

GAS COMPENSATION AND DISPUTE RESOLUTION CONSULTATION PAPER

24 JULY 2023

INTRODUCTION

The Energy Users' Association of Australia (EUAA) is the peak body representing Australian commercial and industrial energy users. Our membership covers a broad cross section of the Australian economy including significant retail, manufacturing, building materials and food processing industries. Combined our members employ over 1 million Australians, pay billions in energy bills every year and in many cases are exposed to the fluctuations and challenges of international trade.

Thank you for the opportunity to make a submission under the Gas Compensation and Dispute Resolution Consultation Paper.

The EUAA supports the AEMC creating consistency between the East Coast Gas System (ECGS) and the Designated Wholesale Gas Market (DWGM), including the compensation and dispute resolution mechanisms, recognising that AEMO has more influence and control over the DWGM than it does the ECGS. The EUAA believes consistency between the two systems would create less confusion between the markets and allow for more efficiency and effectiveness of the disputes processes, putting downward pressure on costs and therefore consumer bills.

However, the EUAA is concerned that AEMC has not provided the cost impacts of the proposed rule change, for consumers or any market participant, including expected changes in the number and size of disputes, the costs of managing the disputes, nor a mechanism for collecting the compensation amounts or the operating costs of the new procedures and guidelines. Without this information, the EUAA is unable to fully support the rule change at this stage.

CONSULTATION QUESTIONS

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

The EUAA considers that the AEMC has devised a sound solution to the issues raised by the Energy Ministers. Particularly, the EUAA supports the AEMC's proposed governance framework relating to:

- The role of the Advisor and timeframes to establish a Dispute Resolution Panel (DRP);
- The ability of the DRP to call on or rely on third-party information;
- The rights to appeal; and
- The \$5000 fee to lodge a dispute.

However, the AEMC should consider the intricacies in the ability to join compensation claims by the Advisor or body determining compensation. The major issue is when confidential/commercially sensitive information from

claimants is required to settle a dispute and that may be required to be shared and/or tabled. The procedure should allow for the Adviser to propose joining compensation claims at the agreement of all claimants. While this may result in several negotiations on the same event being held separately, the EUAA considers that protecting claimants' confidential/commercially sensitive information related to events should take precedence. Further, to protect from claimants always declining joined compensation procedures, a claimant could be required to provide evidence and/or reasons why the information may be commercially sensitive/confidential in order to decline a joined compensation procedure.

The EUAA would also like to see modelling of the costs comparing the current framework and the proposed framework to determine if it would actually lead to greater efficiencies and how these would be passed on to market participants.

SHOULD SIMPLIFICATIONS TO THE PROCESS BE INTRODUCED?

The EUAA supports a simpler process for small claims below a pre-defined threshold where the causes and impacts for a dispute are clear and not disputed in their own right (i.e. an AEMO intervention in the ECGS). The Advisor or body determining compensation could declare specific events, such as an AEMO intervention, as a declared event and the compensation amount should be determined by the Advisor on the basis of the scale of the intervention and impact to the claimant.

As discussed above, the ability to join compensation claims should be considered in terms of the information required to settle the disputes, particularly where commercially sensitive information from claimants is required.

SHOULD FURTHER INCENTIVES BE CONSIDERED IN CERTAIN CIRCUMSTANCES?

The EUAA agrees that entities should only receive compensation for direct costs (including lost product, labour payments, cleaning and/or repairs to equipment etc) associated with the event giving rise to the dispute in most circumstances. The EUAA can not think of a scenario where "opportunity cost" should be included in any compensation claims.

SHOULD THE GOVERNANCE FRAMEWORK ALLOW FOR INFORMATION REQUESTS?

The EUAA is vocal in correcting the market distortions created by information asymmetry in gas markets, and considers that the body determining compensation should be able to request information from a third party should the market participant not be forthcoming with the required information within the timeframes for lodging such information.

SHOULD COMPENSATION CLAIMS BE CAPPED?

The AEMC has provided no evidence for the requirement of a cap on compensation claims. As discussed above, should there be limitations on what can be included in compensation claims (e.g. only direct costs), then the EUAA sees a natural limit to compensation claims.

Further, while market bodies and industry were concerned over compensation claims for the administered price cap in the NEM in June 2022, predicting compensation claims in the billions of dollars, the level of the claims predicted has not been met, and thus provides evidence that caps are not necessary.

SHOULD ANOTHER EXISTING OR NEW ENTITY OVERSEE OR DETERMINE CLAIMS?

The EUAA considers that any entity that oversees the determination of claims should be independent of the gas industry, but fully versed in all nuances of the gas industry. If the AEMC and/or Energy Ministers are keen to replace the current process of an Advisor appointing a DRP, then the ACCC/AER is the logical place for disputes to be heard and claims determined, consistent with the *Competition and Consumer (Gas Market Code) Regulation 2023*.

WHAT ARE YOUR VIEWS OF THE COSTS AND BENEFITS OF THE PROPOSED SOLUTION?

The EUAA agrees with the Energy Ministers intended list of benefits from the updated dispute resolution procedures and guidelines being the greater clarity on the merits of potential claims and expected compensation and the efficiency gains that could reduce costs.

Aside from AEMO's costs in establishing the updated procedures and guidelines, the EUAA considers that the cost of maintaining the Advisor and DRP or another body determining compensation could be reduced from the current levels.

However, without modelling of the current procedure and the proposed procedures, it is difficult to determine categorically whether there would be cost efficiencies with the proposed rule change.

ARE THERE MORE IMPORTANT IMPLEMENTATION CONSIDERATIONS?

The AEMC and Energy Ministers should consider the current proposed timing in the context of other changes being made in the gas market. The current proposed timing of the changes to the dispute resolution and compensation rule change to be implemented by winter 2024 is a tight timeline, requiring a Rule change before the end of 2023. With the added goal of unifying the ECGS with the DWGM, consultation with participants in the DWGM would now make the date very challenging.

The EUAA would encourage the AEMC and Energy Ministers to consider more realistic timelines to ensure all participants are informed and prepared for implementation. EUAA notes that recently some EUAA members were penalised for breaching gas rules in the STTM market for which they were unaware of changes. While EUAA agrees that it is the participants responsibility to understand the rules, the EUAA also considers that rushed rule changes and short lead times on the release of revised procedures and guidelines leads directly to participants being unprepared for implementation.

SHOULD THE BROADER FRAMEWORK BE ALIGNED?

The EUAA would like to see more consistency between the ECGS and DWGM and supports the current dispute resolution and compensation amendments filtering into the DWGM, noting that the current consultation process is specifically targeted to the ECGS and not the DWGM. Further, in the absence of modelling of the current costs of

the DWGM dispute and compensation procedures against those proposed for the ECGS, it is difficult to understand the cost impacts to consumers and therefore to support the extension of the current rule change into the DWGM.

The EUAA would encourage the AEMC to provide the DWGM participants the opportunity for consultation, with financial modelling of the impacts to market participants.

In conclusion, the EUAA would encourage the AEMC to

- perform financial modelling of the impacts of the proposed rule change to consumers and to other market participants;
- delay the implementation until the modelling is made available and the market participants have time to prepare for implementation of the procedures and guidelines; and
- properly consult with DWGM participants before including the DWGM in the current rule change proposal.

Do not hesitate to be in contact should you have any questions.



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