

FROM: Wholesale Energy Market Dispute Resolution Adviser (**WEMDRA**)



Dates covered:
July-Sept 2022

WEMDRA contract 2021-2024

This report covers the quarter July-Sept post COVID and a period where the NEM has been in a state of flux and change. There has been a high level of activity and I have taken the time to annotate some of the terms/dispute stages that are commonly included in the report.

1 Disputes and Scheduling errors

Section 1 - Matters Executive Summary

	July-Sept quarter	Carried over	Status at end of quarter
Matters notified	3 (two gas and one electricity)	2- no action	2 Gas referred to Stage 2 2 carried over
Stage 1	1	nil	Referred to private process
Stage 2	2 (gas) matters from matters notified	nil	Referred to a DRP and notice to the market



Section 2- Explanation of stages and details of the matters with WEMDRA

Explanation: Matters Notified means: Either a matter notified to WEMDRA for compensation, or triage and discussion before initiating another stage.

When seeking compensation, the rules often provide for a referral to a DRP and there is no formal stage 1 process prior to the referral to a DRP. This category includes queries and discussions with WEMDRA that may not progress further in a formal sense for a variety of reasons including lack of jurisdiction by WEMDRA, cost estimates, or commercial considerations.

Details of Matters Notified in the Quarter.

One matter for Compensation- Electricity- This compensation application arises from a market event on 10 August 2022 – This involves multiple parties and is waiting for a report from AEMO before finalising triage and allocation to a DRP. The details will be noted in the Quarter when the AEMO report is available.

Two matters for Gas. This compensation application is relating to the injection of gas scheduled at bid prices exceeding the administered price cap in the June and July 2022 billing periods. This involves Origin and AEMO. The claims total approximately \$1.2. m and is referred to below as the ('administered pricing compensation claim').

Explanation: Stage 1 means: A DMS notice has been served by one party to another under Chapter 8 of the National Electricity Rules, or part 15C of the National Gas Rules.

The DMS notice provides the time to negotiate a dispute to resolution of a matter or crystallise the issues for determination. Resolution occurs in stage 1 by a consensual process of negotiation or a facilitated process. Determination of a matter is by escalation to stage 2 -either an adviser process, or a dispute resolution panel established by the adviser in consultation with the parties.

Details of Matter Notified in stage 1 in the Quarter

There was one matter notified in Stage 1 during the quarter. AEMO was not a party to that issue and therefore the details of the matter can remain confidential between the parties.

There was a difference of view by the parties about whether Chapter 8 of the National Electricity Rules applied, or if it was a matter to which clause 5.5 of the National Electricity Rules applied. Under clause 5.5 the dispute is notified to the AER and the AER must appoint a commercial arbitrator to determine the dispute following arbitrator nominations from the parties.

During the Stage 1 process the parties agreed to have the jurisdiction issue being determined by an expert under a private agreement entered between the parties.



Explanation: Stage 2 means: That a dispute has not been resolved in Stage 1 and is escalated to a dispute panel of between 1-3 people selected by the adviser in consultation with the parties. It may also be referred to an Adviser process for resolution, decision or further triage.

Stage 2 can also be accessed without stage 1 where the rules provide that the matter go directly to a DRP for determination or awarding of compensation. In that case a DRP of between 1-3 people is established by the adviser in consultation with the parties.

Details of Matters Notified in stage 2 in the Quarter

The administered pricing compensation claims notified in the quarter and referred to above was referred to a DRP comprising of Peter RD Gray KC and Greg Thorpe. Given that the claims were arising from similar circumstances but in different time periods they will be determined together.

The DRP will have a round table on 12 October 2022, and WEMDRA provided an extension of time for the matter to be determined to facilitate hearing the matters together. The market was notified of the referral to a DRP as provided for in the rules.

Section 3 Administration for the Quarter

Update DMS contacts

With the number of matters in the quarter it provided an opportunity for organisations to review their DMS contacts and update them. A record 24 contacts were added to the list which can be accessed at [Electricity – WEMDRA \(resolveadvisors.com.au\)](https://www.resolveadvisors.com.au) / [Gas – WEMDRA \(resolveadvisors.com.au\)](https://www.resolveadvisors.com.au).

The full contact details have been placed behind a password controlled secure site to protect the personal information of the contacts.

Update Pool from which panel is selected

Two additional members were added to the pool from which panel members may be selected being The Hon Annabelle Bennett SC OAM most recently from the Federal Court and Arun Wadhwa who has deep industry experience in both gas and Electricity. Their profiles and photos have been uploaded to the Resolve/WEMDRA website.



Forms

A new form was created for notifying applications under the National Gas Rules for administrative pricing caps. The form (“Gas – DRP under rule 237(6) Notice – Template”) can be found at the following link <https://wemdra.resolveadvisors.com.au/resources/>.

Review of Draft Rules

WEMDRA had the opportunity to provide views to the AER on the draft of Division 5 of Part 27 of the National Gas Rules (NGR). These provisions are modelled on the rule 350(a) and rule 237, 238 of the NGR. The claims for compensation for the DRP are under those provisions and this provided an opportunity to reflect on the practical experience from working under the provisions.

Section 4 - Evaluation of priorities set for the July-Sept quarter.

The WEMDRA budget is a fixed retainer. The scope of what can be achieved in a quarter depends on the number of matters that need to be managed and the time requirements for those. Where participants reimburse the costs of the WEMDRA time as part of a process, this frees up the retainer moneys to be used to cover the administration costs of the scheme.

This quarter had many matters referred, not all of which could be recovered. The following scheduled tasks have been carried over:

- Finalise the role description and recruitment for the WEMDRA support function.
- Scope DMS training content and delivery options.
- WEMDRA annual review for the AER (due July each year).
- Finalise the security augmentation of the WEMDRA back-end systems.
- Implementation of a feedback mechanism to WEMDRA.
- Updating of DMC (gas contacts).

Please be in contact with questions and suggestions.

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