere, for example on the WPP, will provide an exemption for the reporting of the same gas flows upstream of the receipt points. There is, however, insufficient clarity as to whether the exemption could be applied in respect of upstream gas production or processing.*
>
> *The Ichthys LNG project is a highly integrated project with gas processing closely interlinked with LNG production. While offshore gas may be unprocessed, it is unclear if there is not some part of the internal infrastructure where total gas flow occurs, and reporting would be required under part 18, where those flows are in excess of what is reported at the receipt point to the WPP.*
>
> *In relation to DLNG, gas processing occurs offshore and the flow of gas does not then travel through the DLNG plant before it is injected into the domestic market. As such these gas flows would be subject to part 18 reporting requirements on the Bulletin Board.*
>
> *The existing rules and existing exemptions are insufficient on their own to achieve the end sought by the proponent; namely the preservation of the commercial incentives of the NT LNG*

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[6] Australian Energy Regulator 2019, *Submission to AEMC consultation stage National Gas Amendment (NT Emergency Gas Supply Arrangements) Rule 2019 – Attachment 1 Stakeholder Feedback Form*, March, p. 6.

projects to maintain emergency gas supply into the domestic market. As a result they need to be clarified in the context of the exemption sought.[7]

A particular point that highlights the seemingly arbitrariness of the potential application of Bulletin Board reporting requirements in the context of the upstream Northern Territory LNG facilities, and consequently that the NGR are not fit for purpose, is that Ichthys LNG may be exempt from reporting information related to its upstream facilities by virtue of processing being undertaken onshore, but Darwin LNG would not by virtue of processing being undertaken offshore.

The AEMC should reassess whether its draft rule is more preferable

DTF requests that the AEMC reassesses whether its draft rule is preferable to the rule change requested by the Northern Territory Government, in the context of the potential economic detriment to the Northern Territory economy, the irrelevance of the information related to the upstream facilities of the Northern Territory LNG projects to domestic gas market participants and that the Bulletin Board rules are not fit for purpose for the Northern Territory gas market.

DTF notes that the market conditions in the Territory are likely to change in the future, however, significant change is not expected in the next few years. If conditions warranting the removal of the Northern Territory Government's requested exemption emerge, it would be open to any party to request that the NGR be changed.

If the AEMC decides not to provide an exemption consistent with the Northern Territory Government's request, at a minimum, a number of improvements to its proposed draft rule should be made.

The AEMC's draft rule should be amended to provide sufficient coverage for the full circumstances which may warrant use of the emergency gas supply arrangements

The AEMC's draft rule provides for the proposed exemption for Northern Territory LNG projects to be removed by the AER if non-emergency gas flows occur between the Northern Territory gas market and Northern Territory LNG projects. The draft rule defines emergency supply to be valid only if it is required to cover an outage of the Blacktip facility, including the Bonaparte Pipeline.

However, DTF understands that a variety of circumstances may necessitate the use of the emergency gas supply from Ichthys LNG and Darwin LNG including related to outages of other production facilities and pipelines.

The exemption should be sufficiently broad to allow for outages of these facilities, and also to changes in circumstances over time, for example, new sources of supply and changes to the legal ownership and legal structure of the facilities or PWC.

The AEMC's draft rule should be amended to allow for non-emergency gas flows

The threshold for pipeline and production facilities to report to the Bulletin Board is a capacity of 10 TJ per day.

Allowing up to 10 TJ per day of non-emergency gas flows before the AER could remove the proposed exemption for the Northern Territory LNG projects would provide some, albeit limited, flexibility for non-emergency gas trades between the Northern Territory gas market and the Northern Territory LNG projects.

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[7] AEMC 2019, *Draft Rule Determination – National Gas Amendment (NT Emergency Gas Supply Arrangements) Rule 2019*, 23 May, p. 16.

By the standard established by the reporting threshold, gas flows of this volume would not be sufficient to affect the domestic gas market.

To avoid unnecessary capital costs, and also to avoid perverse incentives for physical constraints to be applied to the capacity of pipelines that may affect their ability to meet emergency backup requirements, the Northern Territory LNG projects or PWC should not be required to physically limit the capacity of their pipelines.

There should be a mechanism for the exemption to be reinstated once removed

Since under the draft rule the Northern Territory LNG project exemption cannot be reapplied at a future time, the draft rule represents a material constraint on trade between the Northern Territory gas market and Northern Territory LNG projects.

This barrier could be lowered somewhat if there was a requirement for the AER to reinstate the exemption under certain conditions, such as that the gas flows which prompted the removal of the exemption have ceased.

If you would like to discuss these matters further, please contact Ms Samantha Byrne, Senior Director Utilities Reform, on (08) 8999 7487 or at samantha.byrne@nt.gov.au.

Yours sincerely

CRAIG GRAHAM
Under Treasurer

17 July 2019