

AEMO COMPLIANCE NOTIFICATION

PREPARED BY: Gas Retail Market Development

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Retail Market Participation

Introduction

This document outlines apparent breaches of the National Gas Law (NGL) and the Retail Market Procedures (NSW and ACT) (RMP) by Visy Pulp and Paper Pty Ltd (Visy) concerning their participation in the NSW and ACT retail gas market. AEMO considers that Visy has committed apparent breaches of:

- (a) section 91LB(1) of the NGL which prohibits participation in a retail gas market unless registered or exempted by AEMO
- (b) clause 45.2 of the RMP which requires participants to use AEMO's Gas Retail Market Business System (GRMBS) in accordance with the Interface Control Document (ICD)

Circumstances of Apparent Breach

Background

Visy operates a pulp and paper facility in Tumut NSW, the facility is a large user of gas. Prior to 2007 gas was supplied to the site by a retailer under the retail market managed by the Gas Market Company (GMC) a predecessor to AEMO. In 2007 the arrangement between Visy and its retailer ended and Visy made its own arrangements to purchase gas and transport it to its site. In 2007 Visy entered into correspondence with the GMC concerning its need to participate in the NSW and ACT retail gas market. For an unknown reason these discussions did not result in Visy becoming a participant in the market or being granted an exemption. As a result the retail market gas allocation associated with the site continued to be assigned to the original retailer.

In September 2011 a participant contacted AEMO indicating that they believed they had been incorrectly assigned responsibility for Visy's site and that they had ceased to supply gas to the site in 2007. The participant who had been removing the Visy gas allocations from their contract settlements since 2007 were now concerned that this could be an issue as they were updating their market systems and did not want the manual handling of the allocation to continue.

Section 91LB(1)

Section 91LB(1) of the NGL states:

- (1) A person must not participate in a regulated retail gas market in a registrable capacity unless registered (or exempted from registration) in accordance with the Rules.*

The registrable capacities are listed in Part 15A of the National Gas Rules (NGR), the relevant capacity is set out in rule 135AB(c):

- (c) Registrable capacity: self contracting user*

A user or non- scheme pipeline user that:

- (i) is a party to a contract with a service provider for the provision of haulage services in New South Wales or the Australian Capital Territory (or both); and*
- (ii) is an end user; and*
- (iii) is not required to hold a supplier's authorisation under the Gas Supply Act 1996 of New South Wales or a corresponding licence, approval or authorisation under the Utilities Act 2000 of the Australian Capital Territory.*

From the point that Visy ceased to be supplied by a retailer since 2007 and has been a party to a contract for haulage services in NSW with the operator of the Tumut Network Section and has

been an end user of gas. At no time has Visy been required to hold a suppliers authorisation as they do not supply gas to customers in NSW.

Rule 135AB(c) commenced on 1 July 2009, once Visy was made aware of the requirement, by AEMO, it took steps to rectify the situation and submitted a registration application on 10 January 2012 and was registered on 7 February 2012. Visy was not registered (or exempt) between 1 July 2009 and 6 February 2012.

Clause 45.2

Clause 45.2 of the RMP states:

45.2 Interface Control Document

- (1) AEMO must publish and amend from time to time in accordance with the ordinary process for making Procedures under the Rules a document which sets out the technical steps that the market participant must take in order to supply data to, or interact with, the GRMBS ("Interface Control Document").*
- (2) A market participant must connect and use the GRMBS in accordance with the version of the Interface Control Document supplied to the market participant by or on behalf of AEMO from time to time.*
- (3) A market participant must supply appropriate and correct customer and other data to the GRMBS in accordance with the Interface Control Document and any reasonable direction by AEMO or a contractor.*
- (4) In the event of any inconsistency between the provisions of these Procedures and the Interface Control Document, the inconsistency is to be resolved by giving precedence to these Procedures.*
- (5) Until such time as AEMO amends the Interface Control Document under clause 45.2, the Interface Control Document established by the former gas retailer market operator in NSW and ACT is taken to be the Interface Control Document for the purposes of these Procedures.*

Clause 45.2 requires a participant to be able to connect to the GRMBS and to transmit data using it. Since becoming a participant Visy has not been able to do this, and it has indicated that it does not see a need to access the market system. AEMO has been aware of Visy's inability to communicate with the GRMBS and has indicated that AEMO proposes to amend the RMP to allow it to exempt participants, such as self contracting users, from the need to communicate with the GRMBS. AEMO has indicated that there is no need for Visy to be able to communicate with the GRMBS prior to this change being made, as it is highly likely that, as a self contracting user in a no balancing network section, they will qualify for an exemption and there is no compelling need for them to incur the costs of communicating with the GRMBS.

AEMO Decision: Apparent Breach is Not Material

AEMO is required to assess the materiality of breaches of the RMP and if it determines that the breach is material may direct a person suspected of a breach to take remedial action. AEMO is not required to undertake this assessment for breaches of the NGL and NGR but AEMO has provided some commentary on the impact of the apparent breach of section 91LB(1).

Section 91LB(1)

Under the NGL registration is generally a precondition for participating in a market and is a trigger for many of the obligations under the NGR and RMP, failure to register is therefore potentially a significant breach. However, in Visy's case the failure to register has had a very limited impact.

Visy's site is located in a no balancing network section where AEMO performs very few functions. As there are no balancing or wholesale market arrangements in Tumut, Visy's failure to register has no financial impact and has had no material impact on AEMO or participants market systems. The failure to register has had a small operational impact on the previous retailer who has continued to receive metering data for Visy's site. It should be noted that Visy has actively undertaken steps to become registered since being notified of the issue.

Clause 45.2

The GRMBS is central to the operation of the NSW and ACT retail market. Participants interact with it so they can send and receive communications within the market, which allow the market to function. However, as a self contracting user in a no balancing network section, Visy has very little need to interact with the GRMBS.

Materiality

Criterion 1: financial impact

Visy's site is located in a no balancing network areas without a regulated wholesale market as a result their failure to communicate with the GRMBS has no financial impact.

Criterion 2 and 3: system and operational impact

Visy has little need to interact with the GRMBS so there is little impact as a result of their failure to do so. The main impact is that the metering data for their site is not provided to them through GRMBS. This has had no impact on Visy's operation as they receive this data directly from the network operator under their network haulage agreement.

Criterion 4: Any other factors

AEMO is proposing to amend the RMP to permit it to grant exemption from the requirements of clause 45.2. Visy is highly likely to qualify for such an exemption at which point they would cease to be in breach.

Assessment:

Visy's failure to comply with clause 45.2 has had no significant impact on AEMO or other participants therefore AEMO considers that it is not material. AEMO anticipates that this breach will continue until amendments are made to the RMP to allow AEMO to exempt a participant from the requirements of clause 45.2.

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

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).)