

18 May 2022

Australian Energy Market Commission
GPO Box 2603
Sydney
NSW 2001

By email: renewablegas@industry.gov.au

Att: Mr James Tyrell

Dear Mr Tyrell

**AUSTRALIAN ENERGY MARKET COMMISSION NATIONAL HYDROGEN AND
RENEWABLE GASES INDUSTRY CONSULTATION –DRAFT REPORT –
REVIEW INTO EXTENDING THE REGULATORY FRAMEWORKS TO
HYDROGEN AND RENEWABLE GASES – NELA(WA) COMMENTS**

Set out below are the comments made on behalf of the West Australian division of the National Environmental Law Association (**NELA(WA)**), and endorsed by the national NELA board, regarding the Australian Energy Market Commission's (**the Commission**)'s Draft Report regarding its Review into Extending the Regulatory Frameworks to Hydrogen and Renewable Gases (**Draft Report**)

NELA acknowledges the Whadjuk and Yued Noongar peoples as the traditional owners and custodians of the lands and waters covered by the Plan, and we pay our respects to their elders, past, present and emerging.

ABOUT NELA

NELA is a peak body for environmental lawyers in Australia. We are Australia's only national, multidisciplinary, member-based association focused on environmental law and sustainability. NELA serves the needs of practitioners in law, planning, natural resources and environmental science and management. NELA obtains and exchanges information on issues relevant to environmental law and policy.

One of NELA’s objectives is to provide a forum for, and otherwise assist in the discussion, consideration and advancement of, environmental law among the legal profession and the wider community.

BACKGROUND

In this submission, NELA(WA) has considered whether the recommendations made by the Commission meet the outcomes in section 6 of the Draft Report, and has also considered the extent to which the Draft Report covers the issues referred to in section 1.2.1 of the Consultation Paper.

EXECUTIVE SUMMARY

Section 1

In summary, NELA(WA):

- (a) considers that the Draft Report and its recommendations will allow for the efficient connection of supplies of covered gases and prevent service providers from hindering access to the pipeline, however, that the recommendations could be strengthened to enable more efficient delivery of new services through to operation of markets that enable new entrants and investment in the national hydrogen market;
- (b) submits that while the Draft Report recommendations will facilitate further investment in the hydrogen market, the Draft Report could go further to recommend limited incentives to increase participation in the renewable gas and hydrogen markets;
- (c) is eager to ensure that there is a clear allocation of roles and responsibilities in relation to the quality and safety of supply of natural gas equivalents to consumers, and supports not expanding Australian Energy Market Operator’s (AEMO) ’s role or providing AEMO with specific heads of power for making procedures in relation to heating values, and also supports market rules and procedures being reviewed to ensure the constituent gas injections are taken into account when determining the allocation and settlement of natural gas; and
- (d) supports the existing consumer protections under the National Energy Retail Law (NERL) and National Energy Retail Rules (NERR) applying to the sale and supply of natural gas equivalents to customers.

Section 2

In summary, NELA(WA) generally considers that the Draft Report covers the issues referred to in section 1.2.1 of the Consultation Paper.

1 SECTION 1: REVIEW OF REPORT AND ITS RECOMMENDATION

Introduction

- 1.1 In this section, we have considered whether the recommendations meet the outcomes in Section 6 of the Draft Report.

Does the Report and its recommendations enable efficient delivery of new services through the operation of markets that enable new entrants to emerge and efficient investment?

- 1.2 NELA(WA) supports investment in hydrogen and renewable gases to support Australia's transition to net zero emissions by 2050 and to increase the capacity for Australia to rely on renewable energy sources. NELA(WA) believes that hydrogen fuel will be utilised in the future as a reliable source of low and zero carbon energy. In particular NELA (WA) supports the production of green, turquoise and yellow hydrogen.
- 1.3 In the Draft Report, the regulatory framework is focussed on as being an important factor to enable increasing hydrogen production and facilitate new entrants and investment in our national hydrogen market.
- 1.4 NELA(WA) has the following comments regarding the Draft Report recommendation's ability to enable efficient delivery of new services:
- (a) With respect to Chapter 3, NELA(WA) submits that the Draft Report recommendations, among other things:
- (i) allow the efficient connection of suppliers of covered gases by, among other things, ensuring that adequate information is available to allow prospective suppliers to determine whether covered gases can be injected into a pipeline.
 - (ii) prevent service providers from hindering access to the pipeline by imposing a requirement to require all service providers to publish a supplier related curtailment methodology as part of their user access guide.

However, NELA(WA) submits that the report recommendations could be strengthened by addressing the form of information and curtailment methodologies to be provided.

Providing a template which could seamlessly fit into the current regulatory regime will reduce burdens on service providers and make it easy for service providers of various sizes to comply with the recommendation. For example, in relation to the curtailment methodology, it is not clear whether the curtailment methodology should cover the same issues for every service provider or whether there should be flexibility in the methodology based on the size / operations of the service provider. If it is intended to be flexible, NELA(WA) submits that providing more detail about minimum standards in the curtailment methodology will assist in ensuring compliance with the recommendations.

- (b) With respect to Chapter 4, NELA(WA) submits that the Draft Report addresses issues relating to deficiencies which exist in relation to the exemption framework for minimum ring fencing requirements which may limit or have an effect on participation of gas distributors in the market, particularly in relation to new service providers or pipeline operators.

In relation to Question 1 and 2, NELA(WA) submit that there should be limited circumstances in which exemptions from ring fencing requirements can be granted. NELA(WA) supports the limitation of exemptions from minimum ring fencing requirements to encourage greater participation in the market and to ensure that there are no barriers to entry into the market. NELA(WA) also submit that if the regulator assesses exemptions using discretion, this may lead to greater divergence in regulatory outcomes and have the negative effect of making it harder for participants

to understand what regulatory considerations apply to it (as opposed to prescriptive exemptions which clearly do/don't apply). Furthermore, if the regulator is required to apply high-level criteria on a case-by-case basis, this may decrease the efficiency of the regulator.

- (c) With respect to Chapter 5, NELA(WA) supports the application of the five transparency mechanism provided for under the National Gas Rules to other covered gases. NELA(WA) agrees with the AEMC's analysis that the application of the five transparency mechanism provided for under the National Gas Rules should occur where it is "appropriate to do so". NELA(WA) submits that when imposing reporting requirements it is necessary to consider and account for the initial regulatory burden of meeting reporting requirements, and to ensure that reporting obligations do not impact the ability for new entrants to enter the market. NELA(WA) supports flexible arrangements like imposing reporting requirements on an intermittent basis.
- (d) With respect to Chapter 8, NELA(WA) supports the expansion of existing categories in the retail gas markets regulatory regime to ensure that it accommodates other covered gases and blend processing facilities. NELA(WA) submits that amendments to the definitions of 'self-contracting user' and 'market participant other', should be consistent across jurisdictions.

Does the Report and its recommendations support continued innovation in developing new services for customers?

- 1.5 NELA(WA) submits that the Report recommendations will assist in facilitating further investment in the hydrogen market. However, NELA(WA) submit that the Draft Report could go further to recommend limited incentives to increase participation in the renewable gas and hydrogen markets. It is anticipated that the cost of hydrogen will not be competitive with natural gas unless there are considerable developments in hydrogen innovation. As part of its Report recommendations, the AEMC should further consider how incentives or enticements could encourage service providers and suppliers to utilise renewables over natural gas.
- 1.6 For example, in relation to interconnection rules specified in Part 3.1.2, the Draft Report could recommend that the Australian Government establish concessions for interconnection fees where the provider is providing hydrogen or renewable gases as a way to incentivise the connection of hydrogen and renewable gases. The Draft Report could also specify whether the cost of interconnection fees will impact the overall cost of gas on the retail market, and if so, create parameters around the cost that will "trickle down" so that customers do not ultimately bear these costs and are not impacted by the utilisation of hydrogen and renewable gases.

Do the proposed changes provide the stability and transparency in regulatory arrangements to enable consumers, market participants and investors to make efficient decisions?

- 1.7 NELA(WA) agrees that the proposed changes to transparency mechanisms, such as the Gas Bulletin Board, the Gas Statement of Opportunities and requirements on retailers/distributors to communication the transition to a Natural Gas Equivalent (NGE) will enable consumers to make more informed decisions.
- 1.8 NELA(WA) suggests that communications to consumers should be in plain English and provided in written or other accessible formats, such as by way of video or infographic, to ensure that the changes are not lost on consumers because of overly technical language.

Clarity on the roles and responsibilities for the quality, safety, reliability and security of supply of gas, to maintain operational safety of infrastructure and customer equipment and appliances

- 1.9 NELA(WA) suggests that there should be a clear allocation of roles and responsibilities in relation to the quality and safety of supply of natural gas equivalents to consumers.
- 1.10 Safety is a key concern in the use of hydrogen gas. The aim should be to ensure consumers are informed and comfortable from a health and safety perspective of change of product trials.
- 1.11 NELA(WA) supports not expanding AEMO's role or providing AEMO with specific heads of power for making procedures in relation to heating values.
- 1.12 NELA(WA) supports the recommendations that jurisdictions review measures for heating value calculations at injection and withdrawal points and consider consistency between jurisdictions.
- 1.13 NELA(WA) supports market rules and procedures being reviewed to ensure the constituent gas injections are taken into account when determining the allocation and settlement of natural gas between users in the relevant network provide a mechanism for allocating constituent gas injections to market participants and for those injections to be allocated to users in the relevant network section and balanced against withdrawals.

Existing consumer protections to be maintained during the transition to the increasing use of hydrogen and renewable gases

- 1.14 NELA (WA) supports the existing consumer protections under the NERL and NERR applying to the sale and supply of natural gas equivalents to customers. Retailers should clearly and concisely communicate the changes from natural gas to natural gas equivalent to consumers so that consumers are aware of changes to gas volumes, quality, price variations and heating value. It is important that the Australian community support the energy transition process and are informed of how the energy transition affects them.
- 1.15 A key driver of communications should be to build social acceptability around using hydrogen and renewable gas. Customers should be informed of changes to gas supply through their bill cycle. Transition notices should also detail safety measures and precautions to address safety concerns. Whilst NELA appreciates that the NERR must be adopted, infographics or videos could also be used as a tool to make the general information digestible, engaging, and interesting for the general public.

2 SECTION 2: COMPARISON TO CONSULTATION PAPER

Introduction

- 2.1 In this section, we have considered whether the Draft Report covers the issues referred to in section 1.2.1 of the Consultation Paper.
- 2.2 According to section 1.2.1 of the Consultation Report, the scope of the Commission's review was to focus on the changes required to the NGR and NERR in order to address issues that could emerge if the NGR and NERL are extended to natural gas equivalents and their constituent gases. In summary, it identified the following parts of the NGR and NERR as within the scope of its review:
 - (a) economic regulation of pipelines;

- (b) market transparency mechanisms;
- (c) facilitated gas markets;
- (d) regulated retail markets;
- (e) consumer protections; and
- (f) regulatory sandbox framework.

Economic regulation of pipelines

- 2.3 In relation to economic regulations of pipelines, the Consultation Paper states that issues on the operation of economic regulation, ring-fencing arrangements and the rights of natural gas equivalent and constituent gases suppliers to connect to pipelines were within the scope of the review.
- 2.4 One of the key draft recommendations made in the Draft Report was to extend the economic regulatory framework. According to the Draft Report, this is to be achieved by *‘making amendments to the economic regulation framework to facilitate connections of other covered gas suppliers, increase market transparency, and provide where necessary, more clarity on the regulatory treatment of pipelines transitioning to transporting another covered gas’*. The draft recommendations also seek to provide regulatory certainty and clarity on the treatment of government grants and concessional finance used to support new investment.
- 2.5 NELA(WA) is of the view that this broadly reflects the relevant issues referred to in section 1.2.1 of the Consultation Paper.

Market transparency mechanisms

- 2.6 In relation to market transparency mechanisms, the Draft Report identified extending the market transparency mechanisms as a key recommendation, suggesting that:
- (a) the extensions of the transparency mechanisms such as the Gas Bulletin Board and the Gas Statement of Opportunities, are expected to reduce the likelihood of material information gaps occurring (which could have an adverse effect on market participants and economic efficiency); and
 - (b) extending the non-pipeline infrastructure access reporting mechanisms to other covered gases and to blend processing facilities will also help facilitate third party access to these facilities.
- 2.7 In NELA(WA)’s view, this appears to cover the key issues discussed in the Consultation Paper, and makes sensible recommendations that will, if implemented, ensure that there is market transparency applicable to the relevant gases. We have also considered the proposed market transparency mechanisms in further detail in relation to regulated retail markets below.

Facilitated gas markets

- 2.8 NELA(WA) does not take a position or make comment on this aspect of the Consultation Paper.

Regulated retail markets

- 3 NELA(WA) agrees that changes to the retail market registration provisions are required to accommodate natural gas equivalents. It is appropriate to introduce new registration categories, where existing categories do not provide for the changes proposed by the Commission.
- 4 NELA(WA) also agrees that changes are required to metering to ensure that consumers can be charged different rates depending on what gas they are consuming. This will naturally involve introducing metering arrangements that are able to accurately measure the energy content of natural gas equivalents.
 - 4.1 NELA(WA) also agrees that changes are required to metering to ensure that consumers can be charged different rates depending on what gas they are consuming. This will naturally involve introducing metering arrangements that are able to accurately measure the energy content of natural gas equivalents.
 - 4.2 NELA(WA) strongly supports the inclusion of mandated renewable or green gas targets at jurisdictional level. In particular, the Commission should consider the design of these targets based on whether existing infrastructure in each State is in fact able to support those targets, or whether newer, purpose built infrastructure would be required. If new infrastructure is required, then this should be reflected in the targets and a stepped approach may be most appropriate, given the time it will take to build that infrastructure.

Regulatory sandbox framework

- 4.3 The Draft Report identified retaining the draft regulatory sandbox rules in their current form as a key recommendation, as in the Commission's view, these draft rules can already accommodate other covered gases as they are fit for purpose for enabling trial projects involving these gases.
- 4.4 In the Draft Report, the Commission noted that there are currently three reform packages from Energy Ministers that include pending rules to be made by the South Australian Ministers, and that these reform packages relate to economic regulation of pipelines, transparency mechanisms and the regulatory framework. It notes that these reform packages have yet to pass the South Australia Parliament and the rules will only be made after that occurs. According to the report 'references in the NGR in the Draft Report assume the planned rules from these reform packages will be made'. In our view, this assumption is flawed because it assumes that the South Australian Parliament will make a particular decision and does not deal with the situation where the South Australian Parliament decides not to implement the reform packages, and the report should address this eventuality.
- 4.5 NELA(WA) recommends that the Commission considers amending this section to consider the issues raised in the Consultation to deal with the scenario where these foreshadowed changes are not made, for the sake of completeness.

If you have any questions about the above, please do not hesitate to contact us at president@nela.org.au

WESTERN AUSTRALIAN DIVISION OF THE NATIONAL ENVIRONMENTAL LAW ASSOCIATION