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20 July 2023

Anna Collyer  
Chair  
Australian Energy Market Commission  
Level 15, 60 Castlereagh Street  
SYDNEY NSW 2000

Dear Ms Collyer

**AER submission to AEMC Gas Compensation and Dispute Resolution Frameworks consultation paper**

The Australian Energy Regulator (**AER**) welcomes the opportunity to comment on the Australian Energy Market Commission's (**AEMC**) consultation paper on improvements to the compensation and dispute resolution frameworks in the East Coast Gas System (**ECGS**). These frameworks allow the Australian Energy Market Operator (**AEMO**) to monitor and mitigate threats to reliability or adequacy of supply in the ECGS and for parties to be compensated where they have incurred financial detriment from AEMO's resultant directions. The AER supports the aim of the rule change request to refine these frameworks to promote clear and consistent arrangements for participants. Greater clarity surrounding the claims and compensation processes should further promote market preparedness for volatility in the system and contribute to the efficient and effective operation of the gas sector in the long-term interest of consumers.

The existing compensation framework was established by the *National Gas (South Australia) (East Coast Gas System) Amendment Act 2023*. In October 2022, the AER submitted to Energy Senior Officials' consultation on the draft National Gas Regulations and Rules in relation to the extension of AEMO's functions and powers to manage supply adequacy in the ECGS.<sup>1</sup> Energy Ministers agreed to prioritise the elements of the compensation framework required by winter 2023 to enable AEMO to manage the projected supply shortfall.<sup>2</sup> In this submission, we reiterate our suggestions for refinements to the dispute resolution framework made in our submission from October 2022. Our suggestions aim to promote flexibility in the dispute resolution framework to better facilitate the timely and effective resolution of compensation claims.

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<sup>1</sup> AER, Submission to Energy Ministers Secretariat, Consultation – Extension of AEMO functions and powers, 21 October 2022.

<sup>2</sup> Energy Ministers, Priority reforms for a more secure, resilient, and flexible east coast gas market, 12 August 2022, p. 2.

### ***Timeframe to establish a dispute resolution panel***

The AER supports Energy Ministers' requested amendments to the dispute resolution framework to allow for negotiation between AEMO and the claimant on the scope of a claim.<sup>3</sup> The AER maintains the view that the timing for the Wholesale Energy Market Dispute Resolution Advisor (**WEMDRA**)<sup>4</sup> to establish a dispute resolution panel (**DRP**) should not be hardwired into the National Gas Rules (**NGR**) that establish the ECGS compensation claim framework, but be dependent on relevant entities and AEMO agreeing on the parameters of the claim(s) or notifying the WEMDRA that such agreement cannot be reached. This commentary also applies to the rules that establish the dispute resolution frameworks under Part 15C of the NGR and Chapter 8 of the National Electricity Rules (**NER**). AEMO and affected parties sometimes require more time to discuss the nature and scope of the claim with the WEMDRA, and for the WEMDRA to determine the number and constitution of **DRP** members. The AER considers this process may be curtailed by an inflexible statutory timeframe.

We maintain the suggestion that the rules could be amended such that the WEMDRA is to establish a **DRP** within 5 business days of the relevant entities and AEMO agreeing on the parameters of compensation or notifying the WEMDRA that such agreement cannot be reached. Alternatively, if it is preferred not to make the timeframe dependent on discussion of these parameters, the AER considers it would be appropriate to provide at least 15 business days for the WEMDRA to establish a **DRP** after being notified by AEMO. This provides more time for the WEMDRA, AEMO and affected parties to consider the nature and scope of the claim with the WEMDRA, and for the WEMDRA to determine the number and constitution of the **DRP**. It also takes into account that the WEMDRA may be simultaneously managing other disputes.

The AER further considers the relevant entity to a compensation claim should be able to request from AEMO any information the relevant entity needs to confirm the quantum or other details of its claim, if not otherwise publicly available.

### ***Ability to join compensation claims***

The AEMC's consultation paper notes Energy Ministers' proposal for the rules to allow the joining of compensation claims (that are individually below the \$5,000 eligibility threshold) from the same applicant in relation to the same or similar event impacting on that entity.<sup>5</sup> This is to reflect the potential significant impacts on smaller businesses. Similarly, Energy Ministers propose to consider amending the regulatory framework to allow for joining compensation claims from different entities into one process.

The AER supports allowing the **DRP** to add one or more parties with claims less than the \$5,000 minimum threshold to an existing similar claim if the **DRP** is of the view that there is no detriment to the process or material increase in cost of hearing the claim. This acknowledges that the incremental cost of adding another party in such circumstances is often minimal.

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<sup>3</sup> Energy Ministers, AEMC Rule Change Request – Dispute resolution process under Part 15C and Compensation arrangements under the East Coast Gas System framework, 23 May 2023, p. 10.

<sup>4</sup> The AER uses the term Wholesale Energy Market Dispute Resolution Advisor (WEMDRA) to refer to the current Dispute Resolution Advisor who performs the Dispute Resolution Advisor roles under both the National Electricity Rules and the National Gas Rules.

<sup>5</sup> AEMC, Consultation paper – Gas Compensation and Dispute Resolution Frameworks, June 2023, p. 8.

### ***Allocation of costs of WEMDRA and DRP***

Clause 706(5) of the NGR stipulates that the costs of the WEMDRA and DRP on a compensation claim must be borne by AEMO unless the DRP re-allocates all or part of the costs to a party. The AER maintains the view that AEMO should be able to “pass on” both compensation claim amounts and the WEMDRA and DRP’s associated costs. AEMO functions as a not-for-profit market body responsible for managing various Australian gas and electricity markets, including ensuring the security and reliability of the power system. The AER considers that allowing AEMO to pass on the costs of the WEMDRA and DRP associated with compensation claims would reflect AEMO’s role through the following principles:

1. AEMO should not incur costs for making decisions that financially impact individual participants, where these decisions are made in accordance with its functions and powers to support security and reliability.
2. Participants should share the costs of keeping the relevant energy system secure and reliable, including the costs associated with the compensation claim process.

The AER considers it would be appropriate for AEMO to be able to pass through DRP and WEMDRA costs and payment of the compensation claim unless otherwise directed by a DRP at the DRP’s discretion.

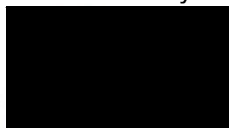
### ***WEMDRA and DRP role in dispute resolution framework***

Energy Ministers’ rule change request notes it may be appropriate to consider whether the WEMDRA is the most appropriate entity to oversee compensation claims under the NGR.<sup>6</sup> The AER supports the WEMDRA and DRP as the most appropriate entities to oversee compensation claims. The WEMDRA and DRP have been able to effectively resolve compensation claims under the Declared Wholesale Gas Market and scheduling error claims under Chapter 3 of the NER (which also relate to compensation for participants) due to the broad skill set of the WEMDRA and DRP members.

Finally, the AEMC has asked stakeholders whether the body determining compensation claims should be able to request information from third parties to support its process. The AER supports the DRP having the ability to request information from third parties as the DRP sees fit when assessing claims for compensation.

We thank the AEMC for the opportunity to submit on this process. If you have any questions about our submission, please feel free to contact Arista Kontos on [REDACTED].

Yours sincerely



Rowena Park  
General Manager  
Compliance and Enforcement

Sent by email on: 20.07.2023

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<sup>6</sup> Energy Ministers, AEMC Rule Change Request – Dispute resolution process under Part 15C and Compensation arrangements under the East Coast Gas System framework, 23 May 2023, p. 10.