



## Department of Primary Industries

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Our Ref:

4 November 2010

Dear John

### **DANDENONG LIQUEFIED NATURAL GAS STORAGE FACILITY RULE CHANGE - SUBMISSION TO THE AEMC**

The Victorian Department of Primary Industries (DPI), as the portfolio agency responsible for energy policy in Victoria makes the following submission to the AEMC in response to its Draft Determination on the proposed rule change entitled "Natural Gas Amendment (Dandenong Liquefied Natural Gas Storage Facility)".

DPI considers that the proposed liberalisation of the operation of the Dandenong LNG facility should help promote the efficient operation of the facility as well as promoting competition between declared wholesale gas market participants. In particular, the proposed rule reduces the level of prescription and increases the level of flexibility available to wholesale gas market participants seeking to use the facility. This should help to promote efficient risk management and competition in the declared wholesale gas market. This should in turn, promote the efficient use of natural gas services with price benefits to consumers, in line with the National Gas Objective.

However, whilst DPI is supportive of the proposal, DPI nevertheless has some concerns relating to the specific rule changes as set out in the Draft Determination.

As set out in the Draft Rule, the AEMC is proposing to delete the definition of the "declared LNG storage provider" which is currently contained in Rule 200 of the National Gas Rules. The AEMC is proposing to replace this with a new term and definition, namely, "LNG Storage Provider". In addition, related changes have also been made to the definition of "LNG storage facility" where the reference to an "LNG Storage Provider" has been removed.

DPI notes that the term "declared LNG Storage Provider" is a defined term within section 2 of the National Gas Law. This definition states that a "declared LNG storage provider" of an adoptive jurisdiction has the meaning given by the application Act of that jurisdiction. Victoria is an adoptive jurisdiction, and section 41 of the *National Gas (Victoria) Act 2008* provides that the Minister by order published in the Victorian



Government Gazette may declare a person who owns, controls, or operates a facility for storing liquefied natural gas in Victoria to be a "declared LNG storage provider". Such an order was made on 26 June 2009 and published in the Victorian Government Gazette on 30 June 2009. It declared APA GasNet Australia (Operations) Pty Ltd to be a declared LNG storage provider.

The term "declared LNG Storage Provider" is referenced in section 91B(2) of the National Gas Law which indicates that a reference to a "storage provider" extends to a "declared LNG storage provider". This is relevant to sections 91BI(c) and 91BJ of the National Gas Law in that it has the effect that the "declared LNG storage provider" is compelled to register with AEMO before participating in the declared wholesale gas market. This is also reflected in the note to rule 135A(e) of the National Gas Rules which requires storage providers to register. In the absence of registration the declared LNG storage provider cannot participate in the declared wholesale gas market.

In addition, item 55F of Schedule 1 ("Subject Matter for the National Gas Rules") to the National Gas Law also indicates that "The regulation of a declared LNG storage provider" falls within the subject matter for the National Gas Rules.

DPI considers that it is clear from the above references that the term "declared LNG service provider" is one that is embedded within the National Gas Law and also in the subject matter of the National Gas Rules.

On this basis, DPI considers that although the term "declared LNG storage provider" is not used in the rules other than in the note under rule 135A(e), this simply represents a drafting oversight in the rules. DPI believes that this oversight was not identified at the time the National Gas Rules were first implemented.

In particular, the references to the term "LNG storage provider" in rules 278-286 should, in DPI's view, be references to "declared LNG Storage provider". DPI notes that by contrast to "declared LNG Storage provider", the term "LNG Storage provider" is not currently defined in the National Gas Rules.

On this basis, DPI considers that the AEMC should address this concern by simply defining "LNG Storage Provider" as being a "declared LNG Storage Provider within the meaning of the Law". This would immediately fix the current definitional problem and at the same time avoid extensive substitutions of the term "LNG Storage Provider" with "declared LNG storage provider".

If the AEMC is unwilling to do this, then DPI would submit that the second best option would be to retain the term "declared LNG Storage Provider" as it is currently defined, rather than removing the term and introducing a new definition of "LNG Storage Provider". This is because, in DPI's view, a court, faced with such a drafting oversight, is likely to conclude that all the references in 278-286 to "LNG Storage Provider" should be read as references to "declared LNG Storage Provider", being the term as defined in the National Gas Law.

By contrast, if the AEMC's approach is adopted, and the definition of "declared LNG storage provider" is altogether removed and replaced with a new definition of "LNG storage provider" then this will result in the removal of any link in the National Gas Rules to the National Gas Law concept of a "declared LNG storage provider".

If you have any queries in relation to this submission please contact me by email at [mark.feather@dpi.vic.gov.au](mailto:mark.feather@dpi.vic.gov.au) or on telephone (03) 9658 4793.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'M. Feather', written in a cursive style.

Mark Feather  
Director, National Energy Development