

Our ref: GRC0065

26 September 2022

Mr Robbie Flood
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By email: <mailto:rflood@csr.com.au>

Dear Mr Flood

Response to objection to the use of an expedited process for the rule change request on DWGM interim LNG storage measures

I refer to the objection from CSR Limited (CSR) to the Australian Energy Market Commission (Commission) in relation to the use of an expedited process for the rule change on DWGM interim LNG storage measures.

The Commission has carefully considered CSR's objection with reference to the relevant test for the use of the expedited process in the National Gas Law. We appreciate the feedback and insights that CSR has provided, but for the reasons set out in the Appendix to this letter, the Commission has decided that the reasons given by CSR in the request for the Commission not to use the expedited process do not meet the criteria under the National Gas Law for the Commission to switch to the standard rule making process.

The Commission thanks CSR for its interest in this project and would welcome a submission from CSR to the issues raised in the consultation paper.

Yours sincerely



Anna Collyer
Chair
Australian Energy Market Commission

Appendix

Relevant provisions of the National Gas Law

The AEMC's decision to use an expedited process for the rule change on *DWGM interim LNG storage measures* was on the basis that the rule change request was a request for an urgent rule. That is, a rule relating to any matter or thing that, if not made as a matter of urgency, will result in that matter or thing imminently prejudicing or threatening—

- a) the effective operation or administration of a regulated gas market operated and administered by AEMO; or
- b) the supply of gas.¹

Under the National Gas Law (the Law) the AEMC must not use the expedited process for a rule change if:

- a) the AEMC receives a written request not to do so; and
- b) the reasons set out in that request are not, in its opinion, misconceived or lacking in substance.

If the AEMC is of the opinion that the reasons given in a request not to use the expedited process are misconceived or lacking in substance, the AEMC must make a decision to that effect and give the person its reasons, in writing, for that decision without delay.²

The AEMC has come to this opinion, after considering the reasons in the CSR objection in the context of the test for an urgent rule. Its reasons are set out below, with reference to each of the reasons in the CSR objection.

AEMO already has the power to contract and use the LNG facility to mitigate against the risk of curtailment as well as for system security

In its submission, CSR stated that:

- AEMO already has the power to do what is contemplated by the rule change request, with section 91BA(2) of the Law allowing AEMO to trade in natural gas and Part 19 of the National Gas Rules (NGR) recognising AEMO's ability to contract to use the Dandenong LNG facility, to hold an LNG reserve and to inject from its LNG reserve.
- AEMO has used these powers in 2021 and 2022 and adjusted its holdings of capacity in the facility, as required.
- AEMO assessed the adequacy of the rules and procedures relating to the use of the Dandenong LNG facility in March 2022 and while it did identify some rule and procedure changes, none of them are required to enable AEMO to contract and inject from the facility.
- AEMO has stated that it would only contract to satisfy the emergency scenario (i.e. where curtailment is occurring), but there is nothing in the NGR limiting AEMO to this situation and as a prudent operator, ensuring curtailment is minimised should also be considered.

As noted in the rule change request, the proponent is of the view that neither the NGR nor the Victorian legislation give AEMO certainty about whether, when and how AEMO may contract and use the LNG facility to mitigate against the risk of curtailment. AEMO's contracting actions to date, which have only focused on having sufficient LNG for emergencies and safe system shutdown, also suggest that it has viewed its powers under the NGR to be quite narrow (i.e. as not encompassing contracting to mitigate the risk of curtailment).

¹ National Gas Law, section 290

² National Gas Law, section 304(4)

In the AEMC's view, the scope of AEMO's powers under the existing framework are uncertain. This is a key aspect of the request and needs further investigation. Resolution of the ambiguity (whether by making a rule or otherwise) is itself a matter of urgency since if CSR is incorrect, AEMO will not have the powers it needs to prepare for winter 2023.

As outlined in the rule change request, modelling undertaken by AEMO suggests that if it only contracts for emergencies and safe system shutdown in 2023 (i.e. 140 TJ) and the amount of LNG held by market participants is the same going into winter 2023 as what it was at the start of winter 2022, then the likelihood of supply being curtailed in winter 2023 would be between 15% and 35%. The failure to address this uncertainty in the current arrangements (either through a rule change or otherwise) poses an imminent threat to the supply of gas in Victoria and the effective operation of the DWGM, as required by section 290 of the Law.

In addition to these issues, there are other aspects of the proposed rule change that also necessitate urgent consideration, such as the basis on which AEMO is to contract with APA and cost recovery.

Taking these matters into account, the AEMC considers that the objection is misconceived and lacking in substance within the meaning of section 304(4) of the Law.

The issue of low contracted volumes was identified more than 18 months ago and AEMO has had sufficient time to act

In its submission, CSR stated that:

- AEMO identified that there would be insufficient stock in the Dandenong LNG facility in early 2021 and there was also information available on the decline in contracting on the Bulletin Board in 2019.
- AEMO has had sufficient time to update the procedures to ensure there is a clear framework in place but has not done so "clearly indicating that this is not an urgent issue".

As noted above, the AEMC considers that the scope of AEMO's powers under the existing framework are uncertain. This is a key aspect of the request and needs further investigation. The AEMC also notes that recent forecasts from AEMO and the ACCC have identified that the demand-supply outlook for the DWGM has further deteriorated since 2021. The failure to address this uncertainty in the current arrangements poses an imminent threat to the supply of gas in Victoria and the effective operation of the DWGM, as required by section 290 of the Law.

For these reasons, the AEMC considers that the objection is misconceived and lacking in substance within the meaning of section 304(4) of the Law.

The proposed rule does not address the underlying issue and could have adverse consequences

In its submission, CSR stated that the proposed rule change does not address the underlying market issue and may be difficult to unwind. It also stated that the proposed rule change introduces concepts that result in AEMO taking on a more active market participant role and that it could undermine the need for APA to offer efficient and innovative LNG storage services and could discourage market participants from procuring LNG capacity.

CSR also submitted that it is unclear that the national gas objective will be met by the rule change given the potential impacts on price, the uncertainty as to whether the changes will assist with safety and security and noting any supply from the facility is likely to be limited. CSR contended that a more thorough assessment of the longer-term market framework is required and must look for a market-led solution, rather than "introducing further market risk into what is already a challenging environment".

The AEMC considers that this objection goes to the merits of the proposed rule change which are to be tested through the rule change process, rather than whether the proposed rule satisfies the requirements for an 'urgent' rule under section 290 of the Law. As such, the AEMC considers that the objection is misconceived and lacking in substance within the meaning of section 304(4) of the Law.

In relation to the last issue raised by CSR, the AEMC notes the proposed rule is proposed as an interim solution while further work is undertaken by jurisdictional officials on both the potential implementation of a third party access regime for storage facilities and a longer term security and reliability framework.