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Australian Energy Market Commission

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Allowing AEMO to accept cash as credit support under the National Gas Rules

AGL Energy (AGL) welcomes the opportunity to respond to the Australian Energy Market Commission's (AEMC) draft rule determination to allow the Australian Energy Market Operator (AEMO) to accept cash as credit support under the National Gas Rules (NGR).

Key points

- The prudential framework should not be materially weakened to provide flexibility in credit support arrangements. The prudential framework is a critical safeguard and must continue to maintain market confidence and settlement integrity.
- We support the AEMC's strengthened package of protections, including first ranking charge, set off rights and return rights.
- We support measures to provide greater legal certainty and further reduce residual clawback risk.
- Any residual clawback risk should not be disproportionately transferred to sellers and producers.
- Concentrating residual clawback risk on sellers and producers is inequitable and may discourage market participation.
- Retailers can also be net receivers, meaning they remain exposed to clawback costs under the proposed framework. The draft rule does not provide the retailer protection the AEMC suggests.
- The reduction in the proposed cap from $20 million to $10 million is an improvement and better reflects gas market exposures; however, a lower cap of $5 million should be considered in the first instance.
    - The cash cap should remain conservative until there is greater operational experience with cash credit support arrangements.
    - The AEMC should explore alternative mechanisms that would provide greater flexibility to adjust the cap over time while maintaining appropriate stakeholder consultation and regulatory certainty.

Maintaining a robust prudential framework

We support flexibility in prudential arrangements where it can be achieved without materially weakening the existing framework. The benefits of increased flexibility should not come at the expense of financial stability or result in the transfer of risks between market participants in ways that are inconsistent with the underlying objectives of the prudential framework.

While the proposed rule change is intended to address difficulties some participants experience in obtaining traditional credit support, it ultimately introduces risks that do not arise to the same extent under existing bank guarantee arrangements.

Support for additional clawback protections

We supports the AEMC's proposed safeguards to strengthen the draft rule through the inclusion of additional legal and prudential protections, including:

- The provision of a first ranking charge in favour of AEMO over cash credit support.
- The introduction of set off rights and return rights.
- Clarification regarding the operation of the existing Corporations Act displacement provisions.
- The recommendation that Energy Ministers consider amendments to the National Gas Law to provide additional legal certainty regarding clawback risk.

Collectively, these measures significantly improve the draft rule and provide a stronger basis for managing insolvency and clawback risks than was contemplated under the original rule change proposal. Minimising uncertainty in this area is important to maintaining confidence in market settlement arrangements.

Residual clawback risk should not be disproportionately allocated to sellers

While we acknowledge that the proposed protections reduce the likelihood of clawback events, the draft determination itself recognises that a residual risk remains. The AEMC has proposed that any clawback costs ultimately be allocated to participants receiving net payments from AEMO. In practice, these participants are likely to be sellers and producers.

We do not consider this to be the most equitable allocation of residual risk.

Participants receiving net payments from AEMO already bear substantial exposure through supplying gas into the market and relying on the prudential framework to ensure settlement obligations are honoured. If the framework is deliberately amended to introduce greater flexibility through cash credit support, it does not necessarily follow that any remaining residual risk should be borne solely by sellers and producers.

Caution should be exercised before introducing a framework that, by design, disproportionately allocates residual risks to sellers and producers. While participation on the demand side of the Declared Wholesale Gas Market (DWGM) and Short Term Trading Market (STTM) is effectively compulsory, gas producers are not required to participate in these markets. Imposing additional risks on producers may weaken incentives for participation and liquidity at a time of ongoing market stress when policymakers are seeking to encourage more active and competitive gas markets. Any residual clawback risk should therefore be allocated in a manner that is both equitable and supportive of efficient market participation.

Retailers may also be subject to disproportionate clawback risk under the AEMC’s proposal

The AEMC’s proposed allocation of residual clawback costs appears to assume that participants receiving net payments from AEMO will predominantly be gas sellers and producers and that retailers will generally sit on the paying side of the market. However, this does not accurately reflect how the DWGM and STTM operate in practice. As balancing markets, participants may be either net payers or net receivers depending on market conditions, trading positions, and operational circumstances at a particular point in time. Retailers can and do receive net payments from AEMO and may therefore be exposed to clawback costs under the proposed framework. Consequently, the draft determination does not provide the protection to retailers that the AEMC appears to envisage. Rather than avoiding the risk of retailers being required to bear additional costs, the proposed mechanism may simply transfer those costs to retailers whenever they are in a net receiver position.

This is particularly relevant given the AEMC’s stated rationale that allocating clawback costs to participants receiving net payments will reduce the likelihood of financial contagion and avoid creating additional payment obligations that could increase retailer default risk. In practice, retailers may still be exposed to clawback costs under the proposed arrangements, meaning the draft rule may not achieve the outcome described in the draft determination. We consider that the AEMC should revisit its assumptions regarding which participants are likely to bear residual clawback costs and assess whether the proposed allocation mechanism appropriately reflects the realities of gas market participation.

A lower cap of $5 million should be considered and only changed if needed

We acknowledge that the draft determination significantly improves upon the original rule change proposal by reducing the proposed cap from $20 million to $10 million per participant per market. However, we consider that the cap should continue to be approached conservatively and should initial be set at $5 million.

The equivalent arrangements in the National Electricity Market have only recently been introduced and have not yet been tested through a full market cycle. As a result, there remains uncertainty regarding participant behaviour, operational outcomes, and the practical effectiveness of the various risk mitigation measures.

While the proposed safeguards are expected to reduce risks substantially, there is still limited practical experience with the operation of cash as credit support in Australian energy markets. Consistent with the prudential objectives of the framework, we consider that any cash cap remains conservative until sufficient operational experience has been gained.

Future review and flexibility of the cap

We note that any future changes to the cap would likely require a further rule change process. Given the time and complexity associated with amending the Rules, the AEMC may wish to consider whether there are alternative mechanisms that would provide greater flexibility to adjust the cap over time while maintaining appropriate stakeholder consultation and regulatory certainty.

We recognise there are competing considerations in this area. While a more flexible mechanism may allow the cap to be adjusted more efficiently in response to operational experience, stakeholders may also place significant value on the certainty associated with parameters being specified directly in the Rules. As the market gains experience with these arrangements, there may be merit in considering whether a more adaptable approach could be appropriate. This could be particularly valuable if future experience demonstrates that the cap should be adjusted to better balance flexibility and prudential risk.

Implementation timeline

We support the proposed commencement date of 1 November 2028 and do not consider the implementation timeframe should be accelerated. The proposed timeline will allow AEMO sufficient time to implement necessary systems and procedural changes and provide market participants with appropriate time to understand and prepare for the new arrangements.

We also support the development of AEMO cash security guidelines prior to commencement. Clear operational arrangements will be important to ensuring the framework operates effectively from commencement.

About AGL

Proudly Australian since 1837, AGL provides over 4.5 million gas, electricity, and telecommunications services to our residential, small, and large business, and wholesale customers across Australia. AGL operates the largest private electricity generation portfolio in Australia, with a total operated generation capacity of almost 8000 MW across Australia as of 30 June 2025. AGL owns Australia's largest privately-owned fleet of hydro assets and operates the largest portfolio of renewables and storage assets of any ASX listed company. Since 2006, AGL has invested billions of dollars in the construction and delivery of over 2 GW of renewable and firming capacity in the National Electricity Market (NEM).

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Yours sincerely,

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