



Removal of force majeure provisions in the Victorian wholesale gas market

Publication of draft rule determination and draft rule

The Australian Energy Market Commission has made a draft rule which removes force majeure provisions from the National Gas Rules as they relate to the Victorian declared wholesale gas market.

The draft rule will contribute to the achievement of the national gas objective by clarifying the rules around the management of market stress or supply disruptions, and aligning the rules with the market design.

Draft rule

The Commission has made a draft rule determination to remove participant force majeure and system force majeure provisions from Part 19 of the National Gas Rules (NGR). These provisions were originally designed to act as a mechanism for managing supply disruptions and market stress. Their removal would allow the rules to more accurately and clearly reflect the current market design.

The draft rule would also define the cumulative price threshold (CPT) in the NGR. This change highlights and clarifies the role of the CPT as the main trigger of an administered price cap (APC) in the Victorian declared wholesale gas market (DWGM).

In addition, the Australian Energy Market Operator (AEMO) would be required to specify, in the administered pricing procedures, the process by which it will consult with market participants on the approach to determining the APC and the CPT. This change draws attention to the formal process outlined elsewhere in the NGR.

Finally, redundant rules relating to the obligations on AEMO and market participants with respect to scheduling instructions would be removed.

The draft rule is made in response to AEMO's rule change request, and is made in the form provided by AEMO.

Commission's reasons

The draft rule would clarify and highlight the role of the CPT as the primary trigger of an APC. The CPT incentivises appropriate risk management practices, which are essential in allowing market participants to resolve market stress or supply disruptions. The force majeure provisions were not consistent with the need for observable market parameters and incentivising appropriate risk management practices.

By removing force majeure provisions, market participants would no longer be able to require AEMO to decide whether to declare system force majeure, and thereby trigger an APC, in times of market stress. This would align the incentives market participants face with the market design, which seeks to make participants financially responsible for their actions.

By making minor clarifications to the rules, the draft rule would also improve administrative efficiency by allowing the rules to more clearly set out their intended functions.

Submissions on
the draft rule
determination
close on 13
November 2014.

Background

Force majeure provisions were introduced in the rules applying to the DWGM to provide protection to market participants when unexpected supply disruptions occurred. The development of the market has called into question the relevance of these provisions.

In 2008, an event occurred in which a market participant declared participant force majeure and requested that AEMO declare system force majeure and thereby trigger a price cap. AEMO did not consider that this was appropriate. The market participant contested the decision, with the issue being heard by the Dispute Resolution Panel and the Supreme Court of Victoria. This process highlighted some issues with force majeure provisions, which were later addressed at the Gas Wholesale Consultative Forum (GWCF). The GWCF considered that force majeure provisions were no longer appropriate for the DWGM, and AEMO subsequently submitted a rule change request on 6 February 2014 to remove them.

Alongside the development of the rule change request, the GWCF considered the possibility of another mechanism to protect the market and its participants from unnecessary losses in the event of a supply shortfall. Support was given to a clearly defined, objectively determined trigger, and the CPT was found to be the most appropriate mechanism.

However, the GWCF also considered it was necessary to review the level of the CPT to determine whether it provided protection to market participants in the event that the market price was very high and that a supply response was not forthcoming. As a result of the review, the CPT was reduced from \$3,700 to \$1,800.

Consultation

A consultation paper was published by the Commission on 10 July 2014. Three submissions were received from stakeholders. These are available on the AEMC website.

The AEMC invites submissions on the draft rule determination and draft rule by 13 November 2014.

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