RULE

Australian Energy Market Commission

RULE DETERMINATION

NATIONAL GAS AMENDMENT (NT EMERGENCY GAS SUPPLY ARRANGEMENTS) RULE 2019

PROPONENT

NT Government

15 AUGUST 2019

INQUIRIES

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ABOUT THE AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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SUMMARY

1 The Australian Energy Market Commission (AEMC or Commission) has made a more preferable final rule that amends the National Gas Rules (NGR) to provide the Northern Territory (NT or Territory) LNG (liquefied natural gas) projects upstream of their connection with the domestic gas market via the Wickham Point Pipeline with exemptions from registration and reporting requirements under the Bulletin Board rules under part 18 of the NGR. The requirements would have required the Northern Territory LNG projects to register as a Bulletin Board participant and report on gas production and transmission facilities upstream of the connection point of these projects with the domestic gas market.

2 Under the final rule the exemption will cease to operate and the Bulletin Board (BB) registration and reporting requirements will apply to the NT LNG projects, if the AER determines that one or more events specified in the final rule (BB application events) occur. The BB application events are defined to include events that indicate that the connection of the NT LNG projects to the NT domestic gas market is for purposes other than emergency back-up supply.

3 The final rule is made in relation to a rule change request submitted by the NT government. The proposed rule was aimed at exempting the facilities from reporting on the Bulletin Board to preserve the commercial incentives for the two LNG projects to maintain their connections to the Northern Territory gas market and to continue with emergency gas supply agreements which underpin security of gas supply in the Northern Territory.

Background and rationale

4 Gas facilities are required to be registered on the Bulletin Board based on a minimum nameplate capacity threshold of 10 TJ per day. NT facilities, which were not connected to the east coast gas markets and therefore exempt from reporting requirements under part 18 of the NGR, are now required to be registered participants as of 6 May 2019, following the completion of the Northern Gas Pipeline in January 2019, which connects the NT market to the rest of the east coast gas market.

5 The AER provided guidance in July 2018 that the new rules classified the pipeline connection between the projects and the domestic market as Bulletin Board pipelines and in addition, interconnected upstream facilities that also exceed the reporting threshold are Bulletin Board facilities that are required to report under Part 18 of the NGR. In this advice the AER acknowledged that the circumstances surrounding the Territory LNG producers may be unique given the purposes for which the connection between the NT LNG projects and the NT domestic gas market was established. The AER recommended the most appropriate course of action would be determined through a rule change process.

6 In November 2018 the Northern Territory government submitted a rule change request to the Commission. The rule change request seeks to introduce changes to the NGR that would exempt LNG related facilities in the NT, upstream of their connections to the NT gas market, from provisions within part 18 of the NGR requiring them to be registered as Bulletin Board participants and from reporting information on their operations on the Bulletin Board.

7 The key benefits anticipated from the final rule are the continued supply of the NT domestic market with emergency back-up gas supply from the two NT LNG projects by virtue of the physical connection and contractual arrangements for emergency supply between the two projects and Power and Water Corporation (PWC).

8 In the event that a rule was not made, the NT government was concerned that the administrative costs of reporting on the Bulletin Board and the potential detriment to the projects from revealing their commercial position to the international LNG market might result in one or both of the LNG projects terminating their emergency supply to the domestic market. As a consequence the gas supply to the NT domestic market could be expected to be less secure, less reliable and higher cost than if a rule was not made.

Features of the rule

9 The final rule provides an exemption for the Northern Territory LNG projects from reporting gas flows that are upstream of their connection with the domestic gas market on the Natural Gas Bulletin Board. The exemption is provided under circumstances in which gas flow into the domestic market occurs for the purposes of emergency back-up supply only.

10 The final rule addresses the same issues identified by the proponent, but provides for circumstances in which the AER may determine that the exemptions no longer apply. Under the final rule the AER may issue a notice to the NT LNG projects that the exemption no longer applies if one or more "BB application events" occurs. The BB application events are defined to include events that indicate that the connection of the NT LNG projects to the NT domestic gas market is for purposes other than emergency back-up supply, being, in summary terms:

- Flow from the projects is into the domestic market only, and not the other way around, with the exception of remaining commissioning gas flow during 2019 to the Ichthys LNG project.
- Flow to the domestic market from the NT LNG projects is only in the event of a gas supply outage or emergency gas supply test.
- The volume of gas supplied from emergency supply must correspond to the shortfall in production resulting from the gas supply outage, or to the duration of the gas supply outage or emergency gas supply test.

11 In order to provide the AER with the information it needs to determine if "BB application events" have occurred, Power and Water Corporation is required to provide notice to the AER of the reasons for emergency supply or an emergency gas supply test on each day of emergency supply (an "emergency gas flow notice" under the final rule).

12 The final rule contains two changes to the draft rule. This is to allow for a wider set of emergency circumstances possible within the domestic NT gas market that might require the supply of emergency back-up gas from the NT LNG facilities and also to allow for the supply of gas from the NT LNG facilities on the occasions where the emergency back-up supply facilities need to be tested. This testing is expected to be infrequent. The changes are as follows:

- emergency events or relevant outages are no longer defined as an outage of the Blacktip gas field, its associated supply infrastructure and the Bonaparte gas pipeline, but instead as a gas supply outage, meaning an interruption to the supply of natural gas from a natural gas facility in the Northern Territory.
- emergency gas supply testing is also allowed for under the exemption and encompasses the supply of natural gas from an exempt NT facility to a WPP connection point to test the emergency gas flow facilities of that exempt NT facility.

Summary of reasons

13 Having regard to the issues raised in the rule change request, the Commission is satisfied that the final rule will, or is likely to, contribute to the achievement of the National Gas Objective (NGO) by helping to ensure that emergency supply continues from the NT LNG projects to the domestic market. The Commission considers the possibility of emergency gas supply being withdrawn is credible. While the costs of reporting on the Bulletin Board are difficult to determine, they are likely to be greater than zero. The benefits to the domestic market of information on daily gas flows upstream of the connection point with the domestic market are negligible, where the use of that connection is limited to emergency back-up supply only. When emergency back-up flow does occur, this flow will be reported at the receipt points of the connecting domestic Wickham Point Pipeline (WPP).

14 On balance, the Commission considers the exemption is likely to better meet the national gas objective than the rule proposed by the rule proponent.

15 The Commission considers that where flow across the connection with the domestic market is for instances other than emergency back-up supply, for instance, for infrequent trade or sales of gas into the plant, or for more frequent and extensive trade into and out of the plants, then information on daily gas flows upstream of the connection point with the domestic market would be of increasing benefit to the domestic market. Under the rule, if this flow occurs and a BB application is triggered, the exemption can be removed by the AER.

16 The threshold on this flow under part 18, is 10 TJ per day of nameplate capacity. Any flow across a connection with this rating is sufficient to justify the removal of the exemption. Furthermore, under the rule there is no provision for the reinstatement of the exemption.

17 Advanced notification to the market of future shutdowns of the NT LNG projects is not required under the exemption. At the current time, the benefits of providing such information are unlikely to outweigh the costs. The high level of redundancy in the current supply and emergency supply arrangements contracted to PWC mean that the benefits of information on future shutdowns in relation to these supply sources is unlikely to be of material benefit to the domestic market. In the event that these circumstances change, a rule change request can be submitted to the Commission to assess the bearing of the changed circumstances on the rule.

18 Further gas market reforms (known as "tranche 2") were recommended to the COAG Energy Council by the Australian Competition and Consumer Commission (ACCC) and Gas Market Reform Group (GMRG) in December 2018. On 8 August 2019 COAG Energy Council released

a Regulation Impact Statement (RIS) on *Measures to Improve Transparency in the Gas Market.* These measures cover the tranche 2 reforms and the recommendations made by the GMRG and ACCC to improve the transparency of the gas market. The Consultation RIS seeks stakeholder views and information that will inform the assessment of the rules package, by 5pm (AEST) Thursday 12 September 2019. Feedback received from stakeholders will inform recommendations to be made to COAG Energy Council on a preferred course of action. COAG Energy Council is expected to consider the Decision RIS in February 2020 and the new transparency measures are expected to come into effect in November 2020 according to key dates set out in the RIS. The RIS raised a number of options for reporting, including requirements that would impose reporting obligations on the NT LNG facilities. This is a matter to be considered by the COAG Energy Council as part of the process of developing tranche 2 reforms.

19 The final rule does not prohibit flows of gas between the NT LNG projects and the domestic market over and above emergency back up supply requirements. But if a "BB application event" occurs the AER may make a determination that the exemption from the Bulletin Board registration and reporting requirements will no longer apply for the relevant NT LNG project. The BB application events are defined to include events that indicate that the connection of the NT LNG projects to the NT domestic gas market is for purposes other than emergency back-up supply and are summarised under "Features of the rule" above.

20 The final rule balances the requirements of emergency supply to the NT domestic gas market with the longer term requirements for the development of the broader interconnected gas market. Emergency back-up supply that is essential to the security of supply of the NT gas market is allowed for under the exemption. Emergency supply is rarely used and where flow does occur, this is reported on the Wickham Point Pipeline. In the event of wider trade between the NT LNG projects and the domestic gas market, the requirement for Bulletin Board reporting for all interconnected facilities, including those upstream of the connection point with the domestic market, forms part of a suite of reforms intended to assist the dynamic development of the interconnected gas market. Bulletin Board information provides valuable signals to the market as a whole for operational and investment decisions.

21 The Commission notes that market conditions in the NT may change in the future such that there is reduced reliance on the NT LNG projects as a source of emergency back-up supply. Such changed circumstances might result in changes to the arrangements the NT Government has in place to supply emergency back-up gas supply. It may be appropriate, at such time, to reconsider the emergency supply arrangements through a rule change request.

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APPENDICES

TABLES

1 THE RULE CHANGE REQUEST

The rule change request, received from the Northern Territory Government in November 2018, proposed to amend the National Gas Rules (NGR) such that those LNG related facilities upstream of their connections to the NT gas market and which may be captured by registration and information provision requirements within Part 18 of the NGR, are exempt from such provisions.

The Territory Government considered that these rule changes are necessary to preserve the commercial incentives for Territory LNG producers to maintain their connections to the NT gas market and to continue with the emergency back-up gas supply agreements which underpin security of gas supply in the NT. See appendix A.4 for an overview of the physical and contractual links between the NT LNG projects and the domestic market. The rule change request may be found on the AEMC website, www.aemc.gov.au.

1.1 Rationale for the rule change request

In the rule change request, the Northern Territory Government provided the rationale for the rule change. The proponent stated that part 18 of the NGR as amended by the 'Improvements to the Natural Gas Bulletin Board' rule change is not fit for purpose for the NT.

The proponent claimed that the LNG projects located in the NT operate differently to their east coast counterparts. The projects source gas from offshore, not from the domestic gas market, and engage in limited trade with the domestic gas market and no trade with any participant in the east coast market. The proponent maintained that the Territory LNG producers have entered into emergency back-up supply arrangements with PWC to supply gas to the NT "in the event of an interruption to supply".[1]

As such, the proponent maintained that the benefits of providing information on the activities of the plants to the domestic market would be negligible.

In the proponent's view, the reporting requirements under part 18 impose a heavy administrative burden that the LNG projects will have to bear. Further, the provision of this operational data may also put the LNG producers at a commercial disadvantage in the international LNG market.

The connection points for these facilities are, for Darwin LNG, the flange connection between the boundary of Darwin LNG and the APA operated Wickham Point Pipeline, and for Ichthys LNG, the point at which the lateral pipeline from the Wickham Point Pipeline to Ichthys LNG crosses the boundary between the Inpex and PWC properties.[2]

As a consequence of the new reporting obligations, the proponent maintained that the NT LNG facilities may choose to cease providing emergency back-up gas supply to the domestic market, in order to avoid the reporting obligations. The proponent considered that this emergency gas supply is critical to the NT gas and electricity market, given the dependence

1 Rule change request p.4.

2 Rule change request p.1.

on gas as a source of fuel for electricity generation, and the low diversity of supply sources with almost 90 per cent of the Territory's domestic gas requirements sourced from the offshore Blacktip field.[3]

1.2 Proposed solution

The Northern Territory government requested that changes be made to the NGR such that LNG related facilities upstream of their connections to the NT 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 a LNG operation, and
- connected to the NT gas market solely through a pipeline facility at the location of the LNG producing operation.

The rule change would result in all LNG related facilities upstream of the connection point, to be exempt from such provisions.

The rule change request did not include rule drafting for a final rule.

1.3 Contribution to the NGO

Benefits

The proponent argued that the proposed rule change would contribute to the price, reliability and security of supply elements of the National Gas Objective by virtue of preserving the commercial incentives for the Territory LNG producers to continue with the emergency back-up gas supply arrangements currently in place, which underpin security of gas supply in the NT.

In this context, consumers of natural gas include gas fired electricity generators.

In the proponent's view, preservation of the emergency back-up supply arrangements between the Territory LNG producers and PWC would safeguard the NT's currently strong gas supply security for the benefit of consumers. Without the emergency back-up supply arrangements with the Territory LNG producers, the NT's security of supply would transition from an expected 'N-2' redundancy from late 2018 to having insufficient back-up supply for any prolonged interruption to gas supplies from the Blacktip gas field.[4]

The proponent suggested that alternative higher cost emergency back-up measures would need to be pursued by PWC or the Northern Territory government to achieve at least N-1 redundancy (one back-up source). Potential measures include contracting supply from existing or new gas fields, investment in increased diesel storage and generation capacity, or funding the upgrade of the Northern Gas Pipeline to provide for bidirectional gas flows. According to the proponent, each of these options may entail higher costs for PWC and, subject to these costs being passed through, ultimately higher costs for gas consumers.

3 Rule change request p.3.

4 N-1 and N-2 denotes the level of redundancy in the system. N-1 means one source of supply can be unavailable and there is still adequate supply, N-2 means two sources of supply can be unavailable and there is still adequate supply.

Costs

The proposed rule change, in the view of the proponent, is not anticipated to have any adverse consequences for any party.

The proponent maintained that information relevant to the NT gas market such as flows at the connection point with the NT market would be reported by another party, the owner or operator of the emergency pipelines (PWC) and by the operator of the connecting WPP (APA), negating any reporting requirements by NT LNG producers.

On the other hand, irrelevant information related to the production and transport of gas from offshore facilities to the Territory LNG facilities would not be reported or published. In the proponent's view this would help to streamline the administration of the Bulletin Board and improve the relevance of the Bulletin Board to NT gas market participants.

1.4 The rule making process

On 7 February 2019, the Commission published a notice advising of its commencement of the rule making process and consultation in respect of the rule change request.[5] A consultation paper identifying specific issues for consultation was also published. Submissions closed on 14 March 2019.

The Commission received eight submissions as part of the first round of consultation. The Commission considered all issues raised by stakeholders in submissions. Issues raised in submissions are discussed and responded to throughout this final rule determination. Issues that are not addressed in the body of this document are set out and addressed in Appendix A.

On 23 May 2019, the Commission published a draft rule determination and draft rule. Submissions on the draft rule determination closed on 4 July 2019. The Commission received 3 submissions and 2 late submissions to the draft determination and draft rule. The Commission considered the issues raised by stakeholders in submissions. Issues raised in submissions are discussed and responded to throughout this final rule determination. Issues that are not discussed in the body of this determination are summarised and responded to in Appendix A - Table A.2.

5 This notice was published under s308 of the National Gas Law (NGL).

2 FINAL RULE DETERMINATION

2.1 The Commission's final rule determination

The Commission's final rule determination is to make a more preferable rule under section 312 of the NGL. The final rule provides an exemption for the NT LNG facilities upstream of the connection point with the domestic market based on these facilities not interacting with the domestic market except in the event of emergency back-up gas supply or testing of the emergency back-up supply facilities. In instances where emergency back-up supply or testing of the emergency supply occurs, these gas flows will be reported at the receipt points of the Wickham Point Pipeline (WPP).

The Commission's reasons for making this final determination are set out in chapter 3.

This chapter outlines:

- the key features of the final rule
- the rule making test for changes to the NGR
- the more preferable rule test
- the assessment framework for considering the rule change request
- the Commission's consideration of the final rule against the national gas objective.

2.2 Rule making test

2.2.1 Achieving the NGO

The Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national gas objective (NGO).[6] This is the decision making framework that the Commission must apply.

The NGO is:[7]

> to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, safety, reliability and security of supply of natural gas.

The Commission has considered the final rule in the context of the impact on all consumers of natural gas, in respect of price, reliability and security of supply.

2.2.2 Making a more preferable rule

Under s.296 of the NGL, the Commission may make a rule that is different (including materially different) to a proposed rule (a more preferable rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule will or is likely to better contribute to the achievement of the NGO.

6 Section 291(1) of the NGL.

7 Section 23 of the NGL.

In this instance, the Commission has made a more preferable rule. This is because the final rule, in comparison to the solution put forward by the proponent, requires that:

- An exemption is only provided for instances of emergency back-up supply (or emergency gas supply testing) from the NT LNG facilities into the domestic market. Flows from the domestic market into the NT LNG facilities are not allowed for under the exemption, with the exception of the continued supply of commissioning gas to Ichthys LNG in 2019.
- Flows of gas between the NT LNG facilities and the domestic market in excess of that required to replace lost supply as a result of a gas supply outage, are not allowed for under the exemption. The quantity of gas supplied, or the duration over which gas flowed, from emergency supply must correspond to the shortfall (or duration) in production resulting from the gas supply outage for the exemption to be in place.
- The duration over which gas flowed between the NT LNG facilities and the domestic market in excess of that required to test the emergency back-up supply facilities, is not allowed for under the exemption.
- An authorised officer of PWC is required to provide the AER with an emergency gas flow notice within ten business days of a gas day on which emergency back-up supply or an emergency gas supply test has occurred, or the last day of gas flow if emergency back-up supply flowed on consecutive days for the exemption to be in place.

2.3 Assessment framework

In assessing the rule change request, the Commission has used a similar framework to the one used in the Improvements to the Natural Gas Bulletin Board rule change given the issues in relation to the achievement of the NGO are similar.

The Commission has considered the trade-offs between the benefits to the domestic market of information in regards to the facilities associated with the NT LNG projects that are upstream of their connection point with the domestic market, versus the direct and indirect costs of providing this information. These costs will encompass both the costs the NT LNG projects might incur in the process of providing the information and, in the event the NT LNG projects cease emergency supply to avoid those costs, the resultant impact and costs on the domestic gas and electricity markets as a result of this action were it to occur.

Benefits of additional information

In relation to the benefits of additional information, the Commission assessed whether the information on the operations of the plants upstream of the connection point that would be provided under the application of part 18 to the NT LNG facilities, would be likely to:

- reduce transaction costs, including search costs for domestic market participants
- reduce information asymmetry that may otherwise impede efficient exchange between domestic market participants
- enable more informed decision making by domestic participants, enabling efficient operational, commercial and investment decisions and appropriate risk management.

The extent to which the additional information will achieve these aims was considered in the context of the impact on all consumers of natural gas, in respect of price, reliability and security of supply.

The Commission has considered how relevant the information will be to the different participants in the domestic gas market, in relation to both the price and volume of gas supplied in the domestic market. The Commission has assessed how useful this information will be both when there is emergency or back-up supply to the domestic market and when there is no emergency or back-up gas supply to the domestic market. The Commission has also assessed the extent to which, where this information is useful, it will be provided by other entities required to report on the Bulletin Board.

Costs of information provision

In relation to the cost of providing this information, the Commission has considered:

- the direct costs of information collation and provision, including the materiality of these costs
- the costs of providing the information in relation to the impact of its provision on the commercial negotiations of the LNG projects to obtain replacement supply during periods when they have an outage planned
- the indirect costs of information provision, in relation to the impacts on the cost and security of gas supply to consumers, particularly to gas fired generation in the NT, from the potential withdrawal of emergency back-up gas supply by the NT LNG projects
- the efficient allocation of tasks and responsibilities, allowing for low cost compliance, enforcement, and accountability. The Commission has considered the degree to which data is pertinent to the domestic market and is already available through the reporting of other entities
- the balance between transparency and confidentiality. Some information is justifiably confidential. The provision of such information may alter otherwise efficient operational and investment decisions by market participants.

2.4 Summary of reasons

The final rule made by the Commission is attached to and published with this final rule determination. The key features of the final rule are as follows:

- The NT LNG facilities upstream of defined connection points with the domestic market ("WPP connection points") are exempted from the Bulletin Board registration and reporting requirements under Part 18 of the NGR.
- The AER may issue a notice (a “BB application notice”) to an exempt facility that the facility is no longer exempt from the Bulletin Board reporting requirements if the AER is satisfied that certain events (“BB application events”) have occurred.

- BB application events are defined in the final rule. In summary terms[8] the following are BB application events:
  - natural gas was withdrawn from the Wickham Point Pipeline through defined connection points with the NT LNG projects for delivery to those projects on a gas day after the gas day that ends on 31 December 2019;
  - natural gas was injected into the Wickham Point Pipeline through defined connection points with the NT LNG projects on a gas day when there was no planned or unplanned gas supply outage or emergency gas supply test
  - natural gas was injected into the Wickham Point Pipeline through defined connection points with the NT LNG projects on a gas day when there was a planned or unplanned gas supply outage or emergency gas supply test but:
    - — in the case of a gas supply outage, the volume of natural gas injected into the Wickham Point Pipeline through the connection point on the gas day was more than reasonably required to replace the volume of natural gas interrupted on the gas day as a result of the outage; and/or
    - — the duration over which natural gas was injected into the Wickham Point Pipeline through the connection point was materially greater than the duration of the gas supply outage or emergency gas supply test.
- If natural gas flows from the NT LNG projects to the NT domestic market on a gas day then PWC is required to provide the AER with a notice (an "emergency gas flow notice") setting out details of the gas flow specified in subrule 143A(8) of the final rule.

Further information on the legal requirements for making this final rule determination is set out in Appendix C.

Having regard to the issues raised in the rule change request, the Commission is satisfied that the final rule will, or is likely to, contribute to the achievement of the NGO.

Information that is relevant and pertinent to the domestic market is still provided under the final rule. Where emergency flow occurs, this will be reported at the two receipt points of the WPP pipeline with the two projects.

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 Commission considers that this information has a limited bearing on the domestic market, provided gas flow between the NT LNG projects and the NT domestic gas market is only for emergency back-up gas supply. To the extent that there is trade between the NT LNG projects and the NT domestic market, where this trade occurs across a connection with a nameplate capacity rating of 10 TJ per day, then this information has a bearing on the

8 See subrule 143A(5) for the full definition of BB application events, which uses terms defined in subrule 143A(1).

domestic market and the benefits identified in relation to better information, and so needs to be reported under part 18.

Under the present limited operation of the connections between the NT LNG projects and the domestic market, the key considerations for the domestic market are the overall capacity of emergency supply and the actual flows as they occur. Under existing reporting at the WPP receipt and delivery points and under the provisions of this final rule, this information is already provided.

As a result of the exemption under the final rule the commercial incentives for NT LNG producers to maintain their connections and emergency supply to the NT gas market are more likely to be preserved than without the exemption. These emergency back-up supply agreements underpin the reliability and security of supply in the NT. Alternative sources of emergency back-up gas supply are likely to cost more and are unlikely to provide the same level of security and reliability at the current time.

The Commission considered whether information relating to future shutdowns, either of the Blacktip facilities and their associated infrastructure or the NT LNG projects, would be pertinent to the domestic market, and hence required despite the exemption. However, the Commission has determined that this should not be required under the final rule. At the current time, the benefits of providing such information are unlikely to outweigh the costs. The high level of redundancy in the current supply and emergency supply arrangements contracted to PWC mean that the benefits of information on future shutdowns in relation to these supply sources is unlikely to be of material benefit to the domestic market and may not justify the costs. In the event that these circumstances change, a rule change request can be submitted to the Commission to assess the bearing of the changed circumstances on the rule.

In the event that market conditions in the NT change and the cost of replacement supply is no longer anticipated to be significantly higher than the existing arrangements and the security and reliability of the alternatives is also felt to be on a par with that offered by the NT LNG projects, the exemption could be reconsidered through a rule change request.

Changes to the draft rule

The final rule contains two changes to the draft rule. This is to allow for a wider set of emergency circumstances possible within the domestic NT gas market that might require the supply of emergency back-up gas from the NT LNG facilities and also to allow for the supply of gas from the NT LNG facilities on the occasions where the emergency back-up supply facilities need to be tested. This testing is expected to be infrequent. The changes are as follows:

- emergency events or relevant outages are no longer defined as an outage of the Blacktip gas field, its associated supply infrastructure and the Bonaparte gas pipeline, but instead as a gas supply outage which means any interruption to the supply of natural gas from a natural gas facility in the Northern Territory.

- emergency gas supply tests are also allowed for under the exemption and encompass the supply of natural gas from an exempt NT facility to a WPP connection point to test the emergency gas flow facilities of that exempt NT facility.

3 ASSESSMENT OF THE RULE CHANGE REQUEST

In making the draft determination, the Commission considered eight submissions to the consultation paper. These submissions dealt with issues in relation to:

- the cost benefit trade off of applying part 18 to the NT LNG projects
- the considerations of the NT LNG projects in maintaining emergency supply arrangements
- scope to exempt the NT LNG projects from part 18 reporting requirements under the existing rules
- scope to exempt the NT LNG projects on the basis of a new exemption
- issues arising from the offshore location of the production facilities
- the impact of any rule made on the application of tranche 2 bulletin board reforms.

Stakeholder comments in relation to these issues and the Commissions findings in relation to the issues can be found in the draft determination on the project website. https://www.aemc.gov.au/rule-changes/nt-emergency-gas-supply-arrangements.

This chapter outlines the key issues considered by the Commission in making the final rule. Submissions to the draft determination reflected a change in emphasis by the rule change proponent, with more weight given to the role of trade between the NT LNG projects and the domestic market and the potential, put forward by the proponent, for the draft rule to act as a barrier to trade.

A submission from PWC to the draft determination raised similar issues to those raised by the proponent in its submission to the draft determination.

Key issues raised in submissions to the draft determination are summarised as follows:

- The NT government and PWC expressed a preference for a fixed period exemption from the rules to allow all trade between the NT LNG projects and the domestic market, without connected upstream facilities reporting
- PWC, the NT government and Inpex suggested a number of revisions to the draft rule, including:
    - greater flexibility around the different types of emergency that can impact the NT domestic gas market
    - the ability to allow minor flows of gas (less than 10 TJ per day) into the NT LNG plants under an exemption
    - the ability to reinstate the exemption after it is removed
    - the extent to which future LNG and field developments are allowed for under the exemption
    - allowance for a successor to PWC's business or a change of name of PWC
    - allowance for the testing of emergency gas supply equipment
- allowance for the development of tranche 2 reforms and the potential for transitional arrangements

3.1 Fixed period exemption allowing all trade

3.1.1 Proponent's view

The rule change proponent in their submission to the draft determination maintain that the draft rule is an improvement on the status quo but it is not a more preferable rule. The proponent in their submission places a much greater emphasis on trade between the NT LNG projects and the domestic market and the potential for the draft rule to act as a barrier to trade.

The NT Government cite three key problems with the draft rule:[9]

1. It poses a material barrier to trade of gas between the NT gas market and the NT LNG projects, and unnecessarily impedes the NT's economic growth and diversification, by prohibiting non-emergency trades of gas, both currently and potential future deals.
2. It may result in the reporting of information to the Bulletin Board which is irrelevant to the domestic market while unnecessarily exposing Australian exporters to commercial detriment.
3. It does not make the BB reporting requirements fit for purpose for the NT gas market.

In relation to point 1, the NT Government would prefer a rule that allows sales of gas into the NT LNG projects, in addition to the provision of emergency back-up supply and considers that any rule change should take into account future developments in the NT gas market which could occur in the next few years. The NT Government maintain these developments are unlikely to happen if barriers, such as the draft rule, are put in place which discourage trade between the NT gas market and the NT LNG projects. The NT Government state that the relatively small size of the deals to the NT LNG projects is such that the commercial benefit is not outweighed by the impact of the ongoing reporting burden that would result.[10]

The NT Government state that market conditions are likely to change in the future, however, significant change is not expected in the next few years.[11]

In relation to point 2, the NT Government state that a principal argument made in the rule change request and submissions made by Inpex and ConocoPhillips to the consultation paper is that information related to the upstream pipeline and production facilities of the NT LNG projects is irrelevant to the domestic NT gas market and east coast gas market participants. According to the NT Government, this is because, at present, the NT LNG projects 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. The NT Government maintain, even if some of the potential trading opportunities identified 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.[12]

9 NT department of Treasury and Finance submission to the draft determination p.4.
10 NT department of Treasury and Finance submission to the draft determination p.5.
11 NT department of Treasury and Finance submission to the draft determination p.8.
12 NT department of Treasury and Finance submission to the draft determination p.5-6.

The NT Government also consider that neither the Commission 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 NT 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.[13]

The NT Government maintain that in the rule change request it was acknowledged that gas flows between the NT gas market and the NT LNG projects may be of relevance to NT gas market participants. In an attempt to make the existing NGR work for the NT LNG projects such that only relevant information related to their activities would be reported to the Bulletin Board, the NT Government's request was for the NT LNG projects to be treated as 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). Under this arrangement, the NT Government propose that information relevant to the domestic market on flows to and from the facilities into the domestic market, would be reported by another Bulletin Board participant, for instance the owner or operator of the emergency pipelines, negating any need for reporting by NT LNG projects.[14]

In relation to point 3, the NT Government state that there is considerable uncertainty and potential disparity in the likely reporting requirements of each of the NT LNG projects if they were subject to Bulletin Board obligations. The NT Government cite the example 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.[15]

The NT Government propose an alternative exemption, to be provided to the extent the facilities are principally operated as part of an LNG operation. If at some future point this changes and the facilities are operated principally as a gas production facility, the NT Government puts forward that the exemption should no longer apply.[16] The NT Government suggest that it would be open to any party to make a rule change request that the exemption be removed.[17]

3.1.2 Stakeholder views

While PWC supports an exemption of the NT LNG facilities from the Bulletin Board reporting requirements, PWC considers the conditions of the exemption set out in the draft rule too restrictive to adequately preserve the commercial incentives for existing and future NT LNG producers to maintain emergency supply to the domestic market.[18]

13 NT department of Treasury and Finance submission to the draft determination p.7.
14 NT department of Treasury and Finance submission to the draft determination p.6.
15 NT department of Treasury and Finance submission to the draft determination, p.8.
16 NT department of Treasury and Finance submission to the draft determination p.2
17 NT department of Treasury and Finance submission to the draft determination p.7.
18 PWC submission to the draft determination p.1.

PWC submit that the NT LNG projects have indicated that Bulletin Board reporting requirements provide a significant disincentive to maintaining domestic supplies or entering into other domestic supply arrangements.[19]

PWC considers that any additional benefit arising out of the NT LNG producers reporting on the Bulletin Board, which PWC maintains are negligible, are far outweighed by the potential detriment to PWC, its customers and consumers in general if the NT LNG producers decided to cease providing emergency gas to the NT market.[20]

PWC considers that the uncertainty and practical barriers to trade created by the draft rule, may potentially impact on the emergency gas supply arrangements with existing and new NT LNG suppliers. PWC maintains this is particularly important in light of Darwin LNG expecting to cease production in the next 2-3 years and new arrangements needing to be put in place by PWC. PWC maintains that it is critical that the regulatory environment does not discourage producers from providing emergency gas supplies to PWC in the future.[21]

Further, the draft rule imposes an administrative burden on PWC and other parties to provide information. PWC concludes the costs of providing this information outweigh the benefits.[22]

PWC suggests that a more flexible and fit-for-purpose approach would be to grant an exemption to the NT LNG producers from Bulletin board reporting for a fixed period, suggesting a period of five years as an example. PWC points out that as with the derogation from the capacity trading provisions in the NGR, the exemption could allow for monitoring and review of its appropriateness on an ongoing basis and that if market conditions change, then a more prescriptive exemption could be reconsidered through a rule change request.[23]

Origin Energy in contrast was supportive of the draft determination. Origin notes in its submission that market conditions in future may change such that an exemption is no longer appropriate. Origin states that it is appropriate to ensure exemptions granted to NT LNG facilities can be revoked in the event gas flows to or from the NT LNG facilities are inconsistent with emergency supply commitments.[24]

The AER states that it supports the draft rule, noting that it addresses the immediate concerns of affected parties. The AER considers that the draft determination, by providing an exemption from part 18 with a trigger for reporting in the event of wider trade with the domestic market, appears to balance both the concerns of the NT government that emergency arrangements might be withdrawn with the importance the AER sees of transparency for informing investment decisions and trade in the domestic gas sector.[25]

19 PWC submission to the draft determination p.1.
20 PWC submission to the draft determination p.1.
21 PWC submission to the draft determination p.2.
22 PWC submission to the draft determination p.1.
23 PWC submission to the draft determination p.2.
24 Origin Energy submission to the draft determination p.1.
25 AER submission to the draft determination p.1.

The AER concludes that the draft rule addresses the concern, previously expressed by AER staff, that any trade between the domestic market and NT LNG businesses should be transparent through Bulletin Board reporting.[26]

3.1.3 Conclusion

Based on the information provided as part of the consideration of the rule change request and consideration of similar arrangements in other parts of the gas market, the arguments that the draft rule:

- represents a material barrier to trade
- may result in the reporting of irrelevant information on the Bulletin Board and
- does not make BB reporting requirements fit for purpose for the NT gas market,

have not been established. In the case of emergency supply, Bulletin Board reporting of upstream information could be a barrier to emergency flow, the information would largely be irrelevant to the domestic market and the reporting requirements in such a case would not be fit for purpose for the NT. However, an exemption is provided for this under the final rule.

That the exemption creates practical barriers to wider trade rests on the assumption that the commercial benefits of any trading opportunity do not outweigh the ongoing costs of reporting that would be incurred. The administrative costs are likely to be small compared to the value of any trade, as evidenced by the number of much smaller facilities in the interconnected gas market that are already reporting on the Bulletin Board. If the value of prospective trades with NT LNG projects are so small as to not justify the administrative burden on the Bulletin Board, then this small benefit from the trade must also be weighed up against the benefits in relation to transparency and wider reporting of gas market information. The Commission also notes that the reported commercial detriment to the LNG projects from revealing their position to the international LNG market was addressed in the draft determination.[27]

The relevance of the upstream information reported is directly related to the extent and nature of the connection between the domestic market and the NT LNG projects. Where that interaction is limited to emergency gas supply, on an infrequent basis, and that information is reported on the Wickham Point Pipeline, the information on flows of gas upstream of the connection with the domestic market is likely to have a limited bearing on the domestic market. However, where the interaction encompasses trade, including small infrequent sales of gas into the plant, or more extensive trade as outlined in submissions to the draft determination, then information on upstream flows may have a bearing on the domestic market both for operational and investment decision making. Interconnected facilities through a connection with a nameplate capacity rating of 10 TJ per day or greater are material in terms of the impact they can have on decision making in the market.[28]

26 AER submission to the draft determination p.4.

27 NT emergency gas arrangements draft determination p.11.

28 *Improvements to the Natural Gas Bulletin board* rule change request, Final determination, p.16.

Issues raised by the proponent in relation to the potential disparity with which the rules would be applied to the two NT LNG projects in the event that the exemption was lifted are outside the scope of the rule change request. The details of the activities required to be reported by the projects are best addressed by the NT LNG projects and the AER in the event that the exemption is removed by virtue of a BB application event.

The rationale provided for a wider exemption, based on the NT LNG projects being principally operated as part of an LNG exporting operation, would justify an exemption for the facilities based on a characteristic that is not unique to the NT. The Gladstone LNG terminals could also be considered to be principally operated as part of an LNG exporting operation. Domestic gas supply and purchases of gas from the domestic market, common to all the projects, are not their principal activity. If the NT LNG projects are principally operated as LNG export facilities but engage in trade with the domestic market over a linkage that is in excess of 10 TJ per day, then without further information or considerations, there is no reason why the rules should not apply.

A time limited exemption based on the LNG projects principally being operated as part of an LNG operation, and allowing for all existing and future flows of gas between the NT LNG plants and the domestic market, would effectively be a complete exemption from the rules. This is different in nature to an exemption based on a connection between the NT LNG projects and the domestic market that is provided for emergency back-up supply purposes. The more trade occurs between the NT LNG projects and the domestic market, the more information on flows of gas upstream of the connection point with the domestic market has a bearing on that market, both in relation to current operational requirements and in relation to future investment. As a result, the final rule does not provide such an exemption.

3.2 Suggested revisions to the draft rule

Notwithstanding the desire of PWC and the NT government for a fixed period exemption allowing all trade between the NT LNG projects and the domestic market, the NT government and PWC submitted recommended changes to the rule as drafted. Inpex also submitted recommended changes to the draft rule. These changes encompassed greater flexibility around the types of emergency events that would be allowed for under the exemption, the draft rule had specified outages to the Blacktip field and the Bonaparte gas pipeline, given these are the primary sources of gas supply to PWC and the NT gas market.

It is also suggested that small flows of gas be permitted into the plants, under the assumption that flows below 10 TJ per day meet the threshold requirements of part 18.[29] The ability to reinstate the exemption after it has been removed was also put forward. Questions were raised concerning the ability of the draft rule to accommodate new LNG projects in the NT, new supply fields supplying those projects and the potential for the rule as drafted to disincentivize new offshore fields supplying the domestic market.

In discussions with the project team, PWC also drew attention to the issue of testing of the emergency gas supply equipment.

29 The requirement under part 18 is for nameplate capacity of 10 TJ per day and greater to report

3.2.1 Proponent's view

The NT government in their submission state that if the AEMC does not provide an exemption on the basis that the facilities are principally operated as part of an LNG operation, and therefore all flows of gas are exempt from the reporting requirements, that at a minimum a number of improvements should be made to the draft rule, such that the rule:

- provides sufficient coverage for all emergency supply circumstances
- allows non-emergency flows (flow into the LNG plants), at least up to 10 TJ per day
- provides a mechanism for the exemption to be reinstated once removed.[30]

The NT government maintains allowing up to 10 TJ per day of non-emergency flows before the AER could remove the proposed exemption for the NT LNG projects would provide some, albeit limited, flexibility for non-emergency gas trades between the NT gas market and the NT LNG projects. The NT government maintains that by the standard established by the reporting threshold, gas flows of this volume would not be sufficient to affect the domestic gas market.[31]

The NT government considers that since under the draft rule the exemption cannot be reapplied at a future time, the draft rule represents a material constraint on trade between the NT gas market and the NT LNG projects. The NT government maintains that 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 that prompted the removal of the exemption have ceased.[32]

3.2.2 Stakeholder views

PWC as mentioned in the previous section proposes an alternative to the draft rule. PWC also states that if the AEMC does not determine a fixed period exemption is appropriate, then a number of changes should be made to the draft rule to make it less restrictive. These changes are as follows:

- Emergency events should allow for more than an outage of the Blacktip gas field and the Bonaparte gas pipeline. For example the Amadeus pipeline and gas supply sources in the south of the NT such as the Dingo gas field. PWC also suggest that an emergency event should allow for any event in which emergency back-up supply is required.[33]
- The flow of gas into the plants should be allowed under an exemption. PWC may on occasion still seek to supply gas to Ichthys LNG (or other NT LNG producers) in the future if, for example, it has surplus gas that it cannot sell to the domestic market on commercial terms. PWC maintains that not allowing this under the rule means NT LNG facilities are unlikely to accept these gas supplies, PWC does not consider that this outcome is consistent with the NGO of promoting efficient investment in, and efficient operation and use of, natural gas services. PWC also maintains that information on the

30 NT Department of Treasury and Finance submission to the draft determination p.2.

31 NT department of Treasury and Finance submission to the draft determination p.8-9.

32 NT department of Treasury and Finance submission to the draft determinaton p.9.

33 PWC submission to the draft determination p.3.

flows of gas into the plants would be reported elsewhere, by the operator of the Wickham Point Pipeline.[34] Alternatively PWC suggests that the Commission should allow flow up to 10 TJ per day. According to PWC, this is broadly consistent with the reporting threshold that applies to all Bulletin Board facilities under part 18 of the NGR.[35]

- The draft rule should be extended to future developments. The draft rule, according to PWC, is narrowly expressed in respect of the Ichthys LNG and Darwin LNG facilities. This does not allow for any flexibility in the event that future LNG developments are established in offshore NT or WA and landed in the NT. According to PWC, it also does not allow for future changes in the operation of PWC's emergency supply arrangements. For example PWC will need to renegotiate emergency gas supply arrangements with the owners of the new gas field/s and/or the owners of the DLNG processing facilities. These may not involve the same entities or precisely the same delivery points as existing arrangements.[36] PWC also comments that the uncertainty and practical barriers as to the application of the exemption under the draft rule may act as a disincentive to developers of offshore resources landing gas in the NT for domestic use.[37]

PWC considers that the proposed reporting obligation under the exemption is onerous.[38] PWC concludes that the reporting obligation under the draft rule places an undue and unnecessary onus on PWC, and is not an efficient allocation of tasks and responsibilities. According to PWC, gas flows from the NT LNG projects will already be reported by the entity for the WPP pipeline. PWC also suggests that preparing an emergency gas flow notice will impose a significant administrative burden on PWC, and this is likely to require the provision of confidential information that is subject to obligations of confidence owed to third parties (including the operator of the Blacktip facilities). PWC also notes that it is inappropriate for the draft rule to expressly refer to PWC, as it may not always by the entity responsible for maintaining emergency supply arrangements.[39]

PWC suggests that the AER should instead be given the right to seek further information from relevant parties as required.

Following their submission, in discussions with the project team, PWC drew attention to the need to allow for periodic testing of the emergency gas supply equipment. This testing is said to occur every few years.

The AER in their submission suggested that the Commission consider enabling the AER to place an expiry date on decisions to remove the part 18 exemption under the rule. According to the AER, this would allow for the possibility that one of the exporters could seek to trade in the domestic market for a short period, before returning to having a wholly export focus.[40]

34 PWC submission to the draft determination p.3.
35 PWC submission to the draft determination p.3.
36 PWC submission to the draft determination p.4.
37 PWC submission to the draft determination p.2.
38 PWC submission to the draft determination p.3.
39 PWC submission to the draft determination p.4.
40 AER submission to the draft determination p.3.

Inpex in their submission state that the draft determination addresses the key issues of securing NT emergency gas supply arrangements. However, Inpex considers that the terms of the exemption are too restrictive where they do not allow for minor flows from the domestic market into the plant. They note other facilities on the east coast do not need to report if flow is less than 10 TJ per day. Inpex proposes adding wording to the rule to allow for flow of less than 10 TJ per day, or alternatively, physically altering the capacity of the pipeline such that flow into the plant is only possible up to 10 TJ per day. Inpex maintain there is mutual benefit from allowing this flow, however the benefit is insufficient to overcome the burden of Bulletin Board reporting that would result.[41]

3.2.3 Conclusion

The Commission agrees with the submissions made by PWC, the NT government and Inpex in relation to the definition of emergency events. The Commission finds that a wider set of emergency events should be allowed for. The Commission has allowed for this in the final rule. No specific emergency event is described in the rule. However, it is required that PWC, or any successor to its business, must give the specific reason behind the emergency event as and when an emergency occurs. The Commission finds that the use of emergency supply does not define an event as an emergency. An emergency event is defined by the loss of supply elsewhere in the NT domestic gas market, and the loss of such supply is required under the exemption to be explained to the AER on any day where emergency gas supply is used.

The definition of gas supply outage under the final rule allows that the outage may be to facilities that do not normally supply PWC or its customers, and in so doing allows for PWC to utilise emergency supply to provide gas to customers not presently supplied by PWC, in the event that gas supply to those customers has been interrupted. The reasons for the gas supply outage must still be provided in the emergency gas flow notice to the AER.

The Commission finds that flows of gas into the LNG plants, beyond the sale of commissioning gas to Icththys LNG during 2019 are not consistent with the exemption.

In relation to suggestions put forward in submissions that flows under 10 TJ per day should be permitted under the exemption, the Commission considers that the threshold established under part 18 is in relation to nameplate capacity, not the rate of flow through the connection. Facilities above this threshold nameplate capacity rating are material in terms of the impact they can have on decision making in the market. A consistent threshold applied to all facilities is important for a well-functioning market and to provide confidence in the information provided to the market.[42]

In relation to future LNG developments and future gas fields developed as part of existing LNG developments, the Commission advises that the rule allows for future developments. An exempt LNG facility is defined in the rule as a BB facility upstream of any WPP connection

41 Inpex submission to the draft determination p.1-2.

42 *Improvements to the Natural Gas Bulletin Board* rule range request, Final Determination, p.16

point. A new facility or field upstream of a WPP connection point would therefore be exempt from reporting provided it met the conditions of the rule.

In consideration of suggestions in submissions that the exemption should provide a mechanism through which it can be reinstated once removed, the Commission finds that allowing NT LNG producers to alter their exemption status based on varying commercial circumstances and operations is not the intent of the exemption, neither is it consistent with the threshold for reporting under part 18. This threshold depends on the nameplate capacity of the connection with the domestic market, not the degree to which it is used in any year. As such providing an exemption that can be reinstated depending on the trading activities of the participants in any period is not consistent with the intent of part 18, or the intent of the exemption under the final rule.

The Commission finds that reporting requirements under the exemption are unlikely to be onerous. Very little information is required to be reported, and it can be expected that this information would be readily available. The additional effort of providing this information in a suitable format to the AER, on the rare occasions that emergency back-up supply is called for, is unlikely to be onerous.

The basis for the claim that information to be provided in emergency gas flow notices is confidential is not clear. The information is to be provided on past events concerning actual gas flows, or lack of flow, on the domestic network in the NT and is to be provided to the AER only. The rule does not require these notices to be published on the Bulletin Board. The Commission also notes that reporting of Bulletin Board information to AEMO, where required, cannot rely on a duty of confidence to avoid compliance with the obligation to provide AEMO with information. This is set out in Chapter 7 of the National Gas Law (NGL).[43]

In relation to the issues raised by PWC that it is not appropriate to name PWC in the rule, given PWC may be replaced in its activities by another entity, or could be restructured or renamed, the Commission considers that the rule allows for these eventualities given under the final rule the term PWC is defined as Power and Water Corporation ABN 15 947 352 360, or any successor to its business.

The Commission considers that the draft rule should be revised to allow for testing, on a periodic basis, of the emergency gas supply equipment. This testing would not be expected to occur frequently or to involve significant volumes. It would also not be expected to involve any substantial or repeated flow into the NT LNG projects from the domestic market. While allowance is made in the final rule for testing of emergency supply equipment, this is subject to the same reporting requirements to the AER as emergency gas supply outage events.

43 https://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20GAS%20(SOUTH%20AUSTRALIA)%20ACT%202008/CURRENT/2008.19.AUTH.PDF

3.3 Allowance for the development of tranche 2 reforms and the potential for transitional arrangements

3.3.1 Proponent's view

In its submission to the consultation paper the proponent stated that some of the proposed Tranche 2 reforms and the AEMC and GMRG joint recommendations related to large user and LNG facility reporting requirements raise identical issues to those identified in the rule change request. The proponent states in the submission that the proposed reporting requirements for large user and LNG facilities may also undermine the commercial incentives for NT LNG projects to maintain their connection to the NT gas market and continue with emergency back-up gas arrangements.[44]

The proponent concluded that the exemption proposed under this rule would exempt the NT LNG facilities from the large user and LNG facility reporting requirements.

3.3.2 Stakeholder views

The AER in its submission stated that it supported the draft determination and states that proposals to extend part 18 reporting obligations to upstream gas flow information indicate that the direction of reform is to expand Bulletin Board reporting beyond the flows of gas across an interconnected domestic network.

The AER states in their submission that while the draft determination addresses the uncertainty around how to treat the NT LNG facilities under the current Gas Rules, a question remains as to whether this should be an interim arrangement given the pending tranche 2 reforms.[45]

In the context of these broader tranche 2 reforms, the AER therefore recommends the AEMC explore temporary or transitional provisions in the rule to accommodate further consideration of NT LNG facility reporting through the tranche 2 reform process.[46]

3.3.3 Conclusion

The Commission finds that future reforms in relation to tranche 2 information cannot be anticipated in the making of this rule, and it is open for future reforms to apply to the NT LNG projects through legislative change. The exemption provided under this rule does not provide for any exemption under rules that have not yet been made. These reforms will be considered on their own merits, and the affected stakeholders in the NT gas market will have opportunity to submit to these processes as and when they proceed. Tranche 2 reforms can take this exemption into account. As such, there is no need to provide for the rule as a transitional measure, and it may provide greater certainty, prior to the implementation of tranche 2, to provide the rule on such basis.

44 NT Department of Treasury and Finance submission to the consultation paper p.3.

45 AER submission to the draft determination p.2.

46 AER submission to the draft determination p.4.

3.4 Conclusion

The Commission considers that the final rule will provide the NT LNG projects and PWC with the flexibility needed to operate the emergency back-up supply arrangements such that NT LNG projects are not disincentivised from providing emergency back-up supply and the security of supply essential to the NT domestic gas market is as a result preserved.

The Commission considers that, based on the arguments provided, extending the terms of the exemption to allow for limited or unlimited trade, at present or in the future, between the NT LNG projects and the NT domestic market is contrary to the intent of part 18 and to the interests of the NGO. The Commission considers that the exemption as written is not likely to be a barrier to trade. In any interconnected gas market, information on the activities of each participant to assist other participants in their operational and investment decisions is in the interests of the NGO.

The final rule balances the requirements of emergency supply to the NT domestic gas market with the longer term requirements for the development of the broader interconnected gas market. Emergency back-up supply that is essential to the security of supply of the NT gas market is allowed for under the exemption. In the event of wider trade between the NT LNG projects and the domestic gas market, the requirement for Bulletin Board reporting for all interconnected facilities, including those upstream of the connection point with the domestic market, forms part of a suite of reforms intended to assist the dynamic development of the interconnected gas market. Bulletin Board information provides valuable signals to the market as a whole for operational and investment decisions.

ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
APA	APA Group
BB	Bulletin Board
Commission	See AEMC
MCE	Ministerial Council on Energy
NEL	National Electricity Law
NEO	National electricity objective
NERL	National Energy Retail Law
NERO	National energy retail objective
NGL	National Gas Law
NGO	National gas objective
PWC	Power and Water Corporation
RIS	Regulation Impact Statement

A BACKGROUND

A.1 The East Coast Review

The AEMC's East Coast gas market review (2016) recommended extensive changes to the Gas Bulletin Board registration and reporting requirements. These were endorsed by the Energy Council.

Two tranches of rule changes were recommended:

- The first tranche did not require law and regulation changes and were the subject of the 'Improvements to Natural Gas Bulletin Board' rule change request and determination, completed in 2017.
- The second tranche requires law and regulation changes because it imposes requirements on entities and on information not currently permissible under the NGL. Tranche 2 has yet to be implemented.

A.2 Improvements to the Natural Gas Bulletin Board rule change

On 26 September 2017 the Commission made the final rule on 'Improvements to the Natural Gas Bulletin Board'.

This rule obliges certain gas facilities to be registered on the Bulletin Board based on a minimum threshold rather than the previous zonal model which was based on whether pipelines carry gas into or out of particular gas zones. The rule also simplified exemption criteria.

The previous production and demand zone model meant facilities in NT, parts of north Queensland and regional areas of NSW, Victoria and SA were not required to comply with the reporting obligations.

As a result of the removal of the zonal model and the shift to a minimum threshold reporting requirement of 10 TJ per day and above for transmission pipelines, production facilities and storage facilities are now required to report under the Bulletin Board if connected to the wider market.[47]

Remote Bulletin Board facilities, defined as those that are not connected directly or indirectly to the East Coast gas market, are exempt from registration and reporting requirements until such time as they are connected. The exempt facilities initially include those located in the NT and in north Queensland. The exemption related to the NT expires 90 days after the Northern Gas Pipeline (NGP) is commissioned because the NGP connects the NT to the east coast gas market.

47 In the Commission's draft determination on the Regulation of covered pipelines rule change proposal, all covered ("scheme")pipelines will be required to report on the Bulletin Board whether or not they meet the reporting threshold but the reporting threshold will still apply to non-scheme pipelines. All of the relevant pipelines in this rule change are non-scheme pipelines so the reporting threshold will still apply post the making of the final rule for the Regulation of covered pipelines.https://www.aemc.gov.au/rule-changes/regulation-covered-pipelines

The NGP was commissioned on 3 January 2019, the NT application date was set for 3 April 2019 and as a result NT facilities were required to be registered by 6 May 2019.[48] Prior to the 6 May 2019, the AER advised both NT LNG projects in writing that it does not intend to take action on potential non-compliance with Part 18 while this rule change application is pending.

A.3 Tranche 2 reforms and additional transparency measures

Subsequent to the AEMC's east coast review and following a request in March 2017 by the then Prime Minister for the ACCC and Gas Market Reform Group (GMRG) to work together to advise on options to improve transparency across the gas supply chain, on 21 December 2018 the ACCC and GMRG released a joint paper recommending 18 measures to improve the transparency of the east coast gas market.

In addition to the outstanding tranche 2 recommendations made in the east coast review (law and regulation changes still pending), the ACCC and GMRG made a number of other recommendations.

At the December 2018 COAG Energy Council meeting, the Energy Council tasked the Senior Committee of Officials with developing a package of measures, including amendments to the National Gas Law, Regulations and Rules, to progress the tranche 2 reforms and the recommendations made by the GMRG and the ACCC in the joint paper.

On 8 August 2019 COAG Energy Council released the Regulation Impact Statement (RIS) on *Measures to Improve Transparency in the Gas Market.* These measures cover the tranche 2 reforms and the recommendations made by the GMRG and ACCC to improve the transparency of the gas market. The Consultation RIS seeks stakeholder views and information that will inform the assessment of the rules package, by 5pm (AEST) Thursday 12 September 2019. Stakeholder forums will be held in August/September 2019. Feedback received from stakeholders will inform recommendations to COAG Energy Council on a preferred course of action.

Energy Council is expected to consider the Decision RIS and any proposed amendments to the National Gas Law, Regulations and Rules in February 2020. If required, amendments to the NGL are expected to be progressed through the SA parliament and the initial Rules and Regulations made through February-November 2020. The new transparency measures would then come into effect in November 2020 according to key dates set out in the RIS.[49]

A.4 The Northern Territory gas market and LNG projects

The NT LNG projects

The LNG projects located in the NT, Darwin LNG and Ichthys LNG, operate differently to their counterparts located in Gladstone, Queensland. Production is sourced entirely from offshore fields that are in large part dedicated to the supply of the LNG projects.

48 NGR s.143(10(a)) and s.150(2).

49 http://www.coagenergycouncil.gov.au/publications/measures-improve-transparency-gas-market-consultation

The physical link with the domestic market is by virtue of lateral pipelines connecting the projects with the Wickham Point Pipeline (WPP).[50]

The NT gas market

Historically, the NT has had a small and isolated domestic gas market, developed primarily to support gas fired generation and located mostly around the Darwin/Katherine region and a smaller market in Alice Springs.

The market uses approximately 25 PJ per year or about 68 Terajoules (TJ) per day on average.[51] The Northern Territory owned PWC is responsible for securing adequate gas supplies for electricity generation and industry and has had an implicit obligation to ensure security of supply.[52]

Security of gas supply is particularly important to the NT as a result of the reliance on natural gas for the provision of baseload power generation. The NT gas market sources up to 90 per cent of supply from one field, Blacktip. The proponent considers that a temporary reduction in gas supply from this field presents a significant risk to the provision of power in the NT.[53] In the event of a temporary reduction in gas supply from the field, diesel back-up, supply from the Amadeus basin and linepack,[54] can all be used as back-up sources of supply, however these sources are insufficient to meet the Territory's needs during an extended loss of gas supply from the Blacktip gas field.

Physical links between the NT LNG projects and the NT gas market

The gas supply from the NT LNG projects is provided via connection to the domestic market through pipelines that connect the projects with the Wickham Point Pipeline (WPP) operated and part owned by APA Group (APA). The emergency lateral pipelines are sized to meet the needs of the domestic market and to match the capacity of the Wickham Point Pipeline which can transport up to 90 TJ per day. The Wickham Point pipeline is a registered Bulletin Board facility under part 18 of the NGR.

Both Darwin LNG and Ichthys LNG have contracts in place with PWC to provide gas supply primarily for emergencies. In the case of Darwin LNG this agreement is expected to expire in 2022.[55]

Darwin LNG currently has no physical capability to receive gas from the domestic market, it can only provide supply.[56] Ichthys LNG has the physical capability to both receive gas (for onsite power generation), and supply gas to the domestic market.[57] Table 2.2 provides a summary of flow capability into and out of the domestic market from the two projects.

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50 https://www.aemc.gov.au/energy-rules/national-gas-rules/gas-scheme-register/nt-wickham-point-pipeline
51 Rule change request p.9.
52 Rule change request p.3.
53 Rule change request p.7.
54 Linepack refers to the volume of gas that can be stored in a gas pipeline. Typically this type of storage has a limited duration.
55 Rule change request p.8.
56 Rule change request p.8.
57 Rule change request p.8.

Ichthys LNG has sourced some commissioning gas from PWC during the build up to commercial operations.[58]

Ichthys LNG is able to buy gas from the domestic gas market, however, the proponent understands that the economics of exporting gas from the NT gas market to Ichthys LNG mean that it is only likely to occur as a last resort for a wholesaler, PWC, who has contracted for the gas and has been unable to secure a purchaser in the NT gas market.[59]

58 Commissioning gas is normally used to test the operation of the plant before full production of LNG commences.

59 Rule change request p.8.

B SUMMARY OF OTHER ISSUES RAISED IN SUBMISSIONS

This appendix sets out the issues raised in consultation on this rule change request and the AEMC's response to each issue.

Table B.1 contains a summary of issues raised in submissions to the draft determination published by the Commission which are not addressed in the body of this determination.

Table B.1: **Summary of other issues raised in submissions to draft determination**

STAKEHOLDER	ISSUE	AEMC RESPONSE
AER	The AER in its submission call on the AEMC to clarify whether PWC's Inpex lateral pipeline is captured by part 18 when an application event occurs. (p.3).	If a BB application were to occur and the AER were to issue a BB application notice, connecting pipelines that meet the threshold reporting requirement (10 TJ per day nameplate capacity) would be required to register and report on the Bulletin Board. If the flows on the Inpex lateral match those already reported on the Bulletin Board, then exemption 164(2) would apply and the pipeline would not need to report. However, this matter of clarification is outside the scope of the rule change request, and is a matter for any liable party to clarify with the AER in the event that a BB application notice is issued.
AER	The AEMC should clarify whether operators of NT LNG infrastructure should provide gas facility details prior to an application event (i.e. gas facilities to which part 18 would apply) as the	Facility operators should be required to provide information on their facilities, upstream of a WPP connection point, once an application event occurs

STAKEHOLDER	ISSUE	AEMC RESPONSE
	AER will need to understand the facilities to be captured following a part 18 exemption removal. (p.3.)	
AER	The AEMC should consider a commercial interest test when a part 18 exemption is removed. This might assess the impact of information disclosure on the Bulletin Board on the commercial position of the LNG export business. This might then provide a basis for exempting the business from a component of reporting such as the medium term capacity outlook. Any such measure would need to be fully justified in terms of why LNG export facilities in the NT are treated differently under part 18 of the NGR (p.3.)	A commercial interest test is outside the scope of this rule change, and is best addressed in the event a BB application event occurs.
PWC	PWC notes that the draft rule as well as potentially impacting emergency gas supply arrangements with existing and new LNG suppliers may also act as a disincentive to developers of offshore resources landing gas in the NT for domestic use. (p.2)	The Commission considers that offshore developments, with a nameplate capacity greater than 10 TJ per day intended for the domestic market are captured by part 18. The Commission considers that development of offshore resources is unlikely to be disincentivised by reporting requirements under part 18.

C LEGAL REQUIREMENTS UNDER THE NGL

This appendix sets out the relevant legal requirements under the NGL for the AEMC to make this final rule determination.

C.1 Final rule determination

In accordance with s. 311 of the NGL of the NERL the Commission has made this final rule determination in relation to the rule proposed by the NT Government.

The Commission’s reasons for making this final rule determination are set out in section 2.4.

A copy of the final rule is attached to and published with this final rule determination. Its key features are described in section 2.4

C.2 Power to make the rule

The Commission is satisfied that the final rule falls within the subject matter about which the Commission may make rules. The final rule falls within s. 74(1)(a)(iii) of the NGL as it relates to the collection, use, disclosure and publication of information in relation to natural gas services.

C.3 Commission's considerations

In assessing the rule change request the Commission considered:

- it's powers under the NGL to make the rule
- the rule change request
- submissions received during first round consultation
- the Commission’s analysis as to the ways in which the proposed rule will or is likely to, contribute to the NGO.
- The Commission’s analysis as to the ways in which the final rule will or is likely to, better contribute to the NGO than the proposed rule.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.[60]

The Commission may only make a rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed rule is compatible with the proper performance of Australian Energy Market Operator (AEMO)’s declared system functions.[61] The more preferable final rule is compatible with AEMO’s declared system functions because it does not affect the performance of those functions.

60 Under s. 73 of the NGL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy. On 1 July 2011, the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. The amalgamated council is now called the COAG Energy Council.

61 Section 295(4) of the NGL].

C.4 Civil penalties

The Commission cannot create new civil penalty provisions. However, it may recommend to the COAG Energy Council that new or existing provisions of the NGR be classified as civil penalty provisions.

The final rule does not amend any clauses that are currently classified as civil penalty provisions under the NGL or National Gas (South Australia) Regulations. The Commission does not propose to recommend to the COAG Energy Council that the new rule 143A made by the final rule be classified as a civil penalty provision.

C.5 Conduct provisions

The Commission cannot create new conduct provisions. However, it may recommend to the COAG Energy Council that new or existing provisions of the NGR be classified as conduct provisions.

The final rule does not amend any rules that are currently classified as conduct provisions under the NGL or National Gas (South Australia) Regulations. The Commission does not propose to recommend to the COAG Energy Council that new rule 143A of the final rule be classified as a conduct provision.