

Decision on Gas Retail Market Scheme Procedure Change Proposal IN004/17W

Submitted by the Australian Energy Market Operator

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Economic Regulation Authority

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Decision

1. In accordance with section 11ZOM of the *Energy Coordination Act 1994 (Act)*, the Economic Regulation Authority (ERA) approves the amendments in procedure change proposal IN004/17W, as submitted to the ERA by the Australian Energy Market Operator (AEMO) on 10 April 2018. The amendments in proposal IN004/17W will be effective from 1 June 2018.

Reasons

Background

2. Section 11ZOL of the Act specifies that members of an approved retail market scheme may prepare an amendment to the scheme and submit the amendment to the ERA for approval under section 11ZOM of the Act.
3. The scheme includes AEMO, the Western Australian Retail Market Agreement and the market rules. AEMO is the formal entity responsible for the operation of the scheme. The Western Australian Retail Market Agreement is the main agreement between gas market participants¹, obligating all members to comply with the market rules. The market rules include:
 - the Retail Market Procedures, which govern the major interactions between gas market participants in the gas retail market;
 - the Specification Pack, which is a suite of documents supporting the operation of the market procedures; and
 - the Full Retail Contestability (FRC) Hub Operational Terms and Conditions that govern the communication protocol within the FRC Hub, which is the information system provided by AEMO.
4. On 10 April 2018, the ERA received a submission from AEMO seeking approval of amendments to the scheme in procedure change proposal IN004/17W - Regulator Fees to Recover Costs for the Economic Regulation Authority.
5. Changes to the procedures have a non-substantial impact if they have no effect on the operations of AEMO, participants, interested persons² or prescribed persons³, and merely correct administrative errors.⁴

¹ Market participants include users (i.e. retailers) and network operators.

² An interested person is a government representative, the ERA or someone that the ERA considers has a legitimate interest in the matter.

³ A prescribed person is a person or class of persons to whom the retail market rules apply, including a swing service provider, a shipper and a self-contracting user.

⁴ These include typographical errors, grammatical errors, cross-referencing errors and other similar trivial defects.

6. Changes to the procedures have a low impact if they do not have a material effect on:
 - the information technology systems of AEMO, market participants, pipeline operators or prescribed persons;
 - consumer protection mechanisms under the retail market rules; or
 - AEMO, participants, pipeline operators or prescribed persons.
7. Changes to the procedures have a high impact if they do not have a non-substantial impact or a low impact.

Discussion

Legislative requirements for the ERA's Approval

8. Where an amendment to the scheme is submitted to the ERA, the ERA is to:
 - a. approve it;
 - b. request that it be changed and approve it in a changed form; or
 - c. refuse to approve it.⁵
9. The ERA may approve an amendment to the scheme⁶ if it is satisfied that:
 - a. if the amendment is made, the scheme will:
 - i. comply with the Act; and
 - ii. be suitable for the purposes of ensuring that the retail gas market supplied through a distribution system is regulated and operates in a manner that is:
 - a) open and competitive;
 - b) efficient; and
 - c) fair to gas market participants and their customers.⁷
 - b. any other principle, criterion, or requirement that is prescribed for the purposes of this paragraph in the Act has been met.
10. Rule amendments for a distribution system scheme are not to be submitted without consulting potentially affected scheme members, including:
 - a. a gas transmission operator whose pipeline is used to transport gas into that system; and
 - b. a prescribed person, including any shipper, swing service provider or self-contracting user.⁸

⁵ In accordance with sections 11ZOO and section 11ZOP of the Act.

⁶ Consistent with 11ZOO(1)(a) of the Act.

⁷ See section 11ZOB of the Act.

⁸ See section 11ZOL(3) of the Act.

11. The ERA may only approve retail market rule amendments if it is satisfied that such consultation has taken place and:
 - a. each person required to be consulted has agreed to the amendment; or
 - b. if any person required to be consulted has not so agreed, that person has been given a reasonable opportunity in the course of the consultation to provide reasons for not agreeing and any reasons so provided have been considered.⁹
12. When determining whether or not to give an approval, the ERA is to have regard to:
 - a. any principles, criteria, or requirements that are prescribed for the purposes of this paragraph in the Act; and
 - b. such other matters as the ERA considers relevant.¹⁰

IN004/17W – Regulator Fee

Rationale and proposal for regulator fee

13. The ERA is currently paid by Government for its functions in Part 2B of the Act from the Consolidated Account.
14. This is counter to the Act which requires that the cost of administration of the gas retail market scheme be met by the gas market participants who are members of the scheme.¹¹ It is also counter to Government intent, which is for the ERA to achieve full cost recovery for its regulatory functions.¹²
15. Procedure change IN004/17W was proposed by the Public Utilities Office, and developed with the assistance of the ERA Secretariat, the Procedure Change Committee and AEMO.
16. It proposes adding a new clause 362B to the Retail Market Procedures allowing the ERA to recover its costs for administering the scheme from gas market participants, and setting out how these costs are to be borne between gas market participants. This is consistent with the requirements of sections 11ZOF(4)(b) and (c) of the Act.
17. Market participants include users and network operators. As network operators recover their costs from users, it is proposed that the regulator fee will not be charged to network operators.¹³
18. Additionally, the regulator fee may be a barrier to competition, affecting the participation in the market of self-contracting users. Self-contracting users withdraw

⁹ See section 11ZOO(2) of the Act.

¹⁰ See section 11ZOP of the Act.

¹¹ See section 11ZOF(4)(b) of the Act.

¹² This is stated in the Impact and Implementation Report developed by AEMO based on the PUO's procedure change proposal. See also Department of the Premier and Cabinet Circular on costing and pricing government services: https://publicsector.wa.gov.au/sites/default/files/documents/2016-01_costing_and_pricing_government_services.pdf. Also see Costing and Pricing Government Services: guidelines for use by Agencies in Western Australian Public Sector, page 26: https://www.treasury.wa.gov.au/uploadedFiles/Treasury/Publications/costing_and_pricing_guidelines_june_2015.pdf.

¹³ ATCO Gas Australia Pty Ltd is the current network operator.

gas from a sub-network for self-supply or supply to a related body corporate.¹⁴ They are not retailers¹⁵ and receive limited services from the ERA in its function of administering the market rules. Therefore, the regulator fee will not be charged to self-contracting users.

19. The ERA sets its budget, including the costs for its gas retail market functions, annually, and it is reviewed and approved by the Minister for Energy. Given that the ERA's costs for its gas retail market functions will be relatively small,¹⁶ these costs will be recovered via an annual fee (\$/annum).
20. Further, it is proposed to charge the annual fee based on the ERA's approved budget, with an adjustment to address any variances between actual and budgeted costs from the previous year. It is not anticipated that the under or over cost recovery will cause an unreasonable spike in the following year's fee.

Classification and consultation on regulator fee

21. Procedure change proposal IN004/17W was first raised for discussion at the Procedure Change Committee (Committee) meeting on 13 December 2017, where it was unanimously agreed that the proposed change is a low impact proposal.
22. Participants supported the requirement for a regulator fee to be recovered by gas market participants. Feedback from participants throughout the consultation process centred on the details of how these costs are to be recovered from gas market participants, from whom the fees should be collected, the possibility of increases in fees, and the lead time for notification of annual fees. Administrative errors in drafting were also considered.
23. AEMO provided multiple opportunities for market participants to provide feedback and reach a consensus on the requirements of the regulator fee. On 8 January 2018, a draft Impact and Implementation Report was circulated to participants for comment by 22 January 2018. Feedback on the draft Impact and Implementation Report was discussed at a second Committee meeting on 7 February 2018. This culminated in a redraft of the Impact and Implementation Report incorporating participant feedback being issued on 12 February 2018 for comment by participants at a meeting to be held on 21 February 2018.
24. On 20 February 2018, participants Kleenheat, AGL, Origin Energy Synergy and Alinta Energy, submitted a redraft of procedure 362B to AEMO, which was discussed at the Committee meeting on 21 February 2018. Two further redrafts of procedure 362B were issued by AEMO on 23 and 26 February 2018 for comment by 27 February 2018.
25. On 28 February 2018 AEMO notified participants that a consensus had been reached on the final revised version of procedure 362B, which was supported by

¹⁴ Self-contracting users currently include APT Facility Management Pty Ltd and Geraldton Brick Pty Ltd.

¹⁵ The users that are retailers currently include Synergy, Perth Energy Pty Ltd, Alinta Sales Pty Ltd, Wesfarmers Kleenheat Gas Pty Ltd, AGL Sales Pty Limited, Origin Energy Retail Limited and Simply Energy.

¹⁶ Proposal IN004/17W notes the estimate of costs for the ERA's gas retail market functions in 2017/18 is \$37,142. The cost estimate varies between \$36,000 and \$40,000 over the next five year estimates. Based on the current number of users (7), the regulator fee would be between \$5,100 and \$5,700 per participant per annum over the next five years.

Alinta, Kleenheat, Origin and Synergy. There were no objections to this final revised version of procedure 362B.

26. AEMO incorporated the final revised version of procedure 362B into its Impact and Implementation Report for IN004/17W, which was published on its website on 7 March 2018. AEMO invited each participant, pipeline operator, prescribed person and interested person to lodge an objection to the proposed amendment in IN004/17W by 23 March 2018. AEMO received a submission from AGL supporting the proposed changes and a submission from Agora Retail objecting to the proposal.
27. The Committee met on 28 March 2018 to consider Agora Retail's objection. The Committee considered that it had previously discussed and addressed all of the issues raised by Agora Retail, which had not attended the previous Committee meetings in which the Impact and Implementation Report was discussed and finalised. The Committee, including Agora Retail, were unanimous in recommending the procedure change proposal to AEMO for submission to the ERA.
28. AEMO notified the market that it had submitted the procedure change proposal to the ERA for approval on 10 April 2018 and invited stakeholders to make submissions by 23 May 2018. The ERA received no submissions in response to this consultation process.

ERA assessment of proposal

29. The ERA considers that the scheme will continue to comply with the Act following implementation of the proposed procedure change.
30. The amendment under IN004/17W will introduce cost recovery of the regulator fee from users, excluding self-contracting users. This is consistent with the requirements of the Act, that the cost of administration of the gas retail market scheme be met by the gas market participants who are members of the scheme. It also aligns with Government intent for the ERA to achieve full cost recovery for its regulatory functions.
31. Exclusion of the requirement for the network operator, which recovers its costs from users, to pay the regulator fee is efficient because users will pay the fee directly to the ERA.
32. The Retail Market Rules, governed by the ERA, have less relevance to self-contracting users when compared to other users that retail gas and require rules ensuring that the market operates effectively, allowing them to compete for customers. For example, the Retail Market Procedures include procedures for transferring customers between gas retailers, and for the management and distribution of gas metering data that is relevant to customer billing. These procedures and the Specification Pack documents supporting their operation, are not relevant to self-contracting users that do not compete for customers.
33. Additionally, self-contracting users communicate through a low volume interface for users with less than 500 customers. This is an alternative mechanism to the FRC Hub for sending and receiving 'business to business' and 'business to market' transactions. The low volume interface is not governed by the FRC Hub Operational Terms and Conditions, which are part of the scheme and require the ERA's approval for amendment.

34. Exclusion of the requirement for self-contracting users to pay the regulator fee is fair and may benefit competition by removing a potential barrier to entry.
35. The use of a flat annual fee charged to users, excluding self-contracting users, appears reasonable, given the small size of the fee, and the effort required in calculating the fee based on market share.
36. The proposal to charge the annual fee based on the ERA's approved budget, with an adjustment to address any variances between actual and budgeted costs from the previous year, is consistent with other cost recovery mechanisms for the ERA's energy market functions.¹⁷
37. If, in the future, participants find that the proposed requirements for the regulator fee under IN004/17W are inadequate and do not meet the market objectives, they can raise it as a gas market issue at the Procedure Change Committee and develop a procedure change proposal for the use of another method.
38. The required consultation occurred with each person and there has not been any dissent to the proposed amendments. The ERA therefore considers that each person has agreed to the amendments proposed under IN004/17W.
39. The ERA is satisfied that, through the amendments proposed under IN004/17W, the provisions of the scheme will continue to ensure regulation of the market and that market operation is open and competitive, efficient, and fair to gas market participants and their customers.

Conclusion

40. The ERA considers that the proposed amendments to the scheme in procedure change proposal IN004/17W meet the requirements for approval in accordance with sections 11ZOO and 11ZOP of the Act. In accordance with section 11ZOM of the Act, the ERA therefore approves the amendments proposed in procedure change proposal IN004/17W.

¹⁷ For example, see market rule 2.24.5 and 2.24.5A of the Wholesale Electricity Market Rules (page 111), which include similar provisions allowing the ERA to recover a portion of its budget corresponding to the costs of undertaking its functions in the Wholesale Electricity Market (monitoring, compliance, enforcement and regulation services), the WEM Regulations, and the Panel Regulations (Secretariat support).

<https://www.erawa.com.au/cproot/18771/2/Wholesale%20Electricity%20Market%20Rules%2020%20March%202018.pdf>