



Australian Energy Market Commission

RULE CHANGE

RULE DETERMINATION

National Gas Amendment (Dandenong Liquefied Natural Gas Storage Facility) Rule 2010

Rule Proponent

Australian Energy Market Operator

Commissioners

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Spalding

16 December 2010

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About the AEMC

The Council of Australian Governments, through its Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005 to be the rule maker for national energy markets. The AEMC is currently responsible for rules and providing advice to the MCE on matters relevant to the national energy markets. We are an independent, national body. Our key responsibilities are to consider rule change proposals, conduct energy market reviews and provide policy advice to the Ministerial Council as requested, or on AEMC initiative.

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Summary

The Commission has made this Rule determination for the Dandenong Liquefied Natural Gas (LNG) Storage Facility Rule change request. This Rule change request was submitted to the Commission by the Australian Energy Market Operator (AEMO) on 10 June 2010.

In this Rule change request, AEMO sought, in light of a reduced reliance on LNG for system security, to partially liberalise the operation of the Dandenong LNG storage facility. The 12 000 tonnes Dandenong LNG storage facility provides LNG storage services to participants in the Victorian Declared Wholesale Gas Market (DWGM) and others. In addition, the Rule Change Request essentially removed AEMO's right¹ to 3000 tonnes of storage capacity in the Dandenong LNG storage facility for an LNG reserve.

Commission's decision

The Commission has decided to make a Rule reflecting the key elements of AEMO's proposed Rule. The Rule is different from the Draft Rule in that the relevant Rules will only regulate declared LNG storage providers as opposed to all LNG storage providers. The Rule will commence operation on 16 December 2010.

Reasons for the Commission's decision

The Commission decided to make a Rule as it considered AEMO's proposal is likely to contribute to the achievement of the National Gas Objective (NGO). In particular, the Commission considered that the proposal is likely to lead to price benefits without adversely impacting the security of supply of natural gas. In coming to this view, the Commission considered that the proposal:

- is not likely to adversely impact AEMO's ability to manage system security in the Victorian Declared Transmission System (DTS) and that it has the potential to enhance AEMO's ability to manage system security;
- is likely to promote efficient capital investment in the Dandenong LNG storage facility and the wider natural gas supply chain;
- is likely to promote the efficient operation and use of the Dandenong LNG storage facility and of natural gas services; and
- may promote competition in the Victorian Declared Wholesale Gas Market, the market for providing gas storage services and in other markets.

¹ Under National Gas Rule 281(2).

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1 AEMO's Rule Change Request

1.1 The Rule Change Request

On 10 June 2010, AEMO (Rule Proponent) made a request to the Australian Energy Market Commission (AEMC or Commission) to make a Rule regarding the partial liberalisation of the operation of the 12 000 tonnes Dandenong LNG storage facility (Rule Change Request).²

1.2 Rationale for the Rule Change Request

In this Rule Change Request the Rule Proponent raised the following issues in relation to the regulation of the Dandenong LNG storage facility:

- The LNG storage facility is not as critical for gas emergencies as it was prior to the establishment of alternative gas supply sources.³
- The National Gas Rules (NGR or Rules) limit the ability of the Dandenong LNG storage provider (the owner and operator of the Dandenong LNG storage facility) to offer efficient and innovative LNG storage services. This is because the Rules restrict the liquefaction services that can be provided.⁴
- Many of the Rules obligations on the Dandenong LNG storage provider to provide operational information to AEMO relating to the Dandenong LNG storage facility are covered more comprehensively in an operating agreement.⁵

1.3 Solution proposed in the Rule change Request

The Rule Proponent proposed to address the above by making a Rule that:

- largely liberalises the operation of the Dandenong LNG storage facility by removing existing Rules that administratively allocate LNG injected into the storage facility to storage holders according to a fixed formula;
- changes the regulatory arrangements relating to AEMO's LNG reserve by:
 - removing AEMO's right to 3000 tonnes of storage capacity in the Dandenong LNG storage facility for its LNG reserve; and
 - providing for the amount of storage capacity in the Dandenong LNG storage facility to be made available for the operation of the LNG reserve to

² AEMO, *National Gas Rule Change Proposal for the Dandenong Liquefied Natural Gas Storage Facility (LNG Facility)*. See www.aemc.gov.au.

³ AEMO, Rule Change Request, p.5.

⁴ AEMO, Rule Change Request, p.5.

⁵ AEMO, Rule Change Request, p.5.

be determined by agreement between AEMO and the LNG storage provider;

- removes those Rules that are additional to Rule 343 (AEMO's intervention powers) relating to how AEMO may use its LNG reserve; and
- removes certain information obligations on the Dandenong LNG storage provider from the Rules.

The Commission understands that the Dandenong LNG storage facility is the only LNG storage facility currently connected to the DTS. The Rule proposed by AEMO appeared to apply to both the Dandenong LNG storage facility and to new LNG storage facilities that connect to the DTS.

In this Rule determination, we use the term "LNG storage provider" to refer to an owner or operator of an LNG storage facility connected to the DTS. The term "declared LNG storage provider" refers to LNG storage providers which have been designated as declared LNG storage providers under Victorian legislation.

We also use the term "Dandenong LNG storage provider" to refer to the owner and operator of the Dandenong LNG storage facility. The Dandenong LNG storage provider is APA Facilities Management Pty Ltd (APA FM). APA FM is a declared LNG storage provider.

Finally, we use the term "current Rules" to refer to the Rules as they existed immediately before the Rule as Made commenced operation on 16 December 2010.

1.4 Relevant background

1.4.1 Proponent's ability to submit this Rule Change Request

Under section 295(3)(a) of the National Gas Law (NGL) a request for a Rule regulating a declared wholesale gas market can only be made by AEMO or the Minister of an adoptive jurisdiction. The Rule Change Request is a request to regulate a declared wholesale gas market⁶ and was made by AEMO, satisfying section 295(3)(a) of the NGL.

Under section 295(3)(b) of the NGL, a request for a Rule regulating AEMO's declared system functions (other than regulating a declared wholesale gas market) can only be made by (i) AEMO, (ii) a service provider for a declared transmission system that is a party to a service envelope agreement with AEMO, or (iii) the Minister of an adoptive

⁶ The proposed Rule would, if made, affect the obligation under current Rule 280(1) on an LNG storage provider to provide AEMO with information relating to AEMO's ability to schedule LNG injection bids.

jurisdiction. The Rule Change Request is such a request⁷ and was made by AEMO, satisfying section 295(3)(b) of the NGL.

1.4.2 Consideration by AEMO's Gas Wholesale Consultative Forum

AEMO's Gas Wholesale Consultative Forum (GWCF) discussed drafts of the Proponent's proposed Rule before the Proponent publically consulted on an exposure draft of the proposed Rule (see section 1.4.3).⁸ The GWCF documents relating to those discussions and the minutes of the relevant GWCF meetings are published on AEMO's website.⁹

1.4.3 Public consultation undertaken by AEMO

AEMO consulted with the public on the nature and content of the Rule Change Request before submitting it to the AEMC. AEMO did this by publishing a Consultation Paper on 26 March 2010 and inviting public submissions on the Consultation Paper.¹⁰ This Consultation Paper included an exposure draft of the Rule proposed in the Rule Change Request.

Two parties made submissions on the Consultation Paper: Infratil Energy Australia and Origin Energy. AEMO published these submissions on its website and responded to the issues raised in them in the Rule Change Request submitted to the AEMC.

1.5 Commencement of Rule making process

On 19 August 2010, the Commission published a notice under section 303 of the NGL advising of its intention to commence the Rule change process in respect of the Rule Change Request.

⁷ The Rule Change Request seeks to regulate the operation and security of the declared transmission system, which is a declared system function under section 91BA(1)(b) of the NGL.

⁸ The GWCF is an open AEMO forum consisting of representatives of registered participants, end-user groups, interested members of the public and AEMO representatives. The objective of the GWCF (in part) is to provide effective consultation between AEMO and stakeholders for the development of changes to the National Gas Rules. The functions of the GWCF include: providing feedback to AEMO on proposals made in relation to the Victorian Gas Wholesale Market, advising the AEMO board on the development of the Victorian Gas Wholesale Market, and formally recording the positions and views of each participant organisation and other interested stakeholders on matters relating to the Victorian Gas Wholesale Market. The Terms of Reference of the GWCF are outlined in the AEMO document *Gas Wholesale Consultative Forum - Victoria (GWCF-V) Terms of Reference and Operational Procedure*. See www.aemo.com.au.

⁹ The relevant GWCF meetings were held on 22 September 2009, 20 October 2009 and 17 November 2009. Representatives of the following organisations attended one or more of those GWCF meetings: AEMO, AER, AGL, APA Group, Australian Power and Gas, BHP Billiton, EnergyAustralia, Envestra, ESSO, International Power, Major Energy Users, Origin Energy, TRUenergy Underground Storage, Santos, Victorian Department of Primary Industries, and Victoria Electricity. See www.aemo.com.au.

¹⁰ AEMO, *Consultation - National Gas Rule Change Proposal for Liquefied Natural Gas (Dandenong LNG Storage Facility)*, 26 March 2010. See www.aemo.com.au.

The Commission decided to fast track the Rule Change Request under section 305(2)(a) of the NGL and, accordingly, there has been no first round consultation under section 303(3)(a) of the NGL. The Commission decided to use the fast track process as it considered that the consultation conducted by AEMO was adequate, having regard to the nature and content of the Rule Change Request and the kind of consultation conducted by AEMO.

1.6 Publication of Draft Rule Determination and Draft Rule

On 23 September 2010 the Commission published a notice under section 308 of the NGL and a draft Rule determination in relation to the Rule Change Request (Draft Rule Determination). The Draft Rule Determination included a draft Rule (Draft Rule).

Submissions on the Draft Rule Determination closed on 4 November 2010. The Commission received four submissions on the Draft Rule Determination. They are available on the AEMC website.¹¹ A summary of the issues raised in submissions, and the Commission's response to each issue, is contained in Appendix A.1.

¹¹ See www.aemc.gov.au.

2 Final Rule Determination

2.1 Commission's determination

In accordance with section 311 of the NGL the Commission has made this final Rule determination in relation to the Rule proposed by AEMO. In accordance with section 313 of the NGL the Commission has determined to make, with amendments, the Rule proposed by the Rule proponent.

The Commission's reasons for making this final Rule determination are set out in section 3.1.

The *National Gas Amendment (Dandenong Liquefied Natural Gas Storage Facility) Rule 2010 No. 4* (Rule as Made) is published with this final Rule determination. The Rule as Made commences on 16 December 2010. The Rule as Made is different from the Rule proposed by the Rule Proponent. Its key features are described in section 3.3.

2.2 Commission's considerations

In assessing the Rule Change Request the Commission considered:

- the Commission's powers under the NGL to make the Rule;
- the Rule Change Request;
- the fact that there is no relevant Ministerial Council on Energy (MCE) Statement of Policy Principles;¹²
- submissions received by the Commission during consultation on the Draft Rule Determination;
- the 2007 VENCORP System Security Reserve Review in which VENCORP (now AEMO) reviewed its LNG security reserve;¹³
- the Australian Competition and Consumer Commission (ACCC) 2007 informal review of the then-proposed allocation of storage capacity in the Dandenong LNG storage facility by GasNet Australia (the then owner of the Dandenong LNG storage facility);¹⁴ and

¹² Under section 73 of the NGL the AEMC must have regard to any relevant MCE Statement of Policy Principles in making a Rule.

¹³ The public documents for the System Security Reserve Review are available from AEMO. These documents include: a VENCORP Pre-Consultation Paper dated 16 January 2007, a VENCORP paper entitled *LNG Emergency Requirements - Modelling and Analysis* dated February 2006, Draft and Final Reports from Concept Consulting entitled *Review of VENCORP LNG Reserve Requirements for 2008 to 2012*, and submissions from Energy Safe Victoria, TRUenergy Gas Storage, TRUenergy and AGL.

¹⁴ ACCC, *Proposed sale of part of LNG Storage Facility owned by GasNet Australia*, see www.accc.gov.au.

- the Commission’s analysis as to the ways in which the proposed Rule will or is likely to, contribute to the achievement of the NGO.

2.3 Commission’s power to make the Rule

The Commission is satisfied that the Rule as Made falls within the subject matter about which the Commission may make Rules.¹⁵ The Rule as Made falls within the matters set out in section 74 of the NGL as it relates to the activities of Registered participants, users and other persons in a regulated gas market, AEMO's declared system functions and the operation of a declared wholesale gas market. Further, the Rule as Made falls within the matters set out in schedule 1 to the NGL as it relates to item 55F because it regulates a declared LNG storage provider and the LNG stored by that provider.

2.4 Rule making test

Under section 291(1) of the NGL the Commission may only make a Rule if it is satisfied that the Rule will or is likely to contribute to the achievement of the NGO. This is the decision-making framework the Commission must apply.

The NGO is set out in section 23 of the NGL as follows:

“The objective of this Law is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.”

Under section 291(2) of the NGL, for the purposes of section 291(1) of the NGL the AEMC may give such weight to any aspect of the NGO as it considers appropriate in all the circumstances, having regard to any relevant MCE Statement of Policy Principles.¹⁶

For this Rule Change Request, the Commission considers that the relevant aspect of the NGO is as given in Box 2.1.:

Box 2.1: Relevant aspect of the National Gas Objective

Efficient investment in and efficient operation and use of LNG storage facilities for the long term interests of consumers of natural gas with respect to price and the security of supply of natural gas.

The Commission is satisfied that the Rule as Made will, or is likely to, contribute to the achievement of the NGO because it is likely to result in price benefits without

¹⁵ The Rule as Made does not apply in Western Australia as the Rule as Made does not fall within the subject matters about which the Commission may make Rules under the Western Australian Application Act (the National Gas Access (WA) Act 2009).

¹⁶ For the Commission's consideration of the Rule Change Request, there is no relevant MCE Statement of Policy Principles.

adversely impacting the security of supply of natural gas. In particular, the Rule as Made:

- Is not likely to adversely impact AEMO's ability to manage system security in the DTS and may, by contrast, enhance its ability to manage system security. This is because the Rule as Made may enhance incentives for faster refill of the Dandenong LNG storage facility while retaining mechanisms assisting AEMO's management of system security.
- Is likely to promote efficient investment in LNG storage facilities and potentially the wider gas supply chain. This is because it is likely to allow declared LNG storage providers to invest in gas storage services on a commercial basis. That is, the Rule as Made promotes dynamic efficiency.
- Is likely to promote the efficient operation and use of the Dandenong LNG storage facility, and of natural gas services. This is because it would provide declared LNG storage providers with more flexibility in offering LNG storage services, potentially allowing storage service customers to meet their needs at lower cost. In addition, it may improve options for risk management by DWGM participants. That is, the Rule as Made promotes productive efficiency.
- May promote competition in the market for providing gas storage services, the DWGM and in other markets. This is because it would allow declared LNG storage providers to offer a wider range of storage services and allow parties to manage their risks in the DWGM and other markets in which they are active more efficiently. That is, the Rule as Made promotes allocative efficiency.

Further discussions about how the Rule as Made will or is likely to contribute to the achievement of the NGO is in Chapter 3.

2.4.1 Compatibility of the Rule as Made with the proper performance of AEMO's declared system functions

Under section 295(4) of the NGL the Commission may only make a Rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed Rule is compatible with the proper performance of AEMO's declared system functions.

The Commission considers that the Rule as Made will impact on AEMO's declared system functions of controlling the operation and security of the DTS and of operating the DWGM. This is because it will remove AEMO's right to 3000 tonnes of storage capacity in the Dandenong LNG storage facility for the operation of an LNG reserve.

The Commission considers that the Rule as Made is compatible with AEMO's declared system functions because AEMO will retain its ability to control the operation and security of the DTS. The reason for this is that AEMO, by agreement with APA FM, may be able to re-establish an LNG reserve. In addition, AEMO will retain its obligation to intervene in the DWGM under Rule 343 if it reasonably considers that a

threat to system security is unlikely to subside without intervention.¹⁷ Furthermore, AEMO has powers under the NGL to give directions to maintain the security of the DTS.¹⁸ As such, the Commission considers that the Rule as Made is compatible with the proper performance of AEMO's declared system functions.

2.5 Other requirements under the NGL

Under section 295(5) of the NGL, the AEMC may only make a Rule that affects the allocation of powers, functions and duties between AEMO and a service provider for a declared transmission system if AEMO consents to the making of the Rule or the Rule is requested by the Minister of the relevant adoptive jurisdiction.

There is no requirement under section 295(5) of the NGL for AEMO to consent to the AEMC making the Rule as Made. This is because the Rule as Made does not affect the allocation of powers, functions and duties between AEMO and a service provider for a declared transmission system as the Dandenong LNG storage facility is not part of a declared transmission system.

2.6 The Rule as Made does not apply to Western Australia

Although the Rule as Made applies in each participating jurisdiction¹⁹ except Western Australia,²⁰ it amends Part 19 of the Rules which currently only relates to the operation of the wholesale gas market, transmission system and distribution systems in Victoria (as declared under the National Gas (Victoria) Act 2008).

¹⁷ Under Rule 343, AEMO must intervene by taking any measures it believes are reasonable and necessary to overcome a threat to system security if AEMO reasonably considers that a threat to system security is unlikely to subside without intervention.

¹⁸ Section 91BC(1) of the NGL.

¹⁹ Under section 21 of the NGL, the participating jurisdictions are the States, the Commonwealth, the Australian Capital Territory and the Northern Territory.

²⁰ The Rule as Made does not apply in Western Australia as it does not fall within the subject matters about which the Commission may make Rules under the Western Australian Application Act (The National Gas Access (WA) Act 2009).

3 Commission's reasons

The Commission has analysed the Rule Change Request and assessed the issues arising out of this Rule Change Request. For the reasons set out below, the Commission has determined that a Rule should be made. Its analysis of the Rule proposed by the Rule Proponent is also set out in this chapter.

This chapter is structured as follows:

- It firstly outlines the Commission's assessment of AEMO's Rule change request as it was originally submitted.
- It secondly provides the Commission's assessment of the issues raised in submissions on the Draft Rule Determination.
- It lastly describes the Rule as Made, and how the Rule as Made differs from the Draft Rule and from AEMO's Proposed Rule.

3.1 Assessment of the issues in AEMO's Rule Change Request

In submitting this Rule Change Request, AEMO sought to remove or amend Rules relating to the operation of LNG storage facilities that it considered are overly prescriptive and unnecessary due to a reduced reliance on LNG for system security. AEMO also stated that those Rules were hindering the commercial development and operation of the Dandenong LNG storage facility.²¹

AEMO submitted that the proposed changes would not adversely impact on system security and would improve incentives for security management. In addition, AEMO stated that the proposed changes would allow for the more commercial operation of the storage facility and provide incentives for investment in a wider range of storage services than at present.²²

After considering submissions to AEMO's Consultation Paper and analysing the issues arising from the Rule Change Request and from submissions on the Draft Rule Determination, the Commission is satisfied that AEMO's Proposed Rule from its Rule Change Request, with the amendments discussed in this chapter, will or is likely to contribute to the achievement of the NGO, as it is likely to lead to price benefits without adversely impacting the security of supply of natural gas.

The issues considered by the Commission in making its final Rule determination are set out below.

²¹ AEMO, Rule Change Request, p.1.

²² AEMO, Rule Change Request, p.4.

3.1.1 AEMO's supporting information presented in the Rule Change Request

AEMO presented supporting information in the Rule Change Request relating to the current and historical role of the Dandenong LNG storage facility in the Victorian gas system.

AEMO stated that up to 1998 the Dandenong LNG storage facility was critical to managing system security in the Victorian gas system during emergencies as it was the only alternative gas supply to Longford.

When the Victorian wholesale gas market commenced in 1999, VENCorp held a 3000 tonnes LNG reserve in the Dandenong LNG storage facility. AEMO stated that this reserve was held for emergencies in situations in which market participants' LNG might have been depleted.²³

AEMO stated that new gas supply sources for the Victorian wholesale gas market have emerged since 1998, such as the NSW-Vic interconnect and the South West Pipeline. AEMO stated that there is presently 460-500 TJ/day alternative gas supplies to the supplies from Longford and the Dandenong LNG storage facility.²⁴

In 2007 VENCorp undertook a System Security Reserve Review in consultation with market participants and Energy Safe Victoria (ESV)²⁵ in which it considered whether it should continue to hold an LNG reserve. VENCorp commissioned Concept Consulting to provide advice for that Review. Concept Consulting's Final Report supported VENCorp not contracting LNG for reserve for 2008-12 if the Corio Loop was in place before winter 2008 and the level of market-contracted LNG stayed at about the same level as it was then (8400 tonnes of LNG).²⁶

VENCorp sold 1500 tonnes of LNG of its LNG reserve in 2008 and the remaining 1500 tonnes was sold by AEMO in 2010. It now holds no LNG for reserve.

AEMO stated that while the LNG storage facility is no longer as critical as at market start in 1999, it is still important to the DWGM due to its proximity to Melbourne. One potential use of LNG is to manage transmission network constraints on high demand days.

3.1.2 The Proposed Rule in AEMO's Rule Change Request

The key aspects of the Proposed Rule in AEMO's Rule Change Request are described below.

²³ AEMO, Rule Change Request, p.23

²⁴ See AEMO, Rule Change Request, p.24, for a table of new gas supply sources since 1998.

²⁵ A Victorian statutory authority established under the Energy Safe Victoria Act 2005.

²⁶ Concept Consulting Group Limited, *Review of VENCorp LNG Reserve Requirements for 2008 to 2012 Final Report*, p.1.

The LNG reserve

The Proposed Rule would:

- remove AEMO's right to 3000 tonnes storage capacity in the Dandenong LNG storage facility for its LNG reserve;
- provide for the quantum of LNG storage capacity to be made available for the operation of the LNG reserve to be determined by agreement between AEMO and the relevant LNG storage providers; and
- remove provisions detailing how AEMO may use or manage the LNG reserve other than under Rule 343.

Use and operation of LNG storage facilities

The Proposed Rule would:

- deregulate how LNG injected into the Dandenong LNG storage facility is allocated to parties. The way in which it would be allocated would be determined by agreement between the Dandenong LNG storage provider and parties contracting LNG storage services;
- deregulate the process for transferring LNG storage capacity and LNG stock between parties; and
- make LNG storage providers bear the costs of any gas vaporised for testing of their LNG storage facility and any boil off gas.²⁷

Obligations on LNG storage providers and AEMO

The Proposed Rule would:

- remove the Rules obligation on LNG storage providers and AEMO to establish and operate an electronic information exchange system relating to LNG storage facilities;
- retain the obligation on LNG storage providers to maintain a register of LNG storage capacity and to advise AEMO of the total LNG stock held in storage facilities and LNG stock that can be bid into the DWGM by market participants at the end of each gas day; and
- remove the obligation on AEMO to inform DWGM participants holding LNG storage capacity about quantities of gas and LNG liquefied, stored and vaporised for LNG storage services.

²⁷ Under the current Rules these costs are allocated to DWGM participants through AEMO's linepack account.

The declared LNG supply agreement

The declared LNG supply agreement is a confidential contract under which the declared LNG supplier (BOC Limited²⁸) provides LNG to APA FM for storage in the Dandenong LNG storage facility.

The Proposed Rule would:

- remove the prohibition on an LNG storage provider terminating or varying the declared LNG supply agreement without the consent of AEMO; and
- remove the obligation on an LNG storage provider to notify AEMO of all matters and circumstances relating to the declared LNG supply agreement that may affect the ability of AEMO to schedule LNG injection offers or use the LNG reserve.

3.1.3 Impact of AEMO's Proposed Rule submitted in the Rule Change Request

This section summarises the Commission's assessment of the impact of the Proposed Rule. These matters are discussed in more detail in Chapters 5-8.

Impact on the security of supply

The Commission considers that removing AEMO's rights to LNG storage capacity and liberalising the use of the Dandenong LNG storage facility is not likely to adversely impact AEMO's ability to manage system security in the DTS and would have the potential to enhance AEMO's ability to manage system security in the DTS. This is because there are alternative gas supply sources to the Dandenong LNG storage facility and AEMO may be able to re-establish an LNG reserve with the agreement of LNG storage providers. In addition, these changes may enhance incentives for faster refill of the Dandenong LNG storage facility while retaining mechanisms to assist AEMO's management of system security.

In particular, the Rules mechanisms to be retained include:

- the obligation on a declared LNG storage provider to ensure that its LNG storage facility is utilised with the objective of maintaining LNG stock at the highest level possible;
- the obligation on declared LNG storage providers to report daily to AEMO on LNG stock levels in their storage facilities;
- the potential for AEMO to re-establish an LNG reserve; and
- the emergency intervention powers of AEMO under Rule 343.

²⁸ BOC Limited (ACN 000 029 729).

Furthermore, the statutory intervention powers of AEMO (under the NGL²⁹), the Victorian Government³⁰ and ESV³¹ would be unaffected.

Impact on efficient investment in gas storage facilities

The Commission considers that liberalising the use of the Dandenong LNG storage facility is likely to promote efficient capital investment in that facility and potentially in the wider gas supply chain. This is because it is likely to provide incentives to the Dandenong LNG storage provider to invest in LNG storage services on a commercial basis.

This may lead to greater competition in the provision of gas storage services and greater innovation in the services offered. This has the potential to lead to more options for risk management and lower prices for customers. In turn, this may ultimately lead to price benefits for end-use consumers of gas.

Impact on the efficient operation and use of LNG storage facilities and of natural gas services

The Commission considers liberalising the use of the Dandenong LNG storage facility is likely to promote the efficient operation and use of that facility. This is because it would provide the Dandenong LNG storage provider more flexibility in the LNG storage services it could offer, potentially meeting customers' needs at lower cost. The liberalisation may also allow parties contracting LNG storage services to have more flexibility in allocating gas to where they value it the most. These impacts may ultimately result in price benefits for end-use customers.

The Commission also considers that liberalising the use of the Dandenong LNG storage facility is likely to also improve options for risk management by DWGM participants. Increased flexibility in using LNG as an additional source of gas may assist DWGM participants in managing financial risk. This may result in price benefits to end-use consumers.

Impact on competition

The Commission considers that liberalising the use of the Dandenong LNG storage facility has the potential to promote competition in the provision of gas storage services, the DWGM and in other markets for the following reasons:

- it would allow the Dandenong LNG storage provider to offer a wider range of and greater flexibility in relation to storage services; and
- it may promote investment in gas storage facilities.

29 Section 91BC of the NGL.

30 Under section 206 of the Victorian Gas Industry Act 2001.

31 Under sections 106 and 107 of the Victorian Gas Safety Act 1997.

Enhanced competition may lead to price benefits for parties contracting LNG storage services and ultimately end-use consumers.

It should be noted that there would be no change to the regulatory framework within which an LNG storage provider operates when allocating LNG storage services to parties (e.g. Part IV of the TPA relating to restrictive trade practices). In addition, the ACCC would continue to potentially have a role under section 50 of the Trade Practices Act 1974 (Cth) (TPA) in relation to any sale of LNG storage services.

3.1.4 Commission's conclusion on the Proposed Rule in AEMO's Rule Change Request

On balance, after weighing up the factors outlined in section 3.1.3, the Commission is satisfied that AEMO's Proposed Rule, with the amendments described in section 3.3, will or is likely to contribute to the achievement of the NGO. This is because it would be likely to lead to price benefits to consumers of natural gas without adversely impacting the security of supply.

3.2 Assessment of issues raised in consultation on the Draft Rule Determination

AEMO, the Victorian Department of Primary Industries (DPI) and Origin Energy made submissions on the AEMC's Draft Rule Determination. While submissions generally supported the AEMC's Draft Rule, AEMO and DPI raised the two issues discussed below.

3.2.1 The Rule should only regulate declared LNG storage providers

In its Draft Rule Determination, the Commission stated that AEMO's Proposed Rule would apply to both the existing Dandenong LNG storage facility and to new LNG storage facilities connecting to the DTS.

Stakeholder submissions

Both DPI and AEMO commented on this issue in their submissions on the Draft Rule Determination.

DPI stated:³²

- References to "LNG storage provider" in existing Rules 278-286 should instead read "declared LNG storage provider" due to a drafting oversight that DPI believed had not been identified at the time the NGR were first implemented.

AEMO stated in its initial submission:³³

³² DPI, submission on the Draft Rule Determination, p.2.

³³ AEMO, initial submission on the Draft Rule Determination, p.2.

- Rules 278-286 are clearly intended to apply to the existing Dandenong LNG storage facility; and
- its Proposed Rule was also only intended to apply to the Dandenong LNG storage facility. This was because it may be inappropriate for the Rules regulating the Dandenong facility to also regulate new LNG facilities given that new facilities may play a different role to the Dandenong facility in the DWGM.

Previous Rules

The previous Rules for the Victorian wholesale gas market - the Market and System Operation Rules (MSOR) - regulated the Dandenong LNG facility which is now operated by APA FM, a declared LNG storage provider. Those provisions did not extend to regulating new LNG storage facilities connecting to the Principal Transmission System - the gas transmission network for the Victorian wholesale gas market.

Existing Rules

Part 19 of the NGR (which regulates the DWGM) appears to regulate the Dandenong LNG storage facility and any new LNG storage facilities connecting to the DTS that are operated by storage providers.³⁴ It should be noted that the Dandenong LNG storage facility is the only LNG storage facility connected to the DTS and that it is operated by a declared LNG storage provider.

Commission's decision

The Commission considers that it may be inappropriate for the Rules that regulate the existing Dandenong LNG storage facility, which is operated by a declared LNG storage provider, to also regulate new LNG storage facilities connecting to the DTS. The Commission notes that the Iona Underground Gas Storage (IUGS) facility is not regulated by the Rules that regulate the Dandenong LNG storage facility.

The Commission notes information provided by DPI in support of the interpretation that Part 19 of the Rules should regulate declared LNG storage providers and not other LNG storage providers.

The Commission considers that it may represent disproportionate regulatory burden to regulate new LNG storage facilities with the Rules currently regulating the Dandenong facility. The Commission considers that it would be good regulatory practice for any Rules regulating new LNG storage facilities to be appropriate for those facilities.

The Commission has decided that the regulation of LNG storage providers in Part 19 of the NGR should only extend to declared LNG storage providers. The Commission considers that, without this change, there might potentially be a disproportionate regulatory burden on new LNG storage facilities which may impact on investment in those facilities.

³⁴ The term "LNG storage provider" used in Part 19 of the NGR is not defined.

The Commission also considers it likely that, if a new LNG storage facility sought to connect to the DTS, any particular regulatory requirements associated with the operation of that facility would be identified during the planning and development process.

3.2.2 AEMO's rights to LNG storage capacity for the LNG reserve

The AEMC's Draft Rule would remove AEMO's rights to LNG storage capacity in the Dandenong LNG storage facility for the operation of the LNG reserve. It would do this by deleting the proposed Rule 281(2) presented in the Rule Change Request.³⁵

AEMO addressed this issue in its initial and supplementary submissions on the Draft Rule Determination. In its initial submission, AEMO requested that the AEMC reconsider the removal of its rights. AEMO stated that the intention of its Rule Change Request was to retain the right to require, and the declared LNG storage provider would be obliged to make available, an amount required by AEMO, up to 3000 tonnes.

In AEMO's initial submission, it stated that its preference was for the AEMC to make the proposed rule 281(2) as per its Rule Change Request. The Commission notes, however, that AEMO's proposed Rule 281(2) does not reflect AEMO's intention of retaining its right to storage capacity, as described above. AEMO also noted this in its initial submission.³⁶

AEMO subsequently reviewed its position in a supplementary submission and no longer requested the AEMC reconsider the removal of Rule 281(2). It did this due to the presence of other Rules and legislative provisions enabling AEMO amongst others to maintain the security of the gas system.³⁷

Following AEMO's supplementary submission, the Commission has decided not to reconsider this aspect of the Draft Rule. The Rule as Made removes AEMO's rights to LNG storage capacity for the operation of the LNG reserve by deleting Rule 281(2).

3.3 Differences between AEMO's Proposed Rule, the Draft Rule and the Rule as Made

3.3.1 Differences between the Draft Rule and AEMO's Proposed Rule

The Draft Rule published with the Draft Rule Determination implemented the proposal in AEMO's Rule Change Request with minor changes. These minor changes were:

³⁵ Current Rule 281(2) is: "Unless and until AEMO otherwise agrees, the LNG storage provider must make available 3,000 tonnes of LNG storage capacity for the operation of the LNG reserve in accordance with rule 285." The proposed rule 281(2) given in AEMO's Rule Change Request was: "Unless and until AEMO otherwise agrees, the LNG storage provider must make available an amount agreed with AEMO of LNG storage capacity for the operation of the LNG reserve."

³⁶ AEMO, initial submission on the Draft Rule Determination, p.2.

- The Draft Rule deleted Rule 279(3) and inserted a new Rule 279(4) incorporating the substance of AEMO's Proposed Rule 279(3). This was because Rule 279(3) is a conduct provision while Proposed Rule 279(3) incorporated some obligations (from Rule 286(3)) which are not conduct provisions.³⁸
- The Draft Rule deleted Rule 281(2) as that Rule was considered unnecessary. Deleting that Rule would not affect the ability of AEMO to negotiate LNG storage services for the operation of an LNG reserve with an LNG storage provider.
- The Draft Rule required an LNG storage provider, as soon as reasonably practicable after the end of each gas day, to provide AEMO with the register of LNG storage capacity kept under Rule 281(5). This requirement exists under Rule 286.
- The Draft Rule made consequential amendments to the definitions and headings in Part 19 of the Rules.
- Minor drafting changes for purposes of clarification.

3.3.2 Differences between the Rule as Made and the AEMC's Draft Rule

The Rule as Made differs from the Draft Rule in the following respects as discussed in section 3.2:

- the Rule as Made specifies that declared LNG storage providers are the only class of LNG storage providers regulated under Rules 278-286;
- minor additional drafting changes to Rule 231; and
- minor changes to Rule 200 (Definitions).

3.4 Civil Penalties

The Rule as Made amends Rules 200, 231 and 278-286, none of which is prescribed as a civil penalty.³⁹ The Commission will not recommend to the Victorian Minister that any of these Rules as amended by the Rule as Made be prescribed as a civil penalty. This is because the Commission considers that the enforcement of these Rules (as amended by the Rule as Made) is unlikely to be assisted by their being prescribed as civil penalties.

³⁷ AEMO, supplementary submission on the Draft Rule Determination, p.1.

³⁸ The Proposed Rule 279(3) in the Rule Change Request, if made by the AEMC, would remain a conduct provision under the National Gas (Victoria) (Declared System Provisions) Regulations 2009.

³⁹ The civil penalties are prescribed in the National Gas (Victoria) (Declared System Provisions) Regulations 2009 and the National Gas (South Australia) Regulations.

3.5 Conduct Penalties

Conduct provisions are Rules or provisions of the NGL for which any person (including the Australian Energy Regulator (AER)) may institute civil proceedings in respect of a breach.⁴⁰ A person (other than the AER) who suffers loss or damage by conduct of another person in breach of a conduct provision may recover their loss or damage by action against the other person in a court.⁴¹

The Rule as Made amends Rules 200, 231 and 278-286. Rules 200 and 231 are not conduct provisions while a number of Rules 278-286 are conduct provisions.⁴² Appendix C details the relevant conduct provisions and the list of Rules that are conduct provisions under the Rule as Made.

The Commission will not recommend to the Victorian Minister that further Rules be prescribed as conduct provisions. Under the Rule as Made, the only Rules (of Rules 278-286) that are not conduct provisions are Rules 278, 279(1), 279(4), 281(6) and 284.

Furthermore, the Commission will not recommend to the Victorian Minister that any Rule (of Rules 278-286) currently prescribed as a conduct provision be no longer prescribed as a conduct provision. Under the Rule as Made, the conduct provisions (of Rules 278-286) are Rules 279(2), 280(1) and 281(5).

40 Under section 229(3) of the NGL.

41 Under section 233 of the NGL.

42 The conduct provisions are prescribed in the National Gas (Victoria) (Declared System Provisions) Regulations 2009 and the National Gas (South Australia) Regulations.

4 Commission's assessment approach

This chapter describes the Commission's approach to assessing the Rule Change Request in accordance with the requirements set out in the NGL (and explained in Chapter 2).

In assessing any Rule Change Request against the NGL criteria the first step is to consider the counterfactual arrangements against which the Rule change is being compared. In the present case the counterfactual arrangements are:

- AEMO has rights to 3000 tonnes of LNG storage capacity in the Dandenong LNG storage facility for the operation of the LNG reserve unless and until AEMO otherwise agrees.
- LNG injected into the Dandenong storage facility for storage is automatically allocated to parties holding LNG storage capacity in the facility according to a fixed formula (specified in the Rules).
- The Rules specify administrative arrangements associated with the transfer of LNG storage capacity and LNG stock between parties.
- The Rules permit AEMO to use the LNG reserve at times it considers necessary or desirable to ensure the security of the DTS and to satisfy AEMO's operational requirements.

In assessing this Rule Change Request, the Commission considered the following issues and the likely impacts of the proposal:

- on the management of the security of supply of natural gas;
- on efficient investment in LNG storage facilities and the natural gas supply chain;
- on the efficient operation and use of LNG storage facilities and of natural gas services; and
- on competition in the DWGM and other markets.

The Commission focussed on this set of issues because:

- the Proponent claimed that new supplies of gas have reduced the importance of the Dandenong LNG storage facility for system security and removed much of the need for the current prescriptive rules;⁴³
- the Proponent claimed that the Proposed Rule would provide greater flexibility and incentives for the market to invest appropriately in LNG storage, vaporisation and liquefaction services instead of only storage services;⁴⁴

⁴³ AEMO, Rule Change Request, p.4.

⁴⁴ AEMO, Rule Change Request, p.4.

- the Commission considered a key aspect of AEMO's Proposed Rule was its potential impacts on the efficient operation and use of LNG storage facilities and of natural gas services; and
- the Commission considered it pertinent to examine the potential impacts of AEMO's Proposed Rule on competition in various markets.

The Commission also undertook the following activities:

- it reviewed the public consultation the Proponent conducted on an exposure draft of the Proposed Rule published in its Consultation Paper, and the development of the Proposed Rule through the GWCF;
- it examined VENCORP's 2007 System Security Reserve Review in which it reviewed its LNG reserve; and
- it held bilateral discussions with AEMO (as the Rule Proponent and DWGM operator) and the APA Group to clarify the Rule Change Request.

5 Security of supply

Gas pipelines must be operated within pressure and flow limits for safety reasons. AEMO, as the DWGM system operator, seeks to operate the DTS in a way that averts or minimises threats to system security in accordance with its Wholesale Market System Security Procedures (Victoria).⁴⁵

The Commission has considered whether the Proposed Rule is likely to promote AEMO's management of system security in the DWGM.

5.1 Rule Proponent's view

In this Rule Change Request, AEMO stated that the importance of the Dandenong LNG storage facility for system security has reduced due to the development of new gas supply sources (e.g. Vic-NSW interconnect and the South West Pipeline)⁴⁶ and the need for much of the current prescriptive Rules regime has been removed.⁴⁷

AEMO stated that its Proposed Rule would not adversely impact system security⁴⁸ because there was confidence there would be appropriate market prices and incentives to ensure LNG stocks are maintained.⁴⁹ AEMO also stated that the proposal retained regulatory mechanisms relating to the management of system security.⁵⁰

AEMO further stated that its Proposed Rule may enhance security management by enabling incentives to increase liquefaction capacity.⁵¹

5.2 Stakeholder views

5.2.1 AEMO's public consultation

Origin Energy commented on the issue of system security in its submission to AEMO's Consultation Paper. AEMO responded to Origin Energy's comments in the Rule Change Request.

Origin Energy stated:⁵²

- The Dandenong LNG storage facility has a reduced system security function in light of the introduction of several alternative gas supply sources.

45 See www.aemo.com.au.

46 See AEMO, Rule Change Request, Table 1, p.24.

47 AEMO, Rule Change Request, p.4.

48 AEMO, Rule Change Request, p.5.

49 AEMO, Rule Change Request, p.2.

50 AEMO, Rule Change Request, p.4.

51 AEMO, Rule Change Request, p.5.

52 Origin Energy, submission to AEMO Consultation Paper, pp.1-2.

- The facility's residual system security capacity is already monitored through the operating agreement between AEMO and APA Group.
- Some of the current arrangements regarding the operation of the storage facility are unnecessary and may undermine system security. System security could be compromised where LNG stock is depleted significantly and where faster refill of the LNG storage facility is not permitted.
- Boundaries should be set on the activities of the facility's owner to ensure its commercial imperatives are not allowed to compromise its obligation to contribute to system security.

AEMO responded to Origin Energy's comments in the Rule Change Request as follows:⁵³

- Emergency management is not the primary obligation of the LNG storage provider. DWGM participants have commercial incentives to ensure they have adequate LNG to manage their loads and market exposure.
- AEMO's Proposed Rule would retain the obligation on the LNG storage provider to maintain LNG stock in the tank at the highest level possible.
- Both AEMO and ESV will have a clear and continuing role in ensuring ongoing security of supply. They will continue to monitor the use, forecast use and availability of LNG and/or alternatives for emergency purposes.
- AEMO could reintroduce an LNG reserve (by negotiation with APA FM) for emergency purposes if it considered DWGM participants did not collectively contract sufficient LNG capacity for the gas market.

5.2.2 Consultation on the Draft Rule Determination

Origin Energy and AEMO commented on this issue in their submissions on the Draft Rule Determination. Both parties generally supported the AEMC's views.

Origin Energy stated:⁵⁴

- It supported the Draft Rule as it promoted competition in the DWGM, which could benefit customers without an adverse impact on the security of supply of natural gas.

AEMO, in its initial submission, stated:⁵⁵

- AEMO and ESV have powers to direct participants to inject gas as required in the event of an emergency.

⁵³ AEMO, Rule Change Request, pp.6, 20-21.

⁵⁴ Origin Energy, submission on the Draft Rule Determination, p.1.

⁵⁵ AEMO, initial submission on the Draft Rule Determination, p.2.

- Its intention for the Rule Change Request was to retain its existing rights to LNG storage capacity for an LNG reserve. AEMO requested the AEMC reconsider the proposed deletion of Rule 281(2) in the AEMC's Draft Rule.

AEMO, in its supplementary submission, stated:⁵⁶

- It had reviewed its position and was no longer requesting the retention of its rights to LNG storage capacity. This was because there are other Rules and legislative provisions enabling AEMO and other parties to maintain the security of the gas system.

5.3 AEMO's supporting information

AEMO stated in its Rule Change Request that the role of LNG as an emergency response has declined since 1998 in light of the development of alternative gas supply sources. The Commission has discussed the historical role of the LNG reserve and AEMO's divestiture of its LNG reserve during 2008 and 2010 in section 3.1.1. This section discusses further matters.

5.3.1 Injection capacity of the Dandenong LNG storage facility

The Dandenong LNG storage facility has the following capacity to inject gas into the DTS:

- at a firm rate of 132 TJ/day,⁵⁷ equivalent to 5.5 TJ/hour or 100 tonnes/hour; and
- at a non-firm rate of 237 TJ/day, equivalent to 9.9 TJ/hour or 180 tonnes/hour.

5.3.2 New gas supply sources since 1998

AEMO stated that new gas sources and pipelines have emerged since 1998 and there is now 460-500 TJ/day of alternative gas supply to the supply from Longford, VicHub and the Dandenong LNG storage facility. AEMO stated that these new gas sources and pipelines include:⁵⁸

- the Victoria-NSW interconnect (50-90 TJ/day to Victoria);
- South West Pipeline (350 TJ/day to Melbourne); and
- Bass Gas (60 TJ/day to Melbourne).

⁵⁶ AEMO, supplementary submission on the Draft Rule Determination, p.1.

⁵⁷ 1 TJ = 1000 GJ. For comparison, the daily gas demand in the DWGM ranges from approximately 300 TJ/day (Summer) to approximately 1100 TJ/day (Winter).

⁵⁸ See AEMO, Rule Change Request, pp.23-24 for more information.

5.3.3 AEMO's divestiture of its LNG reserve

VENCorp sold 1500 tonnes of its LNG reserve in 2007 following a review. For that review, Concept Consulting stated:⁵⁹

“Assuming the Corio Loop is in place prior to winter 2008 and that the market contracts for a similar or high level of LNG storage capacity as at present (8,400 tonnes), it is difficult to mount an argument for VENCorp to contract for LNG security reserves from 2008 to 2012...”

The Corio Loop was commissioned in 2008. In 2010 AEMO sold the remaining 1500 tonnes of LNG in its reserve. It has held no LNG for reserve since February 2010.

5.4 Commission's analysis

The Commission considers that removing AEMO's rights to LNG storage capacity and liberalising the use of the Dandenong facility is not likely to adversely impact AEMO's ability to manage system security and may, by contrast, enhance its ability to manage system security. This is because these changes:

- will likely provide greater opportunity for faster liquefaction (refill) of the Dandenong LNG storage facility;
- will not impact regulatory arrangements assisting AEMO with its management of system security if required; and
- will not impact the intervention powers of AEMO, the Victorian Government and ESV.

These matters are discussed below.

5.4.1 LNG reserve

The Commission considers that:

- removing AEMO's rights to LNG storage capacity; and
- removing its ability to use the LNG reserve to ensure the security of the DTS under Rule 285(1) but retaining its intervention powers under Rule 343;

is unlikely to adversely impact AEMO's ability to manage system security. The Commission notes that while AEMO presently holds no LNG for reserve, an LNG reserve is able to be re-established under the current Rules and also under AEMO's Proposed Rule. This is discussed further below.

⁵⁹ Concept Consulting Group Limited, *Review of VENCorp LNG Reserve Requirements for 2008 to 2012 Final Report*, p.1.

AEMO's rights to storage capacity for the operation of the LNG reserve

The current Rules oblige LNG storage providers to make available 3000 tonnes of LNG storage capacity for the operation of the LNG reserve unless and until AEMO otherwise provides.⁶⁰ AEMO's Proposed Rule would remove this obligation so that AEMO and an LNG storage provider would have to negotiate and agree on any storage capacity to be made available for the operation of the LNG reserve.

The Commission considers that removing AEMO's rights to LNG storage capacity is unlikely to impact its ability to manage system security. This is because AEMO and an LNG storage provider may be able to agree on an amount of storage capacity to be made available for the LNG reserve and there are other mechanisms that would likely assist AEMO's management of system security. These mechanisms are:

- the obligation on a declared LNG storage provider to ensure that its storage facility is utilised with the objective of maintaining LNG stock at the highest level possible; and
- the intervention powers of AEMO under Rule 343 and the NGL, and the statutory intervention powers of the Victorian Government and ESV (discussed in section 5.4.3).

In its supplementary submission on the Draft Rule Determination, AEMO agreed that other Rules and legislative provisions enabled it and other parties to maintain the security of the gas system.⁶¹

Use of the LNG reserve

In addition to AEMO's ability to use the LNG reserve under its Rule 343 intervention powers, it is able to use the reserve under current Rule 285(1) to ensure the security of the DTS.⁶²

Removing Rule 285(1) will not affect AEMO's intervention powers nor its ongoing ability under section 91BA(2) of the NGL to trade in gas to the extent necessary or desirable for the safety, security or reliability of the DTS.

As such, the Commission considers that deleting Rule 285(1) is unlikely to adversely impact AEMO's ability to manage system security.

5.4.2 Impact on AEMO's management of system security

The Commission considers that liberalising the use of the Dandenong LNG storage facility is likely to assist with AEMO's management of system security in the DTS. This is because:

⁶⁰ Current Rule 281(2).

⁶¹ AEMO, supplementary submission on the Draft Rule Determination, p.1.

⁶² And also to satisfy AEMO's operational requirements.

- liberalising the use of the facility would provide more flexibility to the Dandenong LNG storage provider to offer a wider range of storage-related services; and
- the regulatory arrangements assisting AEMO with its management of system security would be retained.

This wider range of services may include: (i) faster refill of contracted storage capacity, and (ii) faster injection of gas into the DTS from the Dandenong LNG storage facility. These services and the regulatory arrangements assisting AEMO with its management of system security are discussed below.

Faster liquefaction and injection services

Faster liquefaction of gas would effectively provide DWGM participants and AEMO access to greater LNG stock following draw down of LNG, potentially assisting AEMO's ability to manage system security. In addition, faster injection of gas into the DTS may assist AEMO's ability to manage network constraints (and hence system security).

Obligations on declared LNG storage providers

The following obligations on declared LNG storage providers which may assist AEMO with managing system security will be retained. These are obligations to:

- ensure that the storage facility is utilised with the objective of maintaining LNG stock at the highest level possible;
- report to AEMO on a daily basis about the total amount of LNG held in the storage facility (and the total amount of LNG in the storage facility that can be bid into the DWGM); and
- keep AEMO informed of all matters that may affect AEMO's ability to schedule LNG injection offers or use its LNG reserve.

5.4.3 Impact on emergency intervention powers

AEMO, the Victorian Government and ESV all have powers to intervene in the Victorian gas system and the operation of the Dandenong LNG storage facility. Relevant legislative provisions and Rules are provided in Appendix D and described below.

The Commission considers that AEMO's Proposed Rule is unlikely to detrimentally impact the ability of AEMO, the Victorian Government and ESV to intervene in the operation of the Dandenong LNG storage facility to ensure the security of supply of gas. This is because their intervention powers are granted by Victorian Acts, the NGL or Rule 343 - which would not be amended by the Proposed Rule.

AEMO's powers to intervene

AEMO has broad powers to intervene in the operation of the Dandenong LNG storage facility which are not time-limited. Under the NGL, AEMO can direct DWGM participants holding LNG stock in the storage facility to bid LNG for injection into the DTS for one or more of the following purposes:⁶³

- to maintain and improve the reliability of the supply of natural gas;
- to maintain and improve the security of the DTS;
- in the interests of public safety.

Secondly, under Rule 343, if AEMO reasonably considers that a threat to system security is unlikely to subside without intervention, AEMO must intervene in the DWGM by taking any measures it believes are reasonable and necessary to overcome the threat to system security. This may include directing DWGM participants and/or LNG storage providers to inject gas into the DTS.

Victorian Government's powers to intervene

The Victorian Government has broad powers to intervene. Under section 206 of the Victorian Gas Industry Act 2001, the Governor in Council can, by proclamation, declare that emergency powers take effect if it appears to the Governor in Council that the available supply of gas is or is likely to become less than is sufficient for the reasonable requirements of the community.

When the proclamation is in force, the Minister may, having regard to the needs of the community, give any directions that the Minister thinks necessary to:

- (a) ensure the safe and sure supply of gas; or
- (b) regulate the use of the available supply of gas.

The Minister's intervention powers include the power to:

- direct persons to extract, produce, transmit or distribute gas;
- direct a person to accept gas provided or transmitted to it;
- direct a person to comply with any terms and conditions relating to the use or consumption of gas the Minister determines; and
- requisition the operation and use of property of any kind which is used or may be used to operate or maintain a service.

⁶³ Section 91BC(1) of the NGL.

Energy Safe Victoria's powers to intervene

The Director of ESV has broad powers to intervene in gas emergency situations and if they consider it necessary to make directions for safety reasons. These powers are described below.

Gas emergency situations

Under section 107 of the Victorian Gas Safety Act 1997, the Director of ESV has intervention powers in gas emergency situations. In these situations, the Director may do anything or give any direction that they consider necessary to make a gas emergency situation safe. In addition, the Director may give any directions they consider necessary:

- to regulate the use of the available supply of gas having regard to the needs of the community; or
- to facilitate the reliability of the supply of gas; or
- to facilitate the security of the system for the transmission of gas.

Directions for safety reasons

Under section 106 of the Victorian Gas Safety Act 1997, the Director of ESV may make directions if they consider it necessary to do so for safety reasons. The Director may, amongst other things, direct a person to cease the supply of gas to a facility, gas installation or appliance, or cease to use a particular facility, gas installation or appliance.

5.5 Conclusion

The Commission considers that removing AEMO's rights to LNG storage capacity and liberalising the use of the Dandenong LNG storage facility is not likely to adversely impact AEMO's ability to manage system security in the DTS and may, by contrast, enhance its ability to manage system security. This is because it may enhance incentives for faster refill of LNG storage facilities while retaining mechanisms assisting AEMO's management of system security.

6 Efficient investment in gas storage facilities

The supply of natural gas to consumers depends on an effective supply chain, which includes natural gas producers, transmission and distribution pipelines and retailers. It also includes facilities for storing natural gas and LNG.

Efficient capital investment in gas storage facilities and the wider natural gas supply chain may result in price benefits for customers and ultimately end-use consumers.

The Commission has considered whether the proposal is likely to promote efficient investment in the natural gas supply chain and in particular, gas storage facilities.

6.1 Rule Proponent's view

AEMO stated in the Rule Change Request that the Proposed Rule should provide incentives for the market to invest appropriately in LNG storage, vaporisation and liquefaction services instead of only storage services.⁶⁴

6.2 Stakeholder views

6.2.1 AEMO's public consultation

Both Infratil Energy Australia and Origin Energy commented on this issue in their submissions to AEMO's Consultation Paper. Submissions generally supported AEMO's view.

Infratil Energy Australia stated:

- The proposal would promote efficient investment in the LNG storage facility. In particular, it would allow contracts reflecting vaporisation services better aligning with and more consistent with the design and operation of the DWGM.⁶⁵

Origin Energy stated:

- The removal of unnecessary Rule restrictions would bring more certainty and flexibility around LNG contracting.⁶⁶

6.2.2 Consultation on the Draft Rule Determination

Stakeholders did not address this issue in their submissions on the Draft Rule Determination.

⁶⁴ AEMO, Rule Change Request, p.4.

⁶⁵ Infratil Energy Australia, submission to AEMO Consultation Paper, p.1.

⁶⁶ Origin Energy, submission to AEMO Consultation Paper, p.2.

6.3 Commission's analysis

6.3.1 Efficient investment in the Dandenong LNG storage facility

The Commission considers that providing greater flexibility in the use of the Dandenong LNG storage facility is likely to promote efficient capital investment in that facility. Such investment may include expanding storage capacity and faster vaporisation capability. This is because providing more flexibility in how the facility can be used is likely to afford greater scope to the Dandenong LNG storage provider to invest commercially in those LNG storage services as discussed below.

Under the current Rules, LNG injected into the Dandenong LNG storage facility is allocated to storage capacity holders according to a fixed formula.⁶⁷ This formula is described in Appendix B. One impact of this administrative allocation of LNG is that it restricts the refilling services that APA FM can offer the market.

AEMO's Proposed Rule deregulates how LNG injected into the Dandenong storage facility is allocated to parties. This is likely to provide greater scope to APA FM to offer LNG refilling services to suit the needs of potential customers. This opportunity to offer a wider range of LNG storage services on a commercial basis is likely to provide incentives to APA FM to invest efficiently in the Dandenong LNG storage facility to meet the needs of potential storage service users.⁶⁸

The Commission also considers that allowing APA FM to offer a wider range of services may reduce the administrative costs associated with contracting storage services.

6.3.2 Wider natural gas supply chain

The Commission considers that liberalising the use of the Dandenong LNG storage facility may also promote efficient investment in the wider natural gas supply chain. This is because it may provide greater scope for parties to invest (by themselves or through an agent) in the supply chain at a lower total cost.⁶⁹

6.4 Conclusion

The Commission considers that liberalising the use of the Dandenong LNG storage facility is likely to promote efficient capital investment in the Dandenong LNG storage

⁶⁷ Current Rule 283(2).

⁶⁸ It should be noted that APA FM's investment in the Dandenong LNG storage facility and revenues from the storage facility are not subject to economic regulation.

⁶⁹ It should be noted that the incentives for investing may vary across the supply chain. For example, the DTS is a covered pipeline owned by APA GasNet (part of the APA Group) and the Dandenong LNG storage facility is an uncovered facility owned by APA FM (also part of the APA Group). The incentives for investing in these assets may be impacted by their status as being either covered or uncovered.

facility and potentially in the wider gas supply chain. This is because it is likely to provide incentives to the Dandenong LNG storage provider to invest in LNG storage services on a commercial basis. Consequently, this may lead to price benefits for customers and ultimately end-use consumers of gas.

7 Efficient operation and use of LNG storage facilities and efficient use of natural gas services

Efficient operation and use of LNG storage facilities, and efficient use of natural gas services, may lead to price benefits for parties using LNG storage services and ultimately end-use consumers.

The Commission has considered whether AEMO's Proposed Rule is likely to promote the efficient operation and use of LNG storage facilities and of natural gas services. The Commission has also considered whether the Proposed Rule is likely to improve options for risk management by DWGM participants.

7.1 Rule Proponent's view

AEMO stated in the Rule Change Request that the Rules were an impediment to the commercial operation of the Dandenong LNG storage facility.⁷⁰ AEMO stated that the reason for this was that the Rules prescribed that LNG storage services could only be contracted with prescribed LNG liquefaction allocations and shared vaporisation capacity.

AEMO also stated that DWGM participants would only be able to take up some of the proposed faster LNG liquefaction services if the operation of the Dandenong LNG storage facility became more flexible.⁷¹

AEMO further stated that the Rules relating to the Dandenong LNG storage facility were unnecessarily prescriptive. Simplifying those Rules would reduce administrative costs and would also allow the LNG storage provider to offer other storage services to DWGM participants and others.⁷²

7.2 Stakeholder views

7.2.1 AEMO's public consultation

Both Infratil Energy Australia and Origin Energy commented on this issue in their submissions to AEMO's Consultation Paper. AEMO responded to their comments in the Rule Change Request.

Infratil Energy Australia stated:

- The proposal would promote efficient operation and use of the Dandenong LNG storage facility. In particular, it would allow contracts reflecting vaporisation

⁷⁰ AEMO, Rule Change Request, p.4.

⁷¹ AEMO, Rule Change Request, p.3.

⁷² AEMO, Rule Change Request, p.5.

services better aligning with and more consistent with the design and operation of the DWGM.⁷³

Origin Energy stated:

- The Rules did not enable liquefaction rates to be varied in LNG storage service contracts. This inflexibility limited the activities of DWGM participants by prohibiting them from purchasing additional liquefaction capacity.⁷⁴
- The removal of unnecessary constraints and restrictions in the Rules would bring more certainty and flexibility around LNG contracting.⁷⁵
- There was duplication between the Rules and the operating agreement between AEMO and the LNG storage provider. The operating agreement would be the best place to cover those provisions and removing them from the Rules would promote administrative efficiency.⁷⁶

AEMO responded to Origin Energy's comments in the Rule Change Request:⁷⁷

- Under AEMO's Proposed Rule, DWGM participants would have flexibility to negotiate products with the LNG storage provider. These products may include combinations of storage, liquefaction and vaporisation capacity.

7.2.2 Consultation on the Draft Rule Determination

DPI and Origin Energy both commented on this issue in their submissions on the Draft Rule Determination. Both stakeholders supported the AEMC's view on this issue.

DPI stated that:⁷⁸

- the proposed liberalisation of the Dandenong LNG facility should promote the efficient operation of the facility, and promote efficient risk management.

Origin Energy stated that:⁷⁹

- the Draft Rule would likely provide DWGM participants with more opportunity to use LNG and to manage their market risks, by providing LNG storage providers with the opportunity to offer a wider range of commercial services and greater flexibility around those services.

⁷³ Infratil Energy Australia submission to AEMO Consultation Paper, p.1.

⁷⁴ Origin Energy submission to AEMO Consultation Paper, p.1.

⁷⁵ Origin Energy submission to AEMO Consultation Paper, p.2.

⁷⁶ Origin Energy submission to AEMO Consultation Paper, p.1.

⁷⁷ AEMO, Rule Change Request, p.20.

⁷⁸ DPI, submission on the Draft Rule Determination, p.1.

⁷⁹ Origin Energy, submission on the Draft Rule Determination, p.1.

7.3 Commission's analysis

7.3.1 Efficient use of LNG storage facilities

The Commission considers that liberalising the use of the Dandenong LNG storage facility is likely to promote the efficient use of that storage facility, which may result in price benefits for users of LNG storage services and ultimately end-use customers. This is a key aspect of the NGO against which the Commission has assessed AEMO's Proposed Rule.

The reason for this assessment is that the Commission considers that liberalising the use of the Dandenong facility may allow LNG storage users to contract vaporisation, storage and refilling services to meet their needs at lower cost. This is because the Dandenong LNG storage provider would have the ability to offer a wider range of such services.⁸⁰

The Commission further considers that liberalising the use of the Dandenong LNG storage facility appears to be consistent with the principles of good regulatory practice in that the use of the facility should not be regulated if regulation is unnecessary.

7.3.2 Efficient operation of LNG storage facilities

The Commission also considers that exposing the Dandenong LNG storage provider to the costs of operating its facility and reducing administrative costs associated with transferring LNG storage capacity and stock and costs associated with negotiating contracts is likely to promote the efficient operation of the facility. This may also result in price benefits for users of LNG storage services and ultimately end-use customers. This is explained below.

Operational costs

Under the Rule Change Request, the Dandenong LNG storage provider will be exposed to the costs of gas vaporised for testing the storage facility and boil off gas. Under the current Rules, those costs are allocated to DWGM participants.⁸¹

Administrative costs

The current Rules impose administrative costs on the operation and use of the Dandenong LNG storage facility:

⁸⁰ The Commission notes that AEMO's Proposed Rule maintains an existing obligation on LNG storage providers that LNG storage facilities be utilised with the objective of maintaining LNG stock at the highest level possible. The Commission notes that maintaining this obligation is unlikely to adversely impact the efficient use of LNG storage facilities, relative to these obligations under the Rules as existing at the time the Rule Change Request was submitted.

⁸¹ Through AEMO's linepack account, under current Rule 285(3).

- the Rules regulate how DWGM participants can transfer storage capacity and LNG stock in storage facilities between themselves;⁸² and
- the Rules obliges the Dandenong LNG storage provider to not vary the declared LNG supply agreement without AEMO's consent.⁸³

AEMO's Proposed Rule would remove these restrictions, likely reducing the administrative costs associated with the operation and use of the Dandenong LNG storage facility

7.3.3 Risk management

The Commission also considers that liberalising the use of the Dandenong LNG storage facility is likely to improve options for the management of risk by DWGM participants contracting LNG storage services. This view was supported by DPI and Origin Energy. Increased flexibility in using LNG as an additional source of gas may assist DWGM participants in managing financial risk.

In particular, those parties may be able to inject greater quantities of LNG into the transmission network in each scheduling interval. This would provide them with greater flexibility to react to market conditions, e.g. by offering more LNG into the DWGM at times when it is highly valued.

7.4 Conclusion

The Commission considers that liberalising the use of the Dandenong LNG storage facility is likely to promote the efficient operation and use of the facility. This is because the Dandenong LNG storage provider would have more flexibility in the LNG storage services it could offer, potentially allowing customers to meet their needs at lower cost. Parties contracting storage services may also have greater flexibility in allocating gas to where they value it the most. These impacts may ultimately result in price benefits for end-use consumers.

The Commission also considers that liberalising the use of the Dandenong LNG storage facility is likely to improve options for risk management by DWGM participants. This is because they may be able to better manage their financial risks by having greater flexibility in offering LNG to the DWGM. This may also ultimately result in price benefits to end-use consumers.

82 Current Rule 282.

83 Current Rule 280(4).

8 Competition

Enhancing access to gas storage services may promote competition in the DWGM and in other markets. Promoting competition in these markets may lead to price benefits for parties contracting LNG storage services and ultimately end-use consumers.

Restrictions on parties being able to access these services may increase risks to competition in the markets those parties are active. Detrimental impacts on competition in those markets may lead to higher prices for LNG storage services and impact the ability of parties potentially using these services to manage their risks. This in turn may lead to higher prices for end-use consumers.

The Commission has considered whether AEMO's Proposed Rule is likely to promote competition in the market for providing gas storage services and in other markets. It has also considered whether the Proposed Rule is likely to present risks to competition in those markets.

8.1 Rule Proponent's view

The Proponent did not address this issue in its Rule Change Request.

8.2 Stakeholder views

8.2.1 AEMO's public consultation

Stakeholders did not address this issue in their submissions on the Proponent's Consultation Paper.

8.2.2 Consultation on the Draft Rule Determination

DPI and Origin Energy both commented on this issue in their submissions on the Draft Rule Determination. Both stakeholders supported the AEMC's view on this issue.

DPI stated that:⁸⁴

- the proposed liberalisation of the operation of the Dandenong LNG facility should promote competition in the DWGM.

Origin Energy stated that:⁸⁵

- the Draft Rule would promote competition in the DWGM by providing market participants with more opportunity to use LNG and manage their market risks. This may facilitate more efficient market outcomes, benefitting customers.

⁸⁴ DPI, submission on the Draft Rule Determination, p.1.

⁸⁵ Origin Energy, submission on the Draft Rule Determination, p.1.

8.3 Commission's analysis

8.3.1 Potential risks to competition

Risks to competition in relevant markets may arise if LNG storage services are not regularly and transparently contracted out to the parties most valuing them. APA FM contracts out LNG storage services, a process the Rules do not regulate.

The Commission considers that liberalising the use of the Dandenong LNG storage facility and removing AEMO's rights to LNG storage capacity is not likely to present new risks to competition in relevant markets. There would be no change to the regulatory framework within which an LNG storage provider operates when allocating LNG storage services to parties (e.g. Part IV of the TPA relating to restrictive trade practices). This is explained below.

The Rules

The current Rules do not regulate the process used by APA FM to contract out LNG storage services. The Commission considers that this would not change.

The Trade Practices Act

The ACCC may have a role under section 50 of the TPA in relation to the sale of LNG storage services.⁸⁶

Under section 50 of the TPA, a corporation must not directly or indirectly acquire shares in the capital of a body corporation or acquire any assets of a person, if the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a market.⁸⁷

8.3.2 Promotion of competition

The Commission has identified a number of markets in which it considers liberalising the use of the Dandenong LNG storage facility has the potential to promote competition:

- the market for gas storage services;
- the DWGM; and

⁸⁶ The Commission notes that in 2007 the ACCC conducted an Informal Review of GasNet Australia's (now APA GasNet) then-proposed tender process for the sale of 1500 tonnes of storage capacity in the LNG storage facility. The ACCC published a notice regarding the outcome of this Informal Review on the Mergers Register section of its website. See ACCC, *Notice of Informal Review of the Proposed sale of part of LNG Storage Facility owned by GasNet Australia*, www.accc.gov.au.

⁸⁷ Such an acquisition may however proceed if clearance is gained from the ACCC under section 50(4) of the TPA.

- other markets in which parties seeking gas storage services are or may be active.

The potential impacts are discussed below.

Market for gas storage services

The Commission considers that liberalising the use of the Dandenong LNG storage facility has the potential to promote competition in the market for gas storage services. In particular, it may promote competition between the owners of the Dandenong LNG storage facility and the Iona Underground Gas Storage (IUGS) facility in relation to their provision of gas storage services, to the extent they compete to provide those services.

The IUGS is a gas storage facility near Port Campbell, Victoria, which is connected to the Victorian DTS and the SEA Gas Pipeline. TRUenergy Gas Storage Pty Limited, as owner and operator of the IUGS, can contract gas storage services to DWGM participants and others.⁸⁸

The Commission considers that liberalising the use of the Dandenong LNG facility may promote competition between IUGS and the Dandenong facility because it would provide greater flexibility to the Dandenong LNG storage provider to offer a wider range of LNG storage services. Enhanced competition between storage providers may lead to price benefits for DWGM participants and ultimately end-use consumers.

Declared Wholesale Gas Market and other markets

The Commission considers that liberalising the use of the Dandenong LNG storage facility has the potential to promote competition in the DWGM and in other markets that storage service users are active. This is because it may provide greater scope to those users to manage their risks in those markets. Stakeholders agreed that the Draft Rule would help promote competition in the DWGM. Greater competition in the DWGM and in other markets may ultimately lead to price benefits for end-use consumers.

8.4 Conclusion

The Commission considers that liberalising the use of the Dandenong LNG storage facility has the potential to promote competition in the market to provide gas storage services, the DWGM and in other markets. Enhanced competition may lead to price benefits for parties contracting LNG storage services and ultimately end-use consumers.

The Commission further considers that liberalising the use of the facility and removing AEMO's rights to LNG storage capacity is not likely to present new risks to

⁸⁸ See www.truenergy.com.au.

competition. The restrictive trade practices provisions of the TPA and the ACCC's oversight role with respect to those provisions would continue.

Abbreviations

| | |
|--------------|--|
| ACCC | Australian Competition and Consumer Commission |
| AEMO | Australian Energy Market Operator |
| AER | Australian Energy Regulator |
| APA FM | APA Facilities Management Pty Ltd |
| DPI | Victorian Department of Primary Industries |
| DTS | Declared Transmission System |
| DWGM | Declared Wholesale Gas Market |
| ESV | Energy Safe Victoria |
| GWCF | Gas Wholesale Consultative Forum |
| IUGS | Iona Underground Gas Storage |
| LNG | Liquefied Natural Gas |
| MCE | Ministerial Council on Energy |
| MSOR | Market and System Operation Rules |
| NGL | National Gas Law |
| NGO | National Gas Objective |
| NGR or Rules | National Gas Rules |
| TPA | Trade Practices Act 1974 (Cth) |

A Summary of issues raised in submissions

A.1 Consultation on the Draft Rule Determination

This table details the issues raised in submissions on the Draft Rule Determination and the AEMC's response to those issues.

| Stakeholder | Issue | AEMC response |
|--|---|---|
| Origin Energy | Origin Energy supports the Draft Rule as it promotes competition in the DWGM. p.1 | Noted. |
| Origin Energy | Liberalising the operation of the Dandenong LNG storage facility is likely to improve competition by providing greater opportunity for market participants to use LNG and manage their market risks. p.1 | Noted. |
| Origin Energy | AEMO should fully recognise the commercial viability of LNG offers and schedule LNG accordingly. p.1 | This is not within the scope of the Rule Change Request. |
| Victorian Department of Primary Industries | The Draft Rule reduces the level of prescription and increases flexibility for DWGM participants seeking to use the facility, which should promote the efficient use of natural gas services with price benefits to consumers in line with the NGO. p.1 | Noted. |
| Victorian Department of Primary Industries | A drafting oversight led to references to "LNG storage provider" in existing rules 278-286 instead of "declared LNG storage provider" In DPI's view, the references to "LNG storage | The Rule as Made has been amended to regulate declared LNG storage providers and not other LNG storage providers. |

| Stakeholder | Issue | AEMC response |
|--|---|--|
| | provider” in existing rules 278-286 should be references to “declared LNG Storage provider”. p.2 | |
| Victorian Department of Primary Industries | The drafting oversight (mentioned above) should be addressed in the Rule as Made. p.1 | The Rule as Made has been amended so that declared LNG storage providers are the only class of LNG storage providers regulated under Rules 278-286. |
| AEMO initial submission | The existing rules 278-286 are clearly intended to apply only to the Dandenong LNG storage facility. p.1 | Noted. |
| AEMO initial submission | The proposed amendments to the Rules are only intended to apply to the Dandenong LNG storage facility and not to all future LNG storage facilities. This is because a new LNG storage facility may play a different role in the Victorian DWGM to the role played by the Dandenong LNG storage facility and it may be inappropriate for the rules regulating the Dandenong facility to regulate new facilities. p.1 | The Commission agrees that it may be inappropriate for the Rules regulating the LNG storage facility at Dandenong to also regulate new LNG storage facilities connecting to the DTS. To the extent LNG storage facilities are owned or operated by declared LNG storage providers they will be regulated under Rules 278-286. |
| AEMO initial submission | The definition of the term “declared LNG Storage Provider” should be retained in the Rules to differentiate the Dandenong LNG facility’s special status in the Victorian DWGM from new facilities. p.1 | The Commission has amended the definition of “LNG Storage Provider” so that it refers only to a declared LNG storage provider. |
| AEMO initial submission | AEMO’s intention for the Rule Change Request was that it retain its rights to LNG storage capacity for the operation of an LNG reserve. Noting that AEMO and Energy Safe Victoria may have the ability to direct any participant to inject gas in an emergency, AEMO would prefer that the AEMC | The AEMC notes that AEMO, in its supplementary submission of 17 November 2010 (see below), no longer requested the AEMC to reconsider the removal of proposed Rule 281(2). |

| Stakeholder | Issue | AEMC response |
|-------------------------------|--|---------------|
| | approve AEMO's proposed rule 281(2) if only to evidence the intention that the declared LNG storage provider has an obligation to make available to AEMO a reserve capacity as agreed by AEMO. p.2 | |
| AEMO supplementary submission | AEMO no longer requests the AEMC reconsider the removal of proposed rule 281(2) due to the presence of other Rules and legislative provisions that enable AEMO amongst other parties to maintain the security of the gas system. p.2 | Noted. |

B Background information

This appendix contains more information about the Dandenong LNG storage facility and the history of the relevant Rules.

B.1 Ownership and operation of the Dandenong LNG storage facility

Since 1 February 2010, APA Facilities Management has owned and operated the Dandenong LNG storage facility.⁸⁹ APA GasNet Australia (Operations) Pty Ltd owned and operated the storage facility before 1 February 2010.

B.2 DWGM participant use of the Dandenong LNG storage facility

DWGM participants can contract storage services associated with the LNG storage facility. They can bid their LNG stock held in the facility into the DWGM for vaporisation and injection (as natural gas) into the DTS, the transmission pipeline for the DWGM.

The Proponent states that vaporisation at a rate of up to 180 tonnes/hour is available to DWGM participants.⁹⁰ Liquefaction at a rate (for tank refilling) of up to 1500 tonnes/month is available to DWGM participants.⁹¹

B.3 Administrative allocation of LNG injected into the Dandenong storage facility

Under current Rule 283, LNG injected into the Dandenong LNG storage facility is administratively allocated as follows:

- LNG was firstly allocated to AEMO for any LNG reserve (there is currently no LNG reserve); and then
- LNG was allocated to DWGM participants with unfilled storage capacity in proportion to each participant's unfilled capacity.

B.4 History of the relevant Rules

From the start of the Victorian wholesale gas market up to 30 June 2009 the Dandenong LNG storage facility was subject to the Victorian Gas Industry Market and System Operations Rules (MSOR). Since 1 July 2009 it has been subject to the National Gas Rules.

⁸⁹ See www.aemo.com.au.

⁹⁰ AEMO, Rule Change Request, p.23.

⁹¹ AEMO, Rule Change Request, p.23.

The market rules governing the operation of the Dandenong LNG storage facility have only been changed in one substantive way since the start of the Victorian wholesale gas market in 1999. Under that change⁹² market participants could bid in part (or none) of their LNG stock into the wholesale gas market each day. Before that change, they had to bid in all of their LNG stock each day.

When Part 19 of the National Gas Rules commenced operation on 1 July 2009, the Rules regulating the operation of the Dandenong LNG storage facility were substantially the same as under the MSOR.

⁹² Victoria Government Gazette, 28 February 2002.

C Conduct provisions

This appendix details the Rules 278-286 that are currently prescribed as conduct provisions.⁹³ It also details which of these conduct provisions are omitted, amended or retained under the Rule as Made.

| Conduct provisions in the Rules as they existed at the time the Rule Change Request was submitted | Conduct provisions omitted, amended or retained under the Rule as Made |
|--|---|
| 279(2) | Minor variations |
| 279(3) | Omitted |
| 280(1) | Minor variations |
| 280(2) | Omitted |
| 280(4) | Omitted |
| 281(2) | Omitted |
| 281(3) | Omitted |
| 281(5) | Minor variations |
| 282(2), (4), (5), (6), (7), (10) | Omitted |
| 283(1), (3) | Omitted |
| 285(2) | Omitted |

⁹³ National Gas (Victoria) (Declared System Provisions) Regulations 2009.

D Statutory provisions regarding intervention in the Victoria gas system

This section gives statutory extracts underpinning the intervention powers of AEMO, the Victorian Government and Energy Safe Victoria.

D.1 AEMO

The National Gas Law gives AEMO broad intervention powers. The relevant sections follow.

91BC – AEMO’s power of direction

- (1) AEMO may give written directions to a Registered participant (or an exempted participant) with respect to the declared transmission system or a declared distribution system for 1 or more of the following purposes:
 - (a) to maintain and improve the reliability of the supply of natural gas;
 - (b) to maintain and improve the security of the declared transmission system or a declared distribution system;
 - (c) in the interests of public safety.
- (2) A direction under this section –
 - (a) may relate to –
 - (i) the operation or use of any equipment or installation; or
 - (ii) the control of the flow of natural gas; or
 - (iii) any other matter that may affect the safety, security or reliability of the declared transmission system or a declared distribution system; but
 - (b) must be consistent with other legislation (including subordinate legislation) relevant to safety in the adoptive jurisdiction but may be contrary to a provision of the Rules or the Procedures.
- (3) A direction under this section may apply, adopt or incorporate (with or without modification) a relevant code of practice or standard (made in or outside Australia) as in force or existing when the direction is made or as in force or existing from time to time.
- (4) A prohibition imposed by a direction under this section may be either unconditional or subject to conditions stated in the direction.

- (5) A person to whom a direction under this section applies must comply with the direction. Maximum penalty:
 - (a) for a natural person – \$25 000;
 - (b) for a body corporate – \$100 000.
- (6) A person who fails to comply with a direction under this section within the period allowed in the direction commits a further offence for every day the non-compliance continues after the end of that period and is liable to a further penalty of \$10 000 for each such offence.

AEMO also has broad intervention powers for the DWGM under Rule 343 of the National Gas Rules. Rule 343 is unchanged under the Rule as Made.

343 Intervention due to system security threat

- (1) If AEMO reasonably considers that a threat to system security is unlikely to subside without intervention, AEMO must intervene in the Market by taking any measures it believes are reasonable and necessary to overcome the threat to system security, including (without limitation) injecting gas from AEMO's LNG reserve or making the following directions under section 91BC of the NGL:
 - (a) curtailment in accordance with the emergency curtailment list, subject to subrule (2);
 - (b) increasing withdrawals;
 - (c) requiring Registered participants to use reasonable endeavours to inject gas which is available and to which the Registered participant is entitled, but which has not been bid into the market on the relevant gas day or which is non-firm gas, recognising in the case of non-firm gas the uncertainties associated with the supply and injection of that gas;
 - (d) requiring any Registered participant to inject off-specification gas into the declared transmission system;
 - (e) requiring Registered participants to do any reasonable act or thing that AEMO believes necessary in the circumstances.
- (2) If a threat to system security is attributable to a transmission constraint then to the extent practicable, AEMO must, prior to curtailing any other Customers, use reasonable endeavours to curtail those Customers who, in AEMO's reasonable opinion, are using more than the authorised MDQ or quantities in AMDQ credit certificates assigned to those Customers.
- (3) A demand forecast override by AEMO is not an intervention.
- (4) Registered participants must comply with all requests and directions issued by AEMO under this Subdivision.

D.2 Victorian Government

The Victorian Minister's intervention powers are given in the Victorian Gas Industry Act 2001. The relevant sections are below.

206 Proclamation that this Part applies

- (1) If it appears to the Governor in Council that the available supply of gas is or is likely to become less than is sufficient for the reasonable requirements of the community, the Governor in Council may, by proclamation, declare that this Part is to apply.
- (2) The proclamation must be published in the Government Gazette.
- (3) The proclamation takes effect on the date of its publication.
- (4) The Governor in Council may at any time revoke a proclamation.

207 Powers of Minister

- (1) While a proclamation is in force, the Minister may, having regard to the needs of the community, give any directions that the Minister thinks necessary to-
 - (a) ensure the safe and sure supply of gas; or
 - (b) to regulate the use of the available supply of gas.
- (2) Without limiting subsection (1), the Minister may by notice in writing do all or any of the following-
 - (a) give any directions that are necessary to control, direct, authorise conduct in relation to, restrict or prohibit the extraction, production, supply, distribution, sale, use or consumption of gas;
 - (b) direct a person or body who extracts, produces, transmits or distributes gas to extract it for, or produce it, transmit it or distribute it to a person specified in the direction;
 - (c) direct a person or body to comply with any terms and conditions relating to the extraction, production, supply, distribution, sale, use or consumption of gas the Minister determines;
 - (d) direct a person or body to whom gas is provided, or transmitted, to accept the gas so provided or transmitted;
 - (e) direct a person or body to carry out any work required to ensure the extraction, production, supply, distribution or flow of gas;
 - (f) direct what services must be maintained and upon what terms and conditions they must operate;

- (g) direct persons and bodies to operate and maintain services to the extent and upon the terms specified in the direction;
 - (h) direct at what times and places and upon what terms and conditions and in what manner services may be used;
 - (i) prohibit the operation or use of services except, if so specified in the prohibition, with the consent of the Minister;
 - (j) requisition the use of property of any kind which is used or may be used, for or in connection with the operation or maintenance of any service;
 - (k) provide for or control, by direction, prohibition or requisition, the operation, use, disposal, distribution, storage, repair, upkeep and maintenance of any property or commodity used or which may be used for, or in connection with, any service;
 - (l) authorise a person specified in the notice to enter any land, building or structure used for or in connection with the provision of services;
 - (m) provide, by direction, prohibition or requisition, for any matter or thing incidental to the carrying into effect of the powers referred to in this section.
- (3) A direction, prohibition or requisition-
- (a) may be made so as to apply to or have operation throughout the whole or any part of Victoria; and
 - (b) may operate generally, or may be limited in its operation according to specified times, places, circumstances, conditions or restrictions; and
 - (c) may, if so specified in the direction, prohibition or requisition, allow the Minister to exempt a person or body from having to comply with the direction, prohibition or requisition; and
 - (d) may be addressed or directed to people and bodies generally or particularly; and
 - (e) subject to subsection (7), takes effect when made or, if a later time is specified in the direction, prohibition or requisition, at that later time; and
 - (f) has effect as if enacted in this Act.
- (4) A direction (including a direction under subsection (6)), prohibition or requisition must be published in the Government Gazette as soon as possible after it is made.
- (5) Notice of a requisition relating to a class of property must be published in the Government Gazette as soon as possible after it is made.

- (6) The Minister may at any time by direction under this section amend or revoke a direction, prohibition or requisition made, or purportedly made, under this section or may return requisitioned property.

D.3 Energy Safe Victoria

Energy Safe Victoria's intervention powers are given in the Victorian Gas Safety Act 1997.

9 Objectives of Energy Safe Victoria

The objectives of Energy Safe Victoria under this Act are-

- (a) to ensure the safety of the conveyance, sale, supply, measurement, control and use of gas; and
- (b) to control the safety standards of gas work; and
- (c) to maintain public and industry awareness of gas safety requirements; and
- (d) to promote awareness of energy efficiency through energy efficiency labelling of gas installations, appliances and components and energy efficiency regulation of gas installations, appliances and components.

Energy Safe Victoria is comprised of a Director. The Director has the following powers.

106 Director may give directions

- (1) The Director may, in writing, direct any person-
 - (a) to cease the supply of gas to a facility, gas installation or appliance; or
 - (b) to make adjustments to the gas flow or to pressure in a pipeline; or
 - (c) to disconnect a gas installation from the gas supply-

if the Director considers that it is necessary to do so for safety reasons.

- (2) The Director may, in writing, direct a person-
 - (a) to cease to use a particular facility, gas installation or appliance; or
 - (b) to make safe a facility, gas installation or appliance; or
 - (c) to do any other thing necessary to make an unsafe gas situation safe-

if the Director considers that it is necessary to do so for safety reasons.

- (3) A person must comply with a direction under this section that applies to the person. Penalty: In the case of a natural person, 300 penalty units or 3 years imprisonment or both; In the case of a body corporate, 1500 penalty units.

107 Additional powers in emergencies

- (1) In addition to the powers under section 106, the Director may do anything or give any direction that the Director considers necessary to make a gas emergency situation safe.
- (1A) In addition to the powers under section 106 and subsection (1), the Director may in a gas emergency situation give any directions the Director considers necessary-
 - (a) to regulate the use of the available supply of gas having regard to the needs of the community; or
 - (b) to facilitate the reliability of the supply of gas; or
 - (c) to facilitate the security of the systems for the transmission or distribution of gas.
- (2) A person must comply with a direction under this section that applies to the person. Penalty: In the case of a natural person, 500 penalty units or 5 years imprisonment or both; In the case of a body corporate, 10 000 penalty units.
- (3) An offence under subsection (2) is an indictable offence.
- (4) Energy Safe Victoria must include in its annual report for a financial year under Part 7 of the **Financial Management Act 1994**, a statement setting out details of each direction given by the Director under this section during that financial year.