



## Removal of Force Majeure Provisions in the Victorian Gas Market

### Commencement of consultation on rule change request

**The AEMC has commenced consultation on a rule change request submitted by the Australian Energy Market Operator (AEMO). The request seeks to change the National Gas Rules (NGR) to remove force majeure provisions, and clarify the rules relating to the administered pricing procedures, as they apply to the Victorian declared wholesale gas market (DWGM).**

### The rule change request

Part 19 of the NGR, which concerns the Victorian DWGM, contains force majeure provisions designed to protect market participants from the financial impacts of events beyond their reasonable control.

There are two types of force majeure provisions in effect in the DWGM:

- Participant force majeure (PFM), intended to absolve a market participant of the need to comply with scheduling instructions when it cannot do so due to circumstances beyond its reasonable control.
- System force majeure (SFM), declared by AEMO when there is a supply disruption that materially affects the operation of the market or system security. Declaration of a SFM event triggers an administered pricing period (APP) to mitigate the financial consequences of the event.

AEMO seeks to remove force majeure provisions from the NGR. It considers that PFM is redundant due to the evolution of the physical and legal aspects of the market.

Further, AEMO considers that SFM is ineffective, as the subjectivity involved in declaring a SFM event creates uncertainty around the triggering of an APP. It also considers SFM to be partially redundant, because the market's enhanced flexibility in recent years better allows market forces to respond to supply disruptions.

AEMO also seeks to make a number of minor clarifications in its rule change request. Specifically, AEMO seeks to include a reference to the cumulative price threshold (CPT) in the rules to clarify the CPT's role in administered pricing. Secondly, AEMO seeks to add to the rules the requirement for AEMO to specify the process by which it will consult on the approach to determining the CPT and administered price cap (APC). The intention is to recognise the existing practice in the rules.

### Background

Force majeure provisions were introduced into the DWGM to allow market participants to manage the risk inherent in the market design, which did not allow participants to rebid to reflect changes in their circumstances.

In 2007, the DWGM was redesigned, with multiple schedules that market participants could re-bid into, providing participants with more flexibility to reflect any changes in their circumstances into new scheduling instructions. It also allowed the market to more efficiently respond to any supply disruptions. However, force majeure provisions remained in place.

In November 2008, TRUenergy declared a PFM event after it failed to meet scheduling instructions due to a delay in bringing its Iona storage facility back into production following a period of maintenance. TRUenergy requested that VENCorp, AEMO's predecessor in the Victorian gas market, declare a SFM event which would have triggered an APP and the imposition of an APC.

However, VENCORP did not declare a SFM event, as it decided it was not appropriate given the circumstances. The issue then went to the dispute resolution panel. The panel found in favour of VENCORP, noting that a SFM declaration was not appropriate because the operation of the market was not materially affected. The decision was appealed in the Supreme Court of Victoria, and the dispute resolution panel's decision was upheld.

Subsequently, the Gas Wholesale Consultative Forum (GWCF) examined the force majeure provisions, having regard to the legal proceedings and recent changes in the Victorian gas market arrangements. The GWCF considered that the force majeure provisions in the NGR were redundant, ineffective and should be removed, and recommended that AEMO lodge a rule change request to effect this.

Alongside the development of the rule change request, the GWCF considered the possibility of another trigger for an APC that might protect the market and its participants from unnecessary losses in the event of a supply shortfall. A preference for a clearly defined, objectively determined trigger was indicated, and the CPT was found to be the most appropriate mechanism. However, the GWCF also considered it was necessary to review the level of the CPT to determine whether it provided protection to market participants in the event that the market price was very high and that a supply response was not forthcoming. As a result of the review, the CPT was reduced from \$3,700 to \$1,800.

The CPT Review was carried out alongside the development of this rule change request. Despite the concurrent and related nature of the two projects, the outcomes of the CPT Review and this rule change are not dependent on the other.

## Consultation

A consultation paper has been prepared to facilitate public consultation and assist stakeholders in providing submissions on the rule change request.

The consultation paper should be read in conjunction with AEMO's rule change request, which is also available on the AEMC website.

Submissions to the consultation paper and rule change request are due by 7 August 2014.

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