

Dear Martina and Patrick,

Thank you for the opportunity to comment on the Australian Energy Market Commission's (Commission) proposed Compensation and Dispute Resolution Frameworks rule change.

Our key points and associated details are provided below.

If you wish to discuss our submission in further detail, please get in touch with me, Kate Lucas, on 04 2072 4858 or marketsmanager@apa.com.au.

The key points of our second submission are as follows:

1. Consequential costs should be reconsidered to be included in the compensation framework due to the unpredictable nature of the directions.
2. The definition of the direct costs that can be compensated under the proposed framework should be expanded to reflect on the direction complexity and likely operational steps involved by the participants.
3. The alignment of the claim submission timeline is required in the proposed draft rule and Part 27 of National Gas Rules (NGR or Rules).
4. Renomination of the independent expert should be considered to be based on the conflict-of-interest objection, not limited by the 25% threshold.
5. No additional comments regarding the Commission's proposed tier one civil penalty

1. Consequential costs inclusion in the Compensation framework.

Consistent with APA's initial submission for the Compensation Framework consultation, the consequential costs of a direction, or a particular group of consequential costs, should be considered for the Compensation Framework.

The cause for a direction and available timeline before a direction is unknown and event-dependent. Under Rule 700(1), the Australian Energy Market Operator (AEMO) must consult with the relevant entity before giving an East Coast gas direction. However, rule 700(2) states that an East Coast gas system direction is *not invalid* if AEMO fails to consult with the relevant entity.

Such allowance in the Rules is provided to accommodate emergency events requiring immediate interference.

The consequential costs are likely to occur when AEMO issues a direction within a short timeframe without the ability to consult with the industry and/or specific entity to the full extent. The consequential costs might also occur due to unplanned operational issues during the direction.

In our initial submission, APA provided an example of the consequential costs caused by the off-spec gas. The Commission responded that if the off-spec gas risk is likely, the pipeline operator may be able to refuse due to jurisdictional requirements, i.e., safety preventing transport of off-spec gas.

We understand the Commission's position, however we would like to highlight that the response only addresses the scenario when AEMO is able to engage with the pipeline operator and the gas supplier prior to the direction, and risk assess the gas specification issue.

There are, however, other scenarios that should be considered:

- The initial risk assessment concluded the occurrence of the off-spec event probable but with low *likelihood* which led to the proceeding with the direction to assist the market. The off-spec event, however, occurred during the direction;
- Failure of the gas composition processing equipment during the direction execution;
- The scenario where the gas specification management is achieved by blending off-spec gas with on-spec gas at the certain proportions. Unexpected reduction in the on-spec gas volumes during the direction led to the gas specification unexpectedly falling below the required specification. (Noting that the provision of the gas at certain volumes is directly reliant on the shippers' nominations, and outside of Facility Operator control)

As a prudent operator, APA would risk assess and communicate to AEMO and the market any anticipated gas specification-related risks. The above examples would be outside of APA's control at the time of the assessment and, as a result, would not be considered in the initial risk assessment.

From the perspective of the independent expert evaluation of the claim, the relevance of the gas off-spec impact can be easily confirmed based on the time of the event, pre-direction assessment, and assets and parties involved in the directions. Furthermore, for the

equipment failure that could happen during the direction, the equipment sensor data, including Gas Chromatography, could be provided to support the claim.

In a contract carriage market that is the East Coast gas market (excluding Declared Wholesale Gas Market), the accountability for gas specification and liability for consequential loss is on the shippers injecting gas into the transmission pipeline if it is outside of the gas composition parameters of the contract. If AEMO directs a Facility Operator to accept off-spec gas, it is not clear in the contractual obligations with a shipper or in the National Gas Rules who then holds the liability and as such a Facility Operator may be at risk of significant downstream consequential loss due to an AEMO direction. It should also be mentioned that off-spec gas is not binary where it is a safety issue or not. It can be gradual or dependent on many factors. Whilst an initial assessment in the time provided (if provided by AEMO) the Facility Operator has determined that it believes that adhering to AEMO's direction, the off-spec gas is within its risk tolerance, it's not to say that unforeseen impacts or to downstream customer's equipment don't result, as a consequence of, following AEMO's direction. The Facility Operator in this case may be carrying the liability for complying with AEMO's direction with no ability to be appropriately compensated.

2. Direct cost definition expansion.

The Commission, in its current draft rule, proposes the compensation for the direct costs only, where direct costs are defined as:

The costs associated with the supply of gas including:

- *direct costs of supplying a natural gas service as directed (eg buying replacement gas and shipping gas).*
- *direct costs for a party deprived of a natural gas service (that it has paid for under contract), even if the party is not the subject of the direction.*

The proposed definition would address the direction scenario where Relevant Participant A was directed to provide the gas initially allocated for the deliveries to Relevant Participant B.

In [East Coast Gas System Guidelines](#) created by AEMO for Part 27 of NGR, section 4.4 states that the direction can also be given to the Facility Operator, to the extent only the Facility Operator is directed, without the Shipper's involvement. The proposed definition of direct costs only partially considers the direct costs that the Facility Operator might incur due to the direction.

The examples below provide further details about potential direct costs faced by a Facility Operator:

- **Example 1:** AEMO requested APA to postpone integrity or scheduled maintenance work due to the direction. In its assessment, APA confirmed the ability to postpone the maintenance works. APA carried additional costs triggered by the deferral of the maintenance work due to the direction. Such costs would include but won't be limited to crew/equipment demobilisation and mobilisation costs, crew and equipment standby rates, and any costs associated with securing the site before a temporary demobilisation. The listed costs can be high if the deferred integrity or maintenance involves a specialist, international skill/crew or equipment, limited availability of 3rd party integrity and maintenance crew, procuring of a unique piece of equipment, overseas freight, and de/mobilisation. These direction-triggered costs would not have been accounted for in the initial contractual arrangements with the suppliers due to high unlikely and unpredictable occurrence of a direction.
- In addition, it could mean that deferral of specialist integrity works due to the direction, requires the Facility Operator to temporarily derate their pipeline for a period and cannot accommodate shipper contracted quantities. At which point, the Facility Operator is carrying possible financial impacts of not meeting contractual requirements (consequential loss) with direct costs of rescheduling the contractors and equipment that also is currently addressed by the direct costs' definition. The Commission should consider incorporating the direct costs raised in this example under the new compensation framework.
- **Example 2:** AEMO directed APA to inject/supply gas from APA's base linepack. (Note: the base linepack is an operational prerequisite for the pipeline transport services. A technically modelled level of the base linepack must be maintained in the pipeline for a Facility Operator to meet its Firm's Contracted Transportation commitments). By utilising the base linepack during the direction, the Facility Operator reduces its ability to provide the Contracted firm transport services until the base linepack levels are re-established. Commissioner should consider expansion of the definition '*direct costs for a party deprived of a natural gas service*' to incorporate the direct costs in this example.

3. Claim submission timeframe.

Rule 704(2)(a) of NGR provides 20 business days after the last day the relevant entity suffers the detriment for the claim submission by the impacted relevant entity to AEMO.

The 20-day business-day timeline has been reviewed and agreed upon with the industry participants during the relevant consultation for Part 27 NGR and AEMO East Coast Gas System Procedures and Guidelines.

The Commission should look to make changes to Rule 237(1) to update the ten business days to 20 business days in alignment with Rule 704(2)(a). The existing ten business days provision would not cater for the East Coast Gas System direction purposes and was previously assessed only against STTM and DWGM claims.

The reduced allowed timeline to 10 business days will impose significant process and business pressure on the impacted entity as it simultaneously deals with procuring the gas supply utilised for the direction and rectifying other affected sides of the business. In the directions' scenario, unlike in DWGM and STTM, the impacted entity might not immediately be aware of the full range of incurred costs and will need to go through steps like procuring, contracting, and others before reflecting such costs in the claim. The involvement of the various Relevant Entities across multiple assets in the direction will also add complexity to the cost allocation.

4. The independent expert renomination trigger

The Commission proposed a 25% threshold of the objected claimants to trigger AER consideration for the potential conflict of interest and requirement to reselect the independent expert by AEMO. The Commissioner advised that a 25% threshold has been incorporated from the compensation framework in NER.

We suggest the 25% threshold is removed to allow for AER review and consideration to change of the AEMO appointed independent expert if AER receives any number of objections.

In comparison to NER, it's essential to recognise that the Direction claimants might be represented by various market groups, including retailers, generators, gas producers, facility operators, and LNG participants. For a specific direction, the representation of the different groups amongst claimants is likely unequal, with each group having separate triggers for conflict-of-interest concerns. Due to this highlighted difference with NER claims, we ask the Commission to reconsider the 25% threshold inclusion.

Kind regards,

A handwritten signature in blue ink, appearing to read 'Kate Lucas', with a stylized flourish at the end.

Kate Lucas

Markets Manager