

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

Lodged by:

**Australian Energy Market Operator**

on behalf of itself and energy market participants in  
Australia

**public version**

30 March 2020

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## 1. Summary

### 1.1. Background

This application is made to the Australian Competition and Consumer Commission (**ACCC**) by the independent Australian Energy Market Operator Limited (**AEMO**). AEMO manages electricity and gas markets and systems across Australia to ensure Australians have access to reliable,<sup>1</sup> secure,<sup>2</sup> affordable and sustainable energy. AEMO's members include both government and industry participants.

The application is made on behalf of:

- AEMO;
- participants in Australian gas and/or electricity markets and their related bodies corporate<sup>3</sup> (**AEMO Industry Participants**); and
- any other parties involved in energy or related sectors who in the future wish to engage in the conduct the subject of the application provided the ACCC's prior approval is obtained through the process outlined in Schedule 1 (**Other Approved Participants**).

The COVID-19 pandemic has the potential to impact the reliability and security of Australian energy systems and markets in a number of ways. For example:

- 1.1.1. essential workers and contractors who perform regular maintenance and repairs of critical infrastructure may become unwell with the virus or otherwise be required to self-isolate;
- 1.1.2. disruption to local and global supply chains as a result of the pandemic may result in shortages of parts, equipment, fuel or other essential resources that are necessary to produce and supply energy; and/or
- 1.1.3. lock downs of cities and regional centres are leading to significant changes in demand patterns, which, without close management can have implications for system stability from a technical perspective.

The ongoing safety, security and reliability of Australia's gas and electricity systems is critical to Australian consumers, businesses, government operations, the economy and to Australia's ability to respond to, and minimise the effects of, the global COVID-19 pandemic. Accordingly, as the independent market and system operator, AEMO seeks urgent interim and final authorisation under section 88(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) on behalf of itself, AEMO Industry Participants and Other Approved Participants to engage in the conduct described in section 3 of this application.

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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/en/energy-systems/electricity/national-electricity-market-nem/participate-in-the-market/information-for-current-participants/participants-registered-for-the-nem>
- <https://aemo.com.au/learn/market-participants/gas-market-participants>
- <https://aemo.com.au/energy-systems/electricity/wholesale-electricity-market-wem/participate-in-the-market/information-for-current-participants/participants-registered-in-the-wem>
- <https://qbbwa.aemo.com.au/#participants>

These participants and members registered as at 28 March 2020 are listed in Schedule 2 of this application.

The conduct the subject of the application is intended to assist AEMO, AEMO Industry Participants and Other Approved Participants to work together as required to ensure the safety, security and reliability of Australia's energy systems and to support continued energy supplies to the economy and to the community throughout the pandemic.

## **1.2. Application for urgent interim authorisation**

As discussed in section 3.3 below, AEMO requests that the ACCC grant interim authorisation to enable AEMO, AEMO Industry Participants and Other Approved Participants to work together as soon as possible and take any steps that may be required to ensure the ongoing safe, secure and reliable supply of energy during the pandemic.

## 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 ( <b>AEMO</b> ) Level 22, 530 Collins Street Melbourne Vic 3000	Brett Hausler Chief Governance Officer & General Counsel AEMO [REDACTED] [REDACTED]	Operation of Australian electricity and gas markets and systems

### 2.2. Email address for service of documents in Australia

Rosannah Healy  
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 Other Approved Participants.

## 3. The 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. Examples of Proposed Conduct

Examples of 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 include, 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;
- 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;
- 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, and/or entering into arrangements to secure 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 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 agreements regarding the wholesale or retail price of energy. 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.

### 3.3. Application for interim authorisation

AEMO seeks interim authorisation for the Proposed Conduct on an urgent basis so that AEMO, AEMO Industry Participants and Other Approved Participants can work together immediately to ensure energy supplies during the pandemic. AEMO submits that urgent interim authorisation is justified for the following reasons.

- 3.3.1. The supply of gas and electricity is essential to consumers. Disruptions of electricity and/or gas during the pandemic would adversely affect consumers and consumer sentiment, businesses, the economy and the provision of essential services by governments. Such disruption could primarily occur as a result of three factors:
- (i) essential workers or contractors responsible for maintenance or repairs becoming unwell and/or being required to self-isolate as a result of COVID-19;
  - (ii) possible shortages in parts, equipment, fuel or other essential resources as a result of disruptions to local and global supply chains; and/or
  - (iii) ongoing changes in demand for energy as a result of changed economic activity and lock-downs of cities and regional centres which may have implications for system stability from a technical perspective.
- 3.3.2. The Proposed Conduct will allow AEMO, AEMO Industry Participants and Other Approved Participants to work together immediately to manage the above matters and ensure the ongoing safe, secure and reliable operation of Australia's energy systems during the pandemic. For example, it would enable AEMO, AEMO Industry Participants and Other Approved Participants to:
- (i) plan and prepare for the impacts of the pandemic on Australia's energy systems and markets;
  - (ii) co-ordinate with governments and relevant regulators in relation to energy supply during the pandemic, including but not limited to the COAG Energy Council, the Department of Industry and Energy, the Energy Coordination Mechanism and/or the National Coordination Mechanism established on 5 March 2020 to co-ordinate the whole of government responses to issues outside the direct health management of COVID-19; and
  - (iii) take any necessary steps to ensure the ongoing safety, security and reliability of Australia's energy systems and markets during the pandemic.
- 3.3.3. 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.

### 3.4. Rationale

As noted above, authorisation is sought to ensure the ongoing safe, secure and reliable operation of Australia's energy systems and markets during the COVID-19 pandemic.

The need for participants in the energy sector to work closely was identified in a communique released by the COAG Energy Council on Friday 20 March 2020 which included:

*Ministers discussed the need for a coordinated national approach to managing the impacts of COVID-19 in the energy sector, and agreed that governments and industry need to work together to respond effectively to these unprecedented challenges.*

*Ministers agreed that governments and industry will work together in a number of key areas, and will be supported by emergency management arrangements adapted to meet the needs of the current situation. This includes the COAG Energy Council and the newly established National Coordination Mechanism. Ministers agreed to convene the first Energy Coordination Mechanism from next week, bringing together senior executives from governments and industry.*

*Ministers noted there needs to be continued engagement between government and industry across the energy sector. This cooperation will be important to allow governments and industry to ensure the energy sector continues to support the economy and community.*

*Ministers encouraged energy generators, retailers and networks to consider support measures for customers experiencing difficult circumstances as a result of COVID-19.<sup>4</sup>*

### 3.5. 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 and gas in Australia. 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, 45AF, 45AG, 45AJ, and 45AK of the CCA); or
- 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).

### 3.6. Term of authorisation sought

AEMO seeks authorisation for itself, AEMO Industry Participants and any Other Approved Industry Participants for the Proposed Conduct on a temporary basis in order to ensure the safe, secure and reliable supply of energy during the pandemic. AEMO seeks authorisation to engage in the proposed conduct for 12 months from the date of a final determination by the ACCC, noting that the ACCC could under section 91B of the CCA revoke the authorisation should there be a material change in circumstances (e.g. the effects of the pandemic subside).

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

The persons who would be directly impacted by the Proposed Conduct include customers, suppliers and staff of AEMO, AEMO Industry Participants and any Other Approved Participants.

## 5. Counterfactual

In the absence of the Proposed Conduct, AEMO, AEMO Industry Participants and Other Approved Participants may be unable to coordinate certain of their activities in order to ensure the safe, secure and reliable supply of energy during the pandemic.

<sup>4</sup> <http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/EC%20-%20communique%20-%2020200320.pdf>



In particular, while AEMO already has certain emergency powers to deal with immediate threats to power system security and interruptions to supply, the existing emergency management arrangements (including those reflected in the national electricity and gas rules and which enable AEMO to intervene to ensure power system security in certain circumstances) may not be well suited to dealing with the needs of the current pandemic situation and may need to be adapted. This might include less of a reliance by AEMO on bilateral consultations with, and directions to, individual AEMO Industry Participants and the adoption of a more coordinated approach with those parties in order to take urgent action. AEMO notes that the potential need to adapt existing emergency management arrangements to meet the needs of the current pandemic situation was identified by the COAG Energy Council in the communique released by the COAG Energy Council on Friday 20 March 2020 and discussed above in 3.4.

Accordingly, without authorisation, AEMO submits that the ability of AEMO, AEMO Industry Participants and Other Approved Participants to address issues that have the potential to impact on the safety, security and/or reliability of Australia's energy supply during the pandemic is likely to be less effective and less timely than if they are permitted to work together in the manner proposed in this application. In addition, the advice and information given to governments to enable them to manage the economy wide impacts of the pandemic through the National Coordination Mechanism and the Energy Coordination Mechanism is likely to be more effective and timely if AEMO, AEMO Industry Participants and Other Approved Participants are permitted to work together.

## 6. Public benefit

AEMO submits that the Proposed Conduct will result in significant public benefits, as outlined in section 3.2 above.

## 7. Public detriment

AEMO submits that the Proposed Conduct is unlikely to alter the competitive dynamics in energy, and that markets will be able to return to substantially their current state once the pandemic subsides. In particular:

- 7.1.1. gas and electricity are essential services to the Australian community and close coordination by AEMO, AEMO Industry Participants and any Other Approved Participants will ensure the ongoing safe, secure and reliable supply of energy during the pandemic;
- 7.1.2. the Proposed Conduct does not extend to entering into any agreement regarding the wholesale or retail price of energy. AEMO Industry Participants who supply electricity or gas on a wholesale or retail basis will continue to compete in relation to price;
- 7.1.3. the Proposed Conduct is not compulsory, and any AEMO Industry Participant or any Other Approved Participant can opt out of any proposed collaboration the subject of this application;
- 7.1.4. 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 (or to which AEMO is not a party but which are necessary for implementation). In addition, it is intended that AEMO will work closely with the Energy Coordination Mechanism (of which the AER is a member), including updating the Energy Coordination Mechanism on the steps being taken to ensure energy supplies, including coordinated measures as relevant;
- 7.1.5. the period of authorisation is for a limited period of 12 months only (from the date of the ACCC's final determination) and can be discontinued in the event that the effects of the pandemic subside at an earlier date. This is no more than is reasonably necessary to address any energy supply challenges that could potentially arise as a result of the COVID-19 pandemic.

## 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 are 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).



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Brett Hausler

Chief Governance Officer & General Counsel, Australian Energy Market Operator

This 30th day of March 2020

**Schedule 1: Seeking ACCC approval to become Other Approved Participant**

Where AEMO proposes that other parties involved in energy or related sectors are to engage in the Proposed Conduct and that those parties should obtain the protection of any interim authorisation granted by the ACCC, the following process should be followed:

1. AEMO must seek the approval of the ACCC by sending an email to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au) with the subject 'AEMO authorisation – request to be covered by interim authorisation', identifying the entity(ies) that it wishes to be covered by the interim authorisation and the types of coordination measures that it proposes those entities to engage in.
2. If the ACCC approves a party involved in the energy or related sectors to engage in the Proposed Conduct, that party will have the protection of this interim authorisation from the time it is notified of the ACCC's decision.

**Schedule 2: AEMO Industry Participants**

Please see the excel spreadsheet titled '*Schedule 2: AEMO Industry Participants as at 28 March 2020*'. As at 28 March 2020, 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*');
- participants in the GBB (see tab '*3 GBB participants*');
- participants registered in the WEM (see tab '*4 WEM registered participants*'); and
- participants in the GBB (WA) (see '*5 GBB (WA) participants*').