

AEMO COMPLIANCE PROCESS FOR RETAIL MARKET PROCEDURES.

VERSION: 1.01

DATE: 1 July 2010

FINAL

Version Release History

Version	Date	By	Changes
1.0	14/06/10	Bryan Nguyen	Original
1.01	01/07/10	Bryan Nguyen	Disclaimer included

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1 AEMO criteria to use in determining apparent breaches of Gas Retail Market Procedures

Section 91MB of the National Gas Law provides that AEMO and each person to whom the Retail Market Procedures (**Procedures**) are applicable must comply with the **Procedures**.

If AEMO has reasonable grounds to suspect that an apparent breach to the Procedures has occurred AEMO must make a determination whether the apparent breach is material.

AEMO will use the following criteria to in assessing whether apparent breaches of the Gas Retail Market Procedures as they apply to the relevant jurisdiction are:

- i. Material; and
- ii. If the incident is material whether it should be referred to the Australian Energy Regulator (AER).

1.1 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 any applicable market operating 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 any applicable market operating 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 any applicable market operating system;
 - c. End use customers;
 - d. AEMO stakeholders.
4. Any other factors considered relevant by AEMO.

1.2 Whether to refer a material apparent breach to the Australian Energy Regulator

AEMO will use the following process 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.

1.3 Relevant National Gas Law provisions to AEMO Compliance Process for Gas Retail Markets

(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).)