

ECONOMICS AND INDUSTRY STANDING COMMITTEE

INQUIRY INTO THE WA DOMESTIC GAS POLICY



**TRANSCRIPT OF EVIDENCE
TAKEN AT PERTH
WEDNESDAY, 8 NOVEMBER 2023**

SESSION TWO

Members

**Mr P.C. Tinley (Chair)
Ms M. Beard (Deputy Chair)
Mr D.A.E. Scaife
Ms E.L. Hamilton
Ms A.E. Kent**

Hearing commenced at 10.32 am

Mr STEVE EDWELL

Chair, Economic Regulation Authority, examined:

Ms JENNESS GARDNER

CEO, Economic Regulation Authority, examined:

Ms SARA O'CONNOR

Executive Director, Regulation and Inquiries, Economic Regulation Authority, examined:

Mr RAJAT SARAWAT

Executive Director, Energy Markets, Economic Regulation Authority, examined:

The CHAIR: I would like to begin by acknowledging the Whadjuk Noongar people, the traditional owners of the land on which we meet today, and pay my respects to their elders both past and present.

On behalf of the committee, I would like to thank you for agreeing to appear today to provide evidence in relation to our inquiry into WA's domestic gas policy. I am Peter Tinley. I am the chair of the committee. I am joined today by the rest of the committee. To my left is the deputy chair, Merome Beard, member for North West Central. To her left is Emily Hamilton, member for Joondalup. To her left are David Scaife, member for Cockburn; and Ali Kent, member for Kalgoorlie.

I advise that the proceedings of the committee hearing will be broadcast live within Parliament House and via the internet. This broadcast may include documentation provided by you to assist the committee in its investigations. It is important that you understand that any deliberate misleading of this committee may be regarded as a contempt of Parliament. Your evidence is protected by parliamentary privilege; however, this privilege does not apply to anything that you might say outside of today's proceedings. The secretariat may have informed you that we are not taking opening statements. However, you will be given the opportunity at the end or towards the end of the hearing to add any further comments or address themes that you think we should have ventured into. Have you been before a committee before?

Mr EDWELL: Many times.

The CHAIR: Many times, yes. But we are not a Senate committee, so that is fine!

No questions about what I have just outlined there; that is good. Let us hop into it. The purpose of this inquiry is to review the 2010 domestic gas policy, look at its operation and probably, more importantly, its efficacy in meeting the future needs of gas in Western Australia into what we now know, through AEMO and other agency reporting, will be a fairly constricted space from a time a couple of years from now through to the mid-2030s. We can talk about that sort of stuff, if you need to. We have received a wide range of evidence from witnesses on the buy side and the sell side, and things in-between. One of the things that a lot of them talked about is the transparency issue—about what is available in the domestic gas market and what has been supplied and what sort of time frame it could be supplied over.

JTSI and ERA obviously are a part of that whole mix. One of the things that we have seen is that there seems to be a concern around the fact that JTSI is a facilitator of investment and a supporter

of industry and a builder, and yet it is also responsible as part of the compliance side. My first question is a more generalised one around this idea that the ERA should be taking a bigger role in compliance, if not the major role, of meeting the DMO in accordance with both its spirit and its intent, even though it is a policy and not a law. What do you think about that? Steve, we might start with you and then you can hand it around.

Mr EDWELL: Sure, chair. We are pretty experienced in monitoring markets and compliance, so certainly there is a whole bunch of skills that would be useful in that sort of space. I guess the issue is, though, we have two things here as we see it. We have got the domestic gas reservation policy, which gets effect through contracts that the state has with individual shippers and they are all in different forms. Some of them are commercial contracts, some of them are attached to state agreements et cetera. But we have not got a gas market; we have got a bulletin board, which is a statement of forecasts. We have a GSOO, which AEMO produces, which is basically a statement of demand supply balance at a higher level. We have not got a gas market, per se. The issue is: if we were to get a compliance or monitoring role in terms of the domestic gas reservation adherence, what is our role and what are the source documents? At the moment, for example, we do all this stuff in the context of the electricity market, but there is a well-developed market. We can see what people are offering their generation at every half hour. We can see what prices, what the quantities are. We can track and we have got a whole bunch of rules, a thousand pages of rules, that we can then, in terms of compliance, check what people are doing based on those rules.

In the case of the gas reservation policy there are no rules; there is no market. The compliance role would therefore need to be going back to the source material, which are these individual bespoke contracts or arrangements that the state has got, which we have not got visibility over at the moment.

Mr D.A.E. SCAIFE: Just to clarify that, when you say there are no rules, there are rules, are there not, but those rules are, as you say, bespoke to, say, particular state agreements or state development agreements?

Ms A.E. KENT: It is adherence to those rules. Is that what you are referring to?

Mr EDWELL: There are rules under the gas services information legislation, but they are rules in terms of providing information to the Gas Bulletin Board.

Mr D.A.E. SCAIFE: So you are making a distinction between, say, rules from a kind of general regulatory perspective and private contractual obligations?

Mr EDWELL: Yes, very much so.

Ms GARDNER: Yes, that is a key point.

Mr EDWELL: In this case, to undertake a role—and we are always keen to take on a role to assist the state in whichever way the state thinks we can consistent with our skills base, so that is welcomed. But regulators have to have—because we have got to go back to these source documents. The challenge for the committee is, to give us a role, it would need to be pretty prescriptive. It would need to be very clearly drafted and we would need to have all the requisite powers, functions and information-gathering powers for us to do that role. Because the obligations are bespoke in different contracts at different times in different fashions between the state and these producers, there is no one rule. We would need to go back to that document, right? That is the big difference here. I just want to make you aware of, as distinct from what is a normal regulatory role, where it is very transparent what our role is—there are set rules, there is a market, there is no agitation or contestability over whether we have got the powers to do stuff. Unless the role in this space is carefully crafted, then it could be problematic.

[10.40 am]

Mr D.A.E. SCAIFE: Does this touch on the fact that your view then—I do not mean to put words in your mouth—is that really your enforcement options, just as they currently are with JTSI without any changes, are just arbitral proceedings under the various state agreements. It is not like you can invoke your pyramid of regulatory actions because it is not like you have a power to give a warning or issue a penalty.

Ms GARDNER: We have not got a role in the space at the moment.

Mr D.A.E. SCAIFE: I am saying hypothetically, if you were to be given a role.

The CHAIR: Maybe for clarity, what role do you have?

Mr EDWELL: So we have various roles in the gas space. I will just go through them very quickly. We have a compliance role, chair, under the Gas Services Information Rules, and that is to ensure that producers and AEMO are meeting an obligation under those rules, but that is primarily checking that they are providing information to the Gas Bulletin Board in a timely way and that AEMO is producing its GSOO in the way in which they should, right? That is pretty much what we are limited to what we do in the GSI space.

Secondly, we monitor and report on the compliance of gas distributors and retailers in terms of their licence requirements.

Thirdly, and importantly, we set the revenues for the monopoly gas pipelines. So, this covers GGP, the Dampier pipeline and ATCO. So, in five-year slots, we set their revenue, which ultimately ends up in the prices they charge for access to the pipe. In the context of that, we do look at demand and supply because that is an input into our revenue calculations.

Fourthly, we set AEMO's revenue in terms of what they can charge participants for undertaking their GSOO and gas market obligations. That is pretty much it. But, as Jenness has said, we do not have a role even indirectly, I think. Even indirectly we do not have a role in monitoring the gas reservation policy.

Mr D.A.E. SCAIFE: Can I then go to your current compliance approach on the responsibilities that you do have in relation to, say, the GSI rules? You received 13 reports of GSI rules noncompliance in your most recent reporting period, as I understand it. So, 10 related to market information requirements and three related to late payment of invoices. Then you have also conducted 33 investigations relating to the GSI rules and found a breach in each of those investigations.

Ms GARDNER: If I could also just ask, I am hearing-impaired so if you could you speak up? You are a little bit softer.

Mr D.A.E. SCAIFE: No problem. I grew up with a sister and father who are as well, so I should know better. I was just saying you received 13 reports of GSI rules noncompliance matters, 10 relating to market information requirements, three relating to late payment of invoices and then conducted 33 investigations and found a breach in each case. I understand that no further action was undertaken in relation to at least those 33 investigations, in I think all of those breaches that were either reported or identified, because they were deemed to be low impact. I am curious about what the boundaries of low impact mean from your perspective.

Mr EDWELL: That is a good question. Look, I think it is a matter of judgement, effectively. I might pass it on to Rajat, who is right on top of it.

Ms GARDNER: Leads in the area, yes.

Mr SARAWAT: They are mainly things like late payment of invoices or information provision. They are not necessarily in relation to materiality of the forecasts that they are supposed to put in. That is what we deemed as being low impact.

Mr D.A.E. SCAIFE: Can you give me an example of the type of information that, say, has not been supplied that is considered a breach but is not considered material?

Mr SARAWAT: I can give you an example of the late payment on one which I am not sure of —

Mr D.A.E. SCAIFE: I would rather one on the information requirements.

Ms A.E. KENT: The market information.

Mr SARAWAT: I will have to get back to you on that. I do not know exactly.

The CHAIR: We will note that.

Mr D.A.E. SCAIFE: Then a question following on from that is: are there repeat offenders within those breaches?

Mr SARAWAT: Again, I think there are, and there are likely to be because there is a number of breaches we are talking about.

Mr D.A.E. SCAIFE: That is ordinarily something you would take into account when it comes to that pyramid of compliance, would it not, whether you have someone who is a repeat offender?

Mr SARAWAT: Yes.

Mr D.A.E. SCAIFE: They may be engaging in a series of low-impact breaches, but collectively it suggests or perhaps might suggest at least a cavalier attitude to some of the requirements. Is there a reason why—the fact that there seem to be some repeat offenders in here—you have not chosen to escalate up the compliance pyramid?

Mr SARAWAT: They would be escalated if the reasons for the noncompliance were more repeated. If one minor noncompliance was “Our system failed on that day” and the second one was “Someone was on holidays who normally does this”, they are different reasons and they are all individually noncompliant.

Mr D.A.E. SCAIFE: Sure. They might be different reasons but if you have a particular party that is still repeatedly failing to comply even if it is for different reasons, as I say, that may still suggest an attitude that noncompliance is acceptable. If someone goes on leave, you can make sure that someone else in the organisation has responsibility. So, I guess I am interested in whether or not you drill into that level of detail about not just the reasons for the noncompliance but that attitude as well towards compliance.

Mr SARAWAT: Typically, it is whether it is material or not. Then the second step is why did it occur. If it is for a reason like human error or a system, what are you doing to make sure that it does not occur again? And then the next time around, if a breach has happened, we check back on what was the reason and whether that was corrected. Then if it turns out that it is something completely different, again non-material, we would not escalate it. But if it turns out that it was similar a cause of the breach then that, as you said, cumulatively becomes an issue.

Ms E.L. HAMILTON: What penalties would you apply then and in what circumstances? How many times? Is there a set formula, if you like, in terms of escalation?

Mr SARAWAT: There is no fixed formula. It depends on the breach itself and what the nature of the breach is. There is a category A under the rules for which we can apply penalties, but for most of it we can either only give warning letters or go to the review board.

Ms E.L. HAMILTON: What are the penalties? If you have the power to impose penalties, do you know what they are?

Mr SARAWAT: No, I am not sure of that. I can get back to you.

Mr D.A.E. SCAIFE: For a civil penalty, do you have to go to court for a civil penalty or do you have powers regulated to give system something like an infringement notice?

Mr SARAWAT: Only for category A.

Ms A.E. KENT: Would you know how many category A?

Ms E.L. HAMILTON: Can we get that information, do you think?

The CHAIR: Yes.

Mr D.A.E. SCAIFE: This is more a statement I just want to put to you to get your views on. There is research that suggests, kind of paradoxically, that the stronger the penalty at the top of the pyramid and the more likely that the regulator is to escalate to the top of the pyramid, the less likely you are to actually get low-level breaches. This is particularly something that John Braithwaite from ANU has worked on. Are you familiar with that view? Is that a philosophy you would adopt at the ERA?

[10.50 am]

Mr EDWELL: Yes. I think penalties are a pretty key tool for regulators to have. You may be aware that even though it is in a different market, we imposed the mother of all penalties on Synergy recently for breach of the market rules in the electricity space. As a matter of approach, what happens is that penalty powers are provided to us through legislative instruments, so it is very clear what our powers and functions are. In the electricity space, where we have much more of a forensic role than we do in gas, we have very clearly defined penalties. Indeed, we have very clear guidelines in terms of how we interpret those penalties. To pick up on your comment earlier, I do agree—it is actually documented in our electricity framework—that where we have a serial offender of a number of immaterial breaches but it is a serial offence, then we would simply call that out. In this case, which is what I said earlier, if the committee or the government deemed fit that we would have a role, there would need to be powers and functions which would include penalties, and then we would, as a matter of regulatory approach, put a guideline together about how we would interpret that penalty regime and apply it.

Mr D.A.E. SCAIFE: But then the problem—I guess this goes back to your point about giving you a penalty regime—is that that would require the state to override the state agreements to some extent, would it not, because the remedies for noncompliance with the agreements are, by and large, set out in them, which are arbitral remedies? I guess the question then becomes: How would we give you a compliance or a penal power in relation to those agreements? Do you have any thoughts about how that could be given to you or to JTSI or to any agency?

Mr EDWELL: Well, I guess you are looking at putting new policy over the top of legacy commercial or legal agreements. I would not want to provide any advice on that to the committee.

The CHAIR: One of the things that has been suggested to us is that where any of those six agreements are silent, there is a space for legislative responses. The key piece of information that we seem to get around this is that this is a policy and not law, which would be anathema to the way the ERA establishes itself and works on it. We will note that for the record here that there is that dichotomy, if you like. It does not necessarily mean that the state does not have a remedy to its future challenges.

I just want to touch on this before I forget it. If I read it right, the vast majority of your funding comes from industry.

Ms GARDNER: That is correct, yes—96 per cent.

The CHAIR: Yes, which is an interesting optic for a regulator to be funded by the very people they are regulating.

Ms GARDNER: No, that is pretty standard, particularly in the space that we fit. Most of the regulators around the country are similarly funded.

The CHAIR: So industry funded?

Ms GARDNER: Yes.

The CHAIR: Okay. So no pressure whatsoever then.

Mr D.A.E. SCAIFE: ASIC, for example, receives some fairly significant —

Ms GARDNER: I am talking about utility regulators.

Mr D.A.E. SCAIFE: Yes, I am just saying, just to buttress your point, that I am fairly certain that ASIC gets some fairly significant industry contributions.

Ms GARDNER: The requirements for funding are very standardised. They are transparent. They are simple. So there is a proportion depending upon the nature of the function, and then it is handed over in a set-and-forget kind of manner. So from the perspective of interference in our functions, we do not perceive that to be a problem.

Mr EDWELL: You could contemplate a regime which is like a “name and shame” regime, which is more like an auditing function rather than a normal regulatory compliance penalty-type function. In the absence of a gas market and given where you are with a whole bunch of contracts, it seems to me that a first initiative might be to simply have someone forensically look at the status quo. Then it could well be, with that information, that the government could move on to another set of solutions.

The CHAIR: So there is nothing stopping the government from amending the GBB information requirements, which would potentially identify supplied gas against nameplate. Is that what you are suggesting—not that in particular but that style of thing?

Mr EDWELL: I presume the government could do that but that would then sit against these commercial obligations. The interface between —

The CHAIR: There is a tension there.

Mr EDWELL: Yes, but I guess what I am saying, chair, is that there could be a role for somebody—us or someone else—with the requisite powers to simply have a look and get the information from these companies as to whether they have complied or not. It would need to provide a report to government about the status quo. Maybe that is something JTSI is doing, but if you wanted an independent regulatory perspective on that, then with the requisite powers, that is something we could usefully perform.

Ms GARDNER: We could be tasked with.

The CHAIR: Do you think the GSI would need to be amended for that?

Ms GARDNER: There would be a number of different ways in which you could ask us to take that function. You could do it through GSI or you could use our references function. Under our references function, you can ask us to do whatever the Treasurer sees fit. By utilisation of that function, you can get access to our information-gathering powers. The purpose of it, generally speaking, though is sort of a once-off investigation or review or publication rather than an ongoing, although we have

had some uses of the references function for an ongoing function; we had one in the water area for a while, where it was a recurring request.

The CHAIR: We have received repeated calls from evidence here around the GBB not being transparent enough around some of the inputs of it. We are pretty clear about what the suppliers do not want to put in and what they would like to put in. What they are happy or more comfortable with and, more importantly, what the customers would like. This is picking up your point. The GBB might well be a better vehicle for that. Do you think its frequency of publication would be an improvement to that?

Ms GARDNER: Having read some of the transcripts, I think it is a question of what is the problem you are trying to solve, to be perfectly honest. Is it the timely provision of gas into the market? Is it the public and transparent perception with respect to compliance with the state's domestic gas policy and its various instruments? Is it ensuring that there is an adequate supply of gas into the market? Is it the way in which the market itself is functioning? There are a number of different challenges.

The CHAIR: What if I said it was all of that?

Ms GARDNER: That is right. Exactly. Whilst we are very useful, I am not sure that we could solve all of that, but we may be of assistance with some elements of it, depending upon the way in which you crafted the task. Where we are useful is analytical skills. We are transparent, we are independent and we have information-gathering powers where they are enacted by reference to one of our functions under our act. We cannot just be tasked with a job that is outside of our act, but if you are using our act, then, yes, you can get access to our information-gathering, which is helpful.

The CHAIR: Yes, and as I say, your act is quite useful.

Ms GARDNER: Where we are getting careful is with respect to the notion of putting our regulatory approach to a space where you have a range of individual commercial contracts between state and producer, and applying a regulatory function over that. That would be more challenging from our perspective.

The CHAIR: But the chair's point about an auditing function, if you like, call it whatever you like.

Ms GARDNER: A monitoring review, an information space.

The CHAIR: Yes, using your existing powers.

Ms GARDNER: Yes.

Ms E.L. HAMILTON: Is there any other aspect of the role that you play already where you would be doing work if you were tasked with that regulatory role or is that something outside of the remit of any current work that you are involved in?

Ms GARDNER: It is outside what we currently do, which is part of the reason for looking for opportunities to make suggestions that would be helpful.

Mr EDWELL: Normally our powers are such that we have to relate them to a particular function. We have even had situations where we have accessed information for a particular function and it is sitting in our database but we cannot use that information for another function.

Ms GARDNER: Chinese walls.

Mr EDWELL: So managing data for us is a key. People on both sides of the table need to have confidence that the regulator does manage data appropriately.

The CHAIR: Yes, of course. So the more simplistic one would be the grain freight rail assessments. You would take information from the operator, from the users. Is that the sort of thing you are talking about—data separation?

[11.00 am]

Mr EDWELL: Yes, so, well, for example, we could—electricity is probably a good example. Rajat, do you want to comment on this, actually give an example about how we quarantine our data from one function to another?

Ms GARDNER: Where we request it under one power for a purpose, it has to be held for that purpose. We cannot just parcel it up and hand it around the office depending upon what other problems it might solve, just in a non-legal sense, but that is actually what we need to be very careful about, because we are given a specific information-gathering power, we utilise that specific information-gathering power, we collect a parcel of information to solve a particular problem, and that is it. It has to sit.

Mr D.A.E. SCAIFE: Do you have to have controls within the organisation as well?

Ms GARDNER: Yes. Too right.

Mr D.A.E. SCAIFE: So, like, law firms, I know we often have—a particular team works on a particular file —

Ms GARDNER: Yes.

Mr D.A.E. SCAIFE: — does not work on another file.

Ms GARDNER: That is correct, and it is part of the way in which we are structured; it is part of the way—and who gets access to what information. So it is —

The CHAIR: The probity arrangements around that, yes.

Ms GARDNER: Yes.

The CHAIR: Sorry, Rajat, did you have something you wanted to add to that?

Mr SARAWAT: Well, I was just going to give you an example of how we ring-fence that data that we get, so we may—we have a monitoring and compliance function. We have functions to make some regulatory decisions such as price limits, and I am using the electricity example here, or what is called the benchmark reserve capacity prices, so these are decisions that we have to make, determinations that we have to make, and to do that, we may collect data for performing one of these functions, and if—that data we get for that purpose, that is quarantined, and we do not use that data for our monitoring purposes. And we use—we have a completely different set of data and requests that we get in different form, perhaps different data, that we use for monitoring and compliance purposes. So that is an example of how we ring-fence that.

The CHAIR: So if ERA were to have an expanded role in this space around domestic gas policy, do you feel that you would have the instruments there able to do that if you were directed by government?

Mr EDWELL: We certainly have the culture and the systems in the approach to quarantine data and make sure it is housed and utilised appropriately, so we could give the market confidence that, you know, that would work. We would need to have, though—the key is to have the powers and functions to access the data in the first place.

The CHAIR: Do you, in your view—and I know it is just right now maybe an underdeveloped view. Do you think you need legislation or just referral?

Mr EDWELL: Well, I think what Jenness was suggesting was if there is a level of urgency to you getting across this problem, you could use our reference function. A reference function basically works such as the government says, “We’ve got a problem, we want you, the ERA, to look at it”, and once that terms of reference fits under our reference function, we have general—quite powerful information-gathering powers. So if, in this case, for example, the government was to give us a reference to do something in terms of looking at the compliance in terms of gas reservation obligations, and that reference was under our reference powers in the ERA act, those powers and functions to enable us to go and get that information are already there. You would not have to do any legislation. If you are thinking something more broadly, outside our reference function, though, then that is more problematic.

Mr D.A.E. SCAIFE: Do your information-gathering powers extend to—would they extend to order and production of information that is, say, deemed confidential under a state agreement? It would?

Ms E.L. HAMILTON: And then, further to that, if you were going to go down that scenario that we are talking around now, around the additional regulatory requirement, would you need any additional resources on top of what you currently have?

Ms GARDNER: Depending upon—when we undertake a reference, so at the moment we do not have a reference, and as a consequence, we do not have any staff for the function. As and when a reference is requested, we look at the nature of what is requested, the size and scope of the task, the timing of it, and go back and have a conversation with Treasury with respect to the allocation of resources at that particular point, so we do add people to enable us to undertake the function. We also leverage off the skill set that we have in-house, so whilst we have a sort of pop-up kind of notion for undertaking a reference, we do link to the fact that we have a bunch of quite serious expertise, and we have not, to my knowledge, been given a reference so far that is completely outside of our existing skill set, so we have not been asked to do something artistic, for example, which would not necessarily be our strength. We normally get something that is associated with economic analysis.

The CHAIR: But then you would also then have—in that resourcing, picking up what Emily is saying, you would want to second in some expertise too. DMIRS, for example.

Ms GARDNER: Second or just appoint, yes.

Mr EDWELL: Potentially. I mean, for example, we can second in someone from a department that had —

Ms GARDNER: Skills.

Mr EDWELL: — that had a background in this, but once they are seconded to that task, they work for us, not the department.

Can I just add to that: what might be useful and what has happened when we have had references in the past, albeit we have not had one recently, is we actually work with the government or the agency in terms of crafting what that reference ought to be, because, at the end of the day, we have got to make it work. So the way this could work is if there is a piece of work that the government contemplates we could do, the actual definition of what that is, in terms of a reference, we could assist in terms of drafting that up, and that way, it is workable. You know, we could consider the issues about, well, how does it fit with commercial contracts, you know, what are the powers and functions et cetera, what are the time lines, what is do-able, what are the resourcing —

Mr D.A.E. SCAIFE: This I think perhaps goes to what my next question was going to be, which is I wanted to ask whether or not you have any existing functions where your role is effectively advisory, so, rather than you being, say, the ultimate decision-maker or regulator, but where you do the auditing and the consideration, then you provide advice to another agency or another regulator

who then acts on that advice. Do you have a function like that, or does it arise under potentially the terms of a reference to you?

Ms GARDNER: It varies, depending upon the area. I might hand over—do you want to have a—yes,

Mr SARAWAT: Yes, okay. So, again, I am going to use electricity in Australia as an example. So we have a role where when Synergy and Verve were merged, there was EGRC regulations, Electricity Generation and Retail Corporation regulations put out, which gave us the function of reviewing whether that ring-fencing arrangement between Synergy's wholesale and generation and retail units, were they effective or not, such that the market would have been as effective, and that was—there is no determination made there. We just do a review, provide some recommendations to the minister, and the minister then asked to table this.

Mr D.A.E. SCAIFE: So that is a capacity that you are familiar with.

Mr SARAWAT: Yes.

Ms GARDNER: Yes.

Mr D.A.E. SCAIFE: In other contexts, yes.

The CHAIR: Just going back to your information collection powers, I am sure there are limits to it somewhere.

Ms GARDNER: Yes. Yes.

The CHAIR: Can you seek information in relation to contracting between two private entities, so a gas producer and a buyer, and even an offshore buyer?

Mr EDWELL: I would say yes, and, for example, in electricity, because—this is where we have —

The CHAIR: It is topical down your way!

Mr EDWELL: We have got a full-on regulatory role in electricity. We have very recently considered and looked at contracts we have got in our database between—commercially sensitive contracts between an off taker and a supplier. So the answer is yes, under our electricity powers and functions, and I would have thought—and it is something we would need to give consideration to—that under our powers and functions in the references area, we would have that option.

Ms GARDNER: Yes.

Mr EDWELL: Which is why our reference functions are quite useful.

Mr SARAWAT: Because those powers are under the ERA act rather than the electricity or industry.

Ms GARDNER: Yes, that is right.

Mr EDWELL: Yes.

Ms GARDNER: Yes, so under the ERA act, we can require any person to give the authority the information or a copy of a document that we think is going to be relevant to the performance of a function, so —

Mr D.A.E. SCAIFE: Yes, so there are —

The CHAIR: So any person doing business in Western Australia?

Ms GARDNER: Yes.

The CHAIR: But some of these people are international businesses, the producers, I am talking about now.

Ms GARDNER: That would be a really entertaining question for our legal team.

The CHAIR: I reckon you would get about 10 different pieces of advice, too!

Mr D.A.E. SCAIFE: Can I just ask about—I think we have been through this on, like, a general level, but I am interested in seeing if we can drill down, and I apologise if I am repeating anything here. We have had submissions about there being shortcomings in the Gas Bulletin Board data, and I am just wondering if I can run you through some examples of what might involve noncompliance with the GSI rules, and whether or not—you can let me know whether or not this type of scenario would involve a breach of the GSI rules that might involve the ERA, or if it just either falls outside your remit or it is not a breach. A producer not disclosing their gas volumes supplied as part of the Gas Bulletin Board. Is that a potential breach of the GSI rules?

[11.10 am]

Mr SARAWAT: It could potentially be. I think non-disclosure would mean that the nameplate capacity would sit there, and whether that nameplate capacity sitting there is a breach or no, we do not know. It could potentially be.

Mr D.A.E. SCAIFE: If the producer provided nameplate capacity instead of actual capacity, it could potentially be a breach.

Mr SARAWAT: It could potentially.

Mr D.A.E. SCAIFE: What about producers not updating the Gas Bulletin Board for maintenance events in domgas and LNG plants?

Mr SARAWAT: Again, that one I am not sure of because I am not sure what the requirements are if it is not available.

Mr D.A.E. SCAIFE: What about if there is not regular publishing of the total amount of gas in storage. Is that something that comes —

Mr SARAWAT: Again, that one could potentially be because they are required to, but it depends on the circumstances.

Mr D.A.E. SCAIFE: Yes, thank you.

The CHAIR: I think we are pretty much there. Is there anything you think we should be talking about that you wanted to get to or we did not get to?

Mr EDWELL: I do not think so.

Ms GARDNER: I think you have covered it off. I might just reiterate Steve's point that should you wish to task us with something, or should the government wish to task us with something, we do work best where we have had an opportunity to provide some input into the parameters of it.

The CHAIR: Never ask a question you do not know the answer to?

Ms GARDNER: Pretty much, particularly when you are asking us to undertake something with the kind of information-gathering powers we have. We are pretty careful about ensuring that we are clear on the parameters of what it is that it is deliverable and that we are careful.

The CHAIR: Yes, picking up on that, in a reference, or the involvement of the ERA in a more finely grained way than it does now, you could not just look at supply at meeting the DMO; you have to look at pipeline, for example, and capacity.

Ms GARDNER: It is that whole notion of definition: (a) what is your problem, and (b) what exactly do you want us to do? Just being particularly specific is a better outcome in terms of getting what you want from any work that we are undertaking in the space.

The CHAIR: Just dwelling on that, the pipeline aspect of it, when we look at future demand for gas, it is not getting less, it is getting more, both as a feedstock and for energy. Do you focus on the pipeline at all?

Ms GARDNER: Yes. Do you want to comment on the pipeline?

Ms O'CONNOR: Yes, we do. When we conduct an access arrangement, we look at the future supply and demand for gas and whether or not the gas pipeline has enough capacity to be able to deliver to that, and if it does not, then any proposed expenditure to expand that capacity would form part of our access arrangement decision.

The CHAIR: Have you looked at other jurisdictions? The east coast has a much more developed network. Does that instruct you in any way?

Ms O'CONNOR: Not particularly. We are not convinced that pipeline capacity will be a barrier here. Although some pipelines are fully contracted, most shippers do not take all of their contracted amount, so there is scope, or spare capacity for want of a better word, and there are technical changes that can be made to the pipeline, like looping and adding more compression that can push more gas through if required to.

The CHAIR: And storage—is that something that occupies your thinking at all?

Ms O'CONNOR: We do, in as much as if there is some investment proposal in an access arrangement to maybe connect to storage or something like that, then we would have to consider it, but storage itself is not regulated by us.

Mr EDWELL: Outside our access work—we do that in five-year stints, so it is a full-on, forensic look at demand and supply, test what the producer says their demand and supply position is. We test that with the other side and we come to a view, because at the end of the day we have got to give them the revenue, right? But that is in five-year slabs. I think you are contemplating something here that is more regular. We do keep our eye on the gas market, for a number of reasons. One reason is that gas is a major fuel input into electricity generation. As we go through, of course, the transformation to decarbonise the power system, gas will be important, at least for a period of time. Because we monitor what prices generators, and gas generators included, are offering their generation into the market at, the fuel cost is very important. We need to have a view on either the contracted price in a long-term contract, or in the event that someone needs to top-up or we need to look at the opportunity cost of gas, which is an economic term that we sometimes have to do that, we then always refer to what people could sell that for in a spot market. We need to have a view about demand and supply, positioning the gas market for a bunch of reasons, mainly in the context of our electricity rule monitoring. We are not agnostic; we have a view about the gas market but we have not got a specific function in the context of your brief.

Ms M. BEARD: Do you have a view on what the greatest threat to energy security in WA might be?

Mr EDWELL: Ooh!

Ms M. BEARD: Sorry—just throwing it out there!

Mr EDWELL: I think the key is going to be making sure we have the timely entry of new generation capacity to replace coal. The government has a public position in terms of closing down at least Synergy's coal plant. The economics of coal, whether the government did that or not, is basically fluffy—fluffy at best. Coal is out, so the trick is that we need to have timely generation coming in, part of which needs to be firm generation, and we also need to have generation which can be available when the intermittent generation is not available. For example, just as a point, there was a day in late June this year—I am not precise on the numbers—when 3 000 megawatts of renewable

capacity was on the system, but we had about 20 megawatts available, as distinct from a day, which had occurred just recently. That earlier day, I might say, was a very cold day. People were using their energy. We had no wind and low solar irradiance, so we had a problem, and we were relying then on coal and gas to fill that void for quite a period of time, as distinct from recently where we had lots of sun and lots of wind and the intermittents were pumping out generation and the price was negative. The problem we have got as we go through the transformation of these big instantaneous swings between having generation and not having generation, and they can happen in an instant —

The CHAIR: Coal does not fire up as quick.

Mr EDWELL: Coal does not fire up as quick and, ultimately, will not be there, chair. That is the biggest risk.

The CHAIR: So gas is your friend.

Ms M. BEARD: Gas is important.

The CHAIR: Do you have a perspective on AEMO's forecasting? We are all talking about a pinch point, 2027 through to 2035—pick a time—and then beyond. Let us call it the short and long-term supply side of gas. Are you confident with the AEMO forecasting?

Mr EDWELL: I think they go through a fairly robust process.

Mr SARAWAT: Forecasting is a very dangerous art. AEMO goes through forecasting assumptions and explanations. There is no reason to be not confident now. Double negatives make sense.

[11.20 am]

The CHAIR: Clearly, there is a pinch, otherwise this committee would not be doing what it is doing, and the government is internally looking at it, you understand, as well. It occupies a fair amount of time now. It seems to me there is just a volume challenge for gas. Let us focus on gas. There is a volume problem coming into the market and now you look to Scarborough and then Perdaman turned up and now it is not so much Scarborough. People are looking to the domestic gas obligations of the existing legacy holders of the DMOs. Some are doing well and some not so well, for a range of different reasons. Then everybody turns their eyes to the onshore option. DMO only, or domestic only, producers, and there seems to be some sort of capital—they would tell us there is a capital constraint for them to fully utilise their potential fields, which constrains volume. It has been put to us that if they were allowed to export, then more capital would go into the exploitation of their reserves. Is that something any of you thought about or contemplated? It is probably more back to that volume question. How do we get more volume into the market?

Mr EDWELL: Yes, well, the investment settings have got to be right, but I think it is imperative, in my view, as we go through the transformation—which will go beyond 2030, chair—that the state has adequate supplies of gas. I know gas is an emitter of carbon, but much less so than coal, and there is no technology out there at the moment, other than a whole bunch of five-star batteries, which can provide the firmness of the generation over the period of time that we might need it as we go through the transformation. So, to risk a demand–supply deficit for gas as we go through the transformation is a risk for the electricity industry, as with other industries.

Mr D.A.E. SCAIFE: I am being a bit indulgent here. I am asking you to come educate me. When it comes to finding that firming capacity for the grid, I understand their options are essentially batteries or pumped hydro, which is really just a battery in a different way. Are there any other options for providing that firming power?

Mr EDWELL: Batteries is the most —

Mr SARAWAT: There are some storage options, but these have not really been feasible as yet, that we have seen. There is a lot of work around the world, going around to see if we have longer duration, which is what is required, rather than just a driver for our battery. You know, there are all these gravity-fed storage options and a few others. But like I said, nothing that is majorly commercially feasible just yet.

The CHAIR: That is the challenge. It is a timing issue as well. You talk about adequacy of supply into the future. We talk about the reserves and the field lives and those sort of things. They all have to be put into this mix. You talk about how your discoverable amount is this, and your exploitable amount is that, but when would you bring it to market? This is why I am talking about the investment settings. When are they right? It is not something that AEMO or anybody that I can determine across any of the agencies is actually looking at the potential—although maybe JTSI is—about when those future fields might come on. The imports post 2030, 2035, out to the 2040s. It is something that if you cannot do then, you have got to do it now. A regulatory environment that meets compliance of existing arrangements—that would also be important to determine, in my view, to assist government in identifying future compliance, if that makes sense. Is that something that you would see as being a viable contribution?

Mr EDWELL: It seems to me that we need to utilise all the existing sources and contracts to make sure that that product is available before we embark on new projects, because the issue with the decarbonised system net zero by 2050 will be there will be less gas as well. So, if you are looking into long-term gas contracts which go a long, long time, you know, is that —

Ms GARDNER: Forty years. That kind of thing.

Mr EDWELL: Yes, 40-year gas contracts, right? So, the problem we have got is we need gas for a period of time. There will be a period of time in the future when we do not need gas when, you know, battery technology gets cheaper. There are other technologies coming in. So, that is one of the challenges here. How can we be agile and flexible and incentivise the development of new gas to the extent we need it? I certainly think that the government is doing the right thing by trying to look at the efficient utilisation of all the existing arrangements it has got in place.

The CHAIR: It is more than just electricity we are talking about. Future gas use —

Mr EDWELL: Indeed.

The CHAIR: — we are talking as a feedstock, and growing that downstream utilisation of it as well.

Ms M. BEARD: I was just saying it comes back—it is a comment more than anything, I guess—to the importance of getting accurate information from those people as to what they have, making sure they are reporting accurately so they do know what exists.

Ms GARDNER: Yes.

Ms M. BEARD: Is that better to say?

Mr EDWELL: Gas is a very important commodity, and commodity markets function well when there is adequate information about what —

Ms M. BEARD: Clarity.

Mr EDWELL: — sellers have got available, and when and where and at what price, and what buyers need when and where and at what price. That is when markets—particularly commodity markets—work well, and the problem we have here in WA is we have not got a proper functioning commodity market. I guess what we are saying to you is in order to morph the bulletin board—and you can certainly enhance it. But in order to morph that into a market structure where you have, you know, gas providers trading in a visible market—like, say, in an electricity wholesale market—it is going to

take a lot of time. It is going to take a whole bunch of rules. So, it seems to me that the first port of call is to pick off low-hanging fruit in terms of domestic gas supply adherence—obligation adherence—and look at a form of how do we make that work better. We are happy to help with the requisite powers and functions and scoping—help the government in that space.

The CHAIR: Work with what you have got. I think we have probably held you long enough, unless anything burning has just popped up. Lots of shaking of heads. Anything you think, finally, that we wanted? Okay. You can always come back if you want. I will close now, if I can. I will proceed to close today's hearing. Thank you very much for your evidence before the committee today. A transcript of this hearing will be emailed to you for correction of minor errors. Any such corrections must be made and the transcript returned within 10 working days of the date of the email attached to the transcript. If the transcript is not returned within this period, it will be deemed to be correct. New material cannot be added via these corrections, and the sense of your evidence cannot be altered. Should you wish to provide additional information or elaborate on particular points, please include a supplementary submission for the committee's consideration when you return your corrected transcript of evidence. Thank you.

Ms GARDNER: Thank you very much.

Mr EDWELL: Thank you.

Hearing concluded at 11.26 am
