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Energy Ministers Secretariat

Submitted via email: gas@industry.gov.au

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Dear Energy Ministers,

AGL appreciates the opportunity to provide feedback on the *Extension of AEMO Functions and Powers to manage supply adequacy in the East Coast Gas Market consultation paper* released by Energy Ministers on 26 September 2022. AGL supports the intent of the review proposed by Energy Ministers to examine what may be required to provide a more secure, resilient, and flexible east coast gas market. However, AGL has significant concerns about the limited time frames for review of the draft legislation and the absence of sufficient oversight and safeguards for the new proposed AEMO powers.

AGL is of the view that there should be a limit to the level of reliance placed on the electricity framework as a complete model for these new reliability measures. The gas market is not like the National Electricity Market (**NEM**), with its almost instantaneous ability to transmit electricity. Attempts to mirror the reliability settings and standards and other foundational requirements of the NEM in the gas system, without appropriate safeguards or thresholds, holds significant risk.

In particular, AGL has concerns about the absence of any 'threshold' or criteria as to what would constitute an 'actual or potential threat', or conversely any legislated definition as to what constitutes a 'normal operating state'. Defining these states would provide some parameters around when AEMO are permitted to use these powers.

AGL also notes the lack of clarity with regard to the sovereignty of the contractual obligations of participants who are directed to act by AEMO. AGL has significant concerns stemming from the absence of a defined trigger for the directions power, and the oversight of its use, when considered together with the potential impacts to participants and their contractual obligations.

A further exploration of these issues is featured below:

Threshold Definitions and Safeguards:

In order for AEMO to adequately identify an actual or potential risk, issue or threat to the East Coast Gas Market (**ECGM**), as suggested under the new section 91AD, it is not sufficient to provide a broad definition of the ECGM. The legislation should define whether this applies to the ECGM as a whole or as defined segments.

Further, AEMO must have reference to a 'normal operating state' of the ECGM. For example, where a normal operating state cannot be maintained, a threat to system security may or will eventuate, and only under such circumstances should the legislation operate to provide AEMO with the ability to direct participants. The legislation should give participants more certainty by requiring AEMO to qualify the threat or risk to the system.



AGL suggests that the draft legislation should mirror the Declared Wholesale Gas Market (**DWGM**) framework by requiring AEMO to develop standards outlining what constitutes an actual or potential threat in relation to the supply of natural gas within the ECGM. The DWGM is operated in accordance with standards that outline threats to system security within the bounds of that market. This provides participants with more certainty of when AEMO is likely to act and assists participants with understanding what AEMO considers deviation from the normal state of the system.

In addition, AGL supports the suggestion that a Gas Reliability Panel should be established, falling within the governance structure of the Australian Energy Market Commission. As with the NEM Reliability Standard, the Gas Reliability Panel should be responsible for determining the Reliability Standard referred to in Schedule 1 of the Draft Bill. Subsequent amendments to the National Gas Rules, mirroring clause 8.8 of the NER, would also need to be adopted, to empower and define the role of the Gas Reliability Panel to have oversight over the actions of AEMO under these proposed laws, rules, and regulations.

Section 91AF Directions:

With regard to the directions power under section 91AF, AGL suggests that the section include an explanation of what triggers the use of this power, to ensure that its use is justified. AGL understands that the rules and regulations will contain further details about the power and there are considerations listed in section 694, but we believe that is not sufficient and a threshold barrier is required within the legislation.

A party that is subject to a direction may through compliance with that direction cause a breach in an underlying supply or sales contract with a third party. What are the safeguards to protect participants when this occurs? If a gas shortage is causing a threat to system security and a participant is forced to supply to either AEMO or the market, how are they protected for the breach of their supply obligations for that gas? AGL suggests that the treatment and protection of existing bilateral contracts be further explored, and safeguards put in place to ensure that participants who are acting under a direction are indemnified for their action that may affect their primary contracts.

Division 5 Compensation regime:

AGL has significant concerns about the compensation regime as currently drafted, particularly in respect of the absence of any legislated right to compensation for costs or loss. The regime as currently drafted appears to give complete discretion to AEMO as to whether it considers any compensation payment to be appropriate, irrespective of whether loss or cost can be established.

This is in contrast to the regime in the NER which effectively provides that depending on the intervention applied, there is a right to direct costs, loss and opportunity costs, and the role for AEMO and/or the AEMC to determine the appropriate quantum of compensation on the basis of the evidence procured by the participant. AGL suggests that in the absence of any additional time to further consult on the proposed legislation, the draft Bill should be amended to provide a right to claim direct costs, opportunity costs and financial loss as a result of the directions.

Lastly, AGL is concerned that under the proposed legislation information sharing is not constrained or protected. The proposed amendments to the National Gas Regulations add ministers and their



departments to the list of prescribed bodies that AEMO is permitted to share information with under s91GC(2)(h) of the National Gas Law (NGL). Section 91GC is very broad and facilitates cooperation between market bodies performing functions under the NGL and operating under equivalent information protection obligations with AEMO.

AGL does not consider that this is an appropriate mechanism for information sharing between ministers, their departments and market bodies, as there seems to be no restriction on the information that may be shared and or on how the information can be used. This is different to the obligations currently imposed on the AER and AEMO to only use commercially sensitive information in specified ways and in accordance with strict laws and regulations. AGL suggests that this information sharing protocol be reconsidered to ensure that AEMO does not share commercially sensitive information with government departments or the Minister who will be conflicted by their duties to government owned entities within the ECGM.

If you have any questions or concerns about this paper, please contact Marika Suszko, Wholesale Market Regulation Manager at msuszko@agl.com.au.

Yours sincerely,

Chris Streets
Acting General Manager

Policy, Market Regulation and Sustainability