

# AEMO COMPLIANCE NOTIFICATION

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## Transportation Agreements Register

### Introduction

This document outlines an apparent breach of **clause 6.7** of the Retail Market Procedures (NSW and ACT) (**Procedures**) in relation to the maintenance of the transportation agreement register. The document also outlines the apparent breach in terms of the confidentiality provisions in the National Gas Law (**NGL**) and under **clause 1.5** of the Procedures.

Section 91G(1)(a) of the NGL states that AEMO must take all reasonable measures to protect from unauthorised use or disclose of information given to it in confidence. Section 91G (3) states that AEMO makes unauthorised disclosure of protected information if the disclosure is not authorised under the NGL, the National Gas Rules (**NGR**), the Procedures or the Regulation.

#### 91G—Protected information

- (1) AEMO must take all reasonable measures to protect from unauthorised use or disclosure information (**protected information**)—
  - (a) given to it in confidence; or
  - (b) given to it in connection with the performance of its statutory functions and classified under the Rules, the Procedures or the Regulations as confidential information.
- (2) AEMO makes unauthorised use of protected information if (and only if) it uses the information contrary to this Law, the Rules, the Procedures or the Regulations.

Note—

Section 91FD authorises AEMO (subject to the Law, the Rules, the Procedures and the Regulations) to use information (whether obtained by market information instrument or in any other way) for any purpose connected with the exercise of any of its statutory functions.

- (3) AEMO makes an unauthorised disclosure of protected information if the disclosure is not authorised under this Law, the Rules, the Procedures or the Regulations.

Clause 1.5 of the Procedures states the following:

#### 1.5 Confidential Information

Unless these *Procedures* state otherwise, any information provided to *AEMO* or a *market participant* under these *Procedures* is classified as confidential information for the purposes of the National Gas Law and the Rules. ‘

It was alleged that AEMO made an unauthorised disclosure of protected information in contravention of section 91G of the NGL and clause 1.5 of the Procedures.

This memo outlines the details of AEMO’s apparent breach of section 91G of the NGL and clauses 1.5 and clause 6.7 of the Procedures.

### Circumstances of Apparent Breach

Clause 6.7 of the Procedures outlines the requirement that AEMO (in its role as a Registry Operator) maintain and update a transportation agreement register for the purposes of change of user on move-in (**COU MI**) transactions. The transportation agreement register sets out for each network section, a list of users that have in place a transportation agreement with the network operator for the transportation of gas to low consumption delivery points.

Under clause 6.7(2) of the Procedures if a transportation agreement for the transportation of gas to a low consumption delivery point is terminated or ceases to operate in a network section, AEMO must request that the network operator remove the user's transportation agreement listing in the transportation agreement register.

Under clause 6.7(3) if a network operator puts in place a transportation agreement with a user in a network section for the transportation of gas to a low consumption delivery point, then the network operator is required to notify AEMO of the network section for which the user has a new transportation agreement.

The network operator is required to notify AEMO of amendments to the transportation agreement registry under clauses 6.7(2) and 6.7(3) using a form approved by AEMO.

In relation to clauses 6.7(2) and 6.7(3) of the Procedures, the network operator(s) and AEMO had over time used an informal process to amend the transportation agreement register. In order to amend the transportation agreements register, the network operator provides instructions to AEMO to add or remove details of users' transportation agreements in particular network sections in the transportation agreement register. AEMO then uses the instructions provided by the network operator and updates the transportation agreement register.

It could be argued that the use of an informal approach for notifying AEMO of the amendments to be made to the transportation agreement register is a contravention of clause 6.7 of the Procedures. This is because the network operator is required to notify AEMO of any changes to the transportation agreement register using a form approved by AEMO. However AEMO (nor its predecessor GMC) had not developed or provided the network operator with an approved form for use in updating or amending the transportation agreement register. This may have led to the confusion between the network operator and AEMO (and its agent Logica) regarding the process used to update the transportation agreement register.

On 15 April 2011, the network operator Jemena Gas Network (**Jemena**) made a request to AEMO to update the transportation agreement register. Jemena provided AEMO with a spreadsheet containing a list of users and network sections for which the user had transportation agreements for low consumption delivery points. AEMO assumed that the spreadsheet that Jemena provided was supposed to be used, as it had in the past, to replace the content of the existing transportation agreement register. As a result, AEMO replaced the transportation agreement register with the content that Jemena provided and notified Jemena that the transportation agreement register had been updated.

On 11 May 2011, a User contacted AEMO (Logica Helpdesk) because they were unable to process certain transactions in the Gas Retail Markets Business Systems (**GRMBS**). A number of this User's transactions in the ACT-Canberra network section had been rejected in the GRMBS because there were no records of this User's transportation agreements registered in the transportation agreements register for the ACT-Canberra network section. In order to assist the User with their query about why their transactions were being rejected in the GRMBS, AEMO, on 17 May 2011 provided the User with a copy of the transportation agreement register and the email that the network operator had provided AEMO on 15 April 2011. This spreadsheet contained a list of all users' transportation agreements in each network section in the NSW and ACT Gas Retail Market. This meant that the confidential information was inadvertently released by AEMO to the User, thus constituting a breach of clause 1.5 of the Procedures and section 91G of the NGL.

As soon as the breach was identified, on 24 May 2011 AEMO requested that the Participant who was in receipt of the confidential information take action to destroy any and all copies of the information. The User responded on the 24 May 2011 that they had destroyed all copies of the information. The broader industry was subsequently informed of the breach via the Gas Retail Consultative Forum.

## **AEMO Decision: Apparent Breach is Material**

AEMO believes that it is appropriate and transparent for a third party, such as the AER to determine the severity of AEMO's breach of the Procedures, rather than for AEMO to moderate its own behaviour.

However, in applying the criteria outlined in the AEMO Compliance Process (see **Attachment A**), AEMO regards the apparent breach of section 91G of the NGL and clauses 1.5 and clause 6.7 of the Procedures to be potentially regarded a serious matter by the industry, and therefore considers this breach to be material in nature for the following reasons:

### Materiality

#### Criterion 1: financial impact

The apparent breach resulted in the release of confidential and commercially sensitive information relating to all Users operating in the NSW/ACT market, to one market participant only.

#### Criterion 2: market system impact

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

#### Criterion 3: operational impact

As the confidential information was destroyed by the User who received it, there was no observed operational impacts on either the market participants, AEMO, including the GRMBS; and AEMO Stakeholders.

#### Criterion 4: Any other factors

The unauthorised release of confidential information by the Market Operator could result in the loss of confidence by market participants in the operation of market. If confidential information (especially information that is of a commercially sensitive nature) is provided by market participants to the Market Operator and this information is not respected or carefully looked after, then market participants may be disinclined to provide further information to the Market Operator. As market operations rely on information provided by the market participants, the loss of this information could seriously hinder market operations.

This breach highlights the need for AEMO to highlight to its own staff and that of its contractor (Logica) the 'Confidential Information Guidelines' and the 'Confidential Information Policy' and that AEMO and Logica staff are required to abide by the provisions with regards to the maintenance and safe keeping of confidential information. Further, that AEMO must develop formalised processes under clause 6.7 for the transportation agreements register to be maintained and updated in an orderly manner. As such, AEMO has commenced a process to ensure the use of a standard template for the network operator under clause 6.7 of the Procedures for the update the transportation agreements register. AEMO has also ensured that its contractor (Logica) has an up-to-date copy of the 'Confidential Information Policy' and that AEMO and Logica staff are appraised of the requirement to keep confidential information confidential.

## 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).)