

GRC0067 - COMPENSATION AND DISPUTE RESOLUTIONS FRAMEWORK

STAKEHOLDER FEEDBACK TEMPLATE

The template below has been developed to enable stakeholders to provide their feedback on the questions posed in the consultation paper and any other issues that they would like to provide feedback on. The AEMC encourages stakeholders to use this template to assist it to consider the views expressed by stakeholders on each issue. Stakeholders should not feel obliged to answer each question, but rather address those issues of particular interest or concern. Further context for the questions can be found in the consultation paper.

SUBMITTER DETAILS

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DATE 20/07/2023

PROJECT DETAILS

**NAME OF RULE CHANGE [OR
REVIEW]:** Compensation and dispute resolutions framework

PROJECT CODE: GRC0067

PROponent: The Hon. Chris Bowen M.P on behalf of the Energy Ministers' Sub-Group

SUBMISSION DUE DATE: 20 July 2023

CHAPTER 3 – THE PROBLEM IN THE RULE CHANGE REQUEST

1. WILL THE PROPOSED SOLUTION ADDRESS THE ISSUES RAISED BY ENERGY MINISTERS?

Do you consider that the proposed changes to the Rules will solve the issue(s) raised by Energy Ministers and improve the regulatory framework? Or are there other factors that would have a greater impact?

The review of the Part 27 compensation framework is appropriate to ensure it is tailored and fit for purpose. The current compensation framework, constructed predominantly for the DWGM is not reflective of the scope and intricacies of the East Coast Gas Market (ECGM) reforms. The Part 27 relevant entities list is much broader, and the directions are set to be issued outside of the DWGM as well.

With the new Part 27, AEMO has broad powers and discretion to address a shortfall in any part of the ECGM. The direction might cover the infrastructure owned by different Facility Operators, the directed gas might come from different sources, including directly from suppliers, shipper linepack, LNG participants, a retailer portfolio and so on – the breadth of options is far more significant than in the DWGM.

The AEMO direction can include not only Part 27 relevant entities but any entity in ECGM. As a result, all those entities are exposed to operational and commercial risks that may not be equivalent in scope or extent to DWGM participants.

For these reasons, the financial detriment caused by the direction is different and far less predictable than in DWGM. We support this additional operational

	<p>and commercial complexity being reflected in the compensation framework for Part 27.</p>
<p>2. SHOULD SIMPLIFICATIONS TO THE PROCESS BE INTRODUCED?</p> <p>A. Should a simpler, quicker process for determining claims be available in certain circumstances? If so, what are these circumstances? How could this be achieved?</p> <p>B. What considerations are relevant to the proposed process to allow claims to be joined into one process?</p>	<p>A. We recommend improvements to the Part 27 compensation framework to reflect the broad powers and directions that could be experienced by Part 27 registered participants. These improvements include:</p> <ul style="list-style-type: none"> a. Defining direct costs in the National Gas Rules, determined in consultation with industry. Currently it is not clear what constitutes a direct cost and entities don't have clarity what the net financial impact could be on them for complying with the direction. Nor the entities have much scope, other than for safety reasons, to not comply with the obligation. Please refer to question 3 regarding opportunity costs and consequently loss. b. Clarifying that relevant entities who may be impacted by a direction but do not necessarily receive a direction from AEMO are eligible to claim. This is currently a point of conjecture and interpretation. For instance, AEMO may direct a supplier or shipper to transport gas that is off specification. Whilst APA as facility operator may not receive the direction directly, if the off-spec gas impacts APA or APA's other customer's facilities, it is necessary that the full costs of these directions be recovered by all impacted entities and not just those receiving the direction. c. Clarifying that if a Facility Operator has been directed by AEMO to utilise its base linepack and, as a result, requires to purchase the gas to replenish the Linepack levels, the Facility Operator will be compensated at the contracted price level and not at the market benchmark price only. d. A longer period than 20 business days to lodge a claim should be considered and available to affected parties who require additional time to gather evidence to support a claim. Due to the broad nature of the direction powers, AEMO could issue directions

that impact the entire ECGM, including multiple assets, shippers, suppliers of equipment, and interconnected Facility Operators. All these entities have their own timeframes in terms of determining costs or impacts and complexities to work through. This could take a considerable amount of time to investigate to prepare the claim. The AEMC should consider a mechanism for longer claim periods such as:

- i. allowing participants to lodge an initial claim within the 20-business day period and request a determined longer claim period or
 - ii. In consultation with industry, agree an extended timeframe in the first instance in advance of submitting a claim.
- e. The methodology to recoup compensation to pay impacted entities is unclear and haven't been tested in practice. The current direction cost recovery methodology is reflected in the CEPA report 20 Feb 2023 requested and prepared by AEMO. The report and suggested methodology were prepared prior to the commencement of Part 27 & finalisation of the ECGS AEMO Procedures & Directions. As a result, the CEPA recommendations were based on the various assumptions and the impacts of the directions haven't been reviewed at the granular level. Further assessment of the options to recoup compensation costs and justification of the economic impact of those options should be consulted on before a methodology is adopted long term.
- f. Equally, case examples of how AEMO determines which relevant entities will be required to fund a particular compensation claim should be outlined so entities can better understand the potential financial impact on their business.
- g. When a direction is given for a period rather than one day (or shorter), some participants may be impacted across a whole period, while others only on the specific day(s). Such differences could lead to 'unsynchronised' claim submissions. The assessment of the submitted claim should be triggered as close to the claim's

	<p>lodgement time as possible. The participant's claim assessment shouldn't be delayed if other impacted parties are yet to submit their claims.</p> <p>h. There might be circumstances when it is beneficial to submit a combined claim, however, at this stage it's difficult to envision those scenarios. The claimants shouldn't be obstructed from submitting such a claim as it might benefit in the circumstance and evidence provision.</p>
<p>3. SHOULD FURTHER INCENTIVES BE CONSIDERED IN CERTAIN CIRCUMSTANCES? Should entities receive only direct costs or should further incentives, such as compensation for other costs, e.g. opportunity costs, be available in certain circumstances? If so, what should these further incentives be? What circumstances should these further incentives apply?</p>	<p>The compensation framework for Part 27 should include opportunity costs and consequential loss.</p> <p>Opportunity costs and consequential losses should be covered by the compensation framework in addition to direct costs to reflect the full cost and impacts of addressing a supply shortfall event. A relevant entity anywhere in the ECGM could be directed by AEMO to reduce or stop all gas supply to its facility to facilitate addressing a shortfall elsewhere in the ECGM such as southern markets. This could negatively impact the entity's facility, equipment or its customers.</p> <p>If only direct costs are recoverable by impacted entities, the full benefits of addressing a supply shortfall are realised by the market and participants where the shortfall occurred, however with only direct costs recoverable, potentially only a subset of the full costs are borne by the market and recoverable by impacted entities. This masks the full cost-benefit trade-off of the shortfall and subsequent actions taken compared to actions that could have mitigated the shortfall occurring, such as investing in new supply, expanded transportation or storage infrastructure etc.</p> <p>Consequential loss can arise due to operational issues that were not anticipated before the direction was issued but have been caused by the direction. A few examples include where AEMO can direct gas to be transported between several networks (different Facility Operators) and off-spec gas might occur with the subsequent impact to the equipment. AEMO is also able to direct for equipment recall or maintenance cancellation. Both situations can lead to the equipment failure during or after the direction that currently isn't anticipated, and hence, should be covered by the compensation framework.</p>

	<p>AEMO could direct a shipper to utilise contracted linepack (e.g., park gas position) to respond to a supply shortfall. This might solve the short-term market shortfall issue and the participant will be compensated for the direct cost of the gas. However, the directed shipper may have been holding the park gas position as a part of the portfolio strategy (eg, response to high GPG demand). As the shipper's park gas has now been utilised in the direction, the initial portfolio strategy cannot be initiated, resulting in an opportunity cost for the shipper. If the opportunity cost is not compensated, the gas market efficiency might suffer with shippers' likely decision to revise their strategy and minimise hedging positions (park gas); the shippers' revenues and ability to sustain the business will be negatively impacted.</p> <p>The CEPA report 20 Feb 2023 sees its being an issue that compensation claims are not set to include the opportunity cost. In CEPA's view, to best promote economic efficiency, prices would reflect all economic costs, including all direct costs and the opportunity cost of market participants.</p>
<p>4. SHOULD THE GOVERNANCE FRAMEWORK ALLOW FOR INFORMATION REQUESTS? Should we progress Energy Ministers' proposal to allow the body determining compensation claims to request information from third parties to support this process? Should any other changes be made to allow the body determining compensation claims to obtain the information it needs from the claimant?</p>	<p>Issue #1.2 in the new rule change proposal paper seems sound. APA is supportive of the panel seeking further information from the claimant and considers that the claimant should have an opportunity to respond to, or clarify, points raised by AEMO or any other third party. If the panel considers advice from sources other than the claimant, the claimant should have a right of reply and transparency of what has been provided for consideration.</p> <p>Regarding Issue #1.3, APA agrees that the claimant should be able to appeal to the DRP if the full amount of the claim is not refunded.</p> <p>APA doesn't object to Issue #1.4 and understand that the \$5,000 threshold provision in the ECGS framework might be too high for some of the small businesses, negatively impacting their ability to recoup the direction costs. The ability to join compensation claims to support small businesses cost recovery is supported.</p>
<p>5. SHOULD COMPENSATION CLAIMS BE CAPPED? Should there be a cap on compensation claims? If so, what form should these caps take, eg, annual aggregate, individual claims, etc?</p>	<p>Compensation claims should not be capped</p>

	<p>As the directions scenarios are unknown, it's not possible to estimate the potential detriment and establish suitable cap value. Considering the supply source distribution across ECGM, some participants might be directed more frequently than others and incur a disproportionately high amount of costs. With a cap in place, the participant might be prevented from recouping all those costs.</p> <p>Capping the number of claims will make the participation in the direction to look punitive, which is an opposite effect of what the ECGS framework reform set to achieve.</p>
<p>6. SHOULD ANOTHER EXISTING OR NEW ENTITY OVERSEE OR DETERMINE CLAIMS? What factors should inform the AEMC's work on the roles of the Adviser and Dispute Resolution Panel (DRP) in overseeing the compensation claims process and making determinations?</p>	<p>The assessment entity (new or existing) for Part 27 claims should have a right expert-level knowledge of ECGM and be able to manage not only the direct cost claims, but also claims with the consequential loss and opportunity cost. If the assessment entity expertise has been determined insufficient during the revision of a specific claim, an Expert Adviser should be engaged.</p>
<p>7. WHAT ARE YOUR VIEWS OF THE COSTS AND BENEFITS OF THE PROPOSED SOLUTION? What do you consider will be the costs and benefits of the proposed solution? If there are costs, will these be one off or ongoing? Is there anything the Commission could do in designing the rule that would help to minimise the costs and maximise the benefits?</p>	<p>No comment</p>
<p>8. ARE THERE IMPORTANT IMPLEMENTATION CONSIDERATIONS? Do you have any suggestions regarding the target commencement timeframes? Are there additional measures that should be considered that would support the effective implementation of the desired solution?</p>	<p>Stage 1 of the reforms came into effect on 4 May 2023. New disclosure obligations commenced on 4 July 2023, and the submission of the Compensation Framework consultation falls only three weeks from it. As a result, the industry hasn't lived through the reforms long enough.</p> <p>CEPA, in its report prepared for AEMO on 20 February 2023 around the directions & trading fund cost recovery mechanisms, recognised their proposed solution is an interim one, considering the urgency and complexity of the reforms. The underlining assumption of CEPA's cost recovery proposal was that the post-implementation regulatory impact review (within 12 months of reforms introduction) should be performed.</p>

	Therefore, consideration should be given to holding a second round of consultation at least after the winter 2023. The interim changes to the framework can be introduced based on this initial industry feedback.
<p>9. SHOULD THE BROADER FRAMEWORKS BE ALIGNED?</p> <p>A. Should the changes to the ECGS compensation framework be applied to the DWGM compensation framework?</p> <p>B. Should any of these changes be made to the broader compensation and dispute resolution frameworks?</p> <p>C. Are there factors that may limit the application of the changes to the ECGS framework to each of these frameworks?</p>	Each facilitated market is different and different to the contract carriage ECGM. Any changes to compensation frameworks should consider the difference of those market constructs and be fit for purpose. A blanket overlay of compensation frameworks in one area of the gas market to another may not be achievable.
<p>10. ARE THERE ALTERNATIVE SOLUTIONS THAT WOULD BE PREFERABLE?</p> <p>A. Do you think there are any alternative, more preferable rule based solutions, which are more aligned with the long-term interests of consumers?</p> <p>B. Are there alternative solutions that sit outside of the energy rules such as industry or jurisdictional initiatives that would better address the identified issue?</p>	The current approach appears reasonable at the high level outlined in the consultation paper. Further refinements outlined in this response are advisable.

CHAPTER 4: MAKING OUR DECISION

<p>11. ASSESSMENT FRAMEWORK</p> <p>Do you agree with the proposed assessment framework? Are there additional principles that the Commission should take into account or are principles included here that are not relevant?</p>	No comment.
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