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29 September 2022

Ms Daniela Moraes
Senior Adviser
Australian Energy Market Commission
Level 15, 60 Castlereagh Street
Sydney NSW 2000

Dear Ms Moraes,

AER Submission – DWGM Interim LNG storage measures

The Australian Energy Regulator (AER) welcomes the opportunity to provide a submission on the Australian Energy Market Commission's (AEMC's) draft rule change on DWGM interim LNG storage measures.

We support the proposed rule change to provide an interim solution to the low levels of contracted capacity at the Dandenong LNG facility since late 2019. The AEMC's draft rule change reduces the risks to system security and public safety and improves the reliability of supply in the Victorian declared wholesale gas market (DWGM) between winter 2023 and 2024. We acknowledge the importance of gas storage facilities and support improved efficiency in the use of storage facilities.

There are two issues we wish to highlight for your consideration.

Clear obligations on AEMO and APA

The AER considers that the obligations in the proposed rules should be framed in precise language to ensure participants are clear on what their obligations are particularly with respect to rule 282 and the transitional rules for the Schedule. Clear obligations will allow for enhanced enforceability by the AER, in the event of alleged non-compliance with the proposed rules.

More specifically, we suggest that rule 282(3) could be redrafted to separate out the obligations that fall upon AEMO and those that fall upon the LNG Storage Provider. We also suggest that it be considered whether “good faith” is the appropriate yardstick with which to measure the obligation to negotiate the LNG storage agreement.

In light of the importance of the issues to which this rule change responds, the AEMC may wish to consider whether the parties should be obliged use best endeavours in negotiations rather than comply with an obligation to negotiate in good faith. We suggest that there be a dispute resolution mechanism if the parties are unable to reach agreement on the LNG storage agreement terms. Further, the eventual terms of rule 282 should be consistent with the eventual terms of the transitional provisions.

We also suggest that rule 285 include a positive obligation on the LNG Storage Provider to comply with scheduling instructions issued by AEMO and the gas scheduling procedures.

Whilst not directly related to the rule change consultation paper focussed on the proposed rules¹, we ask the AEMC to consider how rule 279(1) of the NGR can be amended so that the obligations under the rule are clearer.

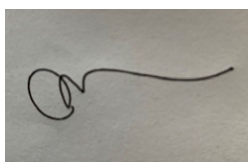
Civil Penalties under Part 19 of the National Gas Rules

There is one civil penalty provision specified under Part 19 of the NGR² compared to thirty civil penalties for Part 20 of the NGR for the Adelaide, Brisbane, Sydney Short Term Trading Markets. We request the AEMC consider whether specifying relevant rules to be civil penalty provisions is appropriate within the scope of this rule change request particularly with respect to proposed rule 282(3).

As regards this particular proposed rule, we suggest that any positive obligations on the LNG Storage Provider should have a civil penalty to enable the AER to take effective enforcement penalty.

We look forward to continuing to work with the AEMC on this interim rule change proposal. If you have any queries relating to this submission, please contact Jeremy Llewellyn at Jeremy.llewellyn@aer.gov.au.

Yours sincerely



Gavin Fox
General Manager, Market Performance
Australian Energy Regulator

¹ Proposed rule numbers 282(4)-(7), 287(1), 281(5)(d), 282(1)-(3), transitional rules (1)-(2), 284(1), 285(1)-(3), 285, 286A, transitional rule (3), 285(4), transitional rule (4), 282(8) and 286(3).

² Subrule 260(5) of the NGR. Part 19 of the NGR relates to Declared Wholesale Gas Market Rules.