

# GAS RULE CHANGE PROPOSAL

RECOGNITION OF EXEMPT SELLER REGIME IN THE  
NATIONAL GAS RULES

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# 1. SUMMARY

The Australian Energy Market Operator (AEMO) has identified a mismatch between the retail gas market registration provisions in the National Gas Rules (NGR) and the exempt seller regime within the National Energy Retail Law (NERL).

This rule change request proposes an amendment to Rule 135AB NGR to recognise exempt sellers within the retail gas market registration framework.

# 2. RELEVANT BACKGROUND

## 2.1 Current Framework

Under section 88(1) of the National Energy Retail Law (NERL), any person or business who sells energy to another person for use at premises must either hold a retailer authorisation or be an exempt seller. The AER may exempt persons or classes of persons, in accordance with the National Energy Retail Rules (NERR), from the requirement to hold a retailer authorisation.<sup>1</sup>

In order to participate in a retail gas market (so that they can have a distribution supply point assigned to them and ship gas to that point) a person, whether a retailer, end user or exempt seller, needs to register with AEMO. AEMO can only register a person in a retail gas market if they fit within one of the registrable capacities described for each jurisdiction in rule 135AB.

## 2.2 Gas retail market registrable capacities

### ***New South Wales and ACT - NGR 135AB(1)***

The Rules currently define a 'user' as:

*A user or non-scheme pipeline user that is a retailer.*

A *retailer* is defined in the National Gas Law as any person who is the holder of a retail authorisation issued under the NERL in respect of the sale of gas.

A 'self contracting user' is defined as a user or non-scheme pipeline user that:

- (i) *is a party to a contract with a service provider for the provision of haulage services in NSW or the ACT (or both); and*
- (ii) *is an end user; and*
- (iii) *is not a retailer.*

### ***Queensland - NGR 135AB(2)***

The registrable capacities for Queensland use the terms 'retailer' (rather than user) and 'self contracting user'.

A 'retailer' is defined as:

*A user or non-scheme pipeline user that is a retailer.*

A 'self contracting user' is defined as a user or non-scheme pipeline user that:

- (i) *is a party to a contract for the provision of haulage services with a service provider that participates in the retail gas market of Queensland with the registrable capacity of distributor; and*
- (ii) *is an end user; and*

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<sup>1</sup> S110(1) National Gas Law

(iii) *is not a retailer.*

### **South Australia - NGR 135AB(3)**

The registrable capacities of 'user' and 'self contracting user' for South Australia are defined in equivalent terms to the NSW/ACT retail gas market.

### **Victoria - NGR 135AB(4)**

The equivalent registrable capacities for users in the Victorian retail gas market are 'market participant – retailer' and 'market participant – other'. The definitions of those terms in version 40 of the NGR are not in effect, but are as follows:

A market participant – retailer is defined as:

- (i) *A retailer that is a user of a declared distribution system.*
- (ii) *A retailer that is a user or non-scheme pipeline user of a distribution pipeline in Victoria, that does not form part of a declared distribution system.*
- (iii) *A retailer that is a user of the Albury gas distribution system.*

A market participant-other is defined as:

- (i) *A user of the declared transmission system.*
- (ii) *A user or non-scheme pipeline user of a transmission pipeline in Victoria that does not form part of the declared transmission system.*

## **3. THE ISSUE**

### **3.1 Exempt sellers not recognised**

Exempt sellers do not currently fit within any registrable capacity for any of the jurisdictions listed in rule 135AB, except Victoria. Accordingly, in the retail gas markets of New South Wales and the Australian Capital Territory, Queensland, and South Australia, exempt sellers may be prevented from meeting their contractual obligations to provide gas to a purchaser, as they are barred entry into the gas retail market.

This issue has arisen with one exempt seller participating in the New South Wales retail gas market. Until the position is resolved permanently via a rule change, AEMO has implemented a short term solution with support from the AER, which is to register the exempt seller as a self-contracting user - notwithstanding that the market participant does not meet the requirements for that registrable capacity.

For completeness, AEMO notes that the registrable capacities for the Victorian retail gas market are capable of including exempt sellers.<sup>2</sup> Noting that the NERL and related NGR amendments to rule 135AB(4) do not currently apply in Victoria, the AEMC may wish to consider whether or not a corresponding change to the Victorian registrable capacities can be made at this time for a consistent approach to the registration of exempt sellers.

### **3.2 Naming discrepancy for registrable capacities**

AEMO notes that there are some discrepancies in the naming of registrable capacities in rule 135AB, and as part of this rule change request proposes renaming the 'user' category for South Australia, and New South Wales and the Australian Capital Territory to 'retailer'. This would align the name of the registrable capacity with its equivalent in the Queensland jurisdiction and with AEMO's Retail Market Procedures and systems.

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<sup>2</sup> The rules applicable in Victoria are pre-NERL. The registrable capacity of retailer includes any user of a Victorian distribution system. NGR 135AB(4)(d) is capable of covering self-contracting users if they are also users of the declared transmission system. AEMO notes that this rule may require further review when the Victorian jurisdiction adopts the NERL.

## 4. THE PROPOSAL

### 4.1 How the proposal will address the issue

AEMO's retail market systems have different requirements for users and self-contracting users. Users (retailers) will typically win and 'churn' customers and must therefore have the necessary systems in place to interact with AEMO's 'FRC Hub'. AEMO does not require the same level of independence from self-contracting users, as they are end users and therefore do not need to make or respond to transfer requests, make discovery inquiries, or perform similar transactions within the retail gas market. For self-contracting users, AEMO can interact with the FRC hub on their behalf as there are relatively few interactions required.

For this reason, AEMO proposes that Rule 135AB be amended to include exempt sellers in one of two following categories:

1. Where the exempt seller is selling gas only to end users that are related bodies corporate of that exempt seller, the exempt seller will be considered a self-contracting user (or equivalent).
2. Where the exempt seller does not fit within (1) above, the exempt seller will be considered a user (or equivalent).

This change will allow exempt sellers to interact with AEMO and the retail gas market systems where necessary, while providing regulatory certainty to the market.

AEMO has considered three alternative options, but does not consider they satisfy the national gas objective:

1. Register all exempt sellers as if they were self-contracting users; however this would confer a potentially unfair advantage on certain exempt sellers over retailers who may wish to compete for the same customers. AEMO believes that this practice has the potential to distort the retail gas market.
2. Register all exempt sellers as if they were users; however this would burden exempt sellers seeking only to transport gas for their own group operations with the unnecessary costs associated with developing retail systems to interact with the FRC Hub. Such exempt sellers are effectively self-contracting users in the way that they interact with the market.
3. Register exempt sellers as a new separate registrable capacity of user under the NGR, in addition to retailers and self-contracting users. This would likely entail more substantial changes to the Retail Market Procedures and the retail gas market and registration systems for no apparent benefit. AEMO does not consider there to be any obligations under its retail market procedures that should be applied uniquely to either category of exempt sellers.

### 4.2 AEMO Procedure changes

AEMO expects that the proposed rule changes will necessitate minor consequential amendments to the retail market procedures. At this stage AEMO has identified the need to adjust the definition of 'Retailer' in the existing procedures for South Australia and for New South Wales and the Australian Capital Territory, to align with the proposed expanded description of the 'user' registrable category in the NGR for those jurisdictions.

AEMO therefore proposes that the amending rule provide for a suitable implementation period within which AEMO must consult on and make the required consequential amendments to retail market procedures. This transitional period should be no less than three months and no earlier than 30 June 2019.

### 4.3 Stakeholder Engagement

This matter has been discussed with both the AER and the participant described in section 3 above.



## 5. HOW THE PROPOSED RULE CONTRIBUTES TO THE NATIONAL GAS OBJECTIVE

Currently, an exempt seller that intends to make its own arrangements for the supply and haulage of gas to other customers cannot do so in accordance with the NGR, because it is not permitted to participate in the retail gas market of NSW/ACT, South Australia or Queensland. The proposed amendment to the NGR will address that omission by recognising the exempt seller regime under the NERL, allowing gas consumers to benefit from business models that may be able to operate under that regime.

These outcomes promote the national gas objective to maintain efficient operation of gas services for the long-term interest for consumers with respect to quality, reliability and security of supply of natural gas.

## 6. EXPECTED BENEFITS AND COSTS OF THE PROPOSED RULE

There is a benefit to consumers in the form of increased competition in the retail gas markets due to the removal of a barrier to entry for exempt sellers.

The cost to implement this change in AEMO's systems is immaterial, assuming that the rule change is made as proposed. While there are a number of corresponding Procedure changes required (described in section 4.2 above) these are minor.

The participant referred to in section 2.2, and subsequent parties in a similar position, will incur the usual costs that other retailers incur in order to interact with the FRC Hub. AEMO believes this is appropriate as there no principled reason to treat exempt sellers who are not end users differently from authorised retailers where those exempt sellers can sell gas to a category of unrelated customers.

## APPENDIX A. DRAFT RULE

This draft is based on version 38 of the National Gas Rules. Additions are shown in blue underline, and deletions in ~~red strikethrough~~.

### Rule 3 Interpretation

Insert immediately after the definition of *energy laws*:

*exempt seller* has the meaning given in section 2(1) of the NERL.

### Rule 135AB Retail market participation

(1) A person participates, in a registrable capacity, in the retail gas market of New South Wales and the Australian Capital Territory as follows:

(a) Registrable capacity: network operator

A service provider that holds, or is required to hold, a reticulator's authorisation under the *Gas Supply Act 1996* of New South Wales or a corresponding licence, approval or authorisation under the *Utilities Act 2000* of the Australian Capital Territory.

(b) Registrable capacity: ~~user~~-retailer

A user or non-scheme pipeline user that:

(i) is a ~~retailer~~, or

(ii) is an exempt seller that is a party to a contract with a service provider for the provision of haulage services in New South Wales or the Australian Capital Territory, other than an exempt seller that is a self contracting user under paragraph (c).

(c) Registrable capacity: self contracting user

A user or non-scheme pipeline user that:

(i) is a party to a contract with a service provider for the provision of haulage services in New South Wales or the Australian Capital Territory (or both); and

(ii) is an end user or an exempt seller that sells gas only to end users that are related bodies corporate of that exempt seller; and

(iv) is not a *retailer*.

(2) A person participates, in a registrable capacity, in the retail gas market of Queensland as follows:

(a) Registrable capacity: distributor

(i) A service provider that holds, or is required to hold, an area distribution authority under the *Gas Supply Act 2003* of Queensland; or

(ii) A service provider that holds, or is required to hold, a reticulator's authorisation under the *Gas Supply Act 1996* of New South Wales for the Tweed local government area.

#### Note:

The APT Allgas Distribution Network – South Coast Region as described in the Access Arrangement for APT Allgas Energy Pty Ltd (ACN 009 656 446) and approved by the Queensland Competition Authority in July 2006 extends into the Tweed local government area in NSW.

(b) Registrable capacity: retailer

A A user or non-scheme pipeline user that:

(i) is a *retailer*, or

(ii) is an exempt seller that is a party to a contract with a service provider that participates in the retail gas market of Queensland with the registrable capacity of distributor, other than an exempt seller that is a self contracting user under paragraph (c).

(c) Registrable capacity: self contracting user

A user or non-scheme pipeline user that:

(i) is a party to a contract for the provision of haulage services with a service provider that participates in the retail gas market of Queensland with the registrable capacity of distributor; and

(ii) is an end user or an exempt seller that sells gas only to end users that are related bodies corporate of that exempt seller; and

(iii) is not a *retailer*.

(3) A person participates, in a registrable capacity, in the retail gas market of South Australia as follows:

(a) Registrable capacity: network operator

A service provider that holds, or is required to hold, a gas distribution licence under the Gas Act 1997 (SA).

(b) Registrable capacity: network operator (Mildura region)

Envestra Limited (ACN 078 551 685) and any successor to Envestra as service provider for the distribution pipelines that serve Mildura and its environs.

(c) Registrable capacity: ~~user~~-retailer

A user or non-scheme pipeline user that:

(iii) is a *retailer*, or

(ii) is an exempt seller that is a party to a contract with a service provider for the provision of haulage services in South Australia, other than an exempt seller that is a self contracting user under paragraph (d).

(d) Registrable capacity: self contracting user

A user or non-scheme pipeline user that:

(i) is a party to a contract with a service provider for the provision of haulage services in South Australia; and

(ii) is an end user or an exempt seller that sells gas only to end users that are related bodies corporate of that exempt seller; and

(iii) is not a *retailer*.

(e) Registrable capacity: transmission system operator

A service provider for a transmission pipeline in South Australia.

(f) Registrable capacity: swing service provider

A person that is a swing service provider within the meaning of the Procedures governing the operation of the regulated retail gas market of South Australia.



(g) Registrable capacity: shipper

A person that is a shipper within the meaning of the Procedures governing the operation of the regulated retail gas market of South Australia.

(4) A person participates, in a registrable capacity, in the retail gas market of Victoria as follows:

(a) Registrable capacity: transmission system service provider

- (i) The service provider for the declared transmission system.
- (ii) A service provider for a transmission pipeline in Victoria that does not form part of the declared transmission system.

(b) Registrable capacity: distributor

- (i) A service provider for a declared distribution system.
- (ii) A service provider for a distribution pipeline in Victoria that does not form part of a declared distribution system.
- (iii) The Albury Gas Co Limited (ACN 000 001 249) and any successor to that company as service provider for the distribution pipelines that serve Albury and its environs (the Albury gas distribution system).

(c) Registrable capacity: market participant – retailer

- (i) A *retailer or an exempt seller* that is a user of a declared distribution system, other than an exempt seller that sells gas only to end users that are related bodies corporate of that exempt seller.
- (ii) A *retailer or an exempt seller* that is a user or non-scheme pipeline user of a distribution pipeline in Victoria, that does not form part of a declared distribution system, other than an exempt seller that sells gas only to end users that are related bodies corporate of that exempt seller.
- (iii) A *retailer or an exempt seller* that is a user of the Albury gas distribution system, other than an exempt seller that sells gas only to end users that are related bodies corporate of that exempt seller.

(d) Registrable capacity: market participant-other

- (i) A user of the declared transmission system.
- (ii) A user or non-scheme pipeline user of a transmission pipeline in Victoria that does not form part of the declared transmission system.