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## **Exposure Draft of Declared Wholesale Gas Market Rules**

Dear Mr Rodgers

Multinet appreciates the opportunity to provide comments on the Exposure Draft of the Declared Wholesale Gas Market Rules (WGMR) which the Ministerial Council of Energy's (MCE) Australian Energy Market Operator (AEMO) Implementation Steering Committee (ISC) has released for consultation.

We recognise that this exposure draft of the Declared Wholesale Gas Market Rules is based on minimal changes to the current Victorian Gas Industry Market and System and Operations Rules, the matters under consultation are not clearly defined in the form of tracked changes. Whilst industry was provided a form of tracking document, this provided an indication of clauses deleted/uplifted to the NGL/NGR, it did not provide a clear indication of what was amended or added. This has resulted in a less effective consultation than that provided to other jurisdictions where tracked changes were used to enable all stakeholders to participate in effective consultation. We would appreciate clear tracked changes for all new NGR sections and newly formed procedures.

Multinet's detailed comments and drafting suggestions are provided in the attached table. Our comments focus on:

- The clarity of application of the WGMR drafted to provide at least consistency with the MSOR application;
- The same level of clarity regarding distributor indemnities as provided for in the current MSOR; and
- The AEMO powers of direction in the WGMR should be limited to the same powers of direction for emergencies as VENCORP had under the MSOR.

Should you have any questions regarding this submission, please do not hesitate to contact me on (03) 8540 7819.

Yours sincerely

Verity Watson  
**Manager Market Regulation**

Comment Nos	Clause	Clause Text	Issue/Comment	Recommendation
1.	MSOR 1.1.7	<p>No <i>Participant</i> shall be liable to <i>VENCorp</i> or another <i>Participant</i> for any <i>indirect losses</i> suffered by <i>VENCorp</i> or another <i>Participant</i> which arise out of or relate to the conduct provisions of these Rules or the performance or breach of the conduct provisions of these Rules.</p> <p><b>Indirect losses</b> means Indirect losses (whether in contract, warranty or tort) including loss of profit or anticipated profit, business interruption, loss of revenue, loss of use loss of contract, loss of good will, loss of business opportunity or exemplary and punitive damages.</p>	<p>MSOR clause 1.17 clearly states that participants shall not be liable to other participants or VENCORP for indirect costs arising out of breach of a conduct provision. The clause is equivalent to a usual clause found in haulage agreements, excluding party liability for indirect or consequential loss.</p> <p>No equivalent provision seems to be found in the NGL (including amendments proposed by the National Gas (Australian Energy Market Operator) Amendment Bill 2009 (<b>AEMO NGL Changes</b>)). However, participants retain the ability to commence proceedings in relation to breach of a conduct provision (see section 233 of the NGL).</p> <p>While the basis for deletion of this clause is ‘consistency with NGL/NGR and NEL/NER generally’ there is a need for <b>inconsistency</b> in relation to proceedings brought for breach of the Wholesale Gas Market Rules (<b>WGMR</b>) so that participants retain the protection from indirect loss that would normally be afforded by haulage agreement terms.</p>	Re-insert clause 1.1.7
2.	WGMR Rule 1	<p>(1) This Part contains rules applicable to the operation of a declared transmission system and a declared wholesale gas market.</p> <p>(2) A person described in section [91B] of the Law must register with AEMO in accordance with Division 2, unless otherwise specified in Division 2.</p> <p>(3) This Part applies to:</p> <p>(a) a person who is registered as a</p>	<p>Multinet is concerned that the WGMR may apply more broadly than the current MSOR.</p> <p>(1) Multinet assumes that ‘declared transmission system’ and ‘declared wholesale gas market’ has the meaning given in section 91B of the AEMO NGL Changes i.e. the participating jurisdiction will define the ‘declared wholesale gas market’ and ‘declared transmission system’. The jurisdiction will also specify declared distribution systems. In Victoria, Multinet would expect that, consistent with the operation of the current Rules, the ‘declared transmission system’ will be the principal transmission system (and not encompass other systems in Victoria, like the South Gippsland system).</p> <p>(2) Section 91BI of the AEMO NGL Changes and this Rule will require a service provider for the declared transmission system or for a declared distribution <b>pipeline</b> to register as a</p>	Reinsert clause 1.1.6 of the MSOR and insert provision to make clear that WGMR apply to participants only in respect of the declared transmission system and declared distribution systems.

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		<p>Participant under Division 2;</p> <p>(b) a person who has ceased to be registered as a Participant, in respect of any obligation or liability arising before that person's deregistration; and</p> <p>(c) any other person to the extent that a provision of this Part is expressed to apply to that person, or to a category of persons to which that person belongs.</p>	<p>participant.</p> <p>('Declared distribution pipeline' is not a defined term, and we assume the reference should be to 'declared distribution system')</p> <p>Again, in Victoria, Multinet would expect that 'declared distribution systems' will be those distribution pipelines connected to the PTS (declared transmission system) and would not encompass distribution systems not currently governed by the MSOR.</p> <p>(3) However, the WGMR then provides that for application to any other person 'to the extent that a provision of this Part is expressed to apply to that person.' This is a new provision. The MSOR only applied to registered participants</p> <p>Further clauses 1.1.6 of the MSOR, providing that the MSOR 'does not limit the rights of any person to construct, own or operate a pipeline or pipeline equipment which is not part of the <i>transmission system</i> and which is not subject to these Rules' has not been replicated in the WGMR.</p> <p>This new Rule 1(3) (c) and the deletion of clause 1.1.6 of the MSOR has the potential to extend the operation of the WGMR beyond the current operation of the MSOR so that, for example, Multinet as a Distributor on the South Gippsland system may be required to comply with the WGMR in respect of that system (when it is not currently required to do so). Likewise, the WGMR may technically impose obligations on Distributors or other industry participants, not associated with the declared transmissions system (eg in other jurisdictions).</p>	
3.	WGMR Rule 2 - Declared Metering Requirement	<p><b>declared metering requirement</b> means all or part of any regulatory instrument defined as a declared metering requirement under the legislation of the adoptive jurisdiction.</p>	<p>Multinet assumes that it is intended that, in Victoria, the 'declared metering requirement' will be the Distribution System Code, consistent with the MSOR, (and that the Gas Industry Act will declare the Distribution System Code to be a 'declared metering requirement').</p> <p>Multinet notes that the ability for an adoptive jurisdiction to specify a 'declaring metering requirement' under legislation of the adoptive jurisdiction will need to continue under the NECF</p>	<p>Consideration is needed regarding the interaction between the ability of a jurisdiction to define a 'declared metering requirement' and the NECF.</p>

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			framework.	
4.	WGMR Rule 2 - Distribution Customer	<b>Distribution Customer</b> means a <i>Customer</i> who withdraws gas at a <i>distribution delivery point</i> .	See comments in relation to point 2 above. The MSOR usually referred to the transmission and distribution pipelines that were connected to the PTS. Absent provisions appropriately defining the scope of application of the WGMR, the definition of distribution customer appears to now include all customers on non PTS networks also.	See amendments suggested in relation to item 2 above and in relation to 'distribution delivery point' below.
5.	WGMR Rule 2 - Distribution delivery point	<b>distribution delivery point</b> means a point on a <i>distribution pipeline</i> at which gas is withdrawn from that <i>distribution pipeline</i> and delivered to a <i>Customer</i> or injected into a <i>storage facility</i> .	See comments in relation to point 2 and 4 above	<b>distribution delivery point</b> means a point on a <i>distribution pipeline</i> at which gas is withdrawn from that <u>declared distribution pipeline</u> [system] and delivered to a <i>Customer</i> or injected into a <i>storage facility</i> .
6.	WGMR Rule 2 – Distributor	<b>Distributor</b> means the service provider in respect of the whole or any part of a <i>distribution pipeline</i> .	While this definition is essentially in the same terms of the definition of Distributor of the MSOR (given that section 8 of the NGL defines a service provider as a person who owns, controls or operates a pipeline), given Rule 1(3), <b>any</b> owner, controller or operator of a distribution pipeline will have to comply with the WGMR where these Rules place an obligation on a Distributor.  Under the current MSOR the term only relates to a Distributor who is registered as a participant with VENCORP.	Clarify scope of application of the WGMR (see item 2 above) and/or limit 'Distributor' for the purposes of the WGMR to a service provider in respect of a declared distribution pipeline who is registered with AEMO.
7.	WGMR Rule 2 – metering communications procedure	<b>metering communications procedures</b> means the Procedures made under rule 123.  <b>metering installation</b> means the <i>meter</i> and associated equipment and installations installed as required under	The metering installation definition appears to capture all distribution delivery points whether they are on the PTS or non PTS distribution network. See comments in relation to point 2 above.	

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		Division 4, Subdivision 4 for <i>connection points, distribution delivery points</i> and <i>receipt points</i> .		
8.	WGMR Rule 2 – responsible person	<b>responsible person</b> means the person who is responsible for providing a <i>metering installation</i> for a particular <i>system point</i> or a <i>distribution delivery point</i> in accordance with rule 106.	Rule 106 only refers to the transmission service providers, custody transfer meters. Rule 107 refers to distributor provided metering at a distribution delivery point.	<b>responsible person</b> means the person who is responsible for providing a <i>metering installation</i> for a particular <i>system point</i> or a <i>distribution delivery point</i> in accordance with rule 106 <u>or rule 107.</u>
9.	WGMR Rule 6	<b>Procedures under this Part</b> (1) Where a rule in this Part provides for AEMO to make Procedures: (a) those Procedures are Wholesale Market Procedures; (b) AEMO must comply with any additional requirements in this Part that apply to the making or amendment of the Procedures. (2) AEMO is not required to comply with [Part 15B] (other than rule [135EB]) if a provision of this Part so specifies.	The WGMR refer to many procedures, some of which name and formalise existing procedures but some of which are new procedures. Where these Rules or the new wholesale market procedures place obligations on distributors that are inconsistent with the current access arrangement, then implementation of these procedural or Rule changes should be deferred to the commencement of the next access arrangement.	Please confirm that: - existing VENCORP procedures will be transitioned to become procedures under the WGMR, without imposing additional obligations on participants; and - any new procedures will not impose obligations or requirements on participants in addition to current practices.

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10.	WGMR Rule 7	Each <i>declared transmission system Service Provider</i> and each person whose pipeline... is <i>connected</i> to the <i>declared transmission system</i> must register with AEMO as a <i>Participant</i> in any one or more of the following registrable capacities...	<p>This Rule, requiring a person whose pipeline is connected to a declared transmission system to register with AEMO, is (potentially) inconsistent with Rule 1(2) and section 91BI of the NGL, which requires that a service provider for a declared distribution pipeline must register with AEMO. Again, Multinet assumes that 'declared distribution pipeline [systems]' will be those connected to a declared transmissions system.</p> <p>More importantly, Rule 1(2) and section 91BI technically require any person involved in the ownership, control or operation of a pipeline to register with AEMO as a participant. This is inconsistent with the MSOR and with information received in industry forums.</p> <p>The MSOR only requires 'each person' whose pipeline is connected to the transmission system to register with VENCORP, and the practice has been that the owner/licensee of the pipeline registers with VENCORP. In the industry forums VENCORP have highlighted that registrations under VENCORP will automatically be deemed to be registered with AEMO. Further, Clause 8 (f) requires the participant who is registered to have the expertise and resources necessary for compliance with this Part i.e. the registered participant in respect of a pipeline must be the appropriate service provider in respect of that asset.</p>	<p>Amend Rule 1(2) and 7 and section 91BI of the NGL so that they are consistent.</p> <p>Confirm that only one service provider entity is required to be registered in relation to the WGMR for a pipeline.</p>
11.	MSOR 4.3.4 (g) (2)	A <i>Participant</i> will not be liable to pay damages in relation to actions arising from section 58 of the <i>Gas Industry Act</i> which relate to the delivery of <i>off-specification</i> gas which <i>VENCORP</i> has accepted in accordance with clauses 4.3.4(e) and 4.3.4(f).	This clause has not been replicated in the WGMR. While Multinet acknowledges that clause 4.3.4(g) (1) (providing that a participant will not be in breach as a result of off-specification gas which AEMO has accepted) has been retained (see Rule 104(7)), to remove any doubt that a participant is liable for damages resulting from delivery of off-specification gas accepted by AEMO in proceedings which may not be based on breach of the Rules, clause 4.3.4(g) (2) should be replicated here.	Reinstate clause 4.3.4(g) (2) of the MSOR.
12.	WGMR Rule 102 (1)	AEMO may approve, in relation to a <i>system injection point</i> , a gas quality standard	I 'Prescribed specifications' in the MSOR was specifically defined by reference to regulations made under sections 22 and 118 of the Gas Safety Act 1997. Under the WGM, gas	

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	See also Rule 104(a)	that is different from the prescribed specifications and accept delivery of gas at that <i>system injection point</i> which complies with that gas quality standard if:	quality specifications may be prescribed by <b>any</b> 'regulatory instrument' relating to gas quality. Multinet's preference would be for the 'prescribed specifications' to be a specifically named jurisdiction instrument (i.e. defined in the same manner as declared transmission system or declared metering requirement.	
13.	WGMR Rule 138	By no later than 30 November each year, AEMO must: (a) prepare an <i>annual planning review</i> in accordance with this rule; and (b) provide to each <i>Participant</i> and the <i>AER</i> a copy of that <i>annual planning review</i> .	The MSOR clause 5.2.1 (b) clearly defined the scope and purpose of the annual planning review, and particularly that the annual planning review will be used by participants. As drafted there is no clarity regarding the scope or purpose of this review. Retention of the provisions will help inform the content of the AEMO's review.	Re-insert the old 5.2.1 (b)
14.	WGMR Rule 139 (3) (b)	anticipated material constraints on the capacity of the <i>distribution pipeline</i> and the location of such constraints, where that constraint is may have a material effect on the operation of the declared transmission system.	Amend drafting to correct the typing error	anticipated material constraints on the capacity of the <i>distribution pipeline</i> and the location of such constraints, where that constraint <del>is</del> may have a material effect on the operation of the declared transmission system.
15.	WGMR Rule 141 (3)	A pipeline service provider, <i>Storage Provider</i> or <i>Producer</i> that has provided information under rule 139(4), concerning time and duration of proposed maintenance, must act in accordance with those forecasts unless:	This drafting is inconsistent with clause 139(4) (and current clause 5.2.6(c) of the MSOR).	Change opening words of section 141(3) to 'A <i>declared transmission system Service Provider, Interconnected Pipeline Service Provider</i> and <i>Storage Provider</i> ..'

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16.	WGMR Rule 150	<p>Nothing in this Division is to be taken to limit the ability of AEMO to take any action or follow any process under this Division which AEMO considers in its absolute discretion to be necessary:</p> <p>(a) to maintain and improve the reliability of gas supply;</p> <p>(b) to maintain and improve the security of the declared transmission system or a declared distribution system; or</p> <p>(c) in the interests of public safety.</p>	<p>This clause is intended to replace MSOR clause 6.1.3(b) and has been amended for consistency with section 91BC (1) of the AEMO NGL Changes.</p> <p>In Multinet's view there is no need to amend clause 6.1.3(b)/Rule 150 to make it consistent with section 91BC(1) (and notes that clause 6.1.3(b) of the MSOR currently operates together with section 186 of the Gas Industry Act which section 91BC(1) will replace).</p> <p>During an emergency AEMO should be required to comply with chapter 6 and the procedures specified in chapter 6, in accordance with participant expectations, unless VENCORP is required to take action 'to protect the public or property'.</p>	<p>Rule 150 should be limited to action necessary to protect the public or property, consistent with current clause 6.3.1(b) of the MSOR.</p>
17.	WGMR Rule 151	<p>(1) An <i>emergency</i> will be deemed to occur when:</p> <p>(a) AEMO reasonably believes there to be a situation which may threaten:</p> <p>(i) reliability of gas supply;</p> <p>(ii) <i>system security</i> or the security of a declared distribution system; or</p> <p>(iii) public safety,</p> <p>and AEMO in its absolute discretion considers that the situation is an <i>emergency</i> and declares there to be an <i>emergency</i>.</p>	<p>The scope of events allowing AEMO to declare an emergency has been significantly expanded under Rule 151(1) (i.e. from material damage to property/pipelines or threat to personal safety, to threat to reliability of gas supply or public safety).</p> <p>The explanation for this is, again, for consistency with section 91BC (1). Again, in Multinet's view this is not a reason to amend the events listed in clause 6.2.1(a) (1) of the MSOR currently allowing VENCORP to declare an emergency, given that clause operates with section 186 of the Gas Industry Act.</p> <ul style="list-style-type: none"> <li>- The directions power in section 91BC may be used in different circumstances and is subject to restrictions.</li> <li>- the events allowing AEMO to declare an emergency should be restricted (1) to allow the market to resolve, for example, supply reliability issues and (2) because of the consequences of declaring an emergency.</li> <li>- Participant's safety plans cannot accommodate 'all events and situations' specified in Rule 151(1) (as required by Rule 154(1) (b)) given the scope of those events (as proposed).</li> </ul>	<p>Amend Rule 151(1) (a) so that it is consistent with clause 6.2.1(a) (1) of the MSOR.</p>

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18.	WGMR Rule 152	<p>(1) AEMO must make available the <i>emergency procedures</i> to each <i>Participant</i> within 7 days after each occasion on which the <i>emergency procedures</i> are updated.</p> <p>(2) AEMO, declared transmission system <i>Service Providers, Interconnected Pipeline Service Providers, Distributors, Retailers</i> and <i>Traders</i> must comply with the <i>emergency procedures</i>.</p>	<p>The MSOR provided for categories of emergencies, the requirement for VENCORP to consult with the safety regulator, that any procedures must be consistent with participant safety management plans and with curtailment lists. These clauses (clause 6.2.2(a) to (d)) and clause 6.4.3 (emergency curtailment list) have been deleted on the basis that they are to be 'provided for in another instrument'.</p> <p>While Multinet understands that these provisions may be better placed in jurisdictional instruments, AEMO should be required to comply with such instruments in reviewing/amending emergency procedures (if AEMO is to be responsible for those procedures).</p> <p>If emergency procedures are not consistent with Participant safety management plans and AEMO make directions that are inconsistent with the safety management plans then the liability in respect of the directions should rest with AEMO not the participant.</p>	Amend Rule 152 so that in preparing and reviewing emergency procedures AEMO must comply with '[relevant jurisdictional instruments]'
19.	WGMR Rule Division 9	Development of proposals for rules under this Part	<p>This division and the amendment to section 295 of the NGL proposed by the AEMO NGL Changes, give AEMO the sole discretion on whether the declared wholesale market Rules may vary. A participants request may eventuate in a Rule change for this section at the sole discretion of AEMO. The Rules as drafted only provide the requesting party with the reasons why the Rule does not proceed. The requesting party has no ability to make a Rule change proposal direct to AEMC.</p> <p>While the Division is consistent with the current role of VENCORP in relation to MSOR changes, together with the AEMC Rule change process, it is likely that any change to the WGMR will take 12 – 15 months.</p>	<p>Suggest either:</p> <ul style="list-style-type: none"> <li>- restricting the AEMO's ability to reject a proposed to (for example) obvious incompatibility with the national gas objective or failure of most/all of participants to support the subject matter of the proposal, and reducing the</li> </ul>

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				<p>AEMO's timeframes for considering the proposal (including deleting its ability to extend the timeframes); or</p> <ul style="list-style-type: none"><li>- restricting the AEMC's ability to amend an AEMO proposed change to the WGMR and/or reducing the consultation time required for an AEMO proposed change.</li></ul>