

A few  
words.

7 April 2010

Dr John Tamblyn  
Chairman  
Australian Energy Market Commission  
PO Box A2449  
Sydney South **NSW** 1235

AGL

## **AEMC Draft Determination — Prioritisation of Tied Controlled Withdrawal Bids**

Dear Dr Tamblyn,

AGL Energy wishes to respond to the Commission's Draft Determination of 25 February 2010 regarding the Rule change proposal by AEMO, Prioritisation of Tied Controlled Withdrawal Bids Rule proposal (AEMC reference GRC0001) . The specific change being sought would apply to the Victorian Declared wholesale Gas Market (DWGM) with respect to the prioritisation of controlled withdrawal bids in the event of a tie.

AGL Energy is, amongst its other roles, a large retailer and shipper of gas in eastern Australia, operating in multiple jurisdictions. In that role, AGL is very familiar with the Victorian gas market and the discussions around this issue that took place at the GMCC and GWCF forums chaired by AEMO. It is the culmination of these discussions which have found their way to the Commission in the form of this current rule change proposal.

AGL Energy is of the view that the Commission's findings fail to take account of the extensive consultation that took place under the framework of the GMCC (and subsequently the GWCF) in relation to this rule change. We are also of the view that there are factual issues, such as the materiality of the issue at stake, with respect to the investigations that underpin the Commission's draft determination. AGL's submission is presented under these two headings, process and factual issues.

### **Process Issues**

The rule change submitted by AEMO was the culmination of a long and intensive consultative process which involved stakeholders representing gas suppliers, gas transmission and distribution companies, first and second tier retailers, and end-users of gas. The process conducted by AEMO provided all stakeholders with extensive information and the opportunity to discuss the merits of multiple options at length. Over the life of this issue, various versions were considered and discarded; but the finalised



rule change submitted to the Commission was based on unanimous support from all stakeholders. The AEMO process ensures that these meetings are fully recorded and no doubt these would have been made available to the Commission's officers by way of further background material. This lengthy gestation period was amply described in the original submission from AEMO dated 16 November 2009 but appears to have been given minimal recognition by the Commission.

It is fair to say, and the records of the GMCC and subsequently of the GWCF will show, that AGL was not an active or enthusiastic proponent of this rule change for prioritising controllable withdrawals at Culcairn, principally on the grounds of the materiality of this issue. The discussion was driven by participants who do have firm haulage capacity on the other side of the Victoria/NSW border and who have strong commercial reasons to ship gas through Culcairn. However, in its final agreed form, the logic or principle that all controllable withdrawal and injection points should be treated equally was compelling enough for all stakeholders to agree to the change. And as stated earlier, the decision of the GWCF was unanimous.

On 23 December 2009, the AEMC published a notice advising the public of the commencement of the Rule change process for this Rule change request and of the Commission's decision to dispense with the first round of consultation on the proposal, as permitted under the transitional provisions applying to Part 19 of the NGR. As the Commission's Information Paper notes: "...the Commission may dispense with a particular step in the rule change process if the Commission is of the opinion that the relevant step is unnecessary because no equivalent step existed under the superseded jurisdictional rules or the same or a similar step has already been take under the superseded jurisdictional rules." Having dispensed with the first round of consultation, which AGL interpreted as tacit recognition of the equivalence to a consultation that would have been conducted as part of a *de novo* hearing by the AEMC, it would appear quite perverse for the Commission to then reject the proposal at the Draft Determination phase. If the Commission entertained doubts about the extent and inclusiveness of the earlier consultation, it would have been more appropriate to have reverted to a first-round consultation itself.

We understand that rule changes do need to be adjudged in terms of reference to the National Gas Objective, as set out in section 23 of the National Gas Law (NGL), and that section 72 of the NGL requires the Commission to "have regard to the national gas objective" in performing its function. AGL firmly believes that principles, such as consistency and equal treatment of equal situations, are hallmarks of a body of rules that have wide acceptance and that granting this rule change would help further the National Gas Objective.

## **Factual Issues**

The Commission's analysis assumes that its decision needs to be seen in light of the Short Term Trading Market (STTM) being in operation in NSW. Whilst that is indeed an appropriate perspective, it needs to be borne in mind that the NSW STTM hub operates only at the entry to the Sydney gas market defined by Jemena's Sydney gas distribution network, and that Sydney is some 500km from Culcairn. Any north-bound flow of gas at Culcairn does not flow into the STTM but supplies off-take points, such as Tumut and Wagga Wagga, on the EAPL lateral which joins the MSP main line at Young.

The Commission's paper, in section 3.1.2, observes that it is "unclear whether there would be demand for bilateral agreements with APA GasNet from parties such as gas retailers under the market carriage framework that applies in the Victorian DWGM." This



fails to take into account the active interest in AMDQ Credits whenever they have been made available by APA within the DWGM, such as in the Southwest Pipeline augmentation that took place in 2008 — over-subscription is not uncommon. Furthermore, the paper fails to note that Culcairn is the interface with the contract carriage regime in NSW, and that for anyone with a commercial presence on the NSW side of Culcairn and sourcing gas, occasionally or primarily from Victoria, it is vital to secure AMDQ/AMDQ credits to ensure reliability of supply.

The Commission's paper goes on to note in section 3.1.3 that adoption of the proposed rule change to prioritise tied controllable withdrawal bids on the basis of transportation rights instead of a *pro rata* arrangement would lead to inefficiencies in the allocation of gas because it "prevents scarce gas being allocated to parties that value it the most". But it is precisely those parties that value it the most who have ensured continuity of supply through committing to AMDQ/AMDQ credits by way of an up-front investment and who will be bidding their gas at the Victorian VOLL of \$800, if need be. These parties will also have firm shipping rights on the other side of Culcairn. If these parties cannot be given access in the event of tied bids, then this would tend to undermine the very premise of contract carriage and the worth of property rights. It is also worth noting that the STTM design, as approved by SCO, gives priority to firm capacity-holders in the event of a tie. This was seen to be a validation of the merits of investment in pipeline capacity.

The Commission's analysis suggests that there are market power issues involved at or around Culcairn, and the draft decision gives significant weight to this aspect. The Commission's analysis fails to recognise the materiality of the issue. The amount of gas flowing at Culcairn is some 17TJ/day, and this is acknowledged in footnote 22 to the Commission's draft determination. The NSW gas market is in excess of 400 TJ/day, so the throughput at Culcairn gas flow is less than 5% of NSW gas demand. It was precisely because of this perspective that the issue of market power was not seen as material in the extensive discussions carried out under the forums conducted by AEMO.

Should you have any queries with respect to this submission, please call George Foley on (03) 8633 6239.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alex Cruickshank', is positioned below the text 'Yours sincerely,'.

Alex Cruickshank  
**General Manager Energy Regulation**