



25 January 2024

Our Reference: APLNG – COR – 1044254

Patrick Loughrey
Project Leader (GRC0067)
Australian Energy Market Commission
Level 15, 60 Castlereagh Street
Sydney NSW 2000

By electronic lodgement: www.aemc.gov.au

Dear Mr Loughrey

Australia Pacific LNG Pty Ltd (**APLNG**) welcomes the opportunity to comment on the Australian Energy Market Commission's (**AEMC**) draft rule determination on the *National Gas Amendment (Compensation and dispute resolution frameworks) Rule* (the **draft determination**).

APLNG is an incorporated company and one of the largest producers of natural gas in eastern Australia, delivering a reliable energy source to customers in Australia and Asia. We are the largest net contributor of gas supply to Australia's domestic east coast gas market, having provided over 2,100 PJ of gas into the domestic market since the project was sanctioned.

As one of the largest producers and consumers of gas in the east coast gas system (**ECGS**), we expect to be disproportionately affected by the Australian Energy Market Operator's (**AEMO**) directions powers and the associated gas compensation framework. It is therefore important to us that the framework is fit-for-purpose, equitable and minimises market distortions.

We believe the creation of a new stand-alone gas compensation framework, as proposed by the AEMC, is a pragmatic step forward. The planned changes remove many of the complexities of the current arrangements and provide greater clarity and certainty to all stakeholders on the compensation claim process, including the overarching roles, responsibilities and timeframes.

However, APLNG believes that several fundamental issues persist in the draft determination which could be more thoroughly assessed by the AEMC before it makes its final determination, including issues we presented to the AEMC in our July 2023 submission and subsequent bilateral meeting. Our key areas of concern are outlined below.

Categories of costs to be recovered as compensation

During previous consultation rounds, APLNG advocated for participants to be able to seek compensation for all costs incurred as a result of a direction issued by AEMO. In simple terms we proposed that claimants should be returned to the financial position they would have been in but for the AEMO direction. We continue to believe this to be the case and that the categories of recoverable costs should be expanded to include both opportunity and consequential costs.

Compensation for directed and affected participants is designed to reduce the impact of a direction by AEMO on participants. Failure to fully compensate directed participants who are required to provide services needed by the ECGS can have long-term negative impacts on the financial position

of these participants, increasing their financial and sovereign investment risks. This will create further risk to ongoing investment in maintaining existing gas supply and developing new gas supply, both of which are necessary for sustaining ECGS supply security.

In addition, limiting recovery to direct costs does not in APLNG's view strike a fair balance between the interests of the claimant and those benefiting from the increased reliability and supply adequacy (i.e. consumers in the domestic ECGS), thus leading to an inequitable allocation of risk across the different parts of the ECGS.

APLNG respectfully requests that AEMC reconsiders the balance of interests between the claimant and the beneficiaries when making its final determination (including the regulatory impact analysis) in order to mitigate the potential knock-on risks to ongoing investment in maintaining adequate supply for the ECGS.

Including the claimant as a liable relevant entity

Under current arrangements, the claimant is exempt from contributing towards the compensation funding amount. The AEMC has proposed that this will no longer be the case. The AEMC has stated on page 21 of its draft determination that: *'Based on consumption-based approach, a claimant may be a relevant liable entity that is required to fund compensation'* but has not provided any detailed rationale for the departure in its draft determination.

APLNG does not support this proposed rule change as it does not strike a fair balance between the interests of the claimant and the beneficiaries of an AEMO direction. We consider that it is inequitable that, in addition to responding to a direction, APLNG could be exposed to contributing towards its own compensation funding amount and to bearing its own claim-related costs...

So far as APLNG is aware there are no barriers preventing AEMO from excluding the claimant's consumption from the aggregate gas consumption calculation, noting that AEMO requires granular consumption data to apportion the compensation funding amount to liable relevant entities. We therefore request the re-insertion of the wording *'(other than the claimant)'* in rule 707(7) of the National Gas Rules.

Proposed Tier 1 civil penalty provision to support appropriate behaviour in response to an AEMO direction

APLNG believes that it is important to preserve economic signals as much as possible, both to minimise market distortions and to provide incentives for market-based responses to potential reliability and supply adequacy issues in the future. In APLNG's view, introducing this civil penalty provision will substantially interfere with the efficient operation of the market and normal commercial trading activity.

An effective functioning market relies on the responsiveness of the market to price signals. In situations where there is a tight supply-demand balance, market prices are likely to be high, making it more attractive for suppliers to voluntarily participate in the market and increase supply to meet demand. It is reasonable for a supplier to respond to these scarcity signals and act in its own legitimate commercial interests when negotiating and entering into agreements with other parties. The *Competition and Consumer (Gas Market Code) Regulations 2023* (Cth) recognises this prerogative in its dealing in good faith provisions.

This proposed civil penalty provision could disincentivise such participation or mute the price signals needed to communicate the threat or risk to reliability and supply adequacy to consumers, potentially creating a circumstance in which AEMO needs to issue a direction that would not otherwise have been required had the market been able to behave and act without regulatory constraints. APLNG therefore does not support its inclusion of a civil penalty provision in the gas compensation framework.

In addition to the above points, APLNG has outlined our position on various aspects of the AEMC's draft determination and draft rule amendments in **Appendix A**. This includes feedback on the proposed right of appeals process, the definition of 'gas demand', the minimum claim threshold, proposed solutions and the implementation timeframe.

APLNG would like to thank the AEMC for the opportunity to provide feedback on the draft determination and for its engagement with us throughout this rule change process. We trust our feedback will assist the AEMC in developing a fit-for-purpose and equitable gas compensation framework.

Should you have any queries relating to this submission or would like to meet with us, please contact Manda Goodwin, General Manager Commercial via email at manda.goodwin@aplng.com.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'Manda Goodwin', with a long horizontal flourish extending to the right.

Manda Goodwin
General Manager - Commercial
Australia Pacific LNG Pty Ltd

Attachment A: Submission from Australia Pacific LNG Pty Ltd

GRC0067 – Draft rule determination: National Gas Amendment (Compensation and dispute resolution frameworks) Rule

SUBMITTER DETAILS

ORGANISATION: Australia Pacific LNG Pty Ltd

CONTACT NAME: Manda Goodwin, General Manager Commercial

EMAIL: manda.goodwin@aplng.com.au

PHONE: 07 3021 3320

DATE: 25 January 2024

PROJECT DETAILS

NAME OF RULE CHANGE: National Gas Amendment (Compensation and dispute resolution frameworks) Rule

PROJECT CODE: GRC0067

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

SUBMISSION DUE DATE: 25 January 2024

FEEDBACK REQUESTED BY THE AEMC

Topic	Feedback
<p>Question 1: We are interested in stakeholder views on the proposed new civil penalty provision to support appropriate behaviour in response to an AEMO direction.</p> <p>In particular, the Commission seeks feedback on:</p> <ul style="list-style-type: none"> the types of behaviour that should be targeted under the new provision and the extent to which such behaviour might increase, or be intended to increase, the costs of compensation whether the draft rule would address this behaviour as intended, or alternative approaches whether the concepts of 'exacerbation' of direct costs and 'reasonable cause' provide sufficient guidance on the behaviour prohibited by the rule, while allowing normal trading to occur during periods of market risk or threats. 	<p>As highlighted in our cover letter, APLNG does not support the introduction of this civil penalty provision due to the distortionary effects it could have on the market. We are particularly concerned about the reference to 'another person' in proposed rule 706, given that a party acting in its own commercial interest in a tight supply-demand market would naturally seek to maximise the revenue it can earn, resulting in higher direct costs for the counterparty. This is a normal market behaviour; not an act to intentionally increase compensation funding amounts.</p> <p>In relation to the AEMC's commentary on page 23 of the draft determination about the types of behaviour that should be prohibited, we note that, unless an exemption applies, suppliers are already subject to civil penalty provisions related to the withdrawal of offers under the <i>Competition and Consumer (Gas Market Code) Regulations 2023</i> (Cth). Specifically, a supplier cannot initiate the withdrawal of a gas initial offer or gas final offer unless there has been a material change in the supplier's circumstances, financial circumstances or business structure, or both parties agree to the withdrawal.</p> <p>If this civil penalty provision is introduced:</p> <ul style="list-style-type: none"> APLNG notes that it could be re-drafted to exclude times where relevant entities are unaware that there is a threat or risk to reliability or supply adequacy or that a direction has been given by the AEMO. Under rule 695(3) 'AEMO is not required to publish a risk or threat notice...if AEMO considers that in the circumstances there is insufficient time to publish the notice before exercising a direction or trading function.' In addition, AEMO's publication of the direction notice under rule 697(1) may occur after the direction has already been actioned, meaning relevant entities (other than the directed participant) would not be able to adhere to this civil penalty provision. We agree the Australian Energy Regulator (AER) should be responsible for monitoring and enforcing breaches. The AER should establish and consult on guidelines outlining the concepts of 'exacerbation' and 'reasonable cause', as well as examples of behaviours that they consider would or would not exacerbate direct costs. Without this transparent guidance, it will be open to interpretation as to what behaviour is acceptable versus not. This would create uncertainty within the industry and affect normal commercial trading activities. We query what information the AER will rely on to determine whether a relevant entity has breached this civil penalty provision. APLNG does not support the introduction of new reporting

Topic	Feedback
	obligations, given the substantial regulatory reporting burden suppliers already face under the National Gas Rules (NGR) and other legislation.

DRAFT RULE DETERMINATION

Topic	Feedback
<p>Claimants, market bodies and parties required to fund a compensation claim have a (limited) right to seek review of an expert's decision (section 3.1.2).</p>	<p>APLNG supports the inclusion of a right of appeals process within the east coast gas system (ECGS) framework. However, we have several concerns with the AEMC's current proposal:</p> <ol style="list-style-type: none"> Proposed rule 135JK(1) confers a right to seek review of an independent expert's determination limited to questions of law only. Given the role of the independent expert (as per proposed rule 135Jl) and the fact that the independent expert is determining the quantum of compensation, we query whether the independent expert can or should be asked to make determinations on questions of law. As the independent expert's role is limited to acting as an 'expert',¹ we suggest that the right of review by the Court should instead be a merits based appeal. In considering whether to grant leave in proposed rule 135JK(2), the Court must be satisfied that the question is one the independent expert was asked to determine. The entitlement to make a claim is contained in rule 704 and the claim is for compensation for direct costs. Again, we query whether the independent expert can or should be asked to determine questions of law in determining compensation for direct costs. In relation to proposed rule 135JK(2)(b), the drafting assumes that a finding of fact must necessarily precede a finding of law. We suggest that this is not always the case and query whether this drafting was intentional. It is unclear why the AER and AEMO have ability to apply to the Court for a review of the determination of an independent expert with respect to Part 27 compensation claims. They are not parties to the compensation claim (e.g. the independent expert does not assess whether AEMO's compensation process costs should be passed through in full or not), nor are they required to contribute towards the compensation funding amount.

¹ Proposed rule 135Jl(1).

Topic	Feedback
	<p>5. APLNG anticipates there may be instances where the Court's orders or the new determination under proposed rule 135JK result in a lower compensation funding amount than the original determination. In the event liable relevant entities have already paid for their respective share of the compensation funding amount, APLNG considers that there should be a provision in the NGR or Procedures for AEMO to refund the difference to liable relevant entities. Likewise, the provision could provide for the claimant to return the difference to AEMO if it has already received the compensation funding amount.</p> <p>6. For procedural fairness, APLNG views that claimants should be able to apply for a review of a determination by an independent expert to allocate some or all of the compensation process costs to the claimant under proposed rule 135JJ(3).</p>
<p>No power for the independent expert to compel third-party information for the assessment of a compensation claim (section 3.1.2).</p>	<p>APLNG supports the AEMC's draft decision not to introduce a power for the independent expert to compel third-party information. Please refer to our July 2023 submission² for more information on our position in relation to the use of third-party information and the measures that would need to be put in place if the independent expert can rely on third-party information.</p>
<p>Objections to AEMO's nominated independent expert (section 3.1.2).</p>	<p>Under proposed rule 135JE, an affected claimant may object to the independent expert nominated by AEMO on the ground that the independent expert has a potential conflict of interest. If the AER receives objections from more than 25 per cent of the affected claimants and the AER is satisfied that the independent expert has a potential conflict of interest, AEMO must nominate another person.</p> <p>APLNG believes that each affected claimant should be satisfied that the independent expert does not have a potential conflict of interest, given the important role the independent expert plays in determining the compensation claim. We therefore recommend the removal of 25 per cent reference in proposed rule 135JE(5).</p> <p>APLNG also considers that the time period in which an affected claimant may object to the nomination should also be extended from three business days to five. Three business days is insufficient time to prepare the supporting information, seek the relevant internal approvals and lodge the objection with the AER. Introducing a requirement for the AER to create a standardised objections lodgement form would also streamline the process.</p>

² See pp.7-8 in the stakeholder feedback template at www.aemc.gov.au/sites/default/files/2023-09/APLNG%20%281%29.pdf

Topic

Only direct costs are eligible for compensation to incentivise market supporting behaviour (section 3.2.1).

Feedback

As highlighted in our cover letter, APLNG supports expanding the category of costs to be recovered through compensation to include opportunity and consequential costs. The below sections outline our response to the AEMC's draft determination to limit cost recovery to direct costs only.

Defining 'direct costs'

Rule 704(1) allows a relevant entity to make a claim for compensation for direct costs suffered by the relevant entity as a direct result of AEMO issuing an ECGS direction. Where this entity provides a natural gas service, the entity can claim the direct costs associated with the supply of the natural gas service. Where this entity has been deprived of a natural gas service, the entity can claim the direct costs associated with the deprivation of that service.

Direct costs are not defined. However, rule 704(2) states that the direct costs must be determined by reference to the following:

- (a) prices in a market transaction for natural gas services to which the claimant was a party
- (b) prices in a contractual agreement for natural gas services to which the claimant was a party
- (c) if paragraph (a) or (b) does not apply, standing prices or benchmark rates as set out in the Procedures.

The drafting of rule 704(2) could give rise to an interpretation that direct operational costs

(i.e. incremental operation and maintenance costs incurred during, or in preparation for, an AEMO direction that are directly attributable to the direction) are excluded from the direct costs the relevant entity can seek compensation for.

APLNG respectfully requests that this rule be re-drafted to provide regulatory certainty to participants and independent experts. Specifically, rule 704(2) should include language to the effect of '*plus any additional costs directly incurred by the claimant due to AEMO issuing an east coast gas system direction*'.

Preference for a directed state

APLNG does not fully understand AEMC's stated position that giving directed and affected participants the ability to seek recovery of opportunity and consequential costs as part of the compensation framework will create undesirable incentives for a directed state and would not encourage prudent risk management by participants (pp.17-18 of the draft determination). This is because:

- There would be a significant risk that the directed or affected participant could not fully recover their costs, given compensation claim amounts are subject to the independent expert's

determination. Under rule 707(2) the independent expert could reduce the compensation claim amount if the claimant failed to take reasonable action to mitigate the costs. There is also scope for the independent expert to determine that the costs being claimed are not justified or are unrelated to the compensation claim event.

- Seeking compensation would be a time consuming and costly process for the directed or affected participant (e.g. collating evidence of the costs and participating in the formal process). The claimant must bear these costs as it is not able to recover them as part of the compensation claim (see proposed rule 135JJ(1)).
- Under the draft determination, the claimant would need to contribute funding towards its own claim if it has consumed gas in the relevant period and location, meaning it would inevitably receive less than its actual costs. For LNG export facilities, which make up a significant portion of the east coast 'gas demand' (as defined by the AEMC), the contribution (and resultant reduction in compensation that could be recovered from the actual beneficiaries of the direction) would likely always be substantial.
- The directed or affected party would still suffer losses that it would not be compensated for, even if the categories of recoverable costs were expanded. For example, a claimant could not be appropriately compensated for the reputational damage and increased counterparty relationship risk that a direction would cause.
- All relevant entities could be subject to the significant penalties proposed by the AEMC in relation to their conduct when an AEMO direction is issued.

APLNG believes the proposed gas compensation framework and cost recovery mechanism provides a powerful incentive for gas consumers to prefer a directed state, as they will receive gas for a lower cost relative to market value during a period of potential or actual shortfall. In APLNG's view, the amendments proposed in the draft determination do not correct this issue, and may create unintended consequences in relation to buyers' contracting behaviour and short-term trading that could have a significant adverse impact on the ECGS.

Opportunity costs

APLNG does not support the AEMC's draft determination to exclude opportunity costs from the types of claimable costs, the decision for which is based on an assumption that calculating opportunity costs will be too complex and costly.

Topic

Feedback

There is evidence of opportunity costs or lost revenue being recoverable under compensation claim processes in the National Electricity Market. For example, under clauses 3.15.7, 3.15.7A and 3.15.7B of the National Electricity Rules, participants who are directed to provide specific services are eligible to seek compensation for loss of revenue with AEMO. In addition, participants who provide services during price limit events and make a loss can lodge a claim with the AEMC for both direct costs and opportunity costs. The former is similar in nature to directions issued by AEMO under the ECGS framework, which supports that such a process could be also be administered for this framework.

Similarly, where a supplier is directed to supply gas under an insufficiency of supply direction issued under the *Gas Supply Act 2003* (Qld), the supplier is entitled to seek recovery of a reasonable amount for the gas supplied under such a direction. Section 256 of the Queensland legislation provides that the calculation of what is a reasonable amount must have regard to any lost revenue suffered by the supplier. APLNG requests the AEMC to consider these comparable compensation frameworks in its final determination.

In addition, opportunity costs can be calculated by the claimant/independent expert using benchmark prices available in the public domain. The method for valuing opportunity costs could be set out in AEMO's Procedures to promote transparency, predictability, and consistency in decision-making. A similar approach has been adopted by the AEMC in its guidelines for claiming compensation for any losses during an administered price period.³

As outlined in our previous submission, the next best alternative price for LNG exporters (in circumstances where the directed gas has already been offered to the domestic market and the gas is not subject to a contract rate) can be calculated as the greater of:

- the Wallumbilla benchmark price, as defined in the Gas Supply Hub benchmark price methodology published on AEMO's website
- the Australian Competition and Consumer Commission's LNG netback series (spot) benchmark price, as published on ACCC's website.

Without incorporating this change, AEMO's direction powers could create further barriers to APLNG securing investment to maintain existing gas supply over and above existing contractual supply commitments. In APLNG's view this is contrary to the National Gas Objective, and is inconsistent with the AEMC's criteria for this rule change to promote security and reliability of supply.

In light of the above, APLNG proposes the following changes:

³ www.aemc.gov.au/sites/default/files/2022-11/Final%20compensation%20guidelines%20Dec%202022.pdf

- Rule 703 of the NGR could be amended to include an 'opportunity costs' definition, where 'opportunity costs mean the value of opportunities forgone by the claimant due to AEMO issuing an east coast gas system direction as defined in the Procedures'.
- Opportunity costs could be inserted into rule 704(1), alongside each direct cost reference.
- The reference to opportunity cost or losses could be removed from proposed rule 704(3)(c).

Consequential costs

While we agree that it may be difficult to quantify some consequential costs, there are specific costs that can be quantified.

For example, the AEMC could limit consequential costs to the consequential contract costs identified in Table 3.1 of the draft determination. APLNG, and other entities, would be able to establish a unique cost code that identifies those costs related to a direction that would allow for a streamlined review by the independent expert.

Suggestion to sell marginally less LNG cargoes during distressed periods

All LNG export projects on the east coast are parties to the Heads of Agreement with the Minister for Resources. Under that agreement, LNG export projects are required to offer gas to the domestic market prior to selling that gas as a spot LNG cargo.

This means that when APLNG sells a spot LNG export cargo, domestic buyers have already had an opportunity to purchase the gas. APLNG would not decide to 'sell marginally less gas' in circumstances where buyers have demonstrated they are unwilling to buy that gas on competitive market terms.

In order to balance its supply portfolio, to the extent possible APLNG would seek to market those volumes to the international spot LNG export market. The decision to proceed on that basis and the marketing and contracting activities associated with that decision would occur several weeks or months prior to any direction by AEMO being made.

Topic	Feedback
	<p>Another issue is the difficulty of forecasting distressed periods. It is impossible for APLNG to forecast when a short-term supply shortfall in the ECGS may arise given the variability of demand and issues that impact supply sufficiency that APLNG has no control over.</p> <p><u>Cap</u></p> <p>We support the AEMC's proposal not to apply a cap to the compensation claim amounts. As highlighted above, APLNG's view is that claimants should be returned to the position they would have been in but for the AEMO direction.</p>
<p>Insertion of principles into the NGR to guide AEMO's cost recovery methodology for compensation claims under Part 27, based on consumption, time and location (section 3.2.2).</p>	<p>APLNG generally supports the inclusion of principles in the NGR to guide AEMO's cost recovery methodology. The proposed drafting balances the need for transparency against the risks of providing too much prescription in the NGR. Further, anchoring the cost recovery methodology to the time and location of the identified risk or threat will likely incentivise relevant participants to respond with market-based solutions when a potential risk or threat is identified by AEMO in order to avoid exposure to the unknown costs of an AEMO direction.</p> <p>For procedural fairness, liable relevant entities allocated a share of the compensation funding amount should also be given time, such as ten business days, to review AEMO's calculation and allocation approach and raise any concerns or objections with AEMO before invoices are issued.</p>

[Definition of gas demand \(section 3.2.2\).](#)

The AEMC has determined that the compensation funding amount should be allocated to liable relevant entities based on gas consumption (i.e. demand). Gas demand is defined in proposed rule 703 as:

‘... natural gas taken from a pipeline forming part of the east coast gas system for:

- (a) consumption purposes;
- (b) an LNG export project; or
- (c) any other purpose, including storage, specified in the Procedures, in circumstances where the withdrawal of that natural gas has the potential to impact the supply demand balance in the east coast gas system during the period of an identified risk or threat.’

APLNG interprets the reference to ‘taken from a pipeline’ in the above definition to mean that the proportion of produced gas consumed in extraction and processing activities will not be included in the calculation used to allocate the compensation funding amount to liable relevant entities. If this is not the case, we believe the definition should be amended to distinguish between gas consumed for market purposes and gas produced for own consumption. The latter is consumed to deliver the gas that is needed to meet demand in the ECGS during tight supply-demand periods and to respond to an AEMO direction. APLNG believes that it is unreasonable to include this gas in the cost allocation calculation. We also submit that the reference to ‘LNG export project’ in paragraph (b) should be replaced with ‘LNG export facility’. LNG export project is broadly defined in the NGR to include all aspects of the LNG project, including the LNG export facility and upstream production and processing.

Reference to the broader project creates the risk that gas that is withdrawn from a pipeline for processing, and then reinjected into a different pipeline, would be captured twice by the definition of ‘gas demand’ (both at the withdrawal stage and LNG export stage). Similarly, where gas that will ultimately be consumed at the domestic market is withdrawn from a pipeline by APLNG during its normal course of business (for example, to redirect that gas to a different pipeline), that gas demand may be inadvertently counted twice.

Amending the definition in paragraph (b) to ‘LNG export facility’ would ensure that gas demand is not double counted.

Finally, we are concerned by the inclusion of consumption related to long-term foundational LNG contracts. Long-term contract gas (within the meaning of guidelines made under regulation 13GF of the *Customs (Prohibited Exports) Regulations 1958 (Cth)*) is not subject to AEMO directions under rule 701(2) due to the associated sovereign risk.⁴ APLNG, which supplies a large proportion of gas to the domestic ECGS and delivers much needed energy security, could not have proceeded without

Topic	Feedback
<p>Compensation claimants would no longer be exempt from funding compensation claims (section 3.2.2).</p>	<p>these foundational customers. APLNG views that it is unreasonable for the gas demand that is required to fulfil commitments under those long-term foundational LNG contracts should attract a share of the compensation funding amounts.</p> <p>As outlined in our cover letter, in APLNG's view AEMC's proposal to remove the reference to '<i>other than the claimant</i>' in rule 707(7) creates an inequitable outcome in that, in addition to responding to a direction, bearing its own claim-related costs and being unable to claim non-direct costs, the recipient of an AEMO direction would then also have its limited direct cost compensation reduced based on its own (and unrelated) gas consumption.</p>
<p>AEMO to recover the costs of the independent expert in addition to the amount of compensation that is awarded (section 3.2.2).</p>	<p>Per our previous submission, APLNG agrees that the costs of the independent expert and AEMO should be included in the compensation funding amount recovered from relevant liable entities.</p>
<p>Increasing the minimum claim threshold to \$50,000 and allowing for indexation (section 3.2.4).</p>	<p>We agree, in principle, with the inclusion of a minimum claim threshold to discourage immaterial claims where the value of the claim would be less than the cost of the independent expert determining the claim. However, APLNG is concerned by the lack of evidence supporting the AEMC's proposal to increase the minimum claim threshold from \$5,000 to \$50,000.</p> <p>While there have been no Part 27 compensation claims to inform the AEMC of an appropriate threshold, there have been numerous dispute resolution panel (DRP) determinations across the gas and electricity markets in recent years. The costs of the DRP and Wholesale Energy Market Dispute Resolution Advisor have, on average, been significantly lower than the \$50,000 minimum claim threshold being proposed by the AEMC.⁵ While these costs related to different types of compensation claims, we propose that the AEMC undertake a more detailed assessment of the likely costs involved in determining a claim before setting a new threshold amount and consider the impacts that this higher threshold might have on smaller market participants. This analysis could be included in the AEMC's final determination.</p> <p>APLNG supports applying indexation to the minimum claim threshold amount. To promote transparency and reduce transaction costs across the industry, we recommend a new subrule 704(6) for AEMO or the AER to annually publish a notice specifying the new minimum claim threshold amount.</p>
<p>The independent expert will be able to determine multiple claims relating to the same event, however, different entities would not be</p>	<p>APLNG supports this proposal, provided confidential information supplied by the claimant as part of the claims process is not able to be disclosed to other entities whose claims are also being assessed by</p>

⁴ www.energy.gov.au/sites/default/files/2023-02/AEMO%20East%20Coast%20Gas%20System%20Framework%20-%20Information%20paper_publication%20February%202023.docx

⁵ See www.aer.gov.au/dispute-resolution-panel-determinations-gas and www.aer.gov.au/dispute-resolution-panel-determinations-electricity

Topic	Feedback
able to join compensation claims to meet the minimum claim threshold (section 3.2.4).	the same independent expert. This includes at any joint meetings held for related claims and any reports or determinations prepared by the independent expert.
Commencement date, implementation and transition arrangements (section 3.5).	The AEMC currently expects that the final determination will be available on 7 March 2024, which provides AEMO with less than four months to consult on and update or develop the relevant procedures, guidance on the expert determination process and confidentiality deed. APLNG proposes that the AEMC allow sufficient time for proper implementation to ensure the solution is fit-for-purpose and adequately considers stakeholder feedback.

DRAFT RULE AMENDMENTS

Rule	Feedback
Rule 135JD Administration and guidance by AEMO	We consider that the matters listed in proposed rule 135JD(3)(a) to (c) should be mandatory matters that AEMO must include in its guidance on the compensation claim determination process. The reference to 'may' in proposed rule 135JD(3) should therefore be replaced with 'must'.
Rule 135JE Nomination and appointment of an independent expert	<p>AEMO should be required to provide the notice of its proposed independent expert nominee to the affected claimant(s), together with the AER. Proposed rule 135JE(1) should therefore be amended as follows:</p> <p>'Where AEMO is required pursuant to clause 237(2), 465(2) or 705(3) to appoint an independent expert to determine a compensation claim, AEMO must publish, and provide to the AER and each affected claimant, a notice....'</p> <p>In addition, there is a typo in proposed rule 135JE(7):</p> <p>'potential conflict of interest means an interest that may compromise, or would reasonably be seen to compromise and-an independent expert's impartiality in relation to a compensation claim.'</p>
Rule 135JG Procedures for assessment of compensation claims	APLNG considers that the reference to 'the rules' in proposed rule 135JG(1) is ambiguous. We believe this reference would be clearer if it was changed to 'these rules'.

Rule	Feedback
<p>Rule 135JH Draft and final report and determination</p>	<p>We propose the following changes:</p> <ul style="list-style-type: none"> • AEMO could be required to develop, as part of its Procedures, a standard notice template that can be used by all independent experts for the purposes of fulfilling the requirements of proposed rule 135JH(1)(c). This will reduce transaction costs and promote consistency. • The reference to ‘an independent expert’ could be replaced with ‘the independent expert’ in proposed rule 135JH(3), given it is the independent expert specific to the claim being assessed who will be required to fulfil these requirements. • There could be specific timeframes in which AEMO must publish the draft report, notice for submissions, final report and non-confidential final determination. The current drafting is open-ended, which may affect the expediency of the process. • For the avoidance of doubt, proposed rule 135JH(6) could require the independent expert to give AEMO a copy of the ‘final’ determination from which confidential information has been excluded. • Proposed rule 135JH(6) could be more explicit about when the independent expert must provide AEMO the non-confidential version of the final determination. In APLNG’s view the current ‘on making a final determination’ drafting is unclear. We believe it could be provided at the same time as notifying each claimant and AEMO of the final determination under proposed rule 135JH(3)(b).
<p>Rule 135JF(1) Rule 135JG(3), (6), (8) and (9) Rule 135JH(1)(b) and (1)(c)</p>	<p>We recommend the insertion of ‘compensation’ before each use of the word ‘claim’ in Part 15C of the NGR, given ‘compensation claim’ is a defined term in rule 135F.</p>
<p>Rule 135JJ Costs of a compensation claim</p>	<p>Proposed rule 135JJ(4) could refer to the receipt of an invoice from AEMO:</p> <p>‘A claimant must pay to AEMO the compensation process costs allocated to the claimant under subrule (3) within 10 business days of receiving an invoice from AEMO for the amount.’</p> <p>Further, given the AEMC’s proposal to recommend this subrule as a Tier 2 civil penalty provision, we consider that there could be an obligation on AEMO to issue the invoice to the contact details provided and confirm the invoice has been received by the claimant.</p>

Rule	Feedback
<p>Rule 135JK Review of compensation claim determinations</p>	<p>The reference to 'a Court' in rule 135JK(1) should be changed to 'the Court'. In addition, rule 135JK(3) mentions leave to 'appeal' when the remainder of the drafting of rule 135JK refers to a 'review'. Consistent terminology should be used throughout this rule.</p>
<p>Rule 703 Definitions</p>	<p>Part 27 of the NGR introduces the concept of 'claim resolution costs', which are the costs of the independent expert and AEMO under the compensation determination process. However, different terminology ('compensation process costs') is used in Part 15C to describe the same types of costs. For consistency, we believe Part 27 should be amended to refer to 'compensation process costs' as defined in proposed rule 135JJ(2).</p> <p>As mentioned above, the definition of 'gas demand' should be amended as follows:</p> <p>'gas demand means natural gas taken from a pipeline forming part of the east coast gas system for:</p> <ul style="list-style-type: none"> (a) consumption purposes; (b) an LNG export project facility; or (c) any other purpose, including storage, specified in the Procedures, in circumstances where the withdrawal of that natural gas has the potential to impact the supply demand balance in the east coast gas system during the period of an identified risk or threat, <p>but excludes natural gas that is long-term contract gas within the meaning of guidelines made under regulation 13GF of the <i>Customs (Prohibited Exports) Regulations 1958</i> of the Commonwealth.'</p>