

**Application for interim and final
authorisation under s88(1) of the
*Competition and Consumer Act 2010 (Cth)***

Lodged by:

Australian Energy Market Operator Limited
on behalf of itself and energy market participants in
Australia

public version

7 June 2023

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1. Summary

1.1. Background

This application is made to the Australian Competition and Consumer Commission (**ACCC**) by the Australian Energy Market Operator Limited (**AEMO**), the independent market operator. AEMO manages electricity and gas markets and systems across Australia to ensure Australians have access to reliable,¹ secure² and sustainable energy. AEMO's members include both government and industry participants.

The application is made on behalf of:

- AEMO and its related bodies corporate;
- participants in Australian electricity markets (other than in Western Australia), being parties with a registration in, or a registration exemption from, the National Electricity Market (**NEM**) and their related bodies corporate³ (**AEMO Industry Participants**); and
- other entities that become participants registered in the NEM or, parties with a registration exemption from the NEM, and their related bodies corporate, as notified in writing by AEMO to the ACCC (**Future AEMO Industry Participants**).

Australia's electricity system and industry is currently in a period of transition, with a shift from reliance on thermal generation to diversified renewable electricity sources. During this period of transition, Australia's electricity industry is facing challenges that pose threats to reliable electricity supply across the NEM. These challenges include:

- increasing reliance on a smaller number of significant baseload generators, as a result of recent and forthcoming retirements of coal-fired generation;
- an aging fleet of remaining coal-fired generators that require more frequent and extended repairs and maintenance;
- long lead times for planning System Works (as defined below) as a result of global supply chain issues relating to parts and equipment and ongoing labour shortages;
- replacement renewable generation and firming capacity has not yet been developed to the extent that it can fully replace retired capacity;
- connecting new renewable energy generators requires extensive transmission outages;
- other significant transmission projects being implemented also require outages.

In combination, the above factors mean there is a real threat to reliability of electricity supply if repairs, maintenance, renewals, upgrades and new connections requiring outages of generation, transmission and distribution assets are not carefully coordinated.

As a result, AEMO is seeking authorisation to allow cooperation between industry participants in the following areas, so as to reduce the risk of supply shortfalls and blackouts across the NEM:

¹ Reliability refers to the capacity of the energy system to produce and transport energy of a certain quality that will meet the demand for energy of end-users.

² Security refers to the technical and operational resilience of an energy system. That is the ability for the interconnected networks and connected supply facilities to continue to operate within their defined technical limits. Electricity systems must be operated with a 'buffer' that accounts for the occurrence of a credible contingency.

³ The participants and members registered, or with an approved exemption, in respect of markets and systems operated or managed by AEMO can be found in the lists at the following links:

<https://aemo.com.au/energy-systems/electricity/national-electricity-market-nem/participate-in-the-market/registration>

<https://aemo.com.au/learn/market-participants/gas-market-participants>

- coordinating outages of generation, transmission and distribution assets for the purposes of repairs, maintenance, renewals, upgrades and new connections (**System Works**);
- sharing information in relation to essential employees and contractors to ensure there are sufficient personnel to undertake System Works;
- sharing information about the availability of parts, equipment or specialised resources necessary for System Works;
- sharing information about any risks to the ongoing availability, performance and/or operation of their energy facilities for the purposes of scheduling System Works;
- sharing information about electricity system stability from a technical perspective for the purposes of scheduling System Works.

The Proposed Conduct is a sub-set of the conduct previously authorised by authorisation AA1000618 (the **Energy Crisis Authorisation**). The Energy Crisis Authorisation was obtained in response to the crisis in the energy sector that arose in May/June 2022 and the ongoing effects of the COVID-19 pandemic. The Energy Crisis Authorisation expired on 30 April 2023. This application seeks an authorisation narrower in scope than the Energy Crisis Authorisation but it is sought for a longer period, namely until 30 June 2026. Given the ongoing issues described above arising from the energy transition, in AEMO's view, the experience with the Energy Crisis Authorisation, in particular the fortnightly meetings of energy industry participants to discuss System Works in particular NEM regions, has assisted in ensuring electricity system reliability and has not given rise to any public detriments.

1.2. Application for urgent interim authorisation

As discussed in section 3.5 below, AEMO requests that the ACCC grant interim authorisation to enable AEMO, AEMO Industry Participants and Future AEMO Industry Participants to resume working together as soon as possible following the expiry of the Energy Crisis Authorisation.

2. Parties to the Proposed Conduct

2.1. Applicant

Name, address (registered office), telephone number and ACN	Contact person's name, position, telephone number and email address	Description of business activities
Australian Energy Market Operator Limited (AEMO) Level 22, 530 Collins Street Melbourne Vic 3000	Tony Snell General Counsel AEMO [REDACTED] [REDACTED]	Operation of Australian electricity and gas markets and systems

2.2. Email address for service of documents in Australia

Ted Hill
Partner
Allens

[REDACTED]
[REDACTED]

2.3. Other Persons who propose to engage in the Proposed Conduct

As noted above, AEMO makes this application on behalf of itself, AEMO Industry Participants and any Future AEMO Industry Participants.

3. The Proposed Conduct

3.1. Overview

AEMO is the independent market and system operator for gas and electricity systems across Australia.

AEMO seeks authorisation to enable it and its related bodies corporate, AEMO Industry Participants and Future AEMO Industry Participants to discuss, enter into or give effect to any contract, arrangement or understanding between them, or engage in any conduct, related to planning for and/or minimising any disruptions to electricity supply by:

- 3.1.1. coordinating outages of generation, transmission and distribution assets for the purposes of repairs, maintenance, renewals, upgrades and new connections (**System Works**);
- 3.1.2. sharing information in relation to essential employees and contractors to ensure there are sufficient personnel to undertake System Works;
- 3.1.3. sharing information about the availability of parts, equipment or specialised resources necessary for System Works;
- 3.1.4. sharing information about any risks to the ongoing availability, performance and/or operation of their energy facilities for the purposes of scheduling System Works;
- 3.1.5. sharing information about electricity system stability from a technical perspective for the purposes of scheduling System Works,

provided:

- the purpose for doing so is either to:
 - ensure the safe, secure and reliable operation of Australia's energy systems, and minimise the risk of any energy outages, during the period of the authorisation; and/or
 - ensure the continued operation and integrity of the NEM during the period of the authorisation; and
- this conduct does not include the sharing of specific generators' wholesale prices, costs and margins,

the **Proposed Conduct**.

The Proposed Conduct is narrower than the conduct previously authorised by the Energy Crisis Authorisation in the following respects:

- the Proposed Conduct is limited to conduct related to electricity (ie, it does not include conduct related to gas);
- the Proposed Conduct is limited to discussions, conduct, contracts, arrangements and/or understandings related to System Works;
- the Proposed Conduct does not cover entering into common arrangements in relation to sharing essential employees and contracts to ensure there are sufficient personnel to maintain and operate energy infrastructure;
- the Proposed Conduct does not cover sharing information about the availability of, and/or entering into arrangements to share sufficient quantities of, essential inputs for energy

production, generation, transmission, distribution and supply systems infrastructure, including:

- water, gas, coal, diesel and other fuel for generators (**Generator Fuel**);
- services for the transport of Generator Fuel;
- parts, equipment or specialised resources necessary for essential maintenance of facilities for the transport of Generator Fuel; and
- other consumable materials necessary for the operation of such facilities;
- the Proposed Conduct does not cover entering into common arrangements in order to manage electricity system stability from a technical perspective.

3.2. Limitations of the Proposed Conduct

The Proposed Conduct would be limited to discussions, conduct, contracts, arrangements and/or understandings to which AEMO, or its related bodies corporate, is either a party to or has facilitated.

Where the Proposed Conduct involves a meeting or discussions between AEMO Industry Participants or any Future AEMO Industry Participants, then:

- AEMO must attend;
- only AEMO Industry Participants or Future AEMO Industry Participants invited by AEMO or its related bodies corporate may attend;
- the ACCC will be provided with advance notice of the meeting, attendees and agenda and invited to attend; and
- where the Proposed Conduct involves a meeting relating to a specific state or territory jurisdiction or jurisdictions, a senior officer of the relevant state or territory government department or departments with responsibility for energy, or their delegate, will be provided with advance notice of the meeting, attendees and agenda and invited to attend.

Authorisation is not sought to discuss, enter into or give effect to any contracts, arrangements or understandings, or engage in any other conduct, regarding the wholesale or retail price of electricity.

This conduct is not compulsory. Any AEMO Industry Participant or Future AEMO Industry Participant can opt out of any proposed collaboration.

3.3. Proposed conditions of proposed authorisation

AEMO proposes the following conditions apply to the proposed authorisation:

- 3.3.1. **Condition 1: Reporting Requirements.** AEMO must comply with the reporting and communications protocol attached at Schedule 2. This protocol includes AEMO providing monthly reports to the ACCC about the material contracts, arrangements or understandings made at meetings during the preceding period, allows the ACCC to observe meetings and request additional information about the Proposed Conduct.
- 3.3.2. **Condition 2: Agreements not to endure beyond authorisation period.** Any contract, arrangement or understanding entered into in reliance on the interim authorisation or final authorisation must provide for its immediate termination (other than any provisions dealing with ongoing confidentiality obligations), upon the expiry or revocation of the interim authorisation (unless another interim authorisation or final authorisation relating to that conduct is granted) and upon expiry or revocation of any final authorisation.
- 3.3.3. **Condition 3: Presence of competition lawyer:** Where the Proposed Conduct involves a meeting or discussion between AEMO Industry Participants or any Future AEMO Industry

Participants, an external lawyer with expertise in competition law, engaged by AEMO and approved by the ACCC, must attend the meetings with instructions to immediately advise the attendees if, during the course of the meeting, they develop concerns that there is conduct occurring that is outside the scope of the authorisation and risks breaching the CCA.

3.4. Rationale

Authorisation will allow AEMO Industry Participants and Future AEMO Industry Participants, under the auspices of AEMO, to work together in relation to System Works to reduce the ongoing risks of electricity outages. The authorisation will do so in the following ways:

- 3.4.1. **Coordinating scheduling of System Works.** AEMO Industry Participants and Future AEMO Industry Participants will be able to coordinate the scheduling of any outages for the purposes of repairs, maintenance, renewals, upgrades and new connections. This will reduce the risk of overlapping System Works affecting the supply of electricity. Although AEMO can work on a bilateral basis with individual participants, allowing meetings involving industry participants, facilitates timely and effective coordination of repairs, maintenance, renewals, upgrades and new connections.
- 3.4.2. **Sharing information in relation to essential personnel to undertake System Works.** AEMO Industry Participants and Future AEMO Industry Participants will be able to share information in relation to essential employees and contractors to ensure there are sufficient personnel to undertake System Works. Demand both locally and globally mean that sharing information in relation to essential personnel could reduce the risk of unnecessary or extended periods of outages. Additionally, some of the skills required to maintain Australia's energy systems are highly specialised with a limited number of people able to perform these roles. Sharing information in relation to essential personnel will ensure these skills are at the electricity facilities with the greatest need, to reduce the risk of electricity outages.
- 3.4.3. **Sharing information about essential inputs necessary for System Works.** AEMO Industry Participants and Future AEMO Industry Participants will be able to share information about the availability of, or limitations on, parts, equipment or specialised resources necessary for System Works. For example, electricity generators may be able to share information about lead times for new generator transformers. Facilitating this cooperation would reduce the risk of extended outages arising from a generator being unable to obtain parts, equipment or resources necessary for System Works.
- 3.4.4. **Sharing information regarding ongoing operation for the purposes of scheduling System Works.** AEMO Industry Participants and Future AEMO Industry Participants will be able to share information about any risks to the ongoing availability, performance and/or operation of their facilities for the purposes of scheduling System Works. Information on availability is publicly available through AEMO's PASA systems, however this would allow AEMO Industry Participants to provide further context regarding that information. The purpose of this is to facilitate prioritisation of works by allowing participant discussions to factor in risks, especially risks of breakdown of plant and equipment, for the purpose of reducing the likelihood of avoidable extended outages occurring. For example, there may be a need to bring forward an outage to avoid damage to plant that might be complicated or expensive to replace or repair due to limited availability of specialised contractors, or need to send overseas/source from overseas.
- 3.4.5. **Sharing information about system stability for the purposes of scheduling System Works.** AEMO Industry Participants and Future AEMO Industry Participants will be able to share information about electricity system stability from a technical perspective for the purpose

of scheduling System Works. This may allow AEMO and generators to ensure that essential synchronous generators remain online to provide necessary system strength.⁴

3.5. Application for interim authorisation

AEMO seeks interim authorisation for the Proposed Conduct on an urgent basis.

AEMO considers that there is an urgent need for interim authorisation as the winter period begins. Typically, System Works have been scheduled for the winter period as this was traditionally a period of lower risk than the summer period in which the NEM generally experiences peak demand. However, recent developments in the energy industry have changed the risk profile of this period. In particular:

- demand for electricity in winter has increased as consumers have transitioned away from gas heating to electrical heating;
- relatively less electricity is generated in winter as compared to summer from renewable generators, such as solar and wind based generators; and
- this creates a heightened reliance on thermal generation.

AEMO considers interim authorisation will be critical to managing these threats to reliable electricity supply across the NEM. In particular, an interim authorisation will allow those participants to respond to the challenges described in Section 6.1 below swiftly by engaging in the Proposed Conduct in an expedited manner. For example, participants will be in a position to work together cooperatively to ensure that the risk of any disruption to the safe, secure and sustainable supply of electricity is mitigated.

It is also particularly important to manage System Works efficiently ahead of what is expected to be a summer with a high likelihood of challenging weather conditions, in circumstances where the recent closure of the Liddell generation plant will mean that there is a lower amount of baseload capacity compared to previous summers.

Granting interim authorisation will also maintain the status quo. Following the expiry of the Energy Crisis Authorisation AEMO and its related bodies corporate, AEMO Industry Participants and Future AEMO Industry Participants can resume working together as they have since 1 July 2022. Further, the scope of Proposed Conduct is more limited than the Energy Crisis Authorisation.

If, while interim authorisation is in place, the ACCC is concerned about the effectiveness of the Proposed Conduct, it will be open to the ACCC to revoke that authorisation at any time.

3.6. Provisions of the CCA which might apply to the Proposed Conduct

AEMO Industry Participants may compete in relation:

- to the generation, transmission, transportation and/or supply of electricity in Australia; and/or
- the procurement of essential inputs for electricity production, generation, transmission, distribution and/or supply systems and infrastructure.

Accordingly, in the absence of authorisation, the Proposed Conduct risks giving rise to contraventions of the CCA, including by provisions of the CCA relating to:

- cartel conduct (Division 1 of Part IV) (ss45AD, 45AF, 45AG, 45AJ, and 45AK of the CCA); or

⁴ The power system in the NEM is an alternating current system. The system is strong if the voltage wave is very smooth and doesn't deform too much when there is a disturbance in the system. Synchronous generators like coal, gas and hydroelectric generators stabilise the voltage wave formed as a 'byproduct' of their power production. This is due to the fact they are physically coupled to the grid. At the moment, most wind and solar generators don't do this, as they use electronics - computers and inverters - to couple with the grid. See: AEMC, System strength: Getting the grid sorted.

- contracts, arrangements or understandings, concerted practices, exclusive dealing and other conduct that have the purpose, effect or likely effect of substantially lessening competition (ss 45(1), 46(1) and 47(1) of the CCA).

The Proposed Conduct includes discussions, entering into or giving effect to any contract, arrangement or understanding, or engaging in any conduct, as authorisation is sought for a range of potentially anticompetitive conduct, including exclusive dealing and concerted practices, which can occur without a contract, arrangement or understanding.

3.7. Term of authorisation sought

AEMO seeks authorisation to engage in the proposed conduct until 30 June 2026, noting that the ACCC could under section 91B of the CCA revoke the authorisation should there be a material change in circumstances.

While the energy transition is likely to continue for at least the next ten years, AEMO considers authorisation for the period until 30 June 2026 is appropriate for the following reasons:

- The key risks outlined in Section 6.1 below will be heightened in the early years of the energy transition, before firming capacity from renewable sources has been connected to the NEM and major transmission construction and connection works have been completed;
- The Eraring generation plant in New South Wales, which has a capacity of 2880MW is scheduled to retire in 2025, after which the Proposed Conduct will be critical to reducing the risk of overlapping System Works affecting the supply of electricity; and
- AEMO has not dealt with the significant volume of System Works now expected. As described in Section 6.1 below, the increase in the volume of System Works is due to a combination of the age of existing generators, connecting additional new generation facilities and other major transmission works. Therefore, the next few years of the energy transition will be a critical period for AEMO and industry to learn how to best manage System Works.

AEMO also considers that authorisation for the period until 30 June 2026 will allow the ACCC to monitor the effects of the Proposed Conduct.

4. Persons who may be directly impacted by the Proposed Conduct

The persons who would be directly impacted by the Proposed Conduct include customers, other users of inputs, suppliers and staff of AEMO, AEMO Industry Participants and any Future AEMO Industry Participants.

5. Counterfactual

In the absence of the Proposed Conduct, AEMO and its related bodies corporate, AEMO Industry Participants and Future AEMO Industry Participants may be unable to coordinate certain of their activities in order to ensure the safe, secure and reliable supply of electricity during the period of the proposed authorisation. This would exacerbate the risk of outages and blackouts in circumstances where electricity systems are already under pressure as a result of the challenges described in Section 6.1 below.

Accordingly, without authorisation, AEMO submits that the ability of AEMO and its related bodies corporate, AEMO Industry Participants and Future AEMO Industry Participants to address issues that have the potential to impact on the safety, security and/or reliability of Australia's energy supply during the period of the proposed authorisation is likely to be less effective and less timely than if they are permitted to work together in the manner proposed in this application. Please refer to Sections 6.3 and 6.4 for further details.

6. Public benefit

AEMO submits that the Proposed Conduct will result in significant public benefits, as outlined below.

6.1. Current threats to system reliability

Australia's electricity system and industry is currently in a period of transition, with a shift from reliance on thermal generation to diversified renewable electricity sources. During this period of transition, Australia's electricity industry is facing challenges that pose threats to reliable electricity supply across the NEM. These challenges include:

- **increasing reliance on a small number of significant generators.** The recent closure of significant generators such as the Liddell generation plant (2023) and the Hazelwood generation plant (2017) has led to reduced baseload capacity and left the NEM reliant on a decreasing number of scheduled generators. For example, the Eraring generation plant in NSW (retiring in 2025) accounts for 16% of the total registered capacity and 23% of scheduled capacity in NSW. In Victoria, the Loy Yang A and Yallourn generation plants account for 30% of total registered capacity and 40% of scheduled capacity in Victoria. To illustrate this further, aggregate scheduled generation in New South Wales, South Australia and Victoria cannot meet maximum demand levels in their respective States. If any significant remaining generator experiences a planned or forced outage, the stability of the entire NEM is placed at risk due to the increasing proportion of baseload capacity it would represent. AEMO expects that there will be instances in the future where there will not be sufficient baseload capacity to allow for multiple outages simultaneously, or even any planned outages during periods of both high and low demand.
- **managing an ageing fleet of generators.** The thermal generators which remain in use are moving towards the end of their active life. For example:
 - Eraring generation plant in New South Wales, which has a capacity of 2880MW, is scheduled to retire in 2025;
 - Yallourn generation plant in Victoria, which has a capacity of 1480MW, is scheduled to retire in 2028; and
 - Callide B generation plant in Queensland, which has a capacity of 700MW, is scheduled to retire in 2028.

AEMO has observed that these generators require more repairs and maintenance than in earlier years of their lifespan, leading to higher incidences of planned and forced outages. For example, in 2022, capacity of c.3000 megawatts of coal fired generation was removed from the NEM as a result of a number of coincident unplanned outages. There was a prolonged unplanned outage at the Loy Yang generation plant in Victoria combined with outages involving a unit at the Callide generation plant (following an explosion last year) and a unit at the Swanbank generation plant (following a fire last year), both of which are located in Queensland.

- **need for additional renewable generation and firming capacity.** As noted above, a significant proportion of the NEM's scheduled capacity has retired or is due to retire in coming years. Renewable generation capacity and firming capacity to provide energy in periods when renewables are not producing (eg, batteries and pumped hydro) has not yet been developed to fully replace retiring coal fired generation. This poses additional threats to system reliability. In addition, gas fired generation currently provides an important source of firming capacity. Gas fired generation, however, also requires outages and can be affected by gas shortages and high prices.

- **connecting renewable energy generators to the NEM requires extensive transmission outages.** In order to connect new renewable generation plants to the transmission system for the NEM, main transmission lines will be forced to undergo outages. As a result of these transmission outages, other renewable electricity generators which run on these same transmissions lines will also be forced to undergo outages. The extent of these outages is unprecedented. For example, AEMO has forecast that there will be over 100 days in the next 12 months that a main transmission route is experiencing an outage. It is important for AEMO to ensure that thermal generation plants (which generally do not connect on the same transmission lines as renewable electricity generators) are not experiencing an outage simultaneously as that may result in a severe reduction in system capacity and cause communities to be left without power.
- **other significant transmission projects are being planned.** The NEM is undergoing consequential upgrades to its transmission infrastructure, including:
 - the creation of renewable energy zones (eg, the Central-West Orana Renewable Energy Zone)⁵;
 - the building of a new interconnector between New South Wales and South Australia (**Project Energy Connect**);
 - the building of a new interconnector between Victoria and New South Wales (**VNI West**);
 - an upgrade of the transmission system in Western Victoria (**Western Renewables Link**);
 - an upgrade of the Snowy Hydro Scheme, including transmission connection and substation.

All of these projects will require existing key transmission elements to be taken out of service for periods of time. As noted above, this will cause renewable electricity generators which connect on these same transmission lines to be constrained. During those periods, the NEM is likely to be even more reliant on its thermal electricity generation plants. Therefore, if these plans aren't coordinated and instead conflict with outages of a substantial amount of thermal electricity generation, to avoid situations where there will not be sufficient power to deliver to entire communities, AEMO will not allow the outage to proceed. This will delay the energy transition and could cause significant financial consequences to projects that don't meet their deadlines, in turn creating increased costs for consumers. AEMO models every outage on the transmission system and it is evident that the opportunities where conditions allow major transmission outages are decreasing significantly.

- **increase incidence of extreme and/or unusual weather conditions.** In 2022, higher average temperatures increased electricity demand in all NEM regions compared to the same period in 2021.⁶ In particular, Queensland experienced high humidity and overnight temperatures as a result of La Niña conditions, driving increased demand.⁷ Conversely, in late May into early June, a cold snap caused temperatures to drop in South Australia, Victoria, Tasmania and parts of New South Wales and Queensland, also increasing demand

⁵ Other renewable energy zones that are being planned include the New England Renewable Energy Zone, the South West Renewable Energy Zone, the Hunter-Central Coast Renewable Energy Zone, the Illawarra Renewable Energy Zone, the Central North Renewable Energy Zone, the Gippsland Renewable Energy Zone, the Murray River Renewable Energy Zone, the Ovens Murray Renewable Energy Zone, the South Victoria Renewable Energy Zone and the Western Victoria Renewable Energy Zone.

⁶ ACCC, Addendum to the Inquiry into the National Electricity Market—May 2022 report, page 12.

⁷ Ibid.

for electricity.⁸ Wind and solar generation output was also low during this period. AEMO has recently observed long periods of low wind and conditions impacting on the availability of solar, which has reduced renewable energy output across the NEM, adding further complexity to the ability for AEMO to manage the safety, security and reliability of the NEM.

6.2. How the Proposed Conduct will address these challenges and generate public benefits

The above challenges mean that if outages associated with System Works occur in an uncoordinated way there is a very significant risk of insufficient electricity being available to meet demand and/or adverse impacts on wholesale electricity prices during periods in which outages are occurring. The Proposed Conduct will assist to ensure this does not occur and thereby provides significant public benefits. It will do so in the following ways:

- **reduce the risk of overlapping outages arising from System Works.** Although under its current powers, AEMO can work on a bilateral basis with individual participants, allowing meetings involving AEMO Industry Participants and Future Industry Participants, together with AEMO, facilitates timely, effective and transparent identification and resolution of potential conflicts and coordination of System Works.
- **reduce the risk of unnecessary or extended periods of outages caused by lack of personnel necessary for System Works.** By sharing information about essential personnel undertaking System Works, the Proposed Conduct will assist AEMO Industry Participants and Future Industry Participants to identify necessary personnel and their availability, so as to be able to plan System Works effectively. This reduces the risk of unplanned outages because of an inability to undertake System Works and will facilitate the coordination of System Works.
- **reduce the risk of outages arising from a generator being unable to obtain essential inputs necessary for System Works.** By sharing information about the availability of, or limitations on, essential parts, equipment or specialised resources necessary for System Works, the Proposed Conduct will assist AEMO Industry Participants and Future Industry Participants to secure essential inputs for System Works. This reduces the risk of outages because of an inability to secure essential inputs necessary for System Works.
- **sharing information about ongoing availability, performance and operation for the purposes of scheduling System Works,** will ensure that planned outages for System Works take into account any risks to ongoing availability of other generation facilities and so minimise risks to system availability. The purpose of this is to allow information to be shared about availability, performance and operation that is taken into account in scheduling maintenance. For example, an AEMO Industry Participant might advise that they are experiencing a tube leak and are keeping it under close monitoring in the hope that an outage will not be necessary until the next scheduled outage. It may however, be the case that an outage becomes necessary imminently. This information is highly relevant to planning outages in the near term. Conversely a participant might advise that a leak has now been successfully repaired without an outage being necessary, meaning other outages can proceed.
- **sharing information about electricity system stability from a technical perspective,** will help ensure that planned outages do not cause system instability, eg, ensuring that AEMO can be confident that a planned outage of a synchronous generator does not affect system stability.

⁸ Ibid.

6.3. AEMO's current powers

AEMO does have some powers to approve or not approve outages for System Works purposes. To achieve its power system security responsibilities, AEMO will give relevant instructions or directions to market participants based on AEMO's understanding of risks in the market. Ordinarily AEMO obtains this information by information submitted through its PASA and bidding systems and having bilateral discussions with relevant market participants. Under the Rules, AEMO is only able to give directions and otherwise intervene in the market after taking a series of steps and at the latest possible time in order to give the market the opportunity to respond.

Where there are potential risks and issues across the entire energy system, AEMO does not have the visibility or the time or resources to hold bilateral discussions (or a series of many bilateral discussions) to gather the necessary information, consider the information and give relevant directions. Relying on bilateral discussions when dealing with critical incidents (or a series of critical incidents) is not efficient, is unlikely to achieve the necessary visibility of key risks across critical infrastructure and increases the possibility that the required outcome (sufficient and reliable supply of energy) is not achieved.

AEMO considers that it is preferable to prevent these situations arising in the first place (which it considers is made possible by the Proposed Conduct) and that the power to issue directions should only be reserved for situations where it is a last resort action.

6.4. Experience with the Energy Crisis Authorisation

The Energy Crisis Authorisation permitted AEMO and electricity and gas industry participants to engage in a broader range of conduct than the Proposed Conduct AEMO is currently seeking to have authorised. Notwithstanding the breadth of the Energy Crisis Authorisation, the conduct that occurred pursuant to it was largely limited to fortnightly meetings of electricity generators to discuss System Works (ie, the conduct being sought to be authorised under the current application).

In AEMO's experience, the Energy Crisis Authorisation worked well to provide timely information about System Works outages and where necessary allow steps to be taken to coordinate and/or facilitate System Works to minimise threats to system reliability. AEMO considers that the absence of situations in which AEMO has had to use its powers described in Section 6.3 (which it considers a last resort option) is indicative of the Energy Crisis Authorisation achieving its stated objectives. Furthermore, AEMO considers that the conditions outlined in Section 6.1 are likely to worsen over the near term and therefore the Proposed Conduct is likely to become even more critical to avoiding such situations.

Furthermore, AEMO is not aware of any anticompetitive detriments arising from these meetings. The generator meetings occurring under the Energy Crisis Authorisation were attended by an independent competition lawyer, and the ACCC and state government representatives were invited to each meeting. This application proposes that the same conditions in relation to the attendance of an independent competition lawyer, the ACCC and state government representatives also apply to this authorisation.

The Energy Crisis Authorisation included registered participants under the National Gas Rules. The Proposed Conduct for which authorisation is sought now does not extend to gas (ie, it is limited to electricity only). As a consequence, a previous condition dealing with other gas industry authorisations has not been included in this application.

7. Public detriment

AEMO submits that the Proposed Conduct is unlikely to alter the competitive dynamics in electricity markets. The overall purpose and effect of the Proposed Conduct is to maximise supply of electricity by reducing outages for the benefit of both competition and consumers.

In particular:

- (i) electricity is an essential service to the Australian community and close coordination by AEMO and its related bodies corporates, AEMO Industry Participants and any Future AEMO Industry Participants during the transition is essential to ensure the ongoing safe, secure and reliable supply of energy during the period of the proposed authorisation;
- (ii) the Proposed Conduct does not extend to entering into any agreement regarding the wholesale or retail price of electricity;
- (iii) the Proposed Conduct is not compulsory, and any AEMO Industry Participant or any Future AEMO Industry Participants can opt out of any proposed collaboration the subject of this application;
- (iv) the Proposed Conduct is limited to discussions, conduct, contracts, arrangements and/or understandings to which AEMO, the independent market operator, is either a party or has facilitated; and
- (v) the limitations of the Proposed Conduct and the additions of the proposed authorisation, including the requirement for an ACCC approved competition lawyer to attend, and for the ACCC and representatives of state governments to be invited, remove any risk of meetings being used for purposes of coordination beyond the scope of the Proposed Conduct.

8. Declaration by applicant

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned is aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Tony Snell

General Counsel, Australian Energy Market Operator Limited

This 7th day of June 2023

Schedule 1: AEMO Industry Participants

Please see the excel spreadsheet titled '*Schedule 2: AEMO Industry Participants as at 1 June 2023*'. As at 1 June 2023, the AEMO Industry Participants are:

- participants registered in the NEM (see tab '*1 NEM registered participants*');
- participants with a registration exemption for the NEM (see tab '*2 NEM registration exemptions*').

Schedule 2: Reporting Protocol

Purpose

1. This is the Reporting and Communications Protocol referred to in condition [1] of the ACCC's interim authorisation decision of [DATE] 2023 (*Interim Authorisation*) and authorisation decision of [DATE] 2023 (*Authorisation*) in respect of proposed arrangements between AEMO and certain industry participants for the purpose of dealing with the effects of challenges that pose threats to reliable electricity supply across the NEM.
2. Capitalised terms used but not defined in this document have the meaning given in the Interim Authorisation or the Authorisation.

AEMO's reporting commitments

3. While AEMO engages in conduct enabled by the Interim Authorisation or the Authorisation, AEMO will use its best endeavours to provide each month (or such longer period as the ACCC may approve) a report to the ACCC setting out each material contract, arrangement or understanding made by AEMO and AEMO Industry Participants (and any Future AEMO Industry Participants) in the previous month that involves the conduct enabled by the Interim Authorisation or the Authorisation, including:
 - a) the dates of all material contracts, arrangements or understandings formed that rely on the Interim Authorisation or the Authorisation,
 - b) the parties to each material contract, arrangement or understanding formed that rely on the Interim Authorisation or the Authorisation,
 - c) what topics were discussed at meetings where those material contracts, arrangements or understandings were formed, and/or the material content of those contracts, arrangements, understandings, including key details such as the relevant products or services, quantities, timings, and financial or other compensation,
 - d) a description of the issues arising that the relevant contract, arrangement or understanding seeks to address and how it will be addressed,
 - e) where possible a non-confidential version of the report for publication on the public register.

Information requested and concerns raised by the ACCC

4. The ACCC may request additional information regarding conduct enabled by the Interim Authorisation or the Authorisation. AEMO, any AEMO Industry Participant and any Future AEMO Industry Participant must promptly provide any further information requested by the ACCC.
5. An ACCC representative may elect to attend any meeting or call where it is intended that material contracts, arrangements or understandings may be formed as an observer for the purpose of observing that the relevant conduct of those groups which might give rise to concerns under Part IV of the CCA notwithstanding the Interim Authorisation or the Authorisation. AEMO will provide the ACCC with advance notice as soon as reasonably practicable of any meetings or calls (including recurring meetings and ad hoc meetings) where material contracts, arrangements or understandings are expected to be formed. The ACCC will give AEMO notice in advance of its proposed representative at the relevant meeting or call.

6. Any notice or request for information under paragraphs 4 to 5 should be provided to the contact person nominated by AEMO for the purposes of this Reporting Protocol.

Confidentiality

7. Unless stated otherwise, AEMO asks that the ACCC receive any information provided under this Reporting Protocol on a confidential basis in accordance with the ACCC's statutory obligations on the basis set out below:
 - a) there is no restriction on the internal use, including future use, that the ACCC may make of the information consistent with its statutory functions;
 - b) the confidential information may be disclosed to the ACCC's external advisors and consultants on condition that each such advisor or consultant is informed of the obligation to treat the information as confidential; and
 - c) the ACCC may disclose the confidential information to third parties (in addition to its external advisors or consultants) if compelled by law or in accordance with section 155AAA of the CCA.
8. Nothing in paragraph 7 limits AEMO's obligations under paragraph 3 above.