

Australian Energy Market Commission

DRAFT RULE DETERMINATION

National Gas Amendment (Contingency Gas Evidentiary Changes) Rule 2015

Rule Proponent

Australian Energy Market Operator (AEMO)

12 February 2015

For and on behalf of the Australian Energy Market Commission

**RULE
CHANGE**

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About the AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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Summary

The Australian Energy Market Commission (AEMC or Commission) has made a draft rule to provide greater flexibility in how trading participants can structure their bids or offers for providing contingency gas in the Short Term Trading Market (STTM). The draft rule also clarifies the Australian Energy Market Operator's (AEMO) ability to request evidence from trading participants following a contingency gas trigger event. These changes to the National Gas Rules (NGR) could help to encourage trading participants to provide contingency gas in times of emergency in the STTM, and provide participants with greater confidence that they are only paying for contingency gas that has been delivered.

As a result, the Commission considers that its draft rule will or is likely to meet the National Gas Objective as it could promote more efficient pricing of contingency gas, increase the efficient provision and use of contingency gas, and improve reliability and security of supply during times of emergency.

This draft rule determination responds to a rule change request proposed by AEMO. The Commission's draft rule is broadly similar to AEMO's proposed rule, but provides greater clarity about the purposes for which AEMO can request evidence from trading participants following a contingency gas trigger event.

If made, the Commission's draft rule would:

- enable trading participants to confirm or revise the quantity of each price step within a contingency gas bid or offer. Trading participants would be required to confirm or revise their bid or offer in good faith under existing requirements in the NGR;
- require all trading participants to be subject to the same evidentiary requirements following a contingency gas trigger event, and require AEMO to specify the evidence required following a contingency gas trigger event in the STTM Procedures;
- limit the scope of the evidence AEMO may request following a contingency gas trigger event to evidence AEMO requires to determine whether contingency gas was provided as scheduled, and to assist AEMO's reporting on contingency gas trigger events;
- in determining the amounts payable by trading participants for contingency gas, require AEMO to determine the quantity of contingency gas provided after considering the evidence it receives from trading participants;
- enable AEMO to extend the timeframe for its reporting on contingency gas trigger events by up to a further 30 business days if necessary to allow it to receive and consider evidence; and

- correct minor drafting errors which associate "STTM storage facilities" with STTM Users in rules 435 and 436 of the NGR.

The Commission invites submissions from stakeholders in relation to the draft rule determination by 26 March 2015.

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1 AEMO's rule change request

On 20 May 2014, the Australian Energy Market Operator (AEMO) submitted a rule change request to the Australian Energy Market Commission (AEMC or Commission) in relation to contingency gas in the Short Term Trading Market (STTM). This rule change request seeks to amend the National Gas Rules (NGR) to facilitate changes to the contingency gas confirmation and settlement processes in the STTM Procedures. AEMO stated that the changes are intended to improve incentives for trading participants to supply and efficiently price contingency gas by lowering financial risks through more flexible arrangements for confirming supply.

This chapter sets out:

- the current arrangements for contingency gas;
- the issues that the rule change is seeking to address; and
- the changes to the NGR that AEMO considers would address its identified issues.

1.1 Current arrangements for contingency gas

Contingency gas can be considered as an emergency mechanism that AEMO may call on to balance physical supply and demand at a hub if standard STTM mechanisms are unlikely to achieve this balance. For instance, contingency gas might be sought to increase supply and reduce demand, where there is an under-supply. If there is an over-supply, then contingency gas could be used to reduce supply and increase demand. Therefore, the use of contingency gas avoids the need to involuntarily curtail STTM Shippers supplying the hub or STTM Users withdrawing at the hub. To date, contingency gas has never been scheduled in the STTM.

Provisional offers and bids for contingency gas

If a contingency gas trigger event occurs indicating that forecast supply and demand are unlikely to be balanced, AEMO conducts an assessment of whether contingency gas should be called.¹ This assessment includes an industry consultation process.²

Following AEMO's assessment, AEMO may request trading participants to make provisional offers or bids for contingency gas at any time up to 6.00 pm the day before the gas is required.³

Under the current STTM Procedures, trading participants' provisional offers or bids for contingency gas are provided in the form of a stack. This stack is arranged from the

¹ NGR rule 440(1) provides a list of different circumstances that would give rise to a contingency gas trigger event.

² NGR rules 441-443.

³ NGR rules 435(6) and 436(6).

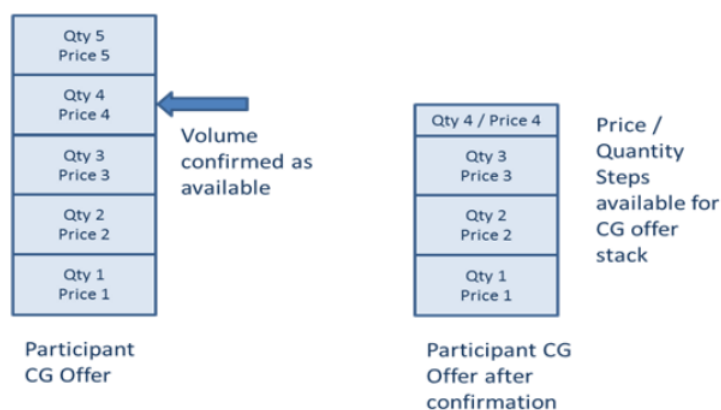
lowest to highest price and can include quantities of gas at up to ten different price steps.⁴

Confirmation and scheduling of contingency gas

Following AEMO's industry consultation process, if AEMO determines that contingency gas is required,⁵ AEMO must request trading participants to confirm or revise the total quantity, timeframe and location of contingency gas that they expect to be available.⁶

However, during this confirmation stage, the trading participant can only confirm or revise the total quantity of contingency gas specified in its bid or offer under the NGR, not the quantity available in each price step. Under the STTM Procedures, if a trading participant revises its bid or offer so that the total quantity of contingency gas available is reduced, the most expensive quantity in the stack will be reduced. This is illustrated in Figure 1.1 below.

Figure 1.1 Current confirmation process for contingency gas



Source: AEMO, Rule change request, 20 May 2014, p. 3.

Trading participants are required to confirm their bid or offer for contingency gas in good faith under rule 445(3) of the NGR, which is a civil penalty provision.⁷ Following the confirmation stage, AEMO then schedules the contingency gas.⁸

Settlement of contingency gas provided and evidentiary requirements

Contingency gas is scheduled on a quantity, time and location basis, and is currently paid or charged at settlement based on the contingency gas scheduled by AEMO following the bid and offer confirmation process.

⁴ STTM Procedures clauses 9.1.1(a) and 9.1.2(a).

⁵ NGR rule 444.

⁶ NGR rule 445; STTM Procedures clause 9.4.1.

⁷ See section 4.3 for further discussion on this civil penalty provision.

⁸ NGR rule 446.

To account for the contingency gas that was actually delivered, a STTM User must provide AEMO with reasonable evidence of the quantity of contingency gas that it delivered on that gas day within 40 business days of the gas day.⁹

Reporting requirements following a contingency gas trigger event

Under the NGR, AEMO is required to publish a report on the contingency gas trigger event, and (if applicable) the scheduling and provision of contingency gas in relation to that contingency gas trigger event, within 30 business days after that event.¹⁰

1.2 AEMO's issues with the current arrangements

AEMO identified two key issues in its rule change request with respect to the NGR for contingency gas in the STTM:

1. The NGR do not specifically allow trading participants to confirm or revise quantities within each price step of a contingency gas bid or offer, and the good faith requirement for providing contingency gas currently only applies to the total quantity of contingency gas.
2. AEMO is unable to accurately resettle contingency gas because the current evidentiary requirements for scheduled contingency gas are limited.

AEMO has also outlined two additional issues which it is seeking to address. These include insufficient time for AEMO to consider trading participants' evidence in preparing its report following a contingency gas trigger event, and minor drafting errors in the NGR that contemplate that STTM Users may submit contingency gas bids or offers from STTM storage facilities.

Confirming or revising price step quantities in contingency gas bids or offers

In practice, a trading participant may link each of its price steps to individual sources of contingency gas. For example, a trading participant may be a retailer with multiple customer curtailment contracts, or have a plant with multiple plant parts or processes that can be withdrawn or shut down. Consequently, each price step is likely to be inherently linked to a specific source of gas.

At confirmation, if a source of gas is no longer available, the same price steps would still apply, but a trading participant may bear the cost of a lower price for a proportion of the contingency gas. This is because AEMO considers the NGR only allows trading participants to confirm or revise the total quantity of their contingency gas bid or offer, as opposed to the quantity of each price step within the bid or offer. AEMO suggests a trading participant would therefore bear the cost of changes in its sources for contingency gas, unless it mitigates this risk by inflating its prices for contingency gas

⁹ See NGR rule 449(2). This requirement does not extend to STTM Shippers. This issue is discussed further below in section 1.2.

¹⁰ NGR rule 497(2)(b).

or not making the gas available. AEMO considers that such an outcome would lead to inefficient contingency gas prices, and reliability and security issues.

Further, AEMO considers that because the current good faith provisions under rule 445(3) of the NGR only apply to a trading participant that confirms the total quantity of their contingency gas bid or offer, amendments to the NGR would be required to bring the confirmation of price steps under the umbrella of the existing good faith provisions.

Evidentiary requirements for scheduled contingency gas

Generally, settlement is used in the STTM to ensure that the total market revenue balances the total market expenses. However, AEMO considers that the current settlement mechanism is limited. Although it can be applied on a daily basis, the mechanism cannot distinguish between gas that was delivered at a scheduled time of the day and the rest of an allocation across the day. That is, the current evidence required for resettlement is insufficient and unclear because only evidence of the quantity of contingency gas that was provided over the entire gas day is required. In such circumstances, AEMO considers that it would be unable to determine whether a trading participant's contingency gas was delivered at the scheduled time to alleviate the contingency gas event.

In addition, AEMO considers that the NGR only allows contingency gas to be resettled through a dispute resolution process. However, AEMO's rule change request does not specifically propose a rule that sets out how contingency gas would be resettled. The AEMC understands AEMO intends to address these issues through its STTM Procedure change process.

To give effect to its proposed STTM Procedure changes for the resettlement of contingency gas, AEMO considers that there is a broader issue of clarity in the evidentiary requirements that changes to the STTM Procedures could not address. This includes:

- a lack of guidance on what evidence is required from STTM Users to enable resettlement; and
- that not all trading participants are subject to the evidentiary requirements in the NGR, as these requirements only apply to STTM Users. AEMO considers this results in inequitable obligations between STTM Users and Shippers, and makes it difficult for AEMO to use evidence to resettle contingency gas for all trading participants.

In addition, AEMO considers that if trading participants are able to revise the quantity of each price step within a contingency gas bid or offer, it would be unable to determine whether trading participants provided sufficient evidence for revising those price steps.

AEMO considers that without proper evidentiary requirements in place, the contingency gas process could be subject to gaming, and trading participants would

have less confidence that they are only paying for contingency gas that was actually delivered.

1.3 The solution proposed in the rule change request

To address the issues identified above, AEMO has proposed changes to Part 20 of the NGR, as well as a number of proposed changes to the STTM Procedures. The rule change request includes a proposed rule.

AEMO's proposed rules can be summarised as follows:

- Rule 445(2)(a) of the NGR would be amended to provide trading participants with the ability to confirm or revise the quantity of each price step within their contingency gas bids or offers at the confirmation stage. Under the existing requirements in rule 445(3) of the NGR, trading participants would be required to confirm or revise the quantity of each price step in good faith, with civil penalties potentially applying if this did not occur;¹¹
- Rule 449(2) would be amended to require all trading participants which had been scheduled to provide contingency gas to provide evidence to AEMO. This would include evidence of the provision of contingency gas on that gas day and any other matter set out in the STTM Procedures. The detail of the evidence required, including the timeframes for its provision, would be set out in the STTM Procedures;
- Rule 449(3) would be inserted to allow AEMO to determine the quantity of contingency gas provided by a trading participant, having regard to any evidence provided. AEMO has indicated that this change would allow it to resettle contingency gas on the basis of amounts delivered, rather than on the basis of amounts scheduled;
- Rule 497(1A) would be inserted to allow AEMO to extend the time for it to publish reports on contingency gas trigger events by up to 30 business days so that it can take into account evidence provided by trading participants; and
- A correction would be made to address drafting errors in rules 435 and 436 in the NGR to remove incorrect references to STTM Users making contingency gas bids or offers from "STTM storage facilities" as only STTM Shippers can make bids or offers from STTM storage facilities.

In addition, the AEMC understands that if it makes the proposed rule changes, AEMO will commence formal consultation on changes to the STTM Procedures, which would give effect to the following:

- the process for trading participants to revise price steps within their contingency bids or offers at the confirmation stage;

- details of evidence that AEMO would require for resettlement to determine the quantity of contingency gas provided and to determine whether a trading participant provided sufficient evidence to support revising price steps within its bid or offer; and
- the method that AEMO would use to determine the resettlement charge that it would impose on trading participants, where AEMO considers there is insufficient evidence that contingency gas was provided as scheduled or for revising a price step in a contingency gas bid or offer.

1.4 Commencement of rule making process

The process that led to AEMO's rule change request being submitted was instigated by BP in 2011, who submitted a proposal to the STTM Consultative Forum (STTM-CF). AEMO has developed the original proposal into this rule change request, in consultation with the STTM-CF.¹²

As part of the development of the rule change request in 2011 and 2012, AEMO also consulted informally with the STTM-CF on draft changes to the STTM Procedures to support its proposed rule, which included a proposed resettlement methodology for contingency gas.¹³ AEMO has undertaken additional informal consultation with the Gas Wholesale Consultative Forum (GWCF) on its proposed resettlement methodology for contingency gas during late 2014.¹⁴

The Commission published AEMO's rule change request and a consultation paper prepared by AEMC staff identifying specific issues and questions for consultation on 6 November 2014. Submissions closed on 4 December 2014.

The Commission received three submissions on the rule change request. They are published on the AEMC website at www.aemc.gov.au. A summary of the issues raised in submissions, and the Commission's response to each issue, are discussed in Chapters 3 to 5.

11 As rule 445(3) is a civil penalty provision, it can be enforced by the Australian Energy Regulator (AER) seeking a court order for the imposition of a civil penalty.

12 AEMO, Rule change request, 20 May 2014, p. 4.

13 The details of the consultation undertaken by AEMO over 2011 and 2012 with the STTM-CF to develop its rule change request are set out on page 19 of AEMO's rule change request. As papers for the STTM-CF meetings are now archived, please contact AEMO to obtain these documents.

14 Contingency Gas Resettlement Methodology, Paper for GWCF Workshop in December 2014; STTM 14-25-01 STTM Contingency Gas Resettlement Methodology, Paper circulated to GWCF in December 2014; STTM 14-25-01A Attachment A for STTM 14-25-01, Paper circulated to GWCF in December 2014. These papers are not available on AEMO's website, and have only been distributed by AEMO to GWCF members only.

1.5 Consultation on draft rule determination

The Commission invites submissions on this draft rule determination by 26 March 2015.

Any person or body may request that the Commission hold a hearing in relation to the draft rule determination. Any request for a hearing must be made in writing and must be received by the Commission no later than 19 February 2015.¹⁵

Submissions and requests for a hearing should quote project number "GRC0028" and may be lodged online at www.aemc.gov.au or by mail to:

Australian Energy Market Commission
PO Box A2449
SYDNEY SOUTH NSW 1235

¹⁵ In accordance with section 310(2) of the National Gas Law (NGL). A public hearing is a formal requirement for the Commission to appear before the applicant to enable the applicant to make a presentation to the Commission.

2 Draft rule determination

This chapter outlines:

- the Commission's rule making test for changes to the NGR;
- the Commission's assessment framework for considering the rule change request; and
- a summary of the Commission's draft rule determination, including the reasoning for its decision.

Appendix A sets out further detail regarding the legal requirements for the making of this draft rule determination.

2.1 Rule making test for changes to the NGR

Under section 291(1) of the National Gas Law (NGL), the Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the National Gas Objective (NGO). The NGO states:

“The objective of this Law is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.”

2.2 Assessment framework for the rule change request

The relevant aspect of the NGO for the assessment of this rule change request is the efficient operation and use of natural gas services with respect to price, reliability and security of supply of natural gas. The Commission has considered the following matters in assessing whether the proposed rule will, or is likely to, promote the NGO:

- whether the proposed changes to the NGR are likely to lead to more efficient pricing of contingency gas, with consequent improvements in the efficient use of contingency gas facilities, and reliable and secure provision of contingency gas;
- whether the proposed changes to the NGR provide sufficient accountability and transparency for all trading participants in relation to contingency gas trigger events;
- whether there is an appropriate balance between flexibility for AEMO to amend the pricing and evidentiary requirements for the provision of contingency gas through its STTM Procedures, and regulatory certainty in the NGR for trading participants; and

- whether the proposed changes to the NGR are proportionate to the problems that have been identified with the current regulatory arrangements for providing contingency gas.

2.3 Draft rule determination

Contingency gas should only be required at times of emergency to help deliver a reliable and secure level of supply in the STTM. To facilitate the efficient provision of contingency gas, the Commission has made a draft rule to provide greater flexibility in how trading participants can structure their bids or offers for providing contingency gas in the STTM. The draft rule also clarifies AEMO's ability to request evidence from trading participants following a contingency gas trigger event. The Commission's draft rule is broadly similar to AEMO's proposed rule, but provides greater clarity about the purposes for which AEMO can request evidence from trading participants following a contingency gas trigger event.

The draft rule

If made, the draft rule would:

- amend rule 445(2) to enable trading participants to confirm or revise the quantity of each price step within a contingency gas bid or offer. Trading participants would be required to confirm or revise their bid or offer in good faith under existing requirements in rule 445(3);
- delete rule 449(2) and insert rules 449(3)-(5) to:
 - allow AEMO to request evidence from trading participants it reasonably requires for the purposes of determining whether the trading participant provided contingency gas as scheduled or to assist AEMO's reporting on contingency gas trigger events;
 - require AEMO to specify the evidence required from trading participants following a contingency gas trigger event in the STTM Procedures; and
 - require all trading participants to provide evidence in the form, manner and timeframes specified in the STTM Procedures to AEMO if it is for one (or both) of the purposes described above;
- insert rule 461(2A) to require AEMO, in determining the amounts payable by trading participants for contingency gas, to determine the quantity of contingency gas provided after considering the evidence it receives from trading participants;
- insert rule 497(1A) to allow AEMO to extend the timeframe for its reporting of contingency gas trigger events by up to a further 30 business days if necessary to allow AEMO to receive and consider evidence; and

- amend rules 435(2) and 436(2) to correct minor errors by deleting references to "STTM storage facilities" in the instances where they are associated with STTM Users.

Reasons for the draft rule

If made as a final rule, this draft rule, would commence four months following the making of the Commission's final rule determination to allow AEMO sufficient time to amend its STTM Procedures.

The Commission considers that this draft rule will or is likely to contribute to the NGO by providing for more efficient pricing of contingency gas and improvements in the efficient provision, operation, and use of such gas. In turn this is likely to improve the reliability and security of the supply of natural gas for consumers during contingency gas trigger events, when gas is likely to be scarce.

In particular, allowing trading participants to confirm or revise the quantity of each price step within a contingency gas bid or offer is likely to encourage trading participants to better reflect the prices of different sources for contingency gas. This is likely to promote more efficient pricing of contingency gas. It could also minimise the potential risks and costs to trading participants, as they will have greater certainty of being paid at least their bid or offer price. Ultimately, the Commission considers that this could encourage trading participants to provide contingency gas to alleviate a constraint in times of emergency in the STTM. Such an outcome is likely to promote the efficient operation and use of contingency gas, and lead to a more reliable and secure level of supply.

The Commission has also determined to amend the NGR to allow AEMO to seek evidence from all relevant trading participants to:

- determine whether contingency gas was provided as scheduled to enable AEMO to resettle contingency gas; and
- assist AEMO to report on contingency gas trigger events.

Specifying the purpose of the evidence required in the NGR, rather than adopting AEMO's proposal to specify all requirements in the STTM Procedures, provides trading participants with greater certainty in relation to what the evidence will be used for and what can be requested from them. It also provides AEMO with sufficient flexibility to specify the detail of the evidence required in its STTM Procedures. This is likely to provide a more transparent process for the resettlement of contingency gas.

Requiring all relevant participants to provide evidence to AEMO following a contingency gas trigger event is likely to improve the accountability of participants.

These changes to the evidentiary requirements following a contingency gas trigger event may improve the confidence of trading participants that they are only paying for contingency gas that has been delivered. This may encourage market participation and promote the efficient operation and provision of contingency gas.

The Commission's draft rule also includes amendments to provide AEMO with greater flexibility to extend the timeframe for it to report on contingency gas trigger events. This is likely to improve the transparency, accountability and comprehensiveness of AEMO's reporting, as it would improve AEMO's ability to take into account relevant evidence to determine what had occurred during the event. This may promote the efficient operation of future contingency gas trigger events.

The draft rule also corrects drafting errors in the current NGR in relation to STTM Users, which would provide trading participants with greater certainty and confidence in the regulatory requirements which apply to them. This may provide incremental improvements in the efficient operation of contingency gas trigger events.

Further information on the Commission's consideration of the rule change request and the reasons for its draft rule are set out in Chapters 3 to 5.

The draft rule has been published with this draft rule determination.

2.4 Links to the AEMC's strategic priorities

This rule change request relates to the AEMC's strategic priority of promoting the development of efficient gas markets. The Commission's draft rule would encourage the efficient operation and pricing of contingency gas, which is likely to provide a more secure and reliable supply of gas for consumers.

3 Confirmation of price steps for contingency gas

This Chapter sets out the Commission's views in relation to the problem identified and solution proposed by AEMO on the confirmation of price steps for contingency gas bids or offers. This Chapter also outlines stakeholder submissions on this issue.

3.1 Problems identified and solutions proposed by AEMO

AEMO states that, as trading participants are only able to confirm or revise the total quantity of contingency gas in their bid or offer at the confirmation stage, a trading participant may bear the costs of a change in its quantity if a specific source of its contingency gas is no longer available. To mitigate that risk, a trading participant could inflate its contingency gas prices or not make gas available, leading to inefficient pricing of contingency gas and a less reliable and secure supply of gas.¹⁶

AEMO proposes to address this by amending rule 445(2) of the NGR to allow a trading participant to confirm or revise the quantity of each price step within its contingency gas bid or offer at the confirmation stage. Under rule 445(3) of the NGR, information provided under rule 445(2) must be provided in good faith.¹⁷ AEMO also proposes to include a reference to the "contingency gas that can be made available" so that it is clear that confirmation of, or revision to, bids and offers for contingency gas must be made on the basis of available gas.¹⁸

3.2 Stakeholder views

Submissions from AGL, Alinta Energy and Lumo Energy were generally supportive of AEMO's proposed changes and reasons to allow trading participants to confirm or revise the quantity of each price step within contingency gas bids or offers.

Alinta Energy considered this change would allow trading participants to align their bids and offers with their true costs of contingency gas where they have multiple sources of gas, and mitigate the likelihood of contingency gas prices being inflated or gas not being made available.¹⁹ It considered that this would ensure efficient costs are incurred by the market and provide clarity and greater certainty in the allocation of contingency gas.²⁰

¹⁶ For further information on AEMO's identified problems, see section 1.2.

¹⁷ Rule 445(3) is a civil penalty provision. Under rule 439(1), a contingency gas offer or bid is submitted, confirmed or revised in good faith if, at the time of submission, confirmation or revision, the trading participant has a genuine intention to provide the specified quantity of contingency gas if scheduled by AEMO and if the material conditions and circumstances on which the contingency gas offer or contingency gas bid is based remain unchanged.

¹⁸ In respect to contingency gas bids and offers, rules 435(4) and 436(5) require that they are made in good faith and represent the best estimate of what the trading participant expects to be able to provide.

¹⁹ Alinta Energy, Submission on consultation paper, 4 December 2014, pp. 1-2.

²⁰ Ibid.

Similarly, Lumo Energy considered that AEMO's proposal would provide the STTM with a more efficient supply of contingency gas.²¹

3.3 The Commission's analysis

The Commission notes that contingency gas has never been called for, given that it is an emergency mechanism where the normal STTM mechanisms fail to balance supply and demand for natural gas. However, in the event that contingency gas is required, the provision of gas should be encouraged. The failure to source an adequate quantity of gas could lead to the risk of involuntary curtailment, resulting in a less reliable and secure supply of gas in the STTM. In addition, the market should be confident that the provision of contingency gas is done in the most efficient manner possible.

To encourage trading participants to efficiently provide contingency gas at times of emergency, they should be paid a price that reflects at least the value of the contingency gas that they are willing to provide. Therefore, where a trading participant has multiple sources of contingency gas, the Commission considers that it is a reasonable expectation that the participant should be able to amend its bid or offer price to at least cover the costs of the contingency gas being provided.

Equally, where a trading participant with multiple sources of contingency gas no longer has a source available at the confirmation stage, it should be able to reflect this change in its bid or offer. The Commission agrees with AEMO's concerns that where trading participants are unable to reflect changes in their gas availability at the confirmation stage, trading participants could inflate their costs or not make contingency gas available. Such a scenario would not promote efficient prices, and could lead to reliability and security issues at times of emergency.

The Commission considers that the current rules are unclear in relation to whether trading participants are able to amend the quantities within each price step in their bids or offers for contingency gas. This lack of clarity in the NGR could reduce the willingness of trading participants to provide contingency gas at times of emergency.

For this reason, the NGR should be amended to clearly allow trading participants to confirm or revise the quantity of each price step within their contingency gas bid or offer. This is likely to allow a trading participant's bid or offer to reflect the value of its different sources for contingency gas, and thereby promote more efficient pricing of contingency gas. It may also minimise the potential trading risks and costs to participants, which could encourage trading participants to provide contingency gas. This in turn, is likely to promote the efficient operation and use of contingency gas as gas that might otherwise be withheld may be offered to the market, leading to a more reliable and secure supply of gas.

To provide confidence to the market that contingency gas is being provided in an efficient manner, the confirmation of each price step within bids or offers for contingency gas should be subject to the existing good faith requirements under rule

²¹ Lumo Energy, Submission on consultation paper, 3 December 2014, p. 1.

445(3). A contingency gas bid or offer is confirmed or revised in good faith if at the time of the confirmation or revision, the trading participant has a genuine intention to provide the specified quantity of contingency gas if scheduled by AEMO, and there has been a change in the material conditions and circumstances on which the participant's provisional bid or offer was made.²² This means that a trading participant may legitimately confirm or revise a bid or offer (or price step within the bid or offer) due to a change in a material circumstance or condition beyond a change in the physical availability of a specific source of gas, as long as they have a genuine intention to provide the specified quantity of gas if scheduled.

The Commission considers this is likely to improve the transparency and accountability of trading participants, particularly as rule 445(3) is a civil penalty provision. This may assist in improving the confidence of trading participants that scheduled contingency gas will be delivered and appropriately paid for, which may improve the efficient provision of contingency gas.

As discussed further in section 4.3, the Commission notes that AEMO is proposing to require trading participants, through changes to the STTM Procedures, to provide evidence that a source of gas was unavailable where a participant has revised a price step in confirming a contingency gas bid or offer.²³ The Commission understands that the purpose of this requirement would be to limit the risk of gaming that may occur if participants are able to revise their price steps.

The Commission's analysis and conclusions in relation to the evidentiary requirements that trading participants should be subject to are set out in sections 4.3 and 4.4. However, the Commission considers that as contingency gas has never been called by AEMO, the materiality and risk of gaming in relation to changes to price steps in the bidding process are unclear. For this reason, the Commission does not consider that it would be a proportionate response to impose additional limitations on the ability of participants to revise their price steps.

3.4 The Commission's conclusions

The Commission has made a draft rule that amends rule 445(2)(a) to allow trading participants to confirm or revise the quantity of each price step within their contingency gas bid or offer at the confirmation stage. If the trading participant confirms or revises the quantity of each price step within a contingency gas bid or offer at the confirmation stage, it must do so in good faith under the existing requirements in rule 445(3).

²² Good faith is defined under NGR rule 439(1).

²³ Contingency Gas Resettlement Methodology, Paper for GWCF Workshop in December 2014; STTM 14-25-01 STTM Contingency Gas Resettlement Methodology, Paper circulated to GWCF in December 2014; STTM 14-25-01A Attachment A for STTM 14-25-01, Paper circulated to GWCF in December 2014. These papers are not available on AEMO's website, and have only been distributed by AEMO to GWCF members only.

The draft rule does not clarify that a confirmation or revision to a bid or offer must be made in relation to the "contingency gas that can be made available". This is because a contingency gas bid or offer is by definition a bid or offer to provide (make available) a specified quantity of contingency gas and must be made in good faith under rule 445(3). This means that in making the contingency gas bid or offer, the trading participant must have a genuine intention to provide the specified quantity of contingency gas in its revised bid or offer.

4 Evidentiary requirements following a contingency gas trigger event

This Chapter sets out the Commission's views in relation to the problem identified and solution proposed by AEMO on the evidentiary requirements following a contingency gas trigger event. This Chapter also outlines stakeholder submissions on this issue.

4.1 Problems identified and solutions proposed by AEMO

Trading participants are currently paid or charged for contingency gas as scheduled.²⁴ However, AEMO has identified limitations with the current settlement process, including its inability to determine whether contingency gas was provided at the particular time of day, quantity and location it was scheduled.

AEMO therefore intends to address this as part of its STTM Procedure changes by prescribing a resettlement process for contingency gas following the outcome of this rule change process.

AEMO has also identified issues in its rule change request regarding the lack of clarity and limitations in the evidentiary requirements following a contingency gas trigger event under the NGR. In particular, AEMO considers that the evidentiary requirements do not apply to all relevant participants that are scheduled to provide contingency gas, and do not specify all the relevant information that would be required for the purposes of resettlement. AEMO would also be unable to determine whether a trading participant has provided sufficient evidence if the participant has revised price steps within a contingency bid or offer at the confirmation stage. Without proper evidentiary requirements in place, AEMO is concerned that the contingency gas process could be subject to gaming, and trading participants would have less confidence that they are only paying for contingency gas that has been delivered.²⁵

AEMO has therefore proposed changes to the NGR so that all trading participants (not just STTM Users) are subject to the same evidentiary requirements following a contingency gas trigger event, which would allow AEMO to determine the quantity of contingency gas provided at the resettlement stage. AEMO would also be required to specify the types of evidence required of trading participants in the STTM Procedures. This would include the prescribed timing for trading participants to provide evidence to AEMO, which would be moved from the NGR to the STTM Procedures.²⁶

The Commission understands that AEMO currently intends to amend its STTM Procedures to prescribe:

- the process for revising price steps within contingency gas bids or offers;

²⁴ NGR rule 461(2)(h); STTM Procedures clause 10.6.

²⁵ For further information on AEMO's identified problems, see section 1.2.

²⁶ For further information on AEMO's proposed solutions, see section 1.3.

- the evidence required for the resettlement of contingency gas provided and revising price steps within contingency gas bids or offers; and
- AEMO's method for imposing a resettlement charge on a trading participant where insufficient evidence has been provided.²⁷

4.2 Stakeholder views

Submissions from AGL, Alinta Energy and Lumo Energy were broadly supportive of AEMO's proposed changes to the evidentiary requirements for contingency gas and AEMO's reasons for these changes.

Alinta Energy considered that AEMO should be given greater flexibility to seek relevant evidence from trading participants in order for AEMO to determine whether contingency gas was provided as scheduled to alleviate a constraint.²⁸ However, Alinta Energy considered that trading participants should be provided with more certainty on the evidence that AEMO would require, and suggested that the evidentiary requirements should be subject to guiding principles. These principles would relate to what information is required, why the information is required, and how AEMO would use this information.²⁹

Lumo Energy considered that AEMO's proposal to seek evidence for the contingency gas provided would improve accountability and transparency for contingency gas.³⁰

AGL considered that AEMO's proposal would give confidence to market participants in the contingency gas process and STTM, and reflect good practice.³¹

In relation to AEMO's proposal to require evidence from a trading participant that revises a price step and for resettlement to occur where sufficient evidence cannot be provided, only AGL specifically supported this proposal, stating that the proposal is reasonable.³² Other stakeholders did not make any comment in relation to this aspect of AEMO's rule change request.

²⁷ Contingency Gas Resettlement Methodology, Paper for GWCF Workshop in December 2014; STTM 14-25-01 STTM Contingency Gas Resettlement Methodology, Paper circulated to GWCF in December 2014; STTM 14-25-01A Attachment A for STTM 14-25-01, Paper circulated to GWCF in December 2014. These papers are not available on AEMO's website, and have only been distributed by AEMO to GWCF members only.

²⁸ Alinta Energy, Submission on consultation paper, 4 December 2014, p. 2.

²⁹ Ibid.

³⁰ Lumo Energy, Submission on consultation paper, 3 December 2014, p. 1.

³¹ AGL, Submission on consultation paper, 4 December 2014, p. 1.

³² AGL, Submission on consultation paper, 4 December 2014, p. 1.

4.3 The Commission's analysis

4.3.1 Purpose of evidentiary requirements

Trading participants should provide AEMO with evidence so that it can determine whether the trading participant provided contingency gas as scheduled, to enable AEMO to accurately resettle contingency gas. Further, trading participants should provide AEMO with evidence to assist it to report on contingency gas trigger events. Evidence provided and used for these two specific purposes would be consistent with AEMO's role as market operator, and existing responsibilities in settling the STTM.

All participants that are scheduled to provide contingency gas should be subject to the same evidence obligations. This would enable AEMO to properly account for all relevant participants that provided contingency gas when AEMO resettles and allocates charges and payments. As a result, there would be greater accountability and transparency in the resettlement process for contingency gas, and trading participants would have greater confidence that they are only paying for contingency gas that was delivered. This may encourage market participation and promote the efficient provision of contingency gas.

The purposes for which AEMO can request evidence from trading participants should be specified in the NGR, to provide trading participants with certainty and transparency in relation to the purposes for which the evidence may be requested. Specifying the purpose of the evidence required in the NGR and requiring the detail of the evidence requirements to be set out in the STTM Procedures, provides an appropriate balance between certainty for trading participants and flexibility for AEMO to specify the evidence required.

While trading participants should be required to provide evidence to determine whether contingency gas was provided as scheduled to enable resettlement, and assist AEMO to prepare its reports, the Commission does not consider it appropriate to expand the purpose of the evidentiary requirements where existing mechanisms are already in place to meet the desired objectives. The Commission understands that AEMO intends to amend its STTM Procedures to enable it to request evidence from trading participants for the purpose of determining whether there was sufficient evidence for the trading participant to revise a price step.³³ This evidence would need to demonstrate that a particular source of gas was no longer available where a trading participant has revised a price step.³⁴ AEMO is also proposing to amend its STTM

³³ AEMO, Rule change request, 20 May 2014, p. 10; Contingency Gas Resettlement Methodology, Paper for GWCF Workshop in December 2014; STTM 14-25-01 STTM Contingency Gas Resettlement Methodology, Paper circulated to GWCF in December 2014; STTM 14-25-01A Attachment A for STTM 14-25-01, Paper circulated to GWCF in December 2014. These papers are not available on AEMO's website, and have only been distributed by AEMO to GWCF members only.

³⁴ Ibid.

Procedures so that it could impose charges through the resettlement process if it found such evidence is insufficient.³⁵

In effect, AEMO's proposed approach aims to restrict the circumstances in which a trading participant may revise its price steps to only circumstances where a source of gas is no longer available and the participant is able to provide evidence to clearly demonstrate this.

The Commission considers that AEMO's proposed evidentiary requirements and resettlement charge for incorrectly revised price steps are functions which are more consistent with the role of the Australian Energy Regulator (AER) as the market regulator, rather than AEMO in its role as the market operator. This is because these functions effectively seek to regulate and enforce the bidding behaviour of trading participants to discourage gaming.

4.3.2 Mechanisms to discourage gaming

There are already existing mechanisms under the NGR to discourage gaming by trading participants who make contingency gas bids or offers through the good faith requirements under rule 445(3), which are administered and enforced by the AER. In particular, the AER can apply for a court order that a trading participant pay a civil penalty if it considers that bids or offers have not been provided in good faith.

The implementation of an additional mechanism to enable AEMO to request evidence from participants to assess whether they correctly revised a price step and potentially impose charges could create duplication in the regulation and enforcement of participants' behaviour and lead to regulatory uncertainty. Limitations on the ability of trading participants to revise contingency gas bids and offers should be enforced by the AER as the market regulator using existing enforcement mechanisms in the NGR, rather than by AEMO in its role as the market operator. For this reason, the draft rule does not empower AEMO to gather evidence for the purposes of determining whether there is sufficient evidence for the trading participant to revise a price step.

The current maximum civil penalty under the NGL is \$100,000, but is currently being considered further by the Council of Australian Governments (COAG) Energy Council. In December 2014, the COAG Energy Council agreed to a review of whether there are any specific additional provisions of the National Energy Laws, Regulations or Rules that should attract the higher maximum penalty rate of \$1,000,000 for bodies corporate and \$200,000 for individuals.³⁶ The COAG Energy Council has indicated that the implementation process is expected to be undertaken during 2015/16, noting the

³⁵ Ibid.

³⁶ This was a recommendation that the COAG Energy Council's consultant made in its final report on the review of the enforcement regimes under the National Energy Laws (completed in November 2013), which was further reviewed by the COAG Energy Council (completed in December 2014). For further information, see: COAG Energy Council Energy Market Reform Working Group, Discussion Paper on the Key Recommendations Arising from the Review of Enforcement Regimes under the National Energy Laws Final Report, October 2014; COAG Energy Council, Meeting Communique, Adelaide, 11 December 2014, p. 5.

importance of continued stakeholder consultation and more in-depth cost benefit analysis before finalising any proposals for legislative and regulatory changes.³⁷ If there are stakeholder concerns that the existing civil penalties are insufficient to discourage gaming and should be higher, then this is a matter that could be considered by the COAG Energy Council in the context of its current review.

If AEMO has concerns that a trading participant has incorrectly revised a price step, it could identify this through its contingency gas trigger event report and refer any concerns to the AER to investigate under the good faith requirements. For example, this could occur if AEMO has observed a substantial revision in a trading participant's bid or offer at the confirmation stage and has concerns that this revision has not been done in good faith. The Commission notes that the AER has general information gathering powers under the NGL to request information from a person if this information is needed for the performance or exercise of a function or power under the NGR.³⁸ AEMO's reports on contingency gas trigger events would also provide AEMO with an opportunity to identify if it has any concerns about the process of revising price steps in the provision of contingency gas.

4.4 The Commission's conclusion

The Commission has made a draft rule, which omits rule 449(2) and inserts rules 449(3)-(5) to:

- allow AEMO to request evidence from trading participants it reasonably requires for the purposes of determining whether the trading participant provided contingency gas as scheduled and to assist AEMO's reporting on contingency gas trigger events;
- require AEMO to specify the evidence required from trading participants following a contingency gas trigger event in the STTM Procedures; and
- require all trading participants to provide evidence in the form, manner and timeframes specified in the STTM Procedures to AEMO if it is for one (or both) of the purposes described above.

As a consequence of allowing AEMO to request evidence for the purpose of determining whether the trading participant provided contingency gas as scheduled, the draft rule inserts new rule 461(2A) into the NGR.³⁹ This rule would require AEMO to use the evidence it receives to determine the amounts payable by trading participants for contingency gas. This change would enable AEMO to resettle contingency gas based on the quantity of contingency gas provided.

³⁷ COAG Energy Council, Meeting Communique, Adelaide, 11 December 2014, p. 5.

³⁸ See section 42 of the National Gas Law.

³⁹ A rule of this form was proposed by AEMO.

5 Additional issues

This Chapter sets out the Commission's views in relation to additional changes to the NGR proposed by AEMO in regard to AEMO's reports on contingency gas trigger events and editorial corrections to rules 435 and 436 of the NGR.

5.1 AEMO's reports on contingency gas trigger events

5.1.1 Problems identified and solutions proposed by AEMO

AEMO considers that the current timeframe under rule 497(1) of the NGR for it to publish its report on a contingency gas trigger event does not provide it with enough time to take into account relevant evidence provided from trading participants. This is because AEMO is required to publish its report within 30 business days after a contingency gas trigger event and STTM Users are required to provide evidence to AEMO within 40 business days after the event under rule 449(2) of the NGR.⁴⁰

AEMO therefore proposes to amend rule 497 of the NGR, by inserting a new rule 497(1A), to provide it with the ability to extend the timeframe for publishing its report by up to a further 30 business days if necessary. It considers that this would provide it with sufficient time to receive and consider relevant evidence from trading participants.

5.1.2 Stakeholder views

AGL, Alinta Energy and Lumo Energy were broadly supportive of AEMO's proposed changes and reasons to extend the timeframe on reporting of contingency gas trigger events. AGL considered that the current timeframes are not workable.⁴¹ Lumo Energy noted that AEMO's proposed amendments would allow AEMO's report to take into consideration a trading participant's evidence.⁴²

5.1.3 The Commission's analysis

The purpose of AEMO's reports on contingency gas trigger events is to provide transparency and accountability in relation to the actions that AEMO and relevant parties have undertaken in response to these events. These reports must also set out the impact of the event on the operation of the STTM and identify if the relevant provisions in the NGR were adequate to address the event.

⁴⁰ As discussed in chapter 4, AEMO proposes to amend rule 449(2) of the NGR so that the prescribed timing for trading participants to provide evidence to AEMO would be set out in the STTM Procedures.

⁴¹ AGL, Submission on consultation paper, 4 December 2014, p. 1.

⁴² Lumo Energy, Submission on consultation paper, 3 December 2014, p. 2.

The Commission considers that AEMO should have greater flexibility to tailor its reporting timeframes to the circumstances of each event and receive and consider the necessary evidence to prepare its report. In this respect, the Commission is of the view that an extended timeframe for reporting of such events may improve the level of transparency and accountability of AEMO and relevant parties, and the comprehensiveness of AEMO's reports. This in turn may promote the efficient operation of future contingency gas trigger events, which may improve the efficient operation of the STTM, and reliability and security of supply for consumers.

5.1.4 The Commission's conclusion

The Commission has made a draft rule, which inserts a new rule 497(1A) in the NGR to allow AEMO to extend the timeframe for publishing its report on contingency gas trigger events by up to a further 30 business days, if necessary to allow AEMO to receive and consider evidence for preparing its report. AEMO would be required to publish a notice on its website to notify stakeholders where it has decided to extend this timeframe.

5.2 Editorial corrections

5.2.1 Problems identified and solutions proposed by AEMO

AEMO has identified drafting errors in rules 435(2) and 436(2) of the NGR, which incorrectly associate STTM Users' contingency gas bids or offers with STTM storage facilities. It considers that such bids or offers can only be provided by STTM Shippers, which is already allowed for under the same provisions of the NGR.

AEMO therefore proposes to delete references to "STTM storage facilities" from rules 435(2) and 436(2) in the instances where they are incorrectly associated with STTM Users.

5.2.2 Stakeholder views

No stakeholders commented in relation to AEMO's proposed editorial corrections to rules 435(2) and 436(2) of the NGR.

5.2.3 The Commission's analysis

The Commission agrees that rules 435(2) and 436(2) include drafting errors. AEMO's proposed amendments would provide trading participants with greater certainty and confidence in the regulatory requirements which apply to them. This may provide incremental improvements in the efficient operation of contingency gas trigger events.

5.2.4 The Commission's conclusion

The Commission has made a draft rule, which amends rules 435(2) and 436(2) of the NGR to delete references to "STTM storage facilities" in the instances where they are associated with STTM Users.

Abbreviations

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
COAG	Council of Australian Governments
Commission	See AEMC
GWCF	Gas Wholesale Consultative Forum
MCE	Ministerial Council on Energy
NGL	National Gas Law
NGO	National Gas Objective
NGR	National Gas Rules
STTM	Short Term Trading Market
STTM-CF	STTM Consultative Forum

A Legal requirements under the NGL

This appendix sets out the relevant legal requirements under the NGL for the AEMC in making this draft rule determination.

A.1 Draft rule determination

In accordance with section 308 of the NGL, the Commission has made this draft rule determination in relation to the rule proposed by AEMO.

A.2 Power to make the rule

The Commission is satisfied that the draft rule falls within the subject matter about which the Commission may make rules.

The draft rule falls within section 74 of the NGL. More specifically, it relates to:

- the collection, use, disclosure, copying, recording, management and publication of information in relation to natural gas services (s. 74(1)(iii));
- AEMO's STTM functions and the operation of a short term trading market of an adoptive jurisdiction (s. 74(1)(va));
- the activities of Registered participants, users, end users and other persons in a regulated gas market (s. 74(1)(vi)); and
- the safety, security and reliability of pipelines (s. 74(1)(vii)).

A.3 Commission's considerations

In assessing the rule change request, the Commission has considered:

- the Commission's powers under the NGL to make the rule;
- the rule change request;
- stakeholder submissions received during first round consultation;
- the fact that there is no relevant Ministerial Council on Energy (MCE) statement of policy principles;⁴³
- the Commission's analysis as to the ways in which the draft rule will or is likely to, contribute to the NGL; and

⁴³ Under section 73 of the NGL, the AEMC must have regard to any relevant MCE statement of policy principles in making a rule.

- AEMO's consultation with the STTM-CF and GWCF in developing AEMO's rule change request and draft STTM Procedure changes.

A.4 Other legal requirements

A.4.1 Compatibility with AEMO's declared system functions

Under section 295(4) of the NGL, the Commission may only make a rule that has effect with respect to an adoptive jurisdiction if it is satisfied that the proposed rule is compatible with the proper performance of AEMO's declared system functions.⁴⁴ The draft rule is compatible with AEMO's declared system functions because it does not affect the performance of those functions.

A.4.2 Participating jurisdictions

The draft rule applies to each participating jurisdiction under the NGL, except Western Australia. This is because the draft rule amends Part 20 of the NGR, which does not apply in Western Australia.

A.4.3 Civil penalty and conduct provisions

The draft rule does not amend any rules that are currently classified as civil penalty provisions or conduct provisions under the NGL or Regulations. The Commission does not propose to recommend to the COAG Energy Council that any of the amendments in the draft rule be classified as civil penalty provisions.

⁴⁴ AEMO's declared system functions are specified in section 91BA of the NGL.