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16 July 2020

Michael Drake  
Director, Adjudication  
Australian Competition and Consumer Commission  
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**For publication****By Email**

Dear Mr Drake

**AEMO application for authorisation AA1000484**

We refer to AEMO's application for authorisation dated 30 March 2020 (**Application**), the interim authorisations granted on 4 and 17 April 2020 and to your letter dated 19 June 2020 regarding the ongoing need for authorisation to ensure the safety, security and reliability of Australian energy systems and the integrity of wholesale markets during the pandemic.

In summary, AEMO considers that there is an ongoing need for authorisation but that it is appropriate that the scope of the authorisation application be **narrowed** to reflect AEMO's better understanding of the impact of the pandemic in Australia since the application was first lodged in March 2020 during its initial onset.

**Annexure A** to this letter contains proposed amendments to the definition of 'Proposed Conduct', as described in AEMO's original application on 30 March 2020 and varied on 17 April 2020.

AEMO requests that the ACCC accept its proposed amendments to the Application. If the ACCC accepts AEMO's request to amend its Application, AEMO also submits that it would be appropriate for the scope of the interim Authorisation dated 17 April 2020 to be narrowed to a corresponding extent.

AEMO would be happy to discuss any aspects of this letter with the ACCC.

**1 Effectiveness of interim authorisation to date**

AEMO considers that the interim authorisations granted on 3 and 17 April 2020 have been effective in ensuring ongoing energy supplies during the pandemic. In practice, the conduct engaged in relying on the authorisation to date has been relatively limited. However, having the interim authorisations in place enabled AEMO and energy industry participants to hold open and frank discussions about the challenges being faced, particularly in the early stages of the pandemic when it was unclear how infection rates and government restrictions might impact on travel by essential workers and maintenance and operation of essential energy infrastructure.

In the months that followed, AEMO also facilitated regular meetings of key electricity generators in Queensland in which maintenance work in upcoming months was discussed and scheduled. The pandemic and associated restrictions and social distancing measures have had an impact on the ability of certain generators to undertake maintenance so far in 2020. This is significant as maintenance generally needs to occur outside of the warmer months when the energy system is under considerable stress. The interim

authorisations enabled those Queensland generators to discuss scheduling of maintenance to reduce the risk of outages (and extended outages), while avoiding moving essential maintenance into the Summer months, and thereby ensure ongoing energy supplies during the pandemic. AEMO's experience was that the open nature of these discussions enabled maintenance issues to be discussed and addressed in a flexible and efficient way. For example, one generator was able to quickly locate an alternative local supplier of a major part that would ordinarily be imported from Germany but was unavailable for importation due to COVID-19 related restrictions in Europe. This avoided an extended outage which was at risk of overlapping with other scheduled outages in the state, giving rise to risks of energy outages. The sharing of this information (which does not ordinarily occur, even with AEMO) caused other generators to consider their supply chains for their outages earlier than originally planned, to avoid the risk of delays for their outages. AEMO notes that the Queensland generator meetings have also facilitated sharing of information regarding best practice for dealing with COVID-19 safety related matters such as quarantining and testing contractors and managing shift hand overs.

Importantly, AEMO's existing powers would not have enabled it to facilitate the discussions or cooperation detailed above. Broadly, AEMO's powers to compel participants to disclose detailed information about their operations is relatively limited, and where AEMO receives confidential information about one industry participant, it is generally not permitted to disclose that information to other industry participants except to the limited extent specifically provided for the Rules (eg through the PASA process) or unless necessary to prevent an imminent threat to system security (a very high threshold). AEMO also has some powers to intervene in industry operations (for example, to direct maintenance to be rescheduled or to direct that a generator come on) but only where there is an imminent threat to system security. Finally, AEMO has no or limited formal powers in relation to a number of categories of conduct contemplated by the interim authorisations, such as sharing of essential personnel or essential inputs.

## 2 Ongoing need for authorisation

The recent outbreak and subsequent lockdowns in Victoria confirm that while initial efforts to suppress the virus in Australia were successful, serious COVID-19 risks remain for the foreseeable future. Accordingly, AEMO considers that there is an ongoing need for authorisation to ensure energy supplies during the pandemic, particularly in relation to cooperation regarding repairs, maintenance and ongoing operation and sharing of essential workers and essential parts (see paragraphs 3(a) and (f), 3(b) and 3(c) respectively of the interim authorisation dated 17 April 2020). This is discussed in further detail below.

### 2.1 Essential maintenance and ongoing operation (paragraphs 3(a) and 3(f) of the interim authorisation)

For the foreseeable future, it seems likely that Australia will continue to face COVID-19 outbreaks and ongoing restrictions in some form relating to international borders, intra-country travel and associated quarantine requirements and social distancing. For example, the recent outbreaks in Victoria have led to a tightening of border restrictions and a reintroduction of stage 3 restrictions in metropolitan Melbourne and some regional locations. New directions in Queensland now also require all interstate travellers (including essential workers) to quarantine for 14 days upon entering Queensland.

AEMO's experience over the last four months is that lockdowns, border restrictions, quarantine requirements and social distancing have had a **direct** and **material** impact on essential maintenance of energy infrastructure, including:

- (a) energy companies deferring maintenance during the initial stages of the pandemic, resulting in a greater number of maintenance works needing to be undertaken in the latter part of the year, including during the extended Summer period when the energy system is under considerable stress;

- (b) practical impediments to specialist maintenance personnel (who are often from national firms based in Victoria and New South Wales) travelling between states to undertake maintenance due to border closures and/or quarantine requirements;
- (c) maintenance works taking longer than normal due to social distancing requirements on-site and delays in receiving essential parts from overseas; and
- (d) in some circumstances, maintenance staff being unable to work due to the onset of flu like symptoms which required workers to self-isolate and obtain negative COVID-19 tests before returning to work; and
- (e) as a result of the factors listed at (b) to (d) above, a heightened risk of extended outages, which in turn increases the risk of outages overlapping with one another potentially giving rise to power disruptions.

In AEMO's view, all of these factors have combined to adversely impact the usual scheduling of essential maintenance of energy infrastructure in which energy companies prioritise completion of maintenance works during the cooler months. While to date only Queensland generators have relied on the interim authorisations to discuss scheduling of maintenance and ongoing operation of facilities (principally due to essential workers being located in southern states), AEMO considers this need is likely to arise in other states in the coming months in the lead up to the extended Summer period if the pandemic continues. Accordingly, AEMO considers there are still significant public benefits in being able to facilitate discussions and co-operation among industry relating to these issues, where necessary for the purposes of ensuring ongoing energy supplies.

As previously discussed with the ACCC, AEMO's existing powers do not enable it to facilitate discussions and cooperation among industry relating to maintenance, repairs and ongoing operation of facilities. While, through the PASA and other processes under the Rules, AEMO receives notifications from industry participants regarding planned outages, the information that can be shared with other participants is not sufficiently granular to allow the sorts of conversations that have taken place in the Queensland generators forums under the interim authorisations. AEMO's powers to intervene in relation to maintenance (eg, to direct that maintenance be rescheduled) is limited to circumstances where there is an imminent threat to system security and would unlikely be triggered where AEMO and industry wish to scenario plan to co-ordinate maintenance activities in order to minimise the risk of outages given the difficulties posed by the pandemic as outlined in (a) – (e) above.

## **2.2 Essential personnel and inputs (paragraphs 3(b) and (c) of the interim authorisation)**

In its original application for authorisation dated 30 March 2020, AEMO noted its concerns about the potential impacts to energy supplies in the event that essential workers or contractors became ill with COVID-19 or there were disruptions to local and global supply chains which resulted in shortages of parts or other essential resources. In practice, due to Australia's early success in suppressing the virus, AEMO has not to date observed impacts to energy supplies due to illness among essential workers and contractors. Similarly, AEMO has not observed significant impacts to local and global supply chains that could not be managed to date although AEMO notes that industry participants are increasingly reporting these issues.

However, given the position in Victoria, the potential for continued local outbreaks in other parts of Australia as restrictions are lifted, and given the very significant infection rates in certain overseas jurisdictions, AEMO considers that there are still real risks of employee illness and further impacts to local or global supply chains in the coming months. By way of example, if employees in a control room were exposed to COVID-19 in a similar way to recent cases in supermarket distribution centres, this could give rise to a real risk of power disruptions unless alternative staffing arrangements (eg, sharing personnel from a competing control room) could be quickly arranged.

AEMO also considers that there are risks of unplanned outages causing greater disruptions to energy supply than would ordinarily be the case due to issues sourcing specialist contractors quickly in the current environment, as discussed in 2.1 above.<sup>1</sup> Accordingly, AEMO considers that there remain significant public benefits in AEMO being able to facilitate discussions and co-operation on essential personnel, parts and other resources where necessary to ensure ongoing energy supplies during the pandemic. Minimising the risk of outages during the extended Summer period is particularly important from a public health perspective where ongoing energy supplies are essential to ensuring that homes, businesses and healthcare providers can maintain power, including for appropriate cooling in the warmer months.

As previously discussed with the ACCC, AEMO's existing powers do not enable it to facilitate discussions and cooperation among industry relating to sharing personnel or essential parts or resources. AEMO does not have specific powers to compel industry participants to provide information about personnel issues or supply chain constraints. Industry participants are required to provide AEMO with information about issues affecting their facilities which could adversely affect system security more generally, however, issues around ill personnel and supply chain shortages are unlikely to be reported under these provisions. In any event, AEMO would be unable to share specific information reported by one industry participant with other industry participants for confidentiality reasons. In addition, AEMO has no formal powers to direct industry participants to take action relating to personnel or supply chain issues.

### **3 Proposed narrowing of authorisation**

AEMO notes that its original application for authorisation was prepared and submitted in March 2020 during the height of the initial pandemic health crisis. At this point in time, infection rates were climbing rapidly in Australia and the government's response to the pandemic and its health and economic impacts were still evolving. Four months on, AEMO has been able to observe and discuss with industry how Australia's energy systems have been impacted in practice and to form a view of the risks which are likely to arise in future. Accordingly, AEMO considers it appropriate that the application for authorisation be narrowed to focus on live issues (being industry co-operation in relation to repairs, maintenance and ongoing operation) and issues which AEMO considers are more likely to arise in coming months (being the potential need to discuss or share essential personnel or essential parts and resources in the event of further outbreaks and/or supply chain disruption). Other conduct contemplated by the Application (such as agreements to defer non-essential works (paragraph 3(d) of the interim authorisation), managing system stability (paragraph 3(e) of the interim authorisation) and other notified conduct (paragraph 3(g) of the interim authorisation) have not proved as problematic and could be removed.

AEMO also proposes that the application for authorisation be amended to require a senior officer of a state or territory government department with responsibilities for energy, or their delegate, to attend or otherwise participate in any state / territory specific discussions and arrangements relying on the authorisation. This would provide enhanced transparency in relation to the conduct which occurs in reliance on the authorisation.

AEMO would also be happy to explore with the ACCC whether a trigger point for review and potentially revocation should also be included in the authorisation in the event that government restrictions regarding international borders, intra-country travel, quarantine and social distancing come to an end.

**Annexure A** to this letter contains draft amendments to the definition of Proposed Conduct for the ACCC's consideration.

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<sup>1</sup> AEMO notes that this issue arose recently and that the meetings of generators enabled the relevant generator to quickly source essential contractors to work on the outage, notwithstanding the current COVID-19 environment.

#### 4 Other matters raised in public consultation

AEMO notes that four submissions have been received in relation to the Application.<sup>2</sup> While these submissions are generally supportive of the Application, AEMO notes that certain submissions suggested that the ACCC give further consideration to:

- whether further oversight of the authorisation and/or consultation with consumer groups is desirable; and
- whether a shorter period than 12 months is appropriate for the authorisation.

In relation to oversight and transparency, AEMO agrees that transparency in relation to the authorisation is important. However, AEMO considers that there is already significant transparency and oversight in relation to the conduct the subject of the authorisation. This includes:

- that authorisation is limited to conduct which has been arranged or facilitated by AEMO, the independent market operator;
- that AEMO must report weekly to the ACCC on all material developments (including updates provided to the Energy Coordination Mechanism), with those updates published on the ACCC's website; and
- that AEMO is required to notify the ACCC of any regular meetings in which industry participants will be relying on the interim authorisation, which the ACCC can (and has) attended as an observer.

Notwithstanding these existing mechanisms, and as noted in section 3 of this letter, AEMO proposes that the application for authorisation be amended to require state/ territory government department involvement in any state / territory specific discussions or arrangements which rely on the authorisation.

In relation to the time period of the authorisation, AEMO considers at this stage that an outer time limit of 12 months is still appropriate given the continued uncertainty as to how long the pandemic and its effects will continue in Australia. However, as noted in section 3 of this letter, AEMO would not object to a trigger point for review and potentially revocation being included in the final authorisation in the event that government restrictions relating to international borders, intra-country travel, quarantine and social distancing coming to an end.

AEMO would be happy to discuss further any of the points raised in this letter with the ACCC.

Yours sincerely



**Rosannah Healy**

Partner  
Allens



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<sup>2</sup> Submission from: the Consumers Federation of Australia dated 1 April 2020, ATCO Australia Pty Ltd dated 19 May 2020, the Public Interest Advocacy Centre dated 20 May 2020 and the Australian Energy Council dated 20 May 2020.

## Annexure A: Narrowed Definition of Proposed Conduct

### 3.1. Overview

AEMO, AEMO Industry Participants and Other Approved Participants seek authorisation to discuss, enter into or give effect to any contract, arrangement or understanding between them, or engage in any conduct, which has the purpose of:

- 3.1.1. ensuring the safe, secure and/or reliable operation of Australia's energy systems and/or the continued operation and integrity of the wholesale markets that underpin energy supply during the pandemic;
- 3.1.2. ensuring ongoing energy supply to support consumers, businesses, government operations and the economy during the pandemic;
- 3.1.3. minimising the risk of any energy outages during the pandemic;
- 3.1.4. ensuring that there are sufficient resources to maintain and operate energy infrastructure, including personnel and essential inputs such as fuel, parts and equipment; or
- 3.1.5. planning or preparing for the impacts of the pandemic in relation to any of the above (the Proposed Conduct).

### 3.2. Categories Examples of Proposed Conduct

~~Examples of e~~Co-ordination measures that may be engaged in if they have one or more of the purposes listed in 3.1.1 to 3.1.5 above **are limited to the following, but are not limited to:**

- 3.2.1. (Sharing information regarding ongoing operation) sharing of information related to the ongoing availability, performance and/or operation of AEMO Industry Participant facilities and any risks to ongoing availability, performance and/or operation;
- 3.2.2. (Co-ordinating repairs and maintenance) planning for and/or minimising any disruptions to energy supply, for example, by coordinating scheduling of any repairs, maintenance and other works requiring outages;
- 3.2.3. (Sharing essential personnel) sharing information and/or entering into common arrangements in relation to essential employees and contractors to ensure there are sufficient personnel to maintain and operate energy infrastructure; **and**
- 3.2.4. (Sharing essential inputs) sharing information about the availability of, and/or entering into arrangements to share, essential inputs for energy production, generation, transmission, distribution and supply systems and infrastructure, such as ~~fuel for thermal electricity generators~~, parts, equipment or specialised resources necessary for essential maintenance, as well as other consumable materials necessary for the operation of AEMO Industry Participant facilities (**but in all cases excluding fuel for thermal generators**).
- ~~3.2.5. (Deferring non-essential works) sharing information, and/or entering into arrangements, to defer activities and/or projects not essential to maintaining the safe, secure and/or reliable operation of energy markets during the pandemic;~~
- ~~3.2.6. (Gas availability) sharing information for the purposes of assessing whether there are sufficient quantities of gas for electricity generation during the pandemic; and/or~~
- ~~3.2.7. (Managing system stability) sharing information and/or entering into common arrangements in order to manage system stability from a technical perspective as a result of changes in system supply and/or demand, including for example managing generation profiles.~~

Importantly:

- the Proposed Conduct would be limited to:

- (i) discussions, conduct, contracts, arrangements and/or understandings to which AEMO, the independent market operator, is either a party or has facilitated; or
  - (ii) discussions, conduct, contracts, arrangements and/or understandings to which AEMO is not a party but which are carried out for the purposes of implementing (i) above;
- the Proposed Conduct would be limited to:
    - where discussions relate to a specific state or territory jurisdiction, discussions attended by a senior officer of the relevant state or territory government department with responsibility for energy, or their delegate; or
    - where conduct, contracts, arrangements and/or understandings relate to a specific state or territory jurisdiction, conduct, contracts, arrangements and/or understandings which have been agreed to by, or arise out of a discussion attended by, a senior officer of the relevant state or territory government department with responsibility for energy, or their delegate;
  - the Proposed Conduct is intended to ensure the ongoing safety, security and reliability of Australian energy systems and the integrity of wholesale markets during the pandemic. It does not involve entering into any contracts, arrangements or understandings agreements regarding the wholesale or retail price of energy, or the supply or acquisition of gas, that would rely on the authorisation. Nor is it intended that AEMO, AEMO Industry Participants and Other Approved Participants would share confidential information relating to retail pricing matters, cost or profits;
  - the Proposed Conduct is not compulsory, and any AEMO Industry Participant or Other Approved Participant can opt out of any proposed collaboration the subject of this application;
  - the Proposed Conduct is a temporary measure to ensure the ongoing safe, secure and reliable supply of energy to consumers, businesses, government operations and the economy during the COVID-19 pandemic;
  - ~~if authorisation is granted, AEMO will notify the ACCC of any proposed coordination measures to be undertaken and which are not listed at 3.2.1 to 3.2.7 above;~~
  - If authorisation is granted, it is intended that AEMO will update the Energy Coordination Mechanism (of which the Australian Energy Regulator (**AER**) is a member) of steps being taken to ensure ongoing energy supplies during the pandemic, including coordination measures as relevant. The newly formed Energy Coordination Mechanism brings together government and industry leaders for weekly meetings to coordinate a national response to the impact of COVID-19 on the energy industry. Members include representatives of the federal and state government departments responsible for energy, AER, AEMO, the Australian Energy Market Commission, the Energy Security Board and Energy Consumers Australia.