

# AEMO COMPLIANCE NOTIFICATION

PREPARED BY: Gas Retail Market Development

VERSION: 1

RELEASE DATE: Tuesday 23 August 2011

## Change of user on move in transactions

### Introduction

This document outlines an apparent breach of clause 6.4(2) of the NSW/ACT Gas Retail Market Procedures (NSW/ACT) (Procedures) in relation to warranties made in relation to the lodgement of Change of User on Move Ins (COU on MI) by Australian Power and Gas (APG) in the NSW-Wilton network section.

### Circumstances of Apparent Breach

Clause 6.3 of the Procedures defines when a COU on MI occurs. COU on MI concerns the situation where a customer changes premises but retains their existing user.

Clause 6.4(1) of the Procedures states that when a user lodges a COU transaction where it specifies it is a move-in, that incoming user “represents and warrants to AEMO that the change of user transaction relates to a move-in”. Furthermore, clause 6.4(2) notes that for each day the COU on MI transaction is open, the user is said to warrant that it is a move-in.

In early May 2011 Jemena Gas Networks informed AEMO that approximately 140 COU on MI transactions were lodged to their system by APG over April/May 2011.

APG is a relatively new participant in the NSW-ACT gas retail market. It appears that the transactions lodged by APG were lodged not as intended and should have been processed as standard change of user transactions rather than as COU on MI. Therefore the warranty given that the transaction was a move-in under clause 6.4 of the Procedures was not provided in good faith. There appears to be a breach of clause 6.4(2).

### AEMO Decision: Apparent Breach is Non Material

Applying the criteria outlined in the AEMO Compliance Process (see Attachment A) AEMO regards the apparent breach of clause 6.4(2) of the Procedures by APG to be non material for the following reasons:

#### Non materiality

Criterion 1: significant financial impact

The apparent breach is unlikely to cause significant financial impact on market participants as these transactions related to the lodging party.

Criterion 2: significant market system impact

There were no market system impacts on either the market participants, AEMO, including the Gas Retail Market Business System; and AEMO stakeholders that AEMO is aware of.

Criterion 3: significant operational impact

While there have been some operational impacts on the network operator, as they are to manually process a large number of COU on MI transactions [that were lodged incorrectly], AEMO has advised that they can continue to process the transactions and that the timing requirements for such transactions to be completed are relaxed.

Criterion 4: Any other factors

This is the first breach of this nature by the participant, and arose as a result of lack of understanding of clause 6.4(2) arising from being a relatively new entrant to the market.

## ATTACHMENT A: AEMO COMPLIANCE PROCESS

### Criteria AEMO will use in considering whether

- i. An incident is material; and**
- ii. If the incident is material whether it should be referred to AER.**

#### Criteria to consider in assessing materiality of apparent breach

The following criteria will be used by AEMO in determining whether an apparent breach is material in nature:

1. Whether or not the apparent breach is likely to cause significant financial impact on either of the following:
  - a. Market Participants;
  - b. AEMO, including the Gas Retail Market Business System;
  - c. End use customers;
  - d. AEMO stakeholders.
2. Whether or not the apparent breach is likely to cause significant market system impact on either of the following:
  - a. Market Participants;
  - b. AEMO; including the Gas Retail Market Business System;
  - c. AEMO stakeholders.
3. Whether or not the apparent breach is likely to use significant operational impact on either of the following:
  - a. Market Participants;
  - b. AEMO; including the Gas Retail Market Business System;
  - c. End use customers;
  - d. AEMO stakeholders.
4. Any other factors considered relevant by AEMO.

#### Criteria to consider in referring a material apparent breach to AER

The checklist is the process AEMO will use to determine whether an apparent breach, if considered material, should be referred to the AER.

In determining whether or not a material apparent breach warrants referral to the AER, AEMO may have regard to the following matters:

1. Whether the complaint is frivolous or vexatious.
2. Whether the apparent breach has resulted in any costs being borne by AEMO (and therefore the market as a whole).

3. Whether or not the apparent breach appears to have arisen as a result of problems with the design/operation of the Procedures.
4. Whether the apparent breach by a Market Participant was caused by the conduct of AEMO.
5. Whether the apparent breach is an isolated event, or indicates a systemic problem with compliance.
6. Whether the apparent breach appears to have been made intentionally or maliciously.
7. Whether remedial action was taken by the Market Participant following discovery of the breach.
8. Whether the apparent breach has a potential anti-competitive effect.
9. Any other matters considered relevant by the AEMO.

## National Gas Law

(From National Gas (South Australia) Act 2008—1.7.2009 – note individuals are responsible for using the latest version of the Procedures/legislation)

### 91MB—Compliance with Retail Market Procedures

(1) AEMO and each person to whom the Retail Market Procedures are applicable must comply with the Procedures.

(2) However, if there is an inconsistency between an applicable access arrangement and the Retail Market Procedures, a person is, to the extent of the inconsistency, not required to comply with the Procedures.

(3) If AEMO has reasonable grounds to suspect a breach of the Retail Market Procedures, it must, after making such inquiries and investigation as it considers appropriate, make a decision as to whether the breach is a material breach.

(4) If AEMO decides the breach is material, AEMO—

(a) must publish the decision and the reasons for it on its website; and

(b) may direct the person suspected of the breach to rectify it or to take specified measures to ensure future compliance (or both); and

(c) may refer the breach to the AER.

(5) A direction by AEMO under subsection (4)(b) must—

(a) specify the breach; and

(b) specify the date by which the direction is to be complied with; and

(c) be addressed to, and given to, the person suspected of the breach.

(6) A person to whom a direction is given under subsection (4)(b) must comply with the direction.

(7) AEMO must give a copy of its decision under subsection (3), its reasons for the decision and (if relevant) any direction under subsection (4)(b) to the AER.

(8) If AEMO decides the breach is not material, AEMO must—

(a) publish the decision and the reasons for it on its website; and

(b) give a copy of the decision and the reasons for it to the AER.

Note—

AEMO may provide the AER with relevant information (including protected information) related to a suspected breach of the Procedures. (For disclosure of protected information, see section 91GC(2)(b).)