



23 Marcus Clarke Street  
Canberra ACT 2601

Our ref: AA1000484  
Contact officer: Robert Janissen  
Contact phone: 02 6243 1387

GPO Box 3131  
Canberra ACT 2601  
tel: (02) 6243 1111

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adjudication@acc.gov.au  
www.acc.gov.au

Rosannah Healy  
Partner  
Allens

Dear Rosannah,

### **Australian Energy Market Operator application for authorisation AA1000484— request for information**

I refer to the application for authorisation lodged by the Australian Energy Market Operator (**AEMO**) on 30 March 2020 and amended on 17 April 2020. As discussed, in order to assess the application and application for interim authorisation, we are seeking clarification on a number of issues, outlined below.

We request that you provide a response for publication on the ACCC's public register by 8 May 2020.

#### **Relevant proposed conduct and ACCC concerns**

As set out in the application (as amended on 17 April 2020), the proposed conduct includes AEMO and industry participants "sharing information for the purposes of assessing whether there are sufficient quantities of gas for electricity generation during the pandemic."

The ACCC accepts that gas is an important fuel source in the National Electricity Market. Gas powered generators are a firm source of capacity, allowing them to contribute to grid security. They are also flexible and help ensure reliability of supply. Keeping gas powered generators available for dispatch during the COVID-19 pandemic is likely to be an important part of minimising the impact of the COVID-19 pandemic on the energy system.

However, gas is also of crucial importance to other customers, including households (where it is commonly used for heating, cooking and hot water) and larger commercial and industrial users such as manufacturers. A significant number of jobs are linked either directly or indirectly to the manufacturing sector, and it also plays a key role in supplying essential products domestically. Many of these businesses were already struggling due to high gas prices (in part driven by competition issues such as limited numbers of gas suppliers), and the COVID-19 pandemic has made conditions more difficult.

The importance of the manufacturing sector has also been recognised by the National COVID-19 Coordination Committee (NCCC), which has announced it is working with the sector to ensure the continued supply of essential products and to identify other opportunities for growth once Australia enters into the recovery stage.<sup>1</sup>

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<sup>1</sup> <https://pmc.gov.au/nccc/news/commission-starts-work-manufacturers-supply-essential-products>

The ACCC is concerned that the prioritisation of using gas for electricity generation could harm other gas users, particularly those in manufacturing.

The ACCC is also concerned that sharing of information between industry participants (particularly gas suppliers) about their gas supply arrangements and their current level of availability could result in market sensitive information passing between competitors. Such a situation could influence how those competitors then behave when seeking to sell (or procure) gas. Given the level of competition between gas suppliers is already limited, this conduct could have a detrimental impact on gas users. This could also potentially affect customers who procure gas from AEMO's wholesale gas markets and also under bilateral contracts.

For the avoidance of doubt, the ACCC does not have concerns about AEMO receiving such information from various industry participants, but is concerned about sharing *between* industry participants.

The proposed conduct would enable AEMO to hold multilateral discussions regarding gas availability, compared to the current situation where AEMO would need to have such discussions on a bilateral basis. Given the conduct is restricted to discussions and information sharing, rather than forming contracts, arrangements, or understandings, it is not clear what the need for multilateral meetings is. This is particularly so given the emergency arrangements and powers available to AEMO and industry participants in both the gas and electricity markets, including the Gas Supply Guarantee and the various jurisdictional emergency arrangements.

Given these concerns, the ACCC seeks further information from AEMO regarding the proposed conduct relating to sharing gas information.

### **Questions for AEMO**

1. What are the circumstances (or, if yet unknown in the context of COVID-19 pandemic, examples of circumstances AEMO considers possible) where sharing information between industry participants regarding gas availability would be necessary?
2. Regarding AEMO's answer to (1), why are bilateral communications between AEMO and industry participants not sufficient in such circumstances.
3. What sort of information does AEMO consider industry participants may need to share as part of the proposed conduct?
4. As AEMO's primary concern regarding gas availability relates to ensuring sufficient gas supply for gas powered generation, can AEMO explain why existing arrangements in the electricity market (including the gas supply guarantee<sup>2</sup>, other national emergency management arrangements<sup>3</sup>, and normal market functions and operations) are not sufficient for AEMO to plan for and respond to gas availability issues arising due to COVID-19?
5. Can AEMO explain how it intends for the proposed conduct to interact with the various jurisdictional emergency arrangements as well as the National Gas Emergency Response Advisory Committee (NGERAC) particularly around decisions on gas curtailment?

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<sup>2</sup> <https://www.aemo.com.au/energy-systems/electricity/emergency-management/gas-supply-guarantee>

<sup>3</sup> <https://www.aemo.com.au/energy-systems/electricity/emergency-management/national-role>

6. Does AEMO agree with the ACCC's assessment of potential detriments arising from the sharing of information between participants? Are there factors that AEMO considers mitigate the concerns, which the ACCC should have regard to?
7. Is it possible to reframe or narrow the proposed conduct in a way that addresses the ACCC's concerns while still enhancing AEMO's ability to respond to issues relating to gas the arise due to the COVID-19 pandemic?

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Robert Janissen on 02 6243 1387 or [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Drake', with a stylized flourish at the end.

Michael Drake  
Director  
Adjudication