



Energy Retailers Association
of Australia Limited

13 March 2009

Mr Steve Rodgers
Governance Section
National Energy Market Branch
Department of Resources, Energy and Tourism
GPO Box 1564
Canberra ACT 2601

Email: AEMO_ISC@ret.gov.au

RE: Declared Wholesale Gas Market Rules

Dear Steve,

The ERAA wishes to provide this submission by way of industry comment on the draft wording of the Declared Wholesale Gas Market Rules that are to replace the Victorian Gas Industry Market and System Operation Rules (MSOR) that currently governs the Victorian wholesale gas market.

The ERAA is an association representing 13 retailers of electricity and gas throughout the National Electricity Market and the jurisdictional gas markets. ERAA members collectively provide electricity and gas to the majority of customers in Eastern Australia and are the first point of contact for end-use customers for both gas and electricity.

There is currently a massive effort underway to recast Retail Gas Market Rules into Retail Gas Market Procedures and the MSOR into Declared Wholesale Gas Market Rules. Whilst ERAA members are engaged in reviewing all the draft documents that have been issued, it did become apparent that the recasting of the MSOR was one of the more strategic issues to be tackled in view of the material consequences to members of any unintended changes through the “translation” process. The ERAA therefore commissioned the firm of Baker & McKenzie to undertake a legal review of what is considered the most material chapter of the MSOR (Chapter Three), which relates to pricing and scheduling of gas, alongside its equivalent drafting in the Declared Wholesale Gas Market Rules. This legal analysis is submitted by ERAA as its submission to the current consultation. This document is to be found embedded on the previous page.



ERAA members will probably wish to submit separately on the other chapters of the MSOR whilst also referring to this submission.

Should you have any queries, please feel free to call me on (02) 9437 6180.

Yours sincerely,

[Transmitted electronically]

Alastair Phillips

Acting Executive Director

Energy Retailers Association of Australia

The tables below were prepared at the request of the Energy Retailers Association of Australia and result from a comparison between the Wholesale Gas Market Rules (*GMR*) (Chapter 3) and chapter 3 of version 29 of the Victorian Gas Industry Market and Systems Operations Rules (*MSOR*) (read subject to the Rule Change Instructions prepared by the GMCC).

List of substantive differences

Note: Provisions of the GMR which are not identified in the chart below remain in the same form as their corresponding provisions in the MSOR.

Gas Market Rule (<i>GMR</i>)	MSOR Section	Difference	Effect	Recommendation
All	All	Transmission System has been changed to "declared transmission system".	We believe this change is a result of the national application of the Wholesale Gas Market Rules (<i>GMR</i>). Section 91B of the amended National Gas Law (<i>NGL</i>) indicates that what constitutes the declared transmission system in each State will be defined either through State legislation or actions of an authorised State Minister. We assume that the Transmission System as defined under the MSOR will be a "declared transmission system" in Victoria under the GMR once these are implemented.	

Gas Market Rule (GMR)	MSOR Section	Difference	Effect	Recommendation
All	All	Transmission Pipeline Owners has been changed to "declared transmission system Service Provider".	This simplifies the Victorian arrangements which historically treated both VENCORP and the owner GasNet as service providers for the Transmission System and required two access arrangements for the Transmission System. Obligations under the GMR (which govern the operation of system) are now simply owed to the operators of the transmission pipelines.	
15	3.1.1(e)	The requirement to maintain procedures relating to systems back-up and disaster recovery processes has been deleted.	While Rule 15 contains a general requirement to develop system security procedures, the requirement for specific procedures relating to systems back-up and disaster recovery processes has been removed.	MSOR section 3.1.1(e) should be included in the GMR.

Gas Market Rule (GMR)	MSOR Section	Difference	Effect	Recommendation
16(4)	3.1.1(d),(f),(g)	The requirements to publish and consult with Market Participants and Transmission Pipeline Owners regarding procedure development and changes have been removed.	Procedure development is now dealt with in Part 15B of the amended National Gas Rules (NGR). Consultation and publication regarding initial procedure development has been retained in Part 15B. It is unclear whether the procedure development process contained in Part 15B of the NGR applies to changes in procedures developed under the GMR.	Consultation with participants and affected stakeholders should be maintained at every stage of procedure development and subsequent amendment. We recommend the addition of a provision in the GMR which confirms that any changes to procedures developed under the GMR will be subject to the procedure development process contained in Part 15B of the NGR.
N/A	3.1.3A(c)	AEMO's determination as to a requirement for a demand forecast is no longer confidential.	The demand forecasts themselves remain confidential information, however AEMO's determination that a demand forecast is required is no longer deemed to be confidential information.	
N/A	3.1.6(b)	Details to be included in an application for accreditation by a Market Participant of a controllable quantity in respect of a withdrawal bid have been deleted.	Accreditation with respect to withdrawal bids is still permitted pursuant to Rule 20(1) so it is unclear why this provision has been deleted. We note that the provision dealing with applications for accreditation in respect of an injection bid have been retained in Rule 20(2).	It is unclear why this provision has been deleted. Unless there are valid reasons to the contrary, MSOR section 3.1.6(b) should be included in the GMR.
20(7)	3.1.6(d)	Procedure change process deleted.	Refer to comments for rule 16(4) above.	

Gas Market Rule (GMR)	MSOR Section	Difference	Effect	Recommendation
21(2)	3.1.7(b)	Deletion of the words "and may not update submissions".	The deleted words were redundant and, as such, the deletion is appropriate. However, this rule does not exactly reflect the GMCC approved changes which retained these words.	
N/A	3.1.10(a)	Requirement that Market Participants make submissions in accordance with the electronic communications procedures, unless otherwise determined, has been deleted.	The definition of Market Participant Submissions indicates that submissions must be via the electronic communications procedures developed by AEMO. Unless alternative methods of submission are provided in the electronic communications procedures, deletion of the words "unless otherwise determined" removes the possibility of alternative methods of submission. We assume that the electronic communications procedures developed will include alternative submission methods in the case of system break-down.	
25(9)	3.1.12(e)	Requirements for each operating schedule (under the rules referred to in these clauses) have changed slightly.	The change in Rule 134(2) reflects the current operations of the market and is therefore appropriate.	
N/A	3.1.13(e)(2)	The reference to penalties under the Gas Industry Act has been deleted.	The NGL provides for penalties. A reference to the penalties in the rules is unnecessary.	

Gas Market Rule (GMR)	MSOR Section	Difference	Effect	Recommendation
N/A	3.1.16(a)-(d), (f)	Title to Gas provisions have been deleted.	Provisions relating to title to gas are contained in sections 91BO and 91BP of the amended NGL. There is no need to repeat them in the GMR.	
34(2)	3.2.4(b)	"Subject to 3.2.4(e)" (now Rule 34(4)) has been deleted.	This has the potential effect of fixing VoLL permanently at \$800/GJ.	This subrule should remain subject to subrule (4).
34(4)	3.2.4(e), (f)	The reference to the rule change procedures contained in chapter 8 of the MSOR has been changed to the rule change procedures contained in the NGL.	Changes in VoLL are now subject to the rule change procedures in the NGL.	Given that the MSOR has specific timeframes relating to rule change procedures, the rule change procedures in the NGL should seek to reflect the relevant MSOR timeframes as closely as possible.
N/A	3.2.5(b),(c)	Procedure change process deleted.	Refer to note regarding Rule 16(4) above.	

Gas Market Rule (GMR)	MSOR Section	Difference	Effect	Recommendation
37(6),(7)	3.3.2(fc), (fd), (fe)	Decisions regarding changes to the participant compensation fund are made by AEMO rather than the Regulator (currently the AER or ESC).	<p>This represents a shift of decision making power from the Regulator to AEMO, a change which is reflected throughout the GMR.</p> <p>Our review has only covered chapter 3 of the MSOR and GMR, and we have not considered whether independent regulator oversight is provided for elsewhere in the GMR. Generally we consider that independent regulator oversight may be beneficial to Market Participants, and, if it is not provided elsewhere, should be retained in the GMR.</p>	The GMR should provide for independent regulator oversight if it is not provided elsewhere in the GMR.
38	3.3.3	Changes to this rule do not reflect the GMCC approved changes.		To reflect the GMCC's recommendation, the reference to Rule 27(4)(a),(b) should be to Rule 28(6)(a),(b).
39(2)	3.3.6	The words "nor its officers" have been deleted.	The protection afforded to officers of VENCORP under this section has not been extended to officers of AEMO under the GMR (although it may be conferred elsewhere).	

Gas Market Rule (GMR)	MSOR Section	Difference	Effect	Recommendation
40(b)	3.5.1	Fees payable by Market Participants are now determined pursuant to Part 15A of the NGR.	Fees were previously proposed by VENCORP and approved by the Regulator. Under the amended NGR, AEMO approves its own fee structure. As noted above, the absence of Regulator oversight in these circumstances may be detrimental to Market Participants.	The GMR should provide for independent regulator oversight if it is not provided elsewhere in the GMR.
41(13)	3.5.2(m)	Requirement for Regulator approval of variations to the formula removed.	See comments relating to Rules 37(6),(7) above regarding independent regulator oversight.	The GMR should provide for independent regulator oversight if it is not provided elsewhere in the GMR.
N/A	3.6.1(b)	Fees payable by Market Participants are now determined pursuant to Part 15A of the NGR.	See comments relating to Rule 40(b) above.	
45(1),(2)	3.6.2(a),(b)	Payment and collection of fees is now determined pursuant to Part 15A of the NGR.	See comments relating to Rule 40(b) above.	
48(2)(b)(i)	3.6.5(b)(4)(A)	"Market service fees" changed to "participant fees".	The concept of "market service fees" has been removed from the GMR. Fees are now determined pursuant to Part 15A of the NGR.	As the participant fees charged under Part 15A of the NGR have not been determined, it is unclear whether all such fees should be included in this formula.

Gas Market Rule (GMR)	MSOR Section	Difference	Effect	Recommendation
49(2)	New	This provision makes a compensation claim a dispute for the purposes of Part 15C of the NGR.	Rules 49 and 50 apparently simplify the number of panels which must be convened under the GMR. The dispute resolution panel rather than a specific compensation panel will determine compensation claims.	
49(5)	3.6.5A(d)	A Participant may only withdraw a compensation claim as provided in Part 15C of the NGR.	This change is consistent with making compensation claims subject to the dispute resolution provisions of the NGR.	
49(6),(7)	3.6.5A(e),(f)	The Adviser must convene a dispute resolution panel rather than a compensation panel.	See comments on Rule 49(2) above.	
49(8)	3.6.5A(g)	The dispute resolution panel must follow the appropriate dispute resolution procedures.	See comments on Rule 49(2) above.	

Gas Market Rule (GMR)	MSOR Section	Difference	Effect	Recommendation
49(9)	New	Costs of a compensation claim are to be borne by AEMO unless otherwise determined by the dispute resolution panel.	Pursuant to clause 3.6.5A(h) a compensation panel under the MSOR had to conduct itself on the same basis as a dispute resolution panel under clause 7.2.4. Clause 7.2.8 of the MSOR required dispute resolution panels to distribute reasonable costs between the parties. Under the GMR, costs are to be borne by AEMO unless otherwise distributed by the dispute resolution panel. This change may be beneficial to participants because in the absence of a contrary determination by the panel, AEMO will bear costs, rather than the participants involved in the dispute.	
49(10)	3.6.5A(i)	Procedure development process is now provided in Part 15B of the NGR.	See comments on Rule 16(4) above.	
50(1)(b)	3.6.6(a)(2)	The words "including amounts to be paid to AEMO from the linepack account" have been inserted into the GMR. This change does not reflect the GMCC approved changes.	We note that compensation claims have been removed from the determination of the linepack account under rule 53(2).	It is inappropriate to specifically identify the linepack account as a source of funds for compensation payments. However, the linepack account should be treated the same as all other settlement items in the dispute panel's consideration.

Gas Market Rule (GMR)	MSOR Section	Difference	Effect	Recommendation
50(7)	3.6.6(i),(j)	The requirement for VENCORP to seek directions of its Board of Directors as to the manner in which payments are to be made by Market Participants to VENCORP, has been removed.	Rule 50(7) is a simplification of the previous procedures under the MSOR. It is unclear whether payment by instalments would be permitted under the GMR. We assume the compensation procedures developed by AEMO will consider the manner in which payments are to be made.	
51(1), 52(1)	3.6.7(aa),(ab), 3.6.8(a),(aa)	A procedure development process is now provided in Part 15B of the NGR. The procedure change process has been deleted from this Rule.	See comments on Rule 16(4) above.	
52(2)(f)	New	New subclause (f) added which indicates that operational gas is excluded from the allocation of uplift payments.	This change is appropriate as it is consistent with changes agreed at the GMCC level regarding operational gas.	
58(1)	3.6.16(a)	The requirement to pay any amounts due despite the existence of a dispute has been deleted.	Section 91H of the NGL provides that amounts due must be paid regardless of a dispute. This deletion is therefore appropriate.	
60(1)	3.6.18(aa)	The words "query or" were added in the first sentence.	Given the consolidation of the dispute resolution procedures in Part 15C of the NGR, the change in wording clarifies what is to be treated as a formal dispute. This change is beneficial.	
60(2),(3)	3.6.18(a),(b)	"Dispute" replaced with "query".	See comments on Rule 60(1) above.	

Gas Market Rule (GMR)	MSOR Section	Difference	Effect	Recommendation
N/A	3.6.18(c),(d)	These subclauses have been deleted.	The dispute resolution procedures are set out in Part 15C of the NGR. These clauses do not need to be repeated in the GMR.	
62(4)	3.6.20(b)	Approved GMCC changes not included.	The GMCC changes are not necessary as the obligation to pay amounts due irrespective of a dispute is contained in section 91H of the NGL.	
66	3.7.1	Purpose statement deleted.	This provision was a purpose statement regarding the prudential requirements. The deletion of this provision does not affect the functioning of the wholesale gas market and is unnecessary given that participants ought now be familiar with the purpose of prudential requirements.	
69(1)	3.7.4(a)	The market service fees concept has been removed from the GMR.	Fees are now determined pursuant to Part 15A of the NGR.	This clause along with the definition of minimum exposure should be amended to take into account the participant fees (or such subsection of the participant fees as appropriate). "Market service fees" should be amended to "participant fees", or a new term for an appropriate subsection of participant fees charged by AEMO.

Gas Market Rule (GMR)	MSOR Section	Difference	Effect	Recommendation
72(1)	3.7.6A(a)	The requirement for newspaper publication has been removed.	As the relevant notice is already published on the bulletin board and the AEMO website, we do not believe this deletion will have any adverse effect on participants (who will have access to these).	
72(3)	3.7.6A(c)	Suspension notice changed to default notice.	This change, while not consistent with the GMCC changes, makes the publication requirements for the issue and revocation of a default notice consistent. Practically, there is no difference between the functioning of the current version and the GMCC's changes to the MSOR.	
73(2)	3.7.7(a)(3)	The requirement for newspaper publication has been removed.	See comments on Rule 72(1) above.	
73(8)	3.7.7(ab)	The retailer of last resort provisions have been modified.	These changes are appropriate.	
75(1)	3.7.9(a)	"Retail Gas Market Rules" had been changed to Retail Market Procedures.	This change is appropriate as the Retail Market Procedures are the successor to the Retail Gas Market Rules.	

Gas Market Rule (GMR)	MSOR Section	Difference	Effect	Recommendation
78-80	3.8	<p>The GST provisions have been modified to better reflect the GST provisions in the National Electricity Rules.</p> <p>The co-operation provisions which are contained in clause 3.8.3 of the MSOR have not been reflected in the GMR.</p>	These changes are appropriate.	

Drafting Errors

Gas Market Rule	Recommended change
Definition of System Security	The new definition refers to the system security guidelines. The guidelines have been replaced by the system security procedures, and the definition should be updated to reflect the new terminology.
27(1)	Reference to Rule 23 should be to Rule 24.
31(1)(3)(a)	Reference to subrule (8) should be to Rule 19(8).
31(6)	Reference to subrule (3) should be to Rule 25(3).
35(2)	Reference to Rule 50(5) should be to Rule 51(5).
37(8)	Reference to subrule (10) should be to Rule 37(3).
47(9)	References to rule (1) and subrule (12) in subclause (c) should be references to 42(1) and 42(12) respectively.
50(8)	References to subrule 1(a) should be to subrule 1(b).

53(2)	Reference to Rule 52(1) in the definition of TIP should be 47(1).
63(1)(b)	Reference to Rule 70 should be to Rule 71. Reference to Subdivision 6 should be to Subdivision 7.
63(1)(d)	Reference to Rule 69 should be to Rule 70.
63(2)(a)	Reference to Rule 71 should be to 72.
63(2)(b), 63(3)	Reference to Rule 72 should be to 73.
64(1)(b)	Reference to Subdivision 6 should be to Subdivision 7.
76(5)	Reference to Rule 71 should be to Rule 72.