



Australian Energy Market Commission

RULE CHANGE

DRAFT RULE DETERMINATION

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

Rule Proponent

Australian Energy Market Operator

Commissioners

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23 September 2010

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For and on behalf of the Australian Energy Market Commission

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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 of draft Rule determination

The Commission has made this draft 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 seeks, in light of its claim of a decreased reliance on LNG for system security, to remove its right¹ to 3000 tonnes of storage capacity in the Dandenong LNG storage facility for an LNG security reserve. The 12 000 tonnes Dandenong LNG storage facility provides LNG storage services to participants in the Victorian Declared Wholesale Gas Market (DWGM) and others. The Rule Change Request also seeks to partially liberalise the operation of the Dandenong LNG storage facility.

Commission's decision

The Commission has decided to make a Draft Rule incorporating the key elements of the Rule proposed to be made in the Rule change request.

Reasons for the Commission's decision

The Commission decided to make a Draft Rule as it considered that the 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 market for providing gas storage services, the Victorian Declared Wholesale Gas Market and other markets.

Invitation for public submissions and Final Rule determination

The Commission invites public submissions on this draft Rule determination by Thursday 4 November 2010. See section 1.6 for details about how to make a submission and how to request a public hearing on this draft Rule determination.

¹ Under National Gas Rule 281(2).

The Commission will consider submissions on the draft Rule determination and publish its final Rule determination by 16 December 2010.

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1 AEMO's Rule Change Request

1.1 The Rule Change Request

On 10 June 2010, AEMO (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

Background information about the Dandenong LNG storage facility and its role in the DWGM can be found in appendix A.

1.2 Rationale for 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 (Rules) impede 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:

- 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;

- 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;
- 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 would apply to both the Dandenong LNG storage facility and to new LNG storage facilities that connect to the DTS. In this draft Rule determination, we use the term "LNG storage provider" to refer to an owner or operator of an LNG storage facility. As discussed above, we use "Dandenong LNG storage provider" to refer to the owner/operator of the Dandenong LNG storage facility. The Dandenong LNG storage provider is APA Facilities Management Pty Ltd (APA FM).

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

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

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.

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.

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. The Commission decided to use the fast track process as it considered that AEMO had

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.

adequately consulted with the public on the nature and content of the Rule Change Request before submitting it to the Commission.

1.6 Consultation on draft Rule determination

In accordance with the notice published under section 303 of the NGL, the Commission invites submissions on this draft Rule determination, including the draft of the Rule proposed to be made, by Thursday 4 November 2010.

In accordance with section 310(2) of the NGL, any person or body may request that the Commission hold a hearing in relation to this draft Rule determination. Any request for a hearing must be made in writing and must be received by the Commission no later than Thursday 30 September 2010.

Submissions and requests for a hearing should quote project number "GRC0003" and may be lodged online at www.aemc.gov.au or by mail to:

Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

2 Draft Rule Determination

2.1 Commission's draft Rule determination

In accordance with section 308 of the NGL the Commission has made this draft Rule determination in relation to the Rule proposed by AEMO. The Commission has determined it should make, with amendments, the Rule proposed by the Rule Proponent (Proposed Rule).¹¹

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

A draft of the Rule that the Commission proposes to be made (Draft Rule) is attached to and published with this draft Rule determination. The Draft Rule is different from the Rule proposed by the Rule Proponent. Its key features are described in section 3.2.

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 in relation to this Rule Change Request;¹²
- the public consultation the Proponent conducted on an exposure draft of the Proposed Rule;
- 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

¹¹ Under section 308(4a) of the NGL the draft of the Rule to be made need not be the same as the draft of the proposed Rule to which the notice under section 303 relates.

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 National Gas Objective (NGO).

2.3 Commission’s power to make the Rule

The Commission is satisfied that the Draft Rule falls within the subject matter about which the Commission may make Rules.¹⁵ The Draft Rule 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.

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 Draft Rule will, or is likely to, contribute to the achievement of the NGO, as it is likely to result in price benefits without adversely impacting the security of supply of natural gas. In particular, the Draft Rule:

¹⁵ The Draft Rule does not apply in Western Australia as the Draft Rule 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.

- 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 Draft Rule 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 LNG storage providers to invest in gas storage services on a commercial basis. That is, the Proposed Rule 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 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 Proposed Rule 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 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 proposed Rule promotes allocative efficiency.

Further discussions about how the Draft Rule will or is likely to contribute to the achievement of the NGO is in section 3.

2.4.1 Compatibility of the Draft Rule 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 Draft Rule would 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 would remove AEMO's right to 3000 tonnes of storage capacity in the Dandenong LNG storage facility for an LNG security reserve.

The Commission considers that the Draft Rule is compatible with AEMO's declared system functions because AEMO would 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 would retain its obligation to intervene in the DWGM under Rule 343 if it reasonably considered that a threat to system security was unlikely to subside without intervention.¹⁷ Furthermore,

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.

AEMO has powers under the NGL to give directions to maintain the security of the DTS.¹⁸ As such, the Commission considers that the Draft Rule 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.

The Draft Rule 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. It follows that there is no requirement under section 295(5) of the NGL for AEMO to consent to the AEMC making the Draft Rule.

2.6 Application of Draft Rule to Western Australia

The Draft Rule applies in each participating jurisdiction except Western Australia.¹⁹ It does not apply in Western Australia as the Draft Rule does not fall within the subject matters about which the Commission may make Rules under the Western Australian Application Act.²⁰

The Draft Rule 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).

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 National Gas Access (WA) Act 2009.

3 Commission's reasons

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

3.1 Assessment

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, the Commission is satisfied that the Proposed Rule 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 draft Rule determination are set out below.

3.1.1 AEMO's supporting information

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

²¹ AEMO, Rule Change Request, p.1.

²² AEMO, Rule Change Request, p.4.

reserve was held for emergencies in situations in which market participants' LNG was 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 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 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 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

The key aspects of AEMO's Proposed Rule are described below.

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 LNG storage capacity to be made available for the operation of the LNG reserve to be determined by agreement between AEMO and LNG storage providers; and
- remove provisions detailing how AEMO may use or manage the LNG reserve other than under Rule 343.

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.

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 allocation would be determined by agreement between LNG storage providers 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 an 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.

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

²⁷ Under the existing Rules this is allocated to DWGM participants through AEMO's linepack account.

²⁸ BOC Limited (ACN 000 029 729).

affect the ability of AEMO to schedule LNG injection offers or use the LNG reserve.

3.1.3 Impact of Proposed Rule

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 the Proposed Rule is not likely to adversely impact AEMO's ability to manage system security in the DTS and that it has 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, the Proposed Rule 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 mechanisms retained under the Rules include:

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

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

Impact on efficient investment in gas storage facilities

The Commission considers that the Proposed Rule is likely to promote efficient capital investment in the Dandenong LNG storage facility and potentially in the wider gas supply chain. This is because it is likely to allow an 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

²⁹ Section 91BC of the National Gas Law.

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

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

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 that the Proposed Rule is likely to promote the efficient operation and use of LNG storage facilities. This is because it would provide LNG storage providers with more flexibility in the LNG storage services they could offer, better meeting customers' needs at potentially lower cost. It 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 the Proposed Rule 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 managing financial risk. This may result in price benefits to end-use consumers.

Impact on competition

The Commission considers that liberalising the use of LNG storage facilities has the potential to promote competition in the provision of gas storage services, the DWGM and in other markets. The reasons for this are that it:

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

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

It should be noted that the Proposed Rule does not impact on the manner in which DWGM participants currently contract for storage services. 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 balance, after weighing up the factors outlined in section 3.1.3, the Commission is satisfied that the Proposed Rule will or is likely to contribute to the achievement of the NGO. This is because it is likely to lead to price benefits to consumers of natural gas without adversely impacting the security of supply.

3.2 Draft Rule

The Draft Rule implements the proposal in the Rule Change Request with minor changes. These are:

- The Draft Rule deletes Rule 279(3) and inserts a new Rule 279(4) incorporating the substance of Proposed Rule 279(3). This is because existing Rule 279(3) is a conduct provision while Proposed Rule 279(3) incorporates some existing obligations (from Rule 286(3)) which are not conduct provisions.³²
- The Draft Rule deletes Rule 281(2) as that Rule is considered unnecessary. Deleting this Rule does 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 requires 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 currently exists under Rule 286.
- The Draft Rule makes consequential amendments to the definitions and headings in Part 19 of the Rules.
- Minor drafting changes for purposes of clarification.

3.3 Civil Penalties

The Draft Rule amends Rules 200 and 278-286, none of which is prescribed as a civil penalty.³³ The Commission does not intend to recommend to the Victorian Minister that any of these Rules as amended by the Draft Rule be prescribed as a civil penalty. This is because the Commission considers that the enforcement of these Rules (as amended by the Draft Rule) is unlikely to be assisted by their being prescribed as civil penalties.

3.4 Conduct Provisions

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.³⁴ A person (other than the AER) who suffers loss or damage by

³² 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.

³³ The civil penalties are prescribed in the National Gas (Victoria) (Declared System Provisions) Regulations 2009 and the National Gas (South Australia) Regulations.

³⁴ Under section 229(3) of the NGL.

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.³⁵

The Draft Rule amends Rules 200 and 278-286, a number which are conduct provisions.³⁶ Appendix B details the list of relevant conduct provisions and the list of Rules that would be conduct provisions under the Draft Rule.

The Commission does not intend to recommend to the Victorian Minister that further Rules be prescribed as conduct provisions. Under the Draft Rule, 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 does not intend to 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 Draft Rule, the conduct provisions (of Rules 278-286) are Rules 279(2), 280(1) and 281(5).

³⁵ Under section 233 of the NGL.

³⁶ 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 analytical framework that the Commission has applied to assess the Rule Change Request in accordance with the requirements set out in the NGL (and explained in chapter 2).

4.1 General analytical framework

As discussed in section 2.4, the Commission may give such weight to any aspect of the NGO as it considers appropriate in all the circumstances.³⁷ For the Rule Change Request, the Commission considers it is appropriate to give weight to the aspect of the NGO stated in Box 2.1: 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.

Economic efficiency is a concept central to the NGO. As the Commission has discussed in relation to a Rule change requests under the NGL and the National Electricity Law, economic efficiency is commonly considered to have three elements:

- productive efficiency - e.g. the natural gas market should be operated on a least cost basis given the existing and likely network and other infrastructure;
- allocative efficiency - e.g. natural gas production and consumption decisions should be based on prices that reflect the opportunity cost of the available resources; and
- dynamic efficiency - e.g. ongoing productive and allocative efficiency should be maximised over time. Dynamic efficiency is commonly linked to the promotion of efficient long-term investment decisions.

In the context of regulated energy markets, a relevant consideration is the extent and form of market intervention. Interventions in the operation of the market should be minimised. This enables resources to be allocated primarily on the basis of prices established through market mechanisms, hence supporting productive, allocative and dynamic efficiency.

The Commission also seeks to apply principles of good regulatory design and practice as it considers that the NGO has implications for the means by which the regulatory arrangements operate (in addition to their ends). In applying these principles, the Commission seeks to have regard to the need, where practicable, to:

- promote stability and predictability - market Rules should be stable, or changes to them predictable, so that participants and investors can plan and make informed short and long-term decisions; and

³⁷ Having regard to any relevant MCE statement of policy principles.

- promote transparency - to the extent that intervention in the market is required, it should be based on, and applied according to, transparent criteria.

4.2 Application of analytical framework for the Rule Change Request

In the present circumstances the application of this analytical framework has involved focussing on the following issues:

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

The Commission has focussed on these considerations 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;³⁸
- 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;³⁹
- the Commission considers a key aspect of the Proposed Rule is its potential impacts on the efficient operation and use of LNG storage facilities and of natural gas services; and
- the Commission considers it pertinent to examine the potential impacts of the Proposed Rule on competition in various markets.

The application of the Commission's analytical framework in this instance has involved the following tasks and methods:

- reviewing 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;
- examining VENCORP's 2007 System Security Reserve Review in which it reviewed its LNG reserve; and

³⁸ AEMO, Rule Change Request, p.4.

³⁹ AEMO, Rule Change Request, p.4.

- undertaking 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).⁴⁰

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)⁴¹ and the need for much of the current prescriptive Rules regime has been removed.⁴²

AEMO stated that the Proposed Rule would not adversely impact system security⁴³ because there is confidence there will be appropriate market prices and incentives to ensure LNG stocks are maintained.⁴⁴ In addition, the proposal retains regulatory mechanisms relating to the management of system security.⁴⁵

AEMO further stated that the Proposed Rule may enhance security management by enabling incentives to increase liquefaction capacity.⁴⁶

5.2 Stakeholders' views

Origin Energy commented on this issue in its submission to AEMO's Consultation Paper. AEMO responded to Origin Energy's comments in the Rule change request.

Origin Energy stated:⁴⁷

- The Dandenong LNG storage facility has a reduced system security function in light of the introduction of several alternative gas supply sources.
- The facility's residual system security capacity is already monitored through the operating agreement between AEMO and APA Group.

40 See www.aemo.com.au.

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

42 AEMO, Rule Change Request, p.4.

43 AEMO, Rule Change Request, p.5.

44 AEMO, Rule Change Request, p.2.

45 AEMO, Rule Change Request, p.4.

46 AEMO, Rule Change Request, p.5.

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

- 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:⁴⁸

- 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.
- The 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.

5.3 AEMO's supporting information

AEMO stated 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,⁴⁹ 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.

⁴⁸ AEMO, Rule Change Request, pp.6, 20-21.

⁴⁹ 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).

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:⁵⁰

- 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).

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:⁵¹

“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 the Proposed Rule 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 the Commission considers the Proposed Rule:

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

These matters are discussed below.

⁵⁰ See AEMO, Rule Change Request, pp.23-24 for more information.

⁵¹ Concept Consulting Group Limited, *Review of VENCorp LNG Reserve Requirements for 2008 to 2012 Final Report*, p.1.

5.4.1 LNG reserve

The Commission considers that the Proposed Rule's impact on the operation of the LNG reserve 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 may be able to be re-established under both the existing Rules and the Proposed Rule. This is further discussed below.

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

The existing 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.⁵² 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.⁵³

The Commission considers that the removal of 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 an LNG storage provider to ensure that the 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).

Use of the LNG reserve

In addition to AEMO's ability to use the LNG reserve under its Rule 343 intervention powers, it is also currently able to use the reserve under Rule 285(1) to ensure the security of the DTS.⁵⁴

The Proposed Rule would not affect AEMO's intervention powers nor its existing 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 Proposed Rule, in deleting Rule 285(1), is unlikely to adversely impact AEMO's ability to manage system security.

⁵² Rule 281(2).

⁵³ Discussions with the Proponent confirm this intention notwithstanding the statement on p.20 of the Rule Change Request that reference to the LNG reserve was returned to a draft of the Proposed Rule to enable AEMO to maintain its right to reserve capacity in the future.

⁵⁴ And to satisfy AEMO's operational requirements.

5.4.2 Impact on AEMO's management of system security

The Commission considers that the Proposed Rule is likely to assist with AEMO's management of system security in the DTS. This is because it would provide more flexibility to LNG storage providers to offer a wider range of storage-related services while retaining the regulatory arrangements assisting AEMO with its management of system security.

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 LNG storage providers

The Proposed Rule retains the following obligations on LNG storage providers that may assist AEMO with managing system security:

- ensuring that the storage facility is utilised with the objective of maintaining LNG stock at the highest level possible;
- reporting 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
- keeping 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 of 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 C and described below.

The Commission considers that the 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:⁵⁵

- 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

⁵⁵ Section 91BC(1) of the NGL.

- requisition the operation and use of property or any kind which is used or may be used to operate or maintain a service.

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 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 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 the Proposed Rule 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 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.⁵⁶

6.2 Stakeholders' views

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.⁵⁷

Origin Energy stated:

- The removal of unnecessary Rule restrictions will bring more certainty and flexibility around LNG contracting.⁵⁸

6.3 Commission's Analysis

6.3.1 Efficient investment in the Dandenong LNG storage facility

The Commission considers that the Proposed Rule is likely to promote efficient capital investment in the Dandenong LNG storage facility. Such investment may include

⁵⁶ AEMO, Rule Change Request, p.4.

⁵⁷ Infratil Energy Australia, submission to AEMO Consultation Paper, p.1.

⁵⁸ Origin Energy, submission to AEMO Consultation Paper, p.2.

expanding storage capacity and faster vaporisation capability. The reason for this is that the Proposed Rule is likely to provide greater scope to the Dandenong LNG storage provider to invest commercially in those LNG storage services, as discussed below.

Under the existing Rules, LNG injected into the Dandenong storage facility is allocated to storage capacity holders according to a fixed formula.⁵⁹ This formula is described in appendix A. One impact of this administrative allocation of LNG is that it restricts the refilling services that APA FM can offer the market.

The Proposed Rule would deregulate 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.⁶⁰

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 the Proposed Rule 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.⁶¹

6.4 Conclusion

The Commission considers that the Proposed Rule is likely to promote efficient capital investment in the Dandenong LNG storage facility and potentially in the wider gas supply chain. This is because it is likely to provide incentives to LNG storage providers to invest in LNG storage services on a commercial basis. This may as a result lead to price benefits for customers and ultimately end-use consumers of gas.

⁵⁹ Rule 283(2).

⁶⁰ It should be noted that APA FM's investment in the Dandenong storage facility and revenues from the storage facility are not subject to economic regulation.

⁶¹ 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.

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 the 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 that the existing Rules are an impediment to the commercial operation of the Dandenong LNG storage facility.⁶² AEMO stated that the reason for this is that the Rules prescribe that LNG storage services can 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 becomes more flexible.⁶³

AEMO further stated that the Rules relating to the Dandenong LNG storage facility are unnecessarily prescriptive. Simplifying these Rules would reduce administrative costs and would also allow the LNG storage provider to offer other storage services to DWGM participants and others.⁶⁴

7.2 Stakeholders' views

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 services better aligning with and more consistent with the design and operation of the DWGM.⁶⁵

Origin Energy stated:

⁶² AEMO, Rule Change Request, p.4.

⁶³ AEMO, Rule Change Request, p.3.

⁶⁴ AEMO, Rule Change Request, p.5.

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

- The Rules do not enable liquefaction rates to be varied in LNG storage service contracts. This inflexibility limits the activities of DWGM participants by prohibiting them from purchasing additional liquefaction capacity.⁶⁶
- The removal of unnecessary constraints and restrictions in the Rules will bring more certainty and flexibility around LNG contracting.⁶⁷
- There is duplication between the Rules and the operating agreement between AEMO and the LNG storage provider. The operating agreement is the best place to cover those provisions and removing them from the Rules would promote administrative efficiency.⁶⁸

AEMO responded to Origin Energy's comments in the Rule Change Request:⁶⁹

- Under the 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.

7.3 Commission's Analysis

7.3.1 Efficient use of LNG storage facilities

The Commission considers that the Proposed Rule is likely to promote the efficient use of LNG storage facilities, 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 the Proposed Rule.

The reason for this assessment is that the Commission considers that the Proposed Rule may allow LNG storage users to contract vaporisation, storage and refilling services to meet their needs at lower cost. This is because the Proposed Rule would provide LNG storage providers with the ability to offer a wider range of such services.⁷⁰

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.

⁶⁶ Origin Energy submission to AEMO Consultation Paper, p.1.

⁶⁷ Origin Energy submission to AEMO Consultation Paper, p.2.

⁶⁸ Origin Energy submission to AEMO Consultation Paper, p.1.

⁶⁹ AEMO, Rule Change Request, p.20.

⁷⁰ The Commission notes that the 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 existing Rules.

7.3.2 Efficient operation of LNG storage facilities

The Commission also considers that the Proposed Rule is likely to promote the efficient operation of LNG storage facilities. This may also result in price benefits for users of LNG storage services and ultimately end-use customers. The reasons for this assessment are below.

Operational costs

The Commission considers that the Proposed Rule is likely to incrementally promote the efficient operation of LNG storage facilities by LNG storage providers because the providers would be exposed to more of the facility's operating costs. Specifically, LNG storage providers would be exposed to the costs of gas vaporised for testing the storage facility and boil off gas. These costs are currently allocated to DWGM participants.⁷¹

Administrative costs

Further, the Commission considers that the Proposed Rule is likely to reduce the administrative costs associated with the operation and use of LNG storage facilities. It would do this by:

- removing the Rules regulating how DWGM participants can transfer storage capacity and LNG stock in storage facilities between themselves;⁷² and
- removing the obligation on LNG storage providers to not vary the declared LNG supply agreement without AEMO's consent.⁷³

7.3.3 Risk management

The Commission also considers that the Proposed Rule is likely to improve options for the management of risk by DWGM participants contracting LNG storage services. 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 the Proposed Rule is likely to promote the efficient operation and use of LNG storage facilities. This is because it would provide LNG

⁷¹ Through AEMO's linepack account, under existing Rule 285(3).

⁷² Rule 282.

⁷³ Rule 280(4).

storage providers with more flexibility in the LNG storage services they could offer, potentially allowing customers to meet their needs at lower cost. It may also allow parties contracting storage services to have greater 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 the Proposed Rule 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.

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 may lead to higher prices for LNG storage services and impact the ability of parties potentially using these services to manage their risks. These in turn may lead to higher prices for end-use customers.

The Commission has considered whether the 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 these markets.

8.1 Rule Proponent's view

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

8.2 Stakeholders' views

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

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 and the Rules do not regulate this process.

The Commission considers that the Proposed Rule is not likely to present new risks to competition in relevant markets. This is because the Proposed Rule will not impact the regulatory factors affecting the process LNG storage providers use to allocate LNG storage services to parties. This is explained below.

The Rules

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

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.⁷⁴

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.⁷⁵

8.3.2 Promotion of competition

The Commission has identified a number of markets in which it considers the Proposed Rule has the potential to promote competition:

- the market for gas storage services;
- the DWGM; and
- 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 the Proposed Rule 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.⁷⁶

The Commission considers that the Proposed Rule may promote competition between IUGS and the Dandenong LNG storage facility because it would provide greater flexibility to the Dandenong LNG storage provider to offer a wider range of LNG

⁷⁴ 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.

⁷⁵ Such an acquisition may however proceed if clearance is gained from the ACCC under section 50(4) of the TPA.

⁷⁶ See www.truenergy.com.au.

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 the Proposed Rule has the potential to promote competition in the DWGM and in other markets that storage service users are active. This is because the Proposed Rule may provide greater scope to those users to manage their risks in those markets. 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 the Proposed Rule 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 the Proposed Rule is not likely to present new risks to 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
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	Victorian Gas Industry Market and System Operations Rules
NGL	National Gas Law
NGO	National Gas Objective
Rules	National Gas Rules
TPA	Trade Practices Act 1974 (Cth)

A Background information

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

A.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 facility⁷⁷ APA GasNet Australia (Operations) Pty Ltd owned and operated the storage facility before 1 February 2010.

A.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.⁷⁸ Liquefaction at a rate (for tank refilling) of up to 1500 tonnes/month is available to DWGM participants.⁷⁹

A.3 Existing administrative allocation of LNG injected into the Dandenong storage facility

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

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

A.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.

⁷⁷ See www.aemo.com.au.

⁷⁸ AEMO, Rule Change Request, p.23.

⁷⁹ 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 change⁸⁰ market participants could bid in part (or none) of their LNG stock into the wholesale gas market each day. Before the 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.

⁸⁰ Victoria Government Gazette, 28 February 2002.

B Conduct provisions

This appendix details the Rules 278-286 that are currently prescribed as conduct provisions.⁸¹ It also details which of these conduct provisions are omitted, amended or retained under the Draft Rule.

Conduct provisions in existing Rules	Conduct provisions omitted, amended or retained under the Draft Rule
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

⁸¹ National Gas (Victoria) (Declared System Provisions) Regulations 2009.

C 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.

C.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.

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.

C.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.

C.3 Energy Safe Victoria

Energy Safe Victoria's intervention powers are given in 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.