

IMPACT IMPLEMENTATION REPORT (IIR)

Summary Section

Issue Number	IN004/19W		
Impacted Jurisdiction(s)	Western Australia		
Proponent	Danny McGowan/Nandu Datar	Company	AEMO
Affected Gas Market(s)	<ul style="list-style-type: none"> Retail 	Consultation process (Ordinary or Expedited)	Ordinary
Industry Consultative forum(s) used	Gas Retail Consultative Forum (GRCF)	Date Industry Consultative forum(s) consultation concluded	Friday, 22 March 2019
Short Description of change(s)	Minor changes to the Western Australian Gas Retail Market Agreement (WAGRMA)		
Procedure(s) or Documentation impacted	WAGRMA		
Summary of the change(s)	<p>The proposed change involves minor amendments to sub clauses 5.4, 5.5 and clause 11 of the WAGRMA.</p> <p>Refer to Attachment A for the marked-up version of the relevant sub clauses of the WAGRMA.</p> <p>This IIR has been prepared in accordance with clause 382 of the RMP and is raised for consideration by gas retail market participants. As per clause 383(1)(b) AEMO considers that an ordinary process is applicable and seeks submissions on the proposed changes.</p>		
I&IR Prepared By	Nandu Datar	Approved By	Michelle Norris
Date I&IR published	10 May 2019	Date Consultation under clause 383 or 384 concludes	7 June 2019



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information**



IMPACT & IMPLEMENTATION REPORT

CRITICAL EXAMINATION OF THE PROPOSAL

1. DESCRIPTION OF AND REASONS FOR CHANGES

Reasons why the proposed changes are needed:

Prior to October 2016, the Western Australian (WA) retail gas market scheme was administered by Retail Energy Market Company (REMCo). The REMCo Constitution was the main agreement between gas market Participants. This agreement is required under section 11ZOF(1)(a) of the Energy Coordination Act 1994.

In 2016 REMCo submitted a scheme change proposal to the Economic Regulation Authority (ERA) proposing to transition responsibility for operation of the WA gas retail market scheme from REMCo to the Australian Energy Market Operator (AEMO). That scheme change proposal included several changes to scheme artefacts including introduction of the WA Gas Retail Market Agreement (WAGRMA) to replace the REMCo Constitution. Click [here](#) to view the WAGRMA.

In its determination to approve the scheme changes, ERA noted that the WAGRMA was a suitable replacement for the REMCo Constitution. Click [here](#) to review ERA determination.

Under the current version of the WAGRMA, a new gas market Participant may apply to become a party to the WAGRMA by submitting an Admission Note in accordance with clause 5.2 of the WAGRMA. AEMO must accept an Admission Notice if the applicant meets the eligibility criteria listed in clause 5.1 of the WAGRMA. Under clause 5.5 of the WAGRMA, approval of the addition of a new party to the WAGRMA is subject to approval of the ERA.

In correspondence with AEMO, ERA has indicated that it considers that the requirement for it to make a determination to either approve or reject membership of a new Participant is costly and redundant, given the requirement for AEMO to assess new participants in the WAGRMA (clauses 5.1 and 5.2). The ERA also notes that there is no requirement for the ERA to approve membership of the scheme in the *Energy Coordination Act 1994*.

ERA has asked AEMO run a procedure change consultation (Chapter 9 of the Retail Market Procedures) to remove the requirement in clause 5.5 of the WARGMA for the ERA to approve the addition of new parties to the WAGRMA.

Description of the proposed changes:

The proposed change involves minor amendments to sub clauses 5.4, 5.5 and clause 11 of the WAGRMA. They are:

- i. Amending clause 5.4 to include an obligation on AEMO to provide written notice specifying reasons for rejecting or deferring consideration of a New Participant's Admission Note.
- ii. Deleting reference to ERA approval in clause 5.5.
- iii. Amending clause 5.5 to remove the prescribed period for assessment of applications to allow AEMO more time and to clarify that the date on which the new party is added to the WARGMA will be in AEMO's written confirmation.
- iv. Amending clause 11 to clarify that adding a new party to the WARGMA does not require ERA approval.

Refer to Attachment A for the marked-up version of the relevant sub clauses of the WAGRMA.



Feedback on this IIR:

Anyone wishing to make a submission for this final stage consultation before AEMO submits the proposed changes to the ERA are to use the response template that will be available on AEMO's website when this IIR is published.

Submissions close 7 June 2019 and should be emailed to grcf@aemo.com.au.

2. REFERENCE DOCUMENTATION

This IIR refers to the Western Australian Gas Retail Market Agreement (WAGRMA). Click [here](#) to view the WAGRMA.

3. HIGH LEVEL OVERVIEW OF THE CHANGES TO THE EXISTING PROCEDURES

This initiative will require minor changes to sub clauses 5.4, 5.5 and clause 11 of the WAGRMA including:

- i. Amending clause 5.4 to include an obligation on AEMO to provide written notice specifying reasons for rejecting or deferring consideration of a New Participant's Admission Note.
- ii. Deleting reference to ERA approval in clause 5.5.
- iii. Amending clause 5.5 to remove the prescribed period for assessment of applications to allow AEMO more time and to clarify that the date on which the new party is added to the WARGMA will be in AEMO's written confirmation.
- iv. Amending clause 11 to clarify that adding a new party to the WARGMA does not require ERA approval.

Refer to Attachment A that shows marked-up changes to the WAGRMA.

4. EXPLANATION REGARDING THE ORDER OF MAGNITUDE OF THE CHANGE

This initiative will require minor changes to sub clauses 5.4, 5.5 and clause 11 of the WAGRMA. There are no system changes. AEMO considers the order of magnitude of this change is 'non-material'.



ASSESSMENT OF LIKELY EFFECT OF PROPOSAL

5. OVERALL INDUSTRY COSTS AND BENEFITS

Removing the requirement for ERA to approve membership of the scheme will result in a more efficient and streamlined process for new participants entering the WA gas retail market.

6. IMPLEMENTATION IMPACTS

Following implementation of this proposal, AEMO will assess a new participant's eligibility as per the WAGRMA and, if appropriate, approve their entry to the WA Gas Retail Market without having to request an additional endorsement from the ERA.

7. TESTING REQUIREMENTS

Not applicable

8. AEMO'S PRELIMINARY ASSESSMENT OF THE PROPOSAL'S COMPLIANCE WITH THE CLAUSE 378 OF THE RMP

Ensure that the retail gas market operates and is governed in a manner that is, (i) open and competitive; (ii) efficient; and (iii) fair to participants and their customers	AEMO's view is that the proposed change will continue to promote competition, is not unreasonably costly to implement and doesn't disadvantage participants or their customers.
Ensure compliance with all applicable laws	AEMO's view is that the proposed changes are consistent with the applicable laws
Ensure effective consultation occurs and gives stakeholder's opportunities to provide feedback of the proposed changes	AEMO's view is that the stakeholders have already provided feedback to the PCR and are invited to provide additional feedback as part of this round of consultation

9. CONSULTATION FORUM OUTCOMES

On 8 March 2019 AEMO published on its website a PCR that recommended minor documentation changes as described in Attachment A. Registered participants and interested stakeholders were invited to make submissions which closed on 22 March 2019.

AEMO received submissions from Alinta, AGL, Origin and ATCO supporting the proposal. Alinta, AGL and Origin also proposed further amendments. AEMO discussed the proposed additional amendments with the individual Participants. In all cases, AEMO and the relevant Participants have agreed on the amendments that are being proposed within this round of consultation. Refer to Attachment B for the Participant submissions and AEMO's responses to feedback. There are no dissenting views in this round of consultation.



10. AUTHORISATION REVIEW

The Australian Competition and Consumer Commission (ACCC) granted Authorisations to REMCo to operate Chapter 5 (Allocation, Reconciliation and Swing) and Chapter 6 (Compliance and Interpretation) of the RMPs and associated ancillary deeds. The ACCC approved variations to the Authorisations to enable REMCo to transfer administration to AEMO.

Authorisation is a process where the ACCC may grant protection from legal action for anti-competitive conduct that might otherwise breach the Competition and Consumer Act 2010 (the CCA) where there is an offsetting public benefit from the conduct.

Changes to the RMP Chapters and ancillary deeds covered by the Authorisations must be assessed to determine whether the change impacts the Authorisation.

Because this proposal requires no changes to any of the clauses in Chapters 5 and 6 of the RMP or ancillary deeds covered by the Authorisations, a review of the ACCC Authorisations is not required.



RECOMMENDATIONS

11. SHOULD THE PROPOSED PROCEDURES BE MADE?

AEMO recommends that the proposed changes to the WAGRMA as described in this IIR should be made with suggested amendments.

12. IF APPLICABLE, A PROPOSED EFFECTIVE DATE FOR THE PROPOSED CHANGES TO TAKE EFFECT AND JUSTIFICATION FOR THAT TIMELINE

The proposed changes are to be published in a new version of the WAGRMA that is targeted for an effective date of September 2019, subject to receiving ERA's approval.



ATTACHMENT A – DOCUMENTATION CHANGES (SEE SECTION 3)

Western Australia Gas Retail Market Agreement

Blue represents additions Red and strikeout represents deletions – Marked up changes

Grey highlight represents additional changes post the PCR consultation.

1 Interpretation

1.1 In this Agreement, unless the context requires otherwise, the following expressions have the following meanings:

Admission Note has the meaning given to it in clause ~~5.1~~ 5.2 of this Agreement.

5. New Participants

5.1 A person that is not a Party to this Agreement may apply to AEMO to become a Party to this Agreement (New Participant) if it is eligible to do so. A New Participant will be eligible only if the person:

- (a) is a WA Gas Retail Market Participant who is lawfully entitled to carry on that business;
- (b) honestly and accurately provides to AEMO the information required under clause 5.2;
- (c) is not being wound up in accordance with the Corporations Act 2001 (Cth);
- (d) is not immune from liabilities incurred under this Agreement or as a Scheme Participant;
- (e) is capable of being sued in its own name in a court of competent jurisdiction; and
- (f) agrees in writing to become bound by the terms and conditions of this Agreement.

(Eligible)

5.2 An application by a New Participant under clause 5.1 must be in the form of an admission note as annexed in the Annexure and must:

- (a) specify the name and ABN (if applicable) of the New Participant;
- (b) specify whether the New Participant is a Gas Distribution Operator, a Retail Gas Operator or a Self-Contracting User;
- (c) state that the New Participant is applying to become a Party to this Agreement; and
- (d) be signed by an authorised officer of the New Participant.

(Admission Note).

5.3 An Admission Note is an offer from the New Participant to the Parties (being AEMO and each WA Gas Retail Market Participant who was initially a Party to this Agreement and each WA Gas Retail Market Participant subsequently joining this Agreement under this clause 5) to amend this Agreement to add the New Participant as one of the Parties.

5.4 AEMO must accept an Admission ~~Notice~~ Note if the New Participant is Eligible. If AEMO is not satisfied a New Participant is Eligible (acting reasonably), it may reject or defer consideration of an Admission Note and must provide written notice to this effect to the New Participant within a reasonable period of time, including any reasons for its decision to reject or defer the New Participant's Admission Note.



5.5 If a New Participant provides AEMO with an Admission Note, and AEMO provides written confirmation to the New Participant ~~before 5:00 PM on the 10th Business Day after the notice is given (Deadline)~~ that the Admission Note has been accepted, then the Parties are deemed by this clause 5.5 to have agreed irrevocably to the offer referred to in clause 5.3, and, ~~subject to approval of the ERA,~~ this Agreement is amended from the ~~Deadline or such~~ date as ~~approved by the ERA~~ specified in AEMO's written confirmation to add the New Participant as one of the Parties.

11. Amendments

This Agreement may only be varied by agreement in writing between the Parties and, if required by the ECA, with the approval of the ERA under section 11ZOM of the ECA.

[Note: The ERA is not required to approve the addition of a new Party to this Agreement under clause 5]

ATTACHMENT B – SUBMISSIONS RECEIVED FOR PROCEDURE CHANGE REQUEST IN004/19W

Stakeholder	Clause/Section ref.	Issue/Comment	Proposed Text Red-Strikeout means Delete and <u>Blue Underline</u> means Insert	AEMO Response
Alinta	11	<p>Firstly, can AEMO confirm that rearranging clause 11 below does not impact on the way the WAGRMA works? The amendments appear to suggest that the WAGRMA can only be amended <u>if required by the ECA</u>. Would there be circumstances where we would want to amend the WAGRMA but where it is not required by the ECA?</p> <p>In the note, "Party" is a defined term and should have a capital.</p>		<p>AEMO agrees with Alinta's comment and proposes the following amendment (in grey) to clause 11 as it adds further clarity.</p> <p>"This Agreement may only be varied by agreement in writing between the Parties and, if required by the ERA, <u>with the approval of the ERA under section 11ZOM of the ECA.</u> and with the approval of the ERA under section 11ZOM of the ECA."</p> <p>AEMO also agrees with Alinta's feedback about defined term 'Party' and has amended the Note below clause 11 accordingly.</p>
Alinta	1.1	Amendment to definition of "Admission Note" in clause 1.1 is required	<p>In this Agreement, unless the context requires otherwise, the following expressions have the following meanings:</p> <p>Admission Note has the meaning given to it in clause 5.1 <u>5.2</u> of this Agreement.</p>	AEMO accepts Alinta's proposed change as it adds further clarity.
Alinta	5.4	Amendment to clause 5.4 required	AEMO must accept an Admission Notice <u>Note</u> if the New Participant is Eligible.	AEMO accepts Alinta's proposed change as it adds further clarity.



Stakeholder	Clause/Section ref.	Issue/Comment	Proposed Text Red Strikeout means Delete and <u>Blue Underline</u> means Insert	AEMO Response
ATCO	General comment	<p>ATCO welcomes the opportunity to provide feedback on the proposed changes to the WAGRMA.</p> <p>We have reviewed the matters raised, the proposed wording, and advise that we support the proposed changes and agree that there are likely efficiency benefits to all market participants that would result from implementation of the proposed changes.</p>		AEMO acknowledges ATCO's support.
Origin	5.5	<p>The below changes to the clause mention clause 5.6 however there is no clause 5.6. Should this be 5.5?</p> <p>In general, removing the requirement for approval from the ERA makes sense and would reduce timeframes for new participants wanting to join the market.</p>		AEMO acknowledges Origin's support and agrees that the clause reference should be 5.5. This was a copy and paste error while including the text in the PCR document. The clause no is 5.5 in the original version of the WAGRMA.
AGL	General comment	<p>AGL supports the change to simplify the WA Gas Retail Market Agreement (WAGRMA) as detailed by AEMO in the request but provides the following comments</p>		AEMO acknowledges AGL's support.



Stakeholder	Clause/Section ref.	Issue/Comment	Proposed Text Red Strikeout means Delete and <u>Blue Underline</u> means Insert	AEMO Response
AGL	Point 1	<p>AGL queries whether the WAGRMA should also provide authority to AEMO acting on behalf of the Parties to accept, reject or defer the Admission Note. The WAGRMA currently makes no reference to this. We refer to clause 5.3 of the WAGRMA which sets out that the Admission Note is an offer from the New Participant to the Parties to amend this Agreement to add the New Participant as one of the Parties. Clause 5.4 of the WAGRMA sets out the acceptance or not by AEMO of this offer. However, as set out in clause 5.3 the offer is made to the Parties as defined in that clause. AGL suggests that clause 5.3 should provide authority to AEMO to act on behalf of the Parties to accept or not accept the offer or alternatively, this authority could be set out in a separate clause. AGL suggests that clause 5.3 could be amended at the end of the clause's current wording as follows:</p> <p>"... AEMO is authorised on behalf of each and all of the WA Gas Retail</p>		<p>AEMO acknowledges AGL's comment and advises the following.</p> <p>Express reference to authority to AEMO acting on behalf of the Parties to accept, reject or defer the Admission Note is not required.</p> <p>As an agreement, each party to the WAGRMA is agreeing to the terms of the WAGRMA.</p> <p>This includes each party agreeing to AEMO accepting or rejecting an offer as per clause 5.4.</p> <p>Accordingly, it is not necessary to make the amendment to clause 5.3 proposed by AGL, as by entering into the WAGRMA, each party to the WAGRMA has given AEMO authority to accept or reject an offer in accordance with clause 5.4.</p> <p>This authority is confirmed by the parties being deemed to have agreed irrevocably to amend the agreement to add the new party based on AEMO's acceptance of an admission note.</p>



Stakeholder	Clause/Section ref.	Issue/Comment	Proposed Text Red Strikeout means Delete and <u>Blue Underline</u> means Insert	AEMO Response
		<p>Market Participants as Parties to this Agreement to accept, defer or reject the Admission Note of the New Participant as set out in this Agreement."</p> <p>AGL is not suggesting that the WA Gas Retail Market Participants (as the other part of "Parties") should be required to accept or not accept a New Participant. This authority and responsibility should sit with AEMO based on AEMO assessing that the New Participant is Eligible or not as set out in clause 5.1 of the WAGRMA.</p>		
AGL	Point 2	<p>If AEMO accepts the position put forward in point 1 above, we propose alternative wording to clause 5.5 of the WAGRMA as it appears unnecessary to refer to the irrevocable agreement of the Parties, and this acceptance should be provided within a time period, suggested new clause 5.5 as follows:</p> <p>"If AEMO accepts the Admission Note in accordance with clause 5.4, it will provide written confirmation</p>		<p>AEMO acknowledges AGL's comment and advises the following.</p> <p>See comment to point 1 above in relation to the reference to irrevocable agreement of the parties.</p> <p>In relation to acceptance within a time period, AEMO's preference is to not specify a period but allow flexibility needed to consider admission notes, given individual circumstances of each applicant.</p>



Stakeholder	Clause/Section ref.	Issue/Comment	Proposed Text Red Strikeout means Delete and <u>Blue Underline</u> means Insert	AEMO Response
		<p>within 10 business days from receipt of the Admission Note to the New Participant that it has been accepted as a Party to this Agreement effective from the date set out therein, and this Agreement is amended accordingly.”</p> <p>AGL provided further feedback to AEMO’s response to change clause reference from 5.6 to 5.5 and requested adding the word ‘written’ with font colour red.</p>		AEMO also agrees to make further changes (font colour) as suggested by AGL. Refer to the change in grey shading in Attachment A.
AGL	Point 3	<p>Further, we propose inserting in clause 5.4 a requirement for written notice setting out AEMO’s reasons within a time period (new wording underlined) as follows:</p> <p>“.....If AEMO is not satisfied a New Participant is Eligible (acting reasonably) it may reject or defer consideration of an Admission Note and must provide written notice to this effect to the New Participant within 10 business days of receiving the Admission Note, including any reasons for its decision to reject or</p>		<p>AEMO acknowledges AGL’s comment and advises the following.</p> <p>AEMO agrees that in accordance with good regulatory practice, AEMO should provide reasons to an applicant if AEMO decides to reject or defer consideration of an admission note.</p> <p>However, as noted in point 2, AEMO’s preference is to not specify a period but allow flexibility needed to consider admission notes, given individual circumstances of each applicant.</p>



Stakeholder	Clause/Section ref.	Issue/Comment	Proposed Text Red Strikeout means Delete and <u>Blue Underline</u> means Insert	AEMO Response
AGL	Point 4	<p>defer the New Participant's admission."</p> <p>AGL provided further feedback to AEMO's response to request changing font colour for the following text to red,</p> <p>"...within a reasonable period of time"</p> <p>We note that the suggested amendments to clause 5.5 are to take effect from approval of this PCR by the ERA, however, we suggest that this change could be backdated to align to when the WAGRMA came into effect. This would mean that any approval by New Participants in the intervening</p>		<p>Therefore, AEMO proposes to amend clause 5.4 as follows:</p> <p>5.4 AEMO must accept an Admission Notice if the New Participant is Eligible. If AEMO is not satisfied a New Participant is Eligible (acting reasonably), it may reject or defer consideration of an Admission Note <u>and must provide written notice to this effect to the New Participant within a reasonable period of time, including any reasons for its decision to reject or defer the New Participant's Admission Note</u></p> <p>AEMO also agrees to make further changes (font colour) as suggested by AGL. Refer to the change in grey shading in Attachment A.</p> <p>AEMO acknowledges AGL's comment and advises the following.</p> <p>Given the current terms of the WAGRMA require ERA approval, the effective date of these proposed changes to the WAGRMA will be determined by the ERA (ie when this proposal is approved by ERA).</p>



Stakeholder	Clause/Section ref.	Issue/Comment	Proposed Text Red Strikeout means Delete and <u>Blue Underline</u> means Insert	AEMO Response
		period would be effective from the date AEMO advised of its acceptance of the Admission Note, rather than the Deadline period or as advised by the ERA as set out under the current clause 5.5, noting that this process has not been followed.		When submitting these proposed changes to the WAGRMA to the ERA, AEMO will propose that the changes are effective from when the WAGRMA came into effect. However, the ERA is the party that will ultimately determine when the changes take effect.
AGL	Point 5	Please note that clause 5.3 in the Request is not the same clause 5.3 as set out in the WAGRMA linked on AEMO's website as the Request clause is missing the words highlighted in yellow: "An Admission Note is an offer from the New Participant to the Parties (being AEMO and each WA Gas Retail Market Participant who was initially a Party to this Agreement and each WA Gas Retail Market Participant subsequently joining this Agreement under this clause 5) to amend this Agreement to add the New Participant as one of the Parties."		AEMO acknowledges AGL's comment and advises that the yellow highlighted words are part of clause 5.3 of the WAGRMA and has amended the clause in Attachment A accordingly.



Stakeholder	Clause/Section ref.	Issue/Comment	Proposed Text Red Strikeout means Delete and <u>Blue Underline</u> means Insert	AEMO Response
		We assume the clause set out in the Request is incorrect as the inclusion of AEMO in this definition is pivotal.		