



25 January 2024

Anna Collyer  
Chair  
Australian Energy Market Commission

Lodged online: [www.aemc.gov.au](http://www.aemc.gov.au)

Dear Ms Collyer,

### **Gas Compensation and Dispute Resolution Frameworks – Draft Determination**

Origin Energy Limited (Origin) welcomes the opportunity to provide comments on the Australian Energy Market Commission's (AEMC) Draft Determination on the *Gas Compensation and Dispute Resolution Frameworks*.

Origin supports the intent of the proposed rule which is to ensure the gas directions compensation framework is fit for purpose. The first stage of the East Coast Gas System (ECGS) Reforms established significant and broad direction powers for the Australian Energy Market Operator (AEMO), and it is critical these powers are supported by a robust and effective compensation framework.

We are concerned that two key aspects of the AEMC's draft rule could limit the overall effectiveness of the revised framework. Firstly, we consider compensation for opportunity costs should be permitted, as opportunity costs together with direct costs best reflect the value of gas and so, the true cost of a direction. Secondly, we do not consider it appropriate / necessary to introduce a new civil penalty provision that is linked to the requirement for participants to respond to an AEMO direction.

We have provided further comments on these areas, and other key aspects of the framework below.

#### **1. Compensation for Opportunity Costs**

To help promote the long-term stability of the ECGS, it is important directed participants receive adequate compensation for the costs they incur in complying with a direction. The Draft Determination indicates that allowing for the compensation of opportunity costs could: (i) provide participants with an incentive towards a directed state that does not support the future security and reliability of the system; and (ii) require complex and costly counterfactual analysis. Origin does not agree with this overarching rationale for excluding opportunity costs and considers the complexities associated with determining such costs could be overcome / reduced.

We generally consider it unlikely the inclusion of opportunity costs would incentivise participants to rely on directions. Directions can result in gas that has been allocated to manage a specific exposure (e.g. to supply forecast retail gas load or fuel for gas-powered generation) being diverted for a different use. This is an undesirable outcome that can potentially undermine the ability of the impacted participant to efficiently manage its risk across both gas and electricity markets.<sup>1</sup> Additionally, participants seeking to claim opportunity costs would face uncertainty around the quantum of potential compensation and the

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<sup>1</sup> This is further complicated by the fact the movement of gas is not instantaneous and it takes time to transport gas to where it is needed in the system.

administrative burden of submitting and (appropriately) justifying claims, which is likely to further reduce any inherent reliance on the framework by participants in the course of normal operations.

Contrary to the above, an inability to claim opportunity costs could weaken incentives for market participants to invest in flexible supply / storage / transportation solutions to efficiently manage their gas / electricity market exposures for the benefit of customers. This is because participants with flexible portfolios are seemingly more likely to be the recipients of directions, which as noted above, undermines the utility / value of that flexibility where opportunity costs cannot be recovered. This issue will likely be exacerbated where the costs of directions are also not allocated to causers.

We recognise there is complexity associated with determining opportunity costs given the need to establish appropriate counterfactual analysis. Clear and transparent guidelines for determining opportunity costs would assist with addressing this, and could allow for practical approximations of costs incurred to be made where possible (e.g. allowing the counterfactual value of replacement gas to be based on some measure of published spot market prices over a defined timeframe).

## 2. Compliance

Draft Rule 706 establishes a new conduct provision that prohibits a relevant entity from exacerbating the direct costs incurred or likely to be incurred by the relevant entity or another person as a direct result of AEMO issuing an ECGS direction, and is intended to be classified as a tier one civil penalty provision. In Origin's view, the proposed rule is excessive and unwarranted given:

- The compensation determination process already takes into account the behaviour of the participant in determining the amount of compensation to be paid, negating the need to impose additional penalties.<sup>2</sup>
- It has broad-ranging application to not only those participants that are directed, but all other entities. This goes beyond the scope of the compensation framework and risks weakening the ability of participants to effectively manage their operations in a directed market, particularly given the ambiguity of key terms such as "exacerbate the direct costs incurred".<sup>3</sup>
- There is no equivalent conduct prohibition in the National Electricity Rules (NER) directions compensation framework. While cl.4.8.9(c2) of the NER prohibits market participants from unreasonably causing or contributing to a direction being issued, this conduct prohibition is imposed under Chapter 4 of the NER in the context of targeting behaviour which affects power system security, thereby causing a direction to be issued. Conversely, NGR Draft Rule 706 seeks to impose a conduct prohibition under the compensation framework where a direction has already been issued and the market is operating in response to that direction.

## 3. Procedural Arrangements

We support the AEMC's draft decision to include a right of appeal in the framework that would allow a claimant to appeal a compensation determination on questions of law. This is prudent given the

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<sup>2</sup> Rule 707(2)(a) allows the independent expert to consider whether the claimant mitigated its costs as part of determining the compensation to be paid. This is already an effective deterrent for ensuring entities take steps to mitigate their costs without the need to also impose a conduct prohibition / civil penalty provision.

<sup>3</sup> For example, it is not clear how the AER would interpret / assess whether a party's actions exacerbated the direct costs incurred under a direction, and / or whether the parties actions were unreasonable given prevailing operating conditions.

framework is untested and there may be uncertainty in relation to how specific scenarios and the associated level of compensation are assessed.

If you wish to discuss any aspect of this submission further, please contact Thomas Lozanov at [thomas.lozanov@originenergy.com.au](mailto:thomas.lozanov@originenergy.com.au).

Yours Sincerely,

A handwritten signature in black ink that reads "S Cole". The signature is written in a cursive, slightly slanted style.

Shaun Cole  
Group Manger, Regulatory Policy