

8 July 2009

Ms Michelle Croker
Gas Market Development Section
National Energy Market Branch
Department of Resources, Energy and Tourism
GPO Box 1564
CANBERRA ACT 2601
Via email: MCETMarketReform@ret.gov.au



Release of the *National Gas (South Australia) (Short Term Trading Market) Amendment Bill 2009*

Dear Ms Croker

The Australian Pipeline Industry Association and pipeline operators welcome the opportunity to comment on the *National Gas (South Australia)(Short Term Trading Market) Amendment Bill 2009*.

The comments provided in the submission particularly reflect the views and concerns of those gas pipeline operators most affected by the Bill. These companies are: APA Group, Epic Energy, Jemena, and South East Australia Gas Pty Ltd. These pipeline operators have all participated in the development of the Short Term Trading Market (STTM) Design and drafting of the new STTM Law and Rules through the STTM Working Group, STTM Steering Group, STTM Industry Legal Working Group and Gas Market Leaders Group (GMLG). Consequently many of the issues and concerns previously raised by the pipeline operators have been addressed via these committees and processes. This submission does not seek to change any arrangements or processes already determined, but seeks clarity on a number of issues and in particular seeks to register the pipeline operators serious concerns about the proposed treatment liabilities in the Bill and compensation for costs.

Please contact me or any of the pipeline operator STTM representatives if you wish to discuss our comments.

Yours sincerely

Ashley Kellett
PRESIDENT

on behalf of Cheryl Cartwright
CHIEF EXECUTIVE



APIA and Pipeline Operators comments on the National Gas (South Australia) (Short Term Trading Market) Amendment Bill 2009

1. INTRODUCTION

The Australian Pipeline Industry Association (APIA) welcomes the opportunity to comment on the National Gas (South Australia) (Short Term Trading Market) Amendment Bill 2009 (the Bill).

APIA is the peak national body representing the interests of Australia's transmission pipeline sector. APIA's current membership is predominantly involved in high-pressure gas transmission. APIA's members include contractors, owners, operators, advisers and engineering companies and suppliers of products and services.

The comments provided below particularly reflect the views and concerns of those gas pipeline operators most affected by the Bill. These companies are: APA Group, Epic Energy, Jemena, and South East Australia Gas Pty Ltd. These pipeline operators have all participated in the development of the Short Term Trading Market (STTM) Design and drafting of the new STTM Law and Rules through the STTM Working Group, STTM Steering Group, STTM Industry Legal Working Group and Gas Market Leaders Group (GMLG). Consequently many of the issues and concerns previously raised by the pipeline operators have been addressed via these committees and processes. This submission does not seek to change any arrangements or processes already determined, but seeks clarity on a number of issues and in particular seeks to register the pipeline operators serious concerns about the proposed treatment liabilities in the Bill and compensation for costs.

APIA and the pipeline operators note the Gas Market Principles, Market Outcomes and Conditions, adopted by the GMLG. In particular, because of their relevance, pipeline operators are pleased to see support for the following Principles and Conditions:

- (Condition 2) Daily market is a physical market, not a financial overlay. Need for alignment of nominations across shippers, networks and pipeliners;
- (Principle 1b) Recognise the fundamental importance of bi-lateral contractual arrangements which underpin gas market development;
- (Principle 5e) Minimise the need for Government intervention in the operation of the market; and
- (Principle 5g) Not reduce incentives for long term investment in infrastructure.

During the STTM design process there were a diversity of industry views and consequently in some cases the outcomes were not ideal from a pipeline operator point of view. However, APIA and the pipeline operators understand that the STTM is largely being implemented for the benefit of shippers and network users, so comments have been limited to where it was felt critical to ensure the success of the new market continued investment in gas infrastructure and the long term security of gas supply.

APIA and pipeline operators have comments on:

- Liability;
- Procedures;
- Transitional arrangements ;
- Cost recovery;
- Title to gas; and
- AEMO functions.

2. LIABILITY

APIA, and the pipeline operators, primary concern with the draft Bill relates to the issue of the treatment of liabilities and the new liabilities proposed. APIA recognises that this matter is still being evaluated by the STTM Legal Working Groups.

2.1 Liability- Breadth of Immunity

The current draft Bill states:

“91FED Immunity of persons giving information to AEMO

(1) A person who gives STTM information to AEMO does not incur any civil monetary liability for an act or omission in giving that information unless the act or omission is done or made in bad faith or through negligence.”

In the STTM, pipeline operators will be required to not only *give* information, but also to *collect* information and to *undertake calculations* for the operation of the market. It is likely that from time to time, some of this data and information will be inaccurate, contain errors or be preliminary in nature, due to the STTM timeline requirements.

Pipeline operators believe they should have immunity from liability for these types of activities, except if they act in bad faith. Pipeline operators are very concerned that “negligence” should not be carved out from the immunity, as its meaning is unclear and could be interpreted to cover a range of scenarios, even if pipeline operators had shown a duty of care in building systems, designing processes and training staff. The insurance contracts of pipeline operators would need to be amended, to cover this new risk at additional cost.

Currently, pipeline operators are able to deal with liability under their shipper contracts. Similarly, shippers may also deal with liabilities with their network user contracts. Under the current draft Bill, pipeline operators may not be protected by their current shipper

contracts, nor protected from civil action by third parties, who may be impacted by pipeline operator actions.

Pipeline operators believe if they build and operate appropriate STTM systems and processes and properly train their staff, then they should be considered to have fulfilled their STTM obligations. If there is:

- an IT system failure; or
- poor data supplied by others; or
- a delay in providing data; or
- keyboard entry error,

then all these events may result in an impact on other parties. Whilst this is unfortunate, the threat of liability cannot help pipeline operators undertake these tasks any better. Rather, some assurance regarding cost recovery will encourage the development of robust systems and processes that will help reduce the occurrence of these events.

2.2 Liability – Cap

Whilst pipeline operators support a cap on liability, the proposed cap of \$400,000 per claimant per event is considered to be far too high. For example, if there were ten claimants, and the event lasted 10 days, then the cap would be \$40 million. Pipeline operators believe there should be an annual cap in the range of \$200,000 to 400,000 in total.

Consistent with other arrangements, individual officers, employees and directors of the pipeline operators should have the benefit of a \$1 liability cap. National Gas Regulation 10 - Maximum civil monetary liabilities—AEMO (including Bulletin Board functions) Para 1(f) provides that the Bulletin Board Operator's employees and officers have that benefit. It should be extended to cover the pipeline and network operators employees/officers as well. If this is not addressed, potential claimants may use this option as a way of getting around the liability cap or immunity for the company itself as companies generally are required to indemnify employees and officers for claims brought against them arising from the conduct of their duties.

2.3 Liability - Timing

The STTM imposes significant new information provision requirements on the operators of gas transmission pipelines. These timelines for the provision of this information are strict and at odds with the historical and contractual requirements on pipeline operators for data provision which have been of lower consequence, less onerous and less demanding in terms of timeliness. There is an increased liability of pipeline operators in providing information under the STTM provisions, including liability from failing to meet a deadline or rushing work to achieve one. This liability should be recognised and accounted for accordingly.

2.4 Liability - Summary

Pipeline operators are being asked to take on significant new potential liabilities that will increase their costs, but they are not guaranteed cost recovery. The liabilities involved are not commensurate with the actions of the operators, nor the pipeline transport tariffs

currently charged, but rather reflect the high value that the STTM will put on the price of gas at specific times. Pipeline operators seek amendments to the draft Bill to better reflect these issues, with particular concern on the likely interpretation of the term “negligence” and the very high cap proposed.

APIA and pipeline operators are very supportive of the STTM principles and objectives. However, the current liability proposal introduces new and unacceptable risk and costs to pipeline businesses. All pipeline operators propose to build appropriate new systems and processes to meet the requirements of the STTM, and accept that an appropriate liability should apply though any bad faith actions, but not through errors. The current liabilities are considered extreme and costly to address and no compensation or cost recovery has yet been guaranteed or agreed. APIA and pipeline operators therefore request the following changes be made:

- cap on liabilities in the range of \$200,000 to \$400,000 annually;
- cap on liabilities of \$1 for employees; and
- removal of the liability for negligence.

3. PROCEDURES

The powers given to AEMO under the section 91BRH below are quite broad. There should be consideration given to some limiting of this power. For example guidelines, tests and standards should be able to be scrutinised by registered parties before finalisation. The draft Bill states:

91BRH Nature of STTM Procedures

(2) The STTM Procedures may deal with the following matters:

...

(b) any other matter relevant to the short term trading market on which this Law or the Rules contemplate the making of Procedures.

...

(3) The STTM Procedures—

...

(b) may confer functions or powers on, or leave any matter or thing to be decided by, AEMO; and

(d) may confer power on AEMO to make or issue guidelines, tests, standards and other documents of an administrative nature; and

(e) may confer power on AEMO to require a person on whom a right is conferred, or an obligation imposed, under the

Procedures—

(i) to comply with a guideline, standard or other document of an administrative nature; or (ii) to conduct, or submit to, a test designed by AEMO

APIA and the pipeline operators support the development of Procedures to underpin the STTM Rules and Law. As a general principle, pipeline operators believe that most of the relevant STTM requirements should reside in the Rules, rather than the Procedures. Material in the Procedures should strictly be procedural in nature. It would be inappropriate to

provide too extensive a scope for AEMO to alter the STTM design via Procedural change, without adequate industry participation. As the Procedures have not yet been drafted, it is too early to comment if the balance between the Rules and Procedures is satisfactory. Allowing Procedural changes to be scrutinised by registered parties before finalisation may provide some comfort that Procedural changes will be appropriate.

Further to the point above, pipeline operators see a risk that Procedural change will result in an impact on pipeline operators systems and processes, incurring additional costs for no benefit or without compensation. It is recommended that as part of any process of Procedural change that may require pipeline operators or other participants to incur new costs, a cost benefit analysis be undertaken, (taking into account all participant classes), before this Procedural change is undertaken.

4. TRANSITIONAL ARRANGEMENTS

Pipeline Operators believe that for the purposes of determining breaches and liability, that there should be some leniency towards all participants for an initial period of time. It is likely there will be implementation issues with the new market, processes and systems for up to 12 months as AEMO and industry develop an understanding of their systems interactions and market behaviours become established. During this period, it would be more appropriate to issue a warning, with financial consequences only for multiple offences that were not rectified.

5. COST RECOVERY

Pipeline operators remain concerned that they have not been guaranteed any cost recovery for the development of new STTM systems and processes. It is acknowledged that the GMLG has noted this is a relevant issue.

Pipeline operators are agreed that their costs should be recovered. Pipeline operators are also agreed that these costs, which are being imposed as a result of legislative changes and the STTM, should be recoverable as a right and should not rely on the success of future commercial negotiations or an increase in existing tariffs.

The preferred option for cost recovery is via AEMO's cost recovery process. AEMO could include identified pipeline STTM costs into its own system for cost recovery charging and then reimburse pipelines from the revenues it collects.

Recoverable costs should include all of those costs which have been explicitly incurred as a result of the STTM design and implementation. As such the costs of consultants and contractors explicitly employed on STTM work tasks should be included in the recoverable cost base.

Typical costs being incurred for the STTM or expected to be incurred for the STTM include:

- External contractors and consultants working on the STTM design and contributing to workgroups.;

- External legal advice;
- Increased insurance premiums and audit costs due to increased liability;
- Modifications to existing IT systems to comply with STTM procedures; and/or new IT systems to comply with STTM procedures;
- Additional costs attributable to pipeline operators running two systems and processes - within the STTM Hub and outside the Hub;
- Any costs from changing operational procedures to standardise times etc between all pipeline operators to allow for the STTM;
- Any costs associated with amending shipper contracts to allow for the STTM;
- Any costs associated with amending other contracts (eg operator agreements) to allow for the STTM;
- Interest cost on delayed cost recovery;
- STTM training costs
- Ongoing costs of dealing with the STTM including new staff to manage any extra workload and any ongoing IT changes;
- Identifiable STTM project management costs; and
- Allowance for future modification to required systems and processes.

6. TITLE TO GAS

6.1 Passing through Obligations

Pipeline operators commented on the issue of Title to Gas at the Sydney forum on the STTM Law. Pipeline operators are interested to understand how title will be transferred, for example for the purpose of passing through the proposed Carbon Pollution Reduction Scheme obligations. There are two cases that need to be addressed:

- Shippers passing their obligations to Network Users under the STTM;
- Pipeline Operators passing on their obligations (eg from the use of compressor fuel etc).

APIA and pipeline operators seek clarity on this point.

6.2 Ambiguity

In the current draft Bill, section 91BRF states:

91BRF Title to gas

*An STTM trading participant must not **deliver** natural gas to an STTM hub unless—*

- (a) the participant has title to the gas, or authority to dispose of title to the gas; and
(b) the gas will, at the point of delivery, be free from any mortgage, charge or encumbrance.*

To avoid confusion this should be re-worded as the current wording may be ambiguous – i.e. is it the shipper or pipeline which *delivers* natural gas?

7. AEMO FUNCTIONS

The current draft Bill section 91BRB should be amended as follows:

91BRB AEMO's STTM functions

(1) AEMO's STTM functions are as follows:

(a) to ~~operate and~~ administer and regulate the short term trading market;

Note this change also requires a wording change to “12 Amendment of section 290—New definition of urgent Rule substituted (a)” for the purposes of consistency.

The role of AEMO is to administer a market between buyers and sellers and regulate behaviours; the word “operate” implies a more proactive role. The changes above better represent the role of AEMO in the STTM.