



Response template for IIR on amendments to the gas compensation regime for the DWGM, ECGS and STTM

Email responses to: GWCF_Correspondence@aemo.com.au

Review comments submitted by: *Australia Pacific LNG Pty Ltd*

Confidential: No

Date: *19 June 2024*

Contact Person: *Kieran Olsen, Commercial Compliance Manager*

Please complete sections 1 and 2.

Section 1 - General Comments on the consultation

Topic	Please Provide Response Here
<p>General Comments</p> <p>Does your organisation support AEMO's assessment of the proposal?</p> <p>If no, please specify areas in which your organisation disputes AEMO's assessment (include IIR section reference number) of the proposal and include information that supports your organisation's rationale why you do not support AEMO's assessment.</p>	<p>Australia Pacific LNG does not have any specific feedback on the Australian Energy Market Operator's (AEMO) assessment of the proposal.</p>

Section 2 - Feedback on the consultation documents

Participants are to complete the relevant columns below in order to record their response.

Wholesale Market Settlement Procedures

Procedure Clause #	Issue / Comment	Proposed text Red strikeout means delete and <u>blue underline</u> means insert	AEMO Response (AEMO only)
	Australia Pacific LNG does not have any feedback on the changes made to the compensation sections in the Wholesale Market Settlement Procedures as we do not operate in the Declared Wholesale Gas Market.		

ECGS Procedures

Procedure Clause #	Issue / Comment	Proposed text Red strikeout means delete and <u>blue underline</u> means insert	AEMO Response (AEMO only)
4.1(a)	Australia Pacific LNG proposes that the claimant should nominate, in its notice of claim, the jurisdiction under which the confidentiality deed should be governed. Please refer to our feedback in the 'Guidance on Gas Compensation Determinations' table below for more information.		
4.1(a)(vi)(D)	We suggest amendments to this clause for the following matters: 1. The reference to the 'liable relevant entity' should be replaced with 'counterparties' because a claimant would be unaware of whether a party to whom it has issued an invoice is a liable relevant	Other relevant evidence supporting the compensation claim, including <u>such as</u> invoices (paid and unpaid) <u>to liable relevant entities counterparties</u> for gas demand in the <i>affected location</i> during the <i>period of the identified risk or threat</i> <u>and receipts or other documentation evidencing any funds, payments, compensation or another financial benefit received by the claimant as set out in clause 4.1(a)(v)(E).</u>	

ECGS Procedures

	<p>entity. Liable relevant entities are determined by AEMO <u>after</u> the notice of claim has been submitted and the independent expert has made its determination.</p> <ol style="list-style-type: none"> 2. The term 'including' could be interpreted to mean that a claimant must provide invoices, even if there are no relevant invoices to provide. We suggest softening this terminology. 3. Other relevant evidence may include receipts of any funds, payments, compensation or another financial benefit received by the claimant (e.g. receipts of payments received from existing counterparties for their gas demand in the affected location during the relevant period). 		
<p>4.4(a)(i)</p>	<p>Australia Pacific LNG believes there should be flexibility incorporated in the East Coast Gas System (ECGS) Procedures for AEMO to amend the 'affected location', as needed. We consider this is necessary because, when a risk or threat is first identified, it may be difficult for AEMO to pinpoint the exact location(s) impacted due to incomplete or missing information at the onset of the event. This could mean the location(s) specified in the risk or threat notice or direction notice may be inaccurate or incomplete.</p> <p>Given this parameter plays a significant role in determining who should fund the compensation funding amount, stakeholders should be afforded the opportunity to:</p> <ol style="list-style-type: none"> 1. raise any concerns about the affected location prior to AEMO determining the liable relevant entities, and 2. provide feedback on any proposed changes to the affected location. 	<p><i>Affected location</i> means, in relation to an <i>identified risk or threat</i>, the location identified by AEMO in the relevant <i>risk or threat notice</i> or <i>direction notice</i> which may include the impacted jurisdiction(s), specific BB facility(s) and other location(s); <u>The affected location may be amended by AEMO if:</u></p> <ol style="list-style-type: none"> (A) <u>AEMO and/or another person identifies an issue(s) with the location specified in the relevant risk or threat notice or direction notice; and</u> (B) <u>following public consultation on the issue(s) identified under clause 4.4(a)(i)(A), AEMO determines, taking into account any feedback received during the consultation, that the affected location should be amended;</u> 	

ECGS Procedures

	<p>Finally, for the recent Queensland Gas Pipeline incident, we note there were various risk or threat and direction notices, with several locations and BB facilities referenced. We seek clarity from AEMO as to whether it will use each notice issued to determine the affected location, as well as each location referenced in those notices, or a different approach.</p>		
<p>New clause and 4.4(b)(ii)</p>	<p>The ECGS Procedures need to provide AEMO with the ability to allocate discrete components of the compensation funding amount to different subsets of liable relevant entities to ensure an equitable distribution of cost impacts, wherever practical. For example, there may be situations where:</p> <ul style="list-style-type: none"> • a component of the compensation funding amount does not relate to a specific liable relevant entity's gas demand in the affected location during the period of risk or threat • a liable relevant entity has only partially paid for its gas demand in the affected location during the period of the risk or threat and still needs to contribute to part of the compensation funding amount (e.g. it may not have paid for swap fees or transportation charges incurred by the claimant to facilitate the supply of the directed gas). <p>We also note this change is required to enact our proposal for reducing a liable relevant entity's share of the compensation funding amount. Please refer to our feedback against clause 4.4(c) below in this regard.</p>	<p>(ii) <u>A liable relevant entity's applicable share of the compensation funding amount may be determined with reference to the entire compensation funding amount or a component of the compensation funding amount.</u></p> <p>(iii) <u>Subject to clause 4.4(c), the applicable share of the compensation funding amount, or a component of the compensation funding amount, payable by a liable relevant entity to AEMO will be...</u></p>	
<p>4.4(c)</p>	<p>Australia Pacific LNG supports AEMO's proposal to reduce a liable relevant entity's share of the compensation funding amount if it has paid the claimant for its gas demand (partially or in full) in the</p>	<p>(c) A liable relevant entity's share of the compensation funding amount may be reduced by any amount paid by a liable relevant entity to a claimant for gas demand in the affected location during the period of the risk or threat <u>if the liable relevant entity has provided any funds, payments,</u></p>	

ECGS Procedures

affected location during the period of the risk or threat. This will help mitigate the risk of cross-subsidisation and lead to a fairer and more reasonable outcome. However, for the reasons listed further below, we do not agree with the methodology currently set out in clause 4.4(c) of the ECGS Procedures.

Instead, we propose that AEMO remove a liable relevant entity's gas demand from the aggregate gas demand before allocating the compensation funding amount, or a component thereof, to liable relevant entities. We consider that this methodology:

- is simple to understand
- is transparent
- ensures full recovery of the compensation funding amount from liable relevant entities (as determined by AEMO)
- minimises inequitable distribution cost impacts
- provides AEMO with the flexibility to adjust its approach depending on the scale/type of incident
- incentivises existing customers of a claimant to pay for their gas demand under existing contractual arrangements, thereby minimising the overall compensation funding amount.

Appendix A provides worked examples illustrating the impacts of adopting AEMO's proposal versus the above proposal.

We also believe this proposal should be extended to include funds, compensation or another financial benefit received by the claimant from the liable relevant entity.

compensation or another financial benefit to the claimant for gas demand in the affected location during the period of the risk or threat.

(i) To calculate the reduction, AEMO will remove the liable relevant entity's gas demand from the aggregate gas demand used to apportion the compensation funding amount, or a component of the compensation funding amount, to liable relevant entities.

~~(ii)~~ AEMO may request the claimant to provide information about the liable relevant entities that have provided any funds, payments, compensation or another financial benefit to the claimant for gas demand in the affected location for the period of the risk or threat, to the extent this information was not provided to AEMO under clause 4.1(a)(v)(E).

~~(iii)~~ The claimant must provide the information requested by AEMO under clause 4.4(c) ~~(ii)~~ within 15 business days of the date of the request.

ECGS Procedures

<p><u>Reason 1 – Double counting of payments</u></p> <p>The compensation funding amount is comprised of:</p> <ul style="list-style-type: none"> • the direct costs specified in the notice of claim, <i>plus</i> • the compensation process costs, <i>less</i> • any funds, payments, compensation or another financial benefit received by the claimant for undertaking the activity required by the direction or being deprived of the relevant service, <i>less</i> • any part of the compensation process costs allocated to a claimant by the independent expert in accordance with rule 135JJ(3). <p>If a liable relevant entity has provided the claimant any funds, payments, compensation or another financial benefit, this benefit would have already been factored into the compensation funding amount being recovered from liable relevant entities (per rule 707(2)(b)). It cannot be deducted a second time without short-changing the claimant, AEMO and/or the independent expert.</p> <p><u>Reason 2 – Under-recovery of the compensation funding amount from other liable relevant entities</u></p> <p>Proposed clause 4.4(c) permits AEMO to reduce a liable relevant entity’s share of the compensation funding amount, but it does not allow AEMO to subsequently recover that liable relevant entity’s share from other liable relevant entities. This means the claimant, independent expert and/or AEMO will not receive their full entitlements.</p>		
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STTM Procedures			
Procedure Clause #	Issue / Comment	Proposed text Red strikeout means delete and <u>blue underline</u> means insert	AEMO Response (AEMO only)
	Australia Pacific LNG does not have any feedback on the changes made to the compensation sections in the STTM Procedures as we do not operate in this market.		

Gas Compensation Confidentiality Deed					
Procedure Clause #	Issue / Comment	Proposed text Red strikeout means delete and <u>blue underline</u> means insert	AEMO Response (AEMO only)		
1.4 and 9.8	<p>While Australia Pacific LNG agrees with AEMO that the jurisdiction should be specified in these clauses, we do not support AEMO's position to explicitly reference 'Victoria'. As highlighted in our submission on the Proposed Procedure Change,¹ the confidentiality deed is for the benefit of the claimant. The claimant should therefore nominate the applicable jurisdiction.</p> <p>Since the confidentiality deed will not be executed until after a notice of claim is received by AEMO, we propose the insertion of a new item in clause 4.1(a) of the ECGS Procedures for the claimant to nominate the applicable jurisdiction in its notice of claim. AEMO could then insert the nominated jurisdiction in clauses 1.4, 9.8(b) and 9.8(c) of the confidentiality deed before it is executed by the relevant parties.</p>	<p>1.4. Governing Law</p> <table border="1"> <tr> <td>Governing Law</td> <td>Victoria<u>[insert state or territory nominated by the claimant]</u></td> </tr> </table> <p>9.8. Governing Law, <u>jurisdiction and service of process</u></p> <p>(a) Governing law, jurisdiction and service of process:</p> <p>(b)<u>(a)</u> The Agreement is governed by the law in force in Victoria<u>[insert state or territory nominated by the claimant]</u>.</p> <p>(c)<u>(b)</u> Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria<u>[insert state or territory nominated by the claimant]</u> and courts of appeal from them. Each party waives any right it has to object to an action.</p>	Governing Law	Victoria <u>[insert state or territory nominated by the claimant]</u>	
Governing Law	Victoria <u>[insert state or territory nominated by the claimant]</u>				

¹ https://www.aemo.com.au/-/media/files/stakeholder_consultation/consultations/gas_consultations/2024/amendments-to-the-gas-compensation-regime-for-the-dwgm-ecgs-and-sttm/submissions/aplng-response-to-template.pdf?la=en

Gas Compensation Confidentiality Deed			
	Finally, clause 9.8(a) duplicates, in part, the clause 9.8 heading and we query whether it should be moved to that heading instead.		
3.2	While we acknowledge AEMO's point that the independent expert is the party signing the confidentiality deed, we consider that it would be desirable to clarify, by way of definition, that the independent expert is the person appointed pursuant to rule 135JE of the National Gas Rules (NGR) to determine the compensation claim. This is consistent with the approach adopted elsewhere in clause 3.2, where 'AEMO' and 'claimant' are defined.	Independent Expert means a person appointed pursuant to rule 135JE of the Rules to determine a compensation claim.	
5(d), 7.1(a) and 7.2(a)	We strongly disagree with AEMO's assertion that it is a standard clause for confidentiality agreements that a party's confidential information can be kept for 'record keeping and audit purposes'. A clause of this nature defeats the purpose of the confidentiality agreement. Australia Pacific LNG submits that it is standard for all confidential information to be returned to the disclosing party, without exception. Clause 5(d) and all references to clause 5(d) should therefore be deleted.	<p>5(d) – Notwithstanding clause 5(a), the Independent Expert may keep a copy of the Confidential Information for its record keeping and audit purposes.</p> <p>7.1(a) – Subject to clause 5(d), the The Independent Expert must...</p> <p>7.2(a) – Subject to clause 5(d), the The Independent Expert must...</p>	

Guidance on Gas Compensation Determinations			
Procedure Clause #	Issue / Comment	Proposed text Red strikeout means delete and blue underline means insert	AEMO Response (AEMO only)
Page 2	Fix the incomplete document reference.	The initial Guidance on Gas Compensation Determinations required by the...	

Guidance on Gas Compensation Determinations

<p>2.1(c)</p>	<p>Australia Pacific LNG maintains our previous position that changes are required to this clause to improve readability and ensure a consistent style with the previous sub-clauses. Existing clause 2.1(c) should be replaced with the proposed text contained in the next column.</p>	<p>East Coast Gas System (ECGS) - a claim for compensation under Division 6 of Part 27, notified to AEMO in a notice of claim under rule 705:</p> <ul style="list-style-type: none"> (i) A relevant entity subject to a direction that requires the relevant entity to provide a gas service may make a claim in accordance with rule 704 for the direct costs associated with the supply of the gas service. (ii) A relevant entity deprived of a gas service in relation to which the relevant entity has a contractual or other legal right may make a claim in accordance with rule 704 for the direct costs associated with the deprivation of that service, but only if the relevant entity remains liable for the payment of the direct costs under the relevant contract or otherwise by law. 	
<p>2.3</p>	<p>Australia Pacific LNG appreciates AEMO's incorporation of our earlier feedback in the process map for the nomination and appointment of an independent expert. We consider that some additional changes are required to align the process map with the following NGR requirements:</p> <ul style="list-style-type: none"> • The market notice seeking a notice of claim from relevant entities should be sent <u>before</u> AEMO receives the notice of claims from relevant entities (per rule 705(1)). • Under rule 135JE(2), AEMO must have regard to whether related claims should be determined by the same independent expert as part of the same process. The current wording does not accurately reflect this requirement and could be interpreted to mean that the claims were provided by the independent expert (rather than the claimant(s)). • In addition to providing the notice of AEMO's independent expert nominee to the Australian Energy Regulator (AER) and the claimant(s), 	<p>AEMO receives valid notice of claim on business day (D) and sends market notice seeking a notice of claim from relevant entities and receipts valid notice of claim(s) on business day (D).</p> <p>Rule 135JE(2) - AEMO is required to consider whether any related claims should be determined by the same independent expert.</p> <p>Rule 135JE(1) - AEMO provides notice to the claimant(s) and the AER of the nominated independent expert on day (E) and publishes the notice.</p>	

Guidance on Gas Compensation Determinations

	<p>AEMO is required to publish the notice (per rule 135JE(1)).</p>		
<p>2.4</p>	<p>We welcome the improvements made to the process map on the independent expert's determination of a compensation claim and encourage AEMO to consider the following amendments:</p> <ul style="list-style-type: none"> • Rule 135JF(2) requires AEMO to provide the market data to the Expert and the claimant(s) as soon as practicable after receipt of the request. This timeline could be included in the process map, for consistency with boxes containing similar information provision requirements. • There are minor typographical errors in the box related to the final documentation to be provided by the independent expert that should be addressed. • There is an incorrect NGR reference in the box related to AEMO's publication of the final report and public final determination. Rule 135JH(7), not rule 135JH(6), requires AEMO to publish the final determination in the form it was provided by the independent expert. • There is an incorrect NGR reference in the first note under the process map. Rule 135JG(4), not rule 135JF(4), allows the independent expert to amend the process and timetable. 	<p>AEMO provides the market data to the Expert and claimant(s) as soon as practicable after receiving the Expert's request</p> <p>Rule 135JH(3) & (6) - Expert prepares and provides within F+20 business days# to:</p> <ol style="list-style-type: none"> 1. AEMO - the final report^; and tax invoice; 2. AEMO and claimant(s) - public^ and confidential final determination(s) <p>Rule 135JH(3)(a) & (6)(7) - AEMO publishes the final report and...</p> <p>* Rule 135JG(4) – The independent expert may amend the process and timetable...</p>	
<p>2.5</p>	<p>In our submission on the Proposed Procedure Change, Australia Pacific LNG suggested minor changes to the process map to ensure alignment with rule 135JK of the NGR. This feedback was inadvertently missed in</p>	<p>Please refer to Appendix B for a revised process map for the review of an independent expert's determination.</p>	

Guidance on Gas Compensation Determinations

AEMO's updated '*Guidance on Gas Compensation Determinations*'.

We recommend the following changes:

- References to the 'compensation claim' should be substituted with 'determination' as rule 135JK permits the Court to grant leave to review the determination made by the independent expert on a question of law.
- The connectors linking the first decision box with the two subsequent boxes should display 'Yes' or 'No'.
- With respect to rule 135JK(5)(d), the Court can set aside the determination in whole or in part.
- The Court's order may specify another timeframe in which the independent expert is to make a new determination (per rule 135JK(7)).

Appendix A – Worked examples of the allocation of the compensation funding amount under different approaches

Scenario 1 – Single compensation funding amount

Calculation of the compensation funding amount		Comments
Direct costs	\$120,000	\$60,000 relates to an existing customer of the claimant and \$60,000 relates to entities who are not existing customers of the claimant.
Payments	\$60,000	Received from the existing customer of the claimant.
Total claim amount	\$60,000	
Compensation process costs	\$5,000	
Compensation funding amount	\$65,000	
Gas demand in the affected location and during the period of risk or threat		Comments
Liable relevant entity 1	0.50 PJ	Existing customer of the claimant.
Liable relevant entity 2	0.25 PJ	Entity who is not an existing customer of the claimant.
Liable relevant entity 3	0.25 PJ	Entity who is not an existing customer of the claimant.
Aggregate gas demand	1.00 PJ	
Adjusted gas demand figures		
Liable relevant entity 1	0.00 PJ	Gas demand reduced to zero as this entity has paid the claimant directly for its gas demand.
Liable relevant entity 2	0.25 PJ	No changes to the gas demand figures.
Liable relevant entity 3	0.25 PJ	
Adjusted aggregate gas demand	0.50 PJ	

Allocation of compensation funding amount to liable relevant entities	
AEMO's approach per proposed clause 4.4(c) of the ECGS Procedures	
Liable relevant entity 1	= [(0.50 PJ / 1.00 PJ) x \$65,000] - \$60,000 = (\$27,500) ²
Liable relevant entity 2	= (0.25 PJ / 1.00 PJ) x \$65,000 = \$16,250
Liable relevant entity 3	= (0.25 PJ / 1.00 PJ) x \$65,000 = \$16,250
Amount invoiced to liable relevant entities	= \$16,250 + \$16,250 = \$32,500
Shortfall in recovery	= \$65,000 - \$32,500 = \$32,500
Australia Pacific LNG's proposal to adjust gas demand figures	
Liable relevant entity 1	= (0.00 PJ / 0.50 PJ) x \$65,000 = \$0
Liable relevant entity 2	= (0.25 PJ / 0.50 PJ) x \$65,000 = \$32,500
Liable relevant entity 3	= (0.25 PJ / 0.50 PJ) x \$65,000 = \$32,500
Amount invoiced to liable relevant entities	= \$32,500 + \$32,500 = \$65,000
Shortfall in recovery	= \$65,000 - \$65,000 = \$0

² Even if this \$27,500 is allocated to liable relevant entities 2 and 3, there would still be a shortfall of \$5,000 due to the payments received from the existing customer being deducted twice from the compensation funding amount.

Scenario 2 – Multiple components of the compensation funding amount

Australia Pacific LNG's proposal to adjust gas demand figures and apportion components of the compensation funding amount to different liable relevant entities

Calculation of the compensation funding amount		Comments
Direct costs 1 <i>Cost of directed gas</i>	\$100,000	\$60,000 relates to an existing customer of the claimant and \$40,000 relates to entities who are not existing customers of the claimant.
Direct costs 2 <i>Swap fee to facilitate supply of directed gas</i>	\$20,000	Relates to an existing customer of the claimant and entities who are not existing customers of the claimant.
Payments	\$60,000	Received from the existing customer of the claimant for direct costs 1.
Total claim amount	\$60,000	
Compensation process costs 1	\$2,500	Relates to the determination of the claim with respect to direct costs 1.
Compensation process costs 2	\$2,500	Relates to the determination of the claim with respect to direct costs 2.
Compensation funding amount	\$65,000	
Gas demand in the affected location and during the period of risk or threat		Comments
Liable relevant entity 1	0.50 PJ	Existing customer of the claimant.
Liable relevant entity 2	0.25 PJ	Entity who is not an existing customer of the claimant.
Liable relevant entity 3	0.25 PJ	Entity who is not an existing customer of the claimant.
Aggregate gas demand	1.00 PJ	

Allocation of compensation funding amount to liable relevant entities		
Allocation of direct costs 1 (\$40,000) ³ and related compensation process costs (\$2,500)		Comments
Adjusted gas demand in the affected location and during the period of risk or threat		
Liable relevant entity 1	0.00 PJ	Gas demand reduced to zero as this entity has paid the claimant directly for its gas demand in relation to direct costs 1.
Liable relevant entity 2	0.25 PJ	
Liable relevant entity 3	0.25 PJ	
Adjusted aggregate gas demand	0.50 PJ	
Liable relevant entity 1	= (0.00 PJ / 0.50 PJ) x \$42,500 = \$0	
Liable relevant entity 2	= (0.25 PJ / 0.50 PJ) x \$42,500 = \$21,250	
Liable relevant entity 3	= (0.25 PJ / 0.50 PJ) x \$42,500 = \$21,250	
Amount invoiced to liable relevant entities for direct costs 1	= \$21,250 + \$21,250 = \$42,500	

Continued on next page >>

³ \$100,000 (direct costs 1) less \$60,000 (payments received for direct costs 1 from existing customer of the claimant).

Allocation of direct costs 2 (\$20,000) and related compensation process costs (\$2,500)		Comments
Gas demand in the affected location and during the period of risk or threat		
Liabe relevant entity 1	0.50 PJ	No adjustments as this entity has not paid for its gas demand with respect to direct costs 2.
Liabe relevant entity 2	0.25 PJ	
Liabe relevant entity 3	0.25 PJ	
Aggregate gas demand	1.00 PJ	
Liabe relevant entity 1	= (0.50 PJ / 1.00 PJ) x \$22,500 = \$11,250	
Liabe relevant entity 2	= (0.25 PJ / 1.00 PJ) x \$22,500 = \$5,625	
Liabe relevant entity 3	= (0.25 PJ / 1.00 PJ) x \$22,500 = \$5,625	
Amount invoiced to liabe relevant entities for direct costs 2	= \$11,250 + \$5,625 + \$5,625 = \$22,500	
Total amount invoiced to liabe relevant entities	= \$42,500 + \$22,500 = \$65,000	
Shortfall in recovery	= \$65,000 - \$65,000 = \$0	

Appendix B – Revised process map for the 'Guidance on Gas Compensation Determinations'

2.5. Review of Independent Expert's determination

