



# Determination

Application for authorisation AA1000643

lodged by

the Australian Energy Market Operator

in respect of

coordination and information sharing for the purpose of scheduling

System Works in the National Electricity Market

Authorisation number: AA1000643

30 November 2023

Commissioners: Cass-Gottlieb

Keogh

Lowe

Crone

Ridgeway

## Summary

The ACCC has decided to grant authorisation, with conditions, to enable coordination between AEMO and current and future AEMO Industry Participants on the scheduling of System Works (including associated information sharing).

The National Electricity Market is facing challenges as a result of the transition from reliance on thermal generation towards renewable electricity sources. These challenges are likely to increase as significant transmission construction and generation connection works continue at the same time as more synchronous generators are retired or are otherwise scaled back. In response to this, there are a number of energy market reforms currently being progressed by market bodies to better equip AEMO and industry to manage the National Electricity Market.

The ACCC's draft determination proposing to deny authorisation to AEMO was finely balanced and based on the information before it at that time. Following the ACCC's draft determination, AEMO provided a detailed response which included further information in support of its public benefit claims and some examples of where benefits have been achieved through co-ordination. AEMO also clarified that it does intend to use the Proposed Conduct, and in particular the industry participant forums, to manage and respond to emergencies, should they arise. The ACCC also received public submissions from 7 industry participants and government energy departments which were strongly supportive of AEMO's application. The ACCC has considered this new material and now considers that the Proposed Conduct is likely to result in a somewhat higher level of public benefit than it found in its draft determination. In particular, the ACCC considers that:

- the Proposed Conduct is likely to result in a public benefit by allowing AEMO and industry participants to respond to issues created by the energy transition more efficiently, and
- in the event of an emergency or critical incident, the efficiency with which AEMO could share information and potentially better coordinate System Works would result in a significant public benefit.

AEMO also amended its application to reduce the authorisation period sought from 3 years to 18 months (with the intention of seeking an alternative longer term regulatory based solution during this period).

The ACCC considers that the shorter period for which authorisation is sought reduces the likely level of detriment. Nevertheless, the ACCC has imposed 3 new conditions to address its remaining concerns regarding information asymmetries and anti-competitive behaviour:

- reporting requirements to address potential information asymmetries that may arise from only some market participants obtaining information from the multilateral meetings coordinated by AEMO, and
- an express obligation on AEMO and other parties to not share any information or enter into any contracts, arrangements or understandings regarding specific Participants' wholesale prices, bids, costs or margins.

On balance and with the conditions, the ACCC is satisfied, in all the circumstances, that the public benefit likely to result from the Proposed Conduct would outweigh

the detriments to the public that would be likely to result from the conduct over the period for which authorisation is sought.

The ACCC has decided to grant authorisation until 22 June 2025.

On 13 July 2023, the ACCC granted interim authorisation with conditions to allow the Participants to engage in conduct similar to the Proposed Conduct, while the ACCC considered the substantive application. Interim authorisation will remain in place until it is revoked or the date the ACCC's final determination comes into effect.

## 1. The application for authorisation

- 1.1. On 7 June 2023, the Australian Energy Market Operator (**AEMO**) lodged application for authorisation AA1000643 with the Australian Competition and Consumer Commission (the **ACCC**). AEMO seeks authorisation on behalf of itself and electricity industry participants to engage in certain coordination and associated information sharing activities relating to outages.
- 1.2. AEMO initially sought authorisation until 30 June 2026. On 15 November 2023, AEMO amended its application to vary the length of authorisation it is seeking to a period of 18 months.
- 1.3. This application for authorisation was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**). If granted, an authorisation provides the relevant parties with protection from legal action under the specified provisions in Part IV of the Act in respect of the specified conduct. The ACCC has a discretion to grant authorisation, but must not do so unless it is satisfied in all the circumstances that the conduct would result in benefit to the public that would outweigh any likely public detriment (ss 90(7) and 90(8) of the Act (the **authorisation test**)).
- 1.4. For the avoidance of doubt, authorisation does not override or exempt any parties from any other existing regulatory or legislative obligations (such as the treatment of confidential information).

### The Participants

- 1.5. AEMO is the independent market and system operator for gas and electricity systems across Australia, including the National Electricity Market (**NEM**). AEMO's members include both government and industry participants.
- 1.6. AEMO's application for authorisation 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 NEM and their related bodies corporate (defined as **AEMO Industry Participants**)<sup>1</sup> 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

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<sup>1</sup> Current AEMO Industry Participants as at 1 June 2023 are listed in Schedule 1 of AEMO's application or authorisation dated 7 June 2023.

notified in writing by AEMO to the ACCC (defined as **Future AEMO Industry Participants**)

(together, the **Participants**).

## The Proposed Conduct

1.7. 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:

- 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,  
provided:
  - the purpose for doing so is either to:
    - ensure the safe, secure and reliable operation of Australia's electricity 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**).

1.8. On 4 July 2023, AEMO confirmed that references in the application to “energy systems” and “energy infrastructure” should be read as “electricity systems” and “electricity infrastructure”, noting that these references are not intended to cover gas systems or infrastructure.<sup>2</sup>

1.9. AEMO submits that the Proposed Conduct is limited to discussions, conduct, contracts, arrangements and/or understandings to which AEMO, or its related bodies corporate, is either a party or has facilitated. Where the Proposed Conduct involves a meeting or discussions between AEMO Industry Participants or any Future AEMO Industry Participants, then:

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<sup>2</sup> A copy of this clarification is available on the ACCC's [public register](#).

- 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.
- 1.10. 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.
- 1.11. AEMO submits that participation in the Proposed Conduct is not compulsory. Any AEMO Industry Participant or Future AEMO Industry Participant can opt out of any proposed collaboration.
- 1.12. AEMO submits that the Proposed Conduct is narrower than the previous authorisation (as outlined in paragraph 1.21 below) as the Proposed Conduct:
- is limited to conduct related to electricity (i.e., does not include conduct related to gas)
  - is limited to discussions, conduct, contracts, arrangements and/or understandings related to System Works
  - 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 electricity infrastructure
  - 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 fuels for generators (**Generator Fuels**)
    - services for the transport of Generator Fuel
    - parts, equipment or specialised resources necessary for essential maintenance of facilities for the transport of General Fuel, and
    - other consumable materials necessary for the operation of such facilities
  - does not cover entering into common arrangements in order to manage electric system stability from a technical perspective.
- 1.13. AEMO proposes that authorisation be granted with 3 conditions requiring certain reporting requirements, the immediate termination of any contract, arrangement or understanding entered into in reliance on any interim authorisation or final authorisation upon expiry or revocation of the authorisation and the presence of a competition lawyer at meetings or discussions between AEMO Industry Participants or any Future AEMO Industry Participants.

1.14. AEMO initially sought authorisation until 30 June 2026. Subsequently, in response to the ACCC's draft determination, AEMO amended its application such that it is now seeking authorisation of the Proposed Conduct for a period of 18 months from the date of any final determination.

## Interim authorisation

1.15. AEMO also requested urgent interim authorisation to enable the Participants to engage in the Proposed Conduct while the ACCC is considering the substantive application.

1.16. On 13 July 2023, the ACCC granted conditional interim authorisation in accordance with subsection 91(2) of the Act.<sup>3</sup>

1.17. The ACCC granted conditional interim authorisation to enable the Participants to discuss, enter into or give effect to any contract, arrangement or understanding between them, or engage in conduct, solely related to planning for and/or minimising any disruptions to electricity supply by:

- a. coordinating outages of generation, transmission and distribution assets for the purposes of repairs, maintenance, renewals, upgrades and new connections (**System Works**)
- b. sharing information in relation to essential employees and contractors to ensure there are sufficient personnel to undertake System Works
- c. sharing information about the availability of parts, equipment or specialised resources necessary for System Works
- d. sharing information about risks to the ongoing availability, performance and/or operation of their electricity facilities solely in order to facilitate the scheduling of System Works
- e. sharing information about electricity system stability from a technical perspective solely in order to facilitate the scheduling of System Works, provided:
  - f. the purpose for doing so is either to:
    - o ensure the safe, secure and reliable operation of Australia's electricity systems, and minimise the risk of any energy outages, during the period of the authorisation and/or
    - o ensure the continued operation and integrity of the NEM during the period of the authorisation, and
  - g. this conduct does not include the sharing of specific Participants' wholesale prices, costs and margins,  
(the **Interim Authorisation Conduct**).

1.18. Interim authorisation was granted with the following conditions:

- **Condition 1 – Reporting requirements:** AEMO must comply with the Reporting and Communications Protocol (as outlined at Schedule 1 of the Interim Authorisation decision). This protocol includes AEMO providing monthly reports to the ACCC about the contracts, arrangements or understandings

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<sup>3</sup> A copy of the ACCC's decision is available on the ACCC's [public register](#).

made at meetings during the preceding period, allows the ACCC to observe meetings and request additional information about the Interim Authorisation Conduct.

- **Condition 2 – Agreements not to endure beyond authorisation period:** Any contract, arrangement or understanding entered into/arrived at in reliance on the interim 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).
- **Condition 3 – Presence of competition lawyer:** Where the Interim Authorisation Conduct involves a meeting or discussion between AEMO Industry Participants and/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 interim authorisation and risks breaching the Act.
- **Condition 4 – AEMO to make and keep a record:** Prior to or at the time Participants give effect to any contract, arrangement or understanding between competing AEMO Industry Participants and/or Future AEMO Industry Participants, which has been discussed and/or entered into and/or arrived at as part of the Interim Authorisation Conduct, AEMO (or its legal representative) must make and keep a contemporaneous record of:
  - the parties to the contract, arrangement and understanding
  - the nature and scope of the conduct the parties will engage in, and
  - the anticipated or agreed duration of the conduct
  - and make it available to the parties as soon as practicable.

1.19. Interim authorisation will remain in place until the date the ACCC's final determination comes into effect, or until the interim authorisation is revoked.

## Previous authorisations

1.20. Since 2020, the ACCC has granted authorisation to AEMO and other industry participants for similar cooperation and information sharing arrangements on 3 occasions.

1.21. Most recently, in November 2022, the ACCC granted authorisation (AA1000618) with conditions to AEMO and industry participants for cooperation and information sharing arrangements in both the electricity and gas industry. This application was made in response to the potential crisis in the energy sector that arose in May/June 2022 and the ongoing effects of the COVID-19 pandemic and the Russian invasion of Ukraine (the **Energy Crisis Authorisation**). The conduct authorised in the Energy Crisis Authorisation was broader than previous (COVID response) authorisations as it included potential coordination on the deferral of non-essential works and coordination for the purpose of managing system stability. The Energy Crisis Authorisation expired on 30 April 2023.



## 2. Background

- 2.1. The NEM is one of the largest interconnected electricity grids or power systems in the world; it interconnects the 6 eastern and southern states and territories of Australia and delivers around 80% of all electricity consumption in Australia.<sup>4</sup>
- 2.2. The NEM is a wholesale market through which generators and retailers trade electricity. The NEM operates as a ‘spot market’, or ‘pool’, in which power supply and demand are matched in real time through a centrally coordinated dispatch process that is managed by AEMO. Generators sell electricity to the pool and retailers buy electricity from the pool to on-sell to consumers.

### Regulation and oversight of the National Electricity Market

- 2.3. The *National Electricity Law*<sup>5</sup> establishes the governance framework and key obligations for the NEM including AEMO’s role and functions. This framework seeks to promote the efficient investment, operation and use of energy services for the long-term interests of consumers in relation to price, quality, safety, reliability and security; it also places responsibilities on market bodies that undertake relevant functions in the NEM to do so in a manner that will or is likely to contribute to the achievement of the National Electricity Objective.<sup>6</sup>
- 2.4. The *National Electricity Rules* are made under the *National Electricity Law* and govern the operation of the NEM. The National Electricity Rules determine how companies can operate and participate in the competitive generation and retail sectors, and also govern the economic regulation of electricity transmission and distribution networks.
- 2.5. Among other functions, the National Electricity Rules provide the regulatory framework and processes for market operations, power system security, network connections and access, pricing for network services in the NEM and national transmission planning.
- 2.6. The 3 main market bodies responsible for energy in Australia are:
  - AEMO – responsible for managing the electricity and gas systems and markets across Australia. It manages the day-to-day operations of the NEM.
  - Australian Energy Market Commission (**AEMC**) – responsible for making the rules which govern the electricity and gas markets, including the retail elements of those markets. The process the AEMC uses to consider rule changes to the National Electricity Rules are discussed in greater detail below. In addition to its rule making role, the AEMC conducts reviews and provides advice on energy market related matters for Ministers.
  - Australian Energy Regulator (**AER**) – monitors and reports on the performance of the NEM. The National Electricity Law requires the AER to review the

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<sup>4</sup> See <https://www.energy.gov.au/government-priorities/energy-markets/national-electricity-market-nem#:~:text=The%20NEM%20is%20a%20wholesale,not%20connected%20to%20the%20NEM.>

<sup>5</sup> The National Electricity Law is contained in a Schedule of the *National Electricity (South Australia) Act 1996* (SA). The National Electricity Law is applied as law in New South Wales, Queensland, Victoria, South Australia, Tasmania and the Australian Capital Territory by application statutes. The Northern Territory has also applied the National Electricity Law with variations that cater to local requirements.

<sup>6</sup> The National Electricity Objective is: “...to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to:

- price, quality, safety and reliability and security of supply of electricity
- the reliability, safety and security of the national electricity system.”



performance of wholesale electricity markets, including analysing and identifying whether there is effective competition and whether there are market features that may be detrimental to effective competition or the efficient functioning of the market. The AER also investigates and enforces compliance with the National Electricity Rules.

- 2.7. Changes to the National Electricity Rules are considered by the AEMC. Any party, except for the AEMC itself,<sup>7</sup> can propose a change to the rules. The AEMC receives rule change requests from a variety of different proponents including governments, members of industry, consumer groups, regulatory market bodies, public advocacy groups, major energy user groups, business groups and individuals.

## Issues arising from the transition to renewable electricity

- 2.8. The NEM is an interconnected network that requires a number of essential system services (or ancillary services), such as frequency response, inertia and system strength, to help keep the electricity system operating in a safe, stable and secure operating state. Essential system services influence the ability of the network to balance supply and demand, deal with disruptions to this balance and address other technical issues in real time.
- 2.9. Many of these essential system services have traditionally been provided as a by-product of synchronous electricity generation (such as coal, gas and hydroelectric) and have historically been available in sufficient quantities without the need to actively source more. As synchronous generators reach their end of life or otherwise leave the NEM or reduce their operations, the supply of essential system services has been reduced and will continue to do so as we progress further into the transition to renewable generation.
- 2.10. Currently, most large-scale batteries, wind and solar generators do not provide or generate essential system services in the same way that synchronous generators do; they instead create greater demand for some essential system services.<sup>8</sup>
- 2.11. This means that new ways are needed to actively source, and pay for, these essential system services as the NEM moves away from synchronous generation and is increasingly reliant on renewable generation.
- 2.12. Increased reliance on renewable generation also brings further issues because much of it, particularly wind and solar, is inherently variable and unpredictable given it is dependent on weather conditions. This is in contrast with sources of synchronous electricity generation that are dispatchable, meaning that these generators can produce on demand and vary their power output according to market needs, instead of according to primary energy output availability (such as the sun and wind). As a result, throughout the transition and into the future, the NEM will require firm and flexible back-up and firming technology (such as battery storage, pumped hydro or gas generation) in order to ensure the reliability of electricity supply.
- 2.13. A symptom of these issues is that AEMO is increasingly having to intervene in the NEM using directions<sup>9</sup> to ensure that it is secure, with the number of directions issued

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<sup>7</sup> Except for minor and non-material changes: National Electricity Laws, s 91(2).

<sup>8</sup> AEMC, Efficient management of system strength on the power system, Rule determination, 21 October 2021, 4.

<sup>9</sup> The National Electricity Rules allow AEMO, subject to a number of requirements and pre-cursors, to issue directions to registered market participants (most often generators) to take action to maintain or re-establish the power system to a secure, satisfactory or reliable operating state. A registered market participant must use its reasonable endeavours to comply with AEMO's directions unless to do so would be a hazard to public safety, materially risk damaging equipment or contravene another law.

by AEMO increasing from 5 in 2016 to 344 in 2020.<sup>10</sup> These directions were almost exclusively used to manage system security in South Australia.<sup>11</sup>

- 2.14. The AEMC has recently indicated that reliance on directions by AEMO in these circumstances, which are meant to be used a last resort measure, increases security risks on the power system because of inadequate transparency, increased administrative burden, does not provide certainty to participants, and does not support trials of new technologies to support power system security.<sup>12</sup> The AEMC stated that it considers there is a need to ensure that the future requirements of the power system are met by providing incentives for new entrants and existing participants to make investment decisions that would see system security provided in the longer term.<sup>13</sup>
- 2.15. Decarbonising the NEM will require the connection of an unprecedented amount of generation capacity at an unprecedented rate.<sup>14</sup> AEMO's 2022 Integrated System Plan forecasts that variable renewable energy generation capacity will need to triple between now and 2030.<sup>15</sup> This growth in generation capacity is being evidenced by the number of new projects seeking to connect to the NEM,<sup>16</sup> with an increase in the size of the connection queue from 389 projects in July 2022 to 524 projects in May 2023.<sup>17</sup>
- 2.16. Within its 2023 Electricity Statement of Opportunities, AEMO forecasts reliability gaps in all mainland regions in the next decade, with reliability risks in South Australia and Victoria forecast as early as the 2023-24 summer. In light of this, AEMO has identified an urgent need for the commitment and delivery of generation, transmission and storage projects and has indicated that it will be critical to ensure the ongoing availability of coal, gas and distillate fuels; without this, AEMO indicates that the reliability of the NEM will be at risk.<sup>18</sup> One of the factors identified within the 2023 Electricity Statement of Opportunities which has impacted AEMO's forecasting is higher rates of generator unplanned outages than has previously been forecast, reflecting recent trends of poor performance among some generator technologies.<sup>19</sup>
- 2.17. AEMO submits that the physical power system underpinning the NEM is rapidly undergoing its most significant period of change, making it increasingly challenging for AEMO to manage risks to supply. AEMO submits that the systems, processes and regulatory framework underpinning the NEM were not designed to deal with this level of change.
- 2.18. AEMO submits that 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. AEMO advises that, during this period of transition, Australia's electricity industry is facing challenges that pose threats to reliable electricity supply across the NEM, including:

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<sup>10</sup> Post-2025 Market Design Final advice to Energy Ministers, Energy Security Board, 27 July 2021.

<sup>11</sup> The disproportionate level of intervention in the South Australian market appears to be due to the fact that South Australia has a significantly higher percentage of renewable electricity penetration compared with other states in the NEM.

<sup>12</sup> AEMC, Improving Security Frameworks for the Energy Transition, Directions Paper, 24 August 2023.

<sup>13</sup> Ibid.

<sup>14</sup> AEMC, Enhancing investment certainty in the R1 process, Consultation paper, 17 August 2023.

<sup>15</sup> AEMO, 2022 Integrated System Plan, 30 June 2022, 10.

<sup>16</sup> Ibid, 36.

<sup>17</sup> AEMC, Enhancing investment certainty in the R1 process, Consultation paper, 17 August 2023.

<sup>18</sup> AEMO, 2023 Electricity Statement of Opportunities, 31 August 2023, 3.

<sup>19</sup> Ibid, 4.

- increasing reliance on a smaller number of significant 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 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
- increased incidence of extreme and/or unusual weather conditions, and
- the connection of new renewable energy generators and consequential upgrades to the NEM's transmission infrastructure requiring extensive outages.

2.19. AEMO submits that demand is becoming more volatile, with maximum demand levels increasing and minimum demand levels decreasing. AEMO submits that demand levels are also exacerbated by changes in climate conditions. As an example, over the coming 2023/24 summer, AEMO anticipates that the impact of El Niño and forecast hot and dry conditions will contribute to demand at the higher end of its usual ranges.

2.20. AEMO submits that, in combination, these factors mean that if outages associated from System Works occur in an uncoordinated way there is a real threat to reliability of electricity supply, risk of electricity outages and/or adverse impacts on wholesale electricity prices during the periods in which outages are occurring. AEMO submits that variations in demand are making the supply/demand equation even more challenging for AEMO to assess when considering outage scheduling.

## Reforms in response to the transition

2.21. It is apparent that the NEM is facing challenges as a result of the transition towards renewable electricity. These challenges are likely to increase as significant transmission construction and generation connection works continue at the same time as more synchronous generators retire or otherwise scale back their operations. It has been widely recognised by industry and market bodies that AEMO will need the right tools to be able to manage the changing dynamics throughout the transition and beyond.

2.22. AEMO, together with industry and other market bodies, such as the Australian Energy Market Commission (**AEMC**), is responsible for delivering a number of the energy market reforms, known as the Post-2025 Reform Project. The reforms provide for changes to key elements of the market design to facilitate a transition towards a modern energy system capable of meeting the evolving wants and needs of consumers and the energy system itself, as well as enable the continued provision of the full range of services necessary to deliver a secure, reliable and lower emissions electricity system at least cost.

2.23. The ACCC considers that there are a number of reforms in the form of rule changes that have recently been completed or that are currently under consideration by the AEMC which are relevant to AEMO better coordinating outages and addressing system security issues more generally. These include the following rule changes:

- **Short Term Projected Assessment of System Adequacy**<sup>20</sup> – on 5 May 2022, the AEMC made a final rule change which makes a number of

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<sup>20</sup> Further details of this project are available [here](#).

amendments to Short Term Projected Assessment of System Adequacy (**ST PASA**). Relevantly, these changes will require AEMO to publish, amongst other things, forecasts of generator availability and capacity information for each unit and station; this is information which AEMO already accesses, however it is not currently publicly available.

The AEMC considered that these changes would promote reliability and security of the system at lowest cost by improving the information provided to market participants; this information will better inform the market of generation availability and will allow market participants to make more informed decisions regarding scheduling planned maintenance and expected reliability and security conditions.

Under the final rule, these changes will be implemented by **31 July 2025**.

- **Medium Term Projected Assessment of System Adequacy**<sup>21</sup> – on 18 August 2022, the AEMC made a final rule change to improve the quality and transparency of information that is collected and published about the future availability of generators as part of the Medium Term Projected Assessment of System Adequacy (**MT PASA**).

Specifically, the rule builds on existing MT PASA requirements, which require generators to indicate how many megawatts they could make available each day over the medium term horizon (that is, between 7 days and 36 months into the future). In addition to providing this availability, the rule will require generators to also provide a:

- *unit state* – that is, a generating unit's availability or unavailability and the reason for its availability or unavailability (i.e., whether unavailability is for economic or physical reasons)
- *unit recall time* – to indicate the period in which the plant could be made available under normal conditions after a period of unavailability.

These information and publication requirements largely commenced on **9 October 2023**.<sup>22</sup>

- **Improving Security Frameworks for the Energy Transition**<sup>23</sup> – the AEMC is currently considering a number of solutions that involve building on existing tools in the framework to allow the direct procurement of system security more quickly and easily. The AEMC considers that its proposed approach would address system security issues through the transition, reduce the regular and inefficient use of directions by AEMO, and provide better incentives for market participants to invest in providing system security in the longer term.

The AEMC released a direction paper on 23 August 2023, ahead of publishing a final determination in March 2024.

Within its direction paper, the AEMC indicated that it considered that these solutions will be set up in a manner that is able to adapt as the needs of the

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<sup>21</sup> Further details of this project are available [here](#).

<sup>22</sup> Requirements for bi-directional units (meaning a unit that has both load and generation that does not refer to energy storage specifically) will not commence until 3 June 2024.

<sup>23</sup> Further details of this project are available [here](#).

power system, and the understanding of it, develop in the longer term. These rule changes focus on:

- aligning the existing inertia and system strength frameworks
- removing the exclusion to procuring inertia network services and system strength in the network support and control ancillary services framework
- creating a new transition non-market ancillary services framework for AEMO to procure security services necessary for the energy transition
- empowering AEMO to enable (or schedule) security services with a whole-of-NEM perspective, and
- improving directions transparency and compensation.

The AEMC's direction paper suggests that a majority of the solutions proposed would be implemented by the **end of 2025**.

### 3. Consultation

- 3.1. The ACCC invited submissions from a range of potentially interested parties including consumer groups, large energy users, state and federal government bodies, industry bodies and other industry participants (such as generators, maintenance service providers, distributors, network operators and retailers).
- 3.2. Prior to the draft determination, the ACCC received 1 confidential submission.
- 3.3. The ACCC has received 8 public submissions from the following interested parties following the draft determination: the Department for Energy and Mining (South Australia); Powerlink Queensland; 2 submissions from the Clean Energy Investor Group; Tilt Renewables; NSW Office of Energy and Climate Change; VIC Department of Energy; Environment and Climate Action; and the AEMC.
- 3.4. The Department for Energy and Mining (South Australia) submitted that in its view the public benefit of being able to coordinate and share information about system works in the NEM well outweighs any concerns about anti-competitive behaviour, particularly given the narrower scope of AEMO's authorisation application compared to its previous authorisations.
- 3.5. Powerlink Queensland submitted that the AEMO Coordination Forum (as it was conducted under the previous authorisations) has provided Powerlink with important contextual information that has identified opportunities for outage facilitation more readily than could be interpreted in isolation from disparate data sources. Powerlink has used the authorised sessions to reschedule planned works on the transmission network at the same time as generation outages, particularly short-notice forced outages. This avoided causing congestion constraints and supported system risk reduction.
- 3.6. The Clean Energy Investor Group's submissions support AEMO's application for authorisation. The Clean Energy Investor Group submitted that the collaborative efforts of AEMO and industry participants are instrumental in improving electricity supply reliability and mitigating costs. The Clean Energy Investor Group submitted that relying on bilateral discussions instead of multilateral discussions may lead to adverse outcomes including:
  - bilateral discussions without robust regulatory oversight can themselves lead to anti-competitive agreements, reducing competition

- uncoordinated outages pose a significant risk and cost to the system, which are reduced by the contextual information shared in a multilateral meeting allowed for by the Proposed Conduct
  - bilateral discussions to manage critical incidents are inefficient and unlikely to provide a comprehensive risk assessment.
- 3.7. Tilt Renewables submitted that, in its experience, the meetings that have occurred under the interim authorisation have been useful in mitigating the negative impacts of necessary network outages. Tilt Renewables expressed concern that substituting bilateral conversations for the existing authorised multilateral discussions would necessarily occur sequentially and thus risk alerting a market participant to commercially valuable information days before other market participants. Tilt Renewables submitted that by comparison the multilateral discussions are open to all market participants, so there is no ability for companies to gain an unfair competitive advantage.
- 3.8. NSW Office of Energy and Climate Change submitted that interim authorisation has allowed for the coordinated sharing of information across market participants which would otherwise take longer to analyse and may not be disclosed in time to manage reliability risks. Mitigation measures are more effective when additional time is available to respond and explore available options. The NSW Office of Energy and Climate Change submitted that enabling AEMO to coordinate information on System Works will reduce risks to electricity reliability and security in the NEM and deliver a public benefit.
- 3.9. VIC Department of Energy, Environment and Climate Action submitted that, in its view, the Proposed Conduct reduces system costs (reducing prices for end users) and reduces the likelihood of a planned outage over the summer peak and reduces the flow-on impact of outages that occur during times of stress.
- 3.10. The AEMC provided a submission outlining major recent and in-progress reforms to the National Electricity Rules that are relevant to managing the security and reliability of the National Energy Market through the transition away from scheduled synchronous generation.
- 3.11. AEMO provided a submission that made several points of clarification and more information relating to its claimed public benefits from the Proposed Conduct and claimed lack of public detriment. AEMO also amended its application to reduce the authorisation period it sought from 3 years to 18 months. The information provided by AEMO is discussed in greater detail as relevant below.
- 3.12. The Clean Energy Investor Group made a further submission in response to AEMO's supplementary submission and reduction in the period for authorisation sought to 18 months. The Clean Energy Investor Group, in summary, submits that it:
- supports AEMO's proposal to seek authorisation for a period of 18 months rather than to 30 June 2026
  - agrees with AEMO that this amended timeframe will allow AEMO to effectively utilise the forums to address critical challenges during upcoming summer periods, regarding weather events and potential capacity constraints, and
  - is in favour of AEMO's proposal for a longer-term regulatory solution to manage outages during the energy transition, noting that it will be subject to public consultation.

## 4. ACCC assessment

- 4.1. AEMO has sought authorisation for Proposed Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act, and with respect to sections 45 and 46 of the Act.<sup>24</sup>
- 4.2. Consistent with subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result.

### Relevant areas of Competition

- 4.3. To assess the likely effect of the Proposed Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.
- 4.4. The ACCC considers that the relevant areas of competition are likely to be:
  - generation, transmission, transportation and/or supply of electricity in Australia and/or
  - procurement of essential inputs (such as essential employees, contractors, parts, equipment or specialised resources necessary for System Works) for electricity production, generation, transmission, distribution and/or supply systems and infrastructure in Australia.<sup>25</sup> Future with and without the Proposed Conduct
- 4.5. In applying the authorisation test, the ACCC compares the likely future with the Proposed Conduct that is the subject of the authorisation to the likely future in which the Proposed Conduct does not occur.
- 4.6. AEMO submits that, in the absence of the Proposed Conduct, the Participants may be unable to coordinate certain of their activities to ensure the safe, secure and reliable supply of electricity. AEMO submits that 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 paragraphs 2.8 – 2.20 above.
- 4.7. Without authorisation, AEMO submits that the ability of the Participants to address issues that have the potential to impact the safety, security and/or reliability of Australia's energy supply is likely to be less effective and less timely than if the Participants are permitted to coordinate in the manner proposed.

### Maintenance forums

- 4.8. AEMO submits that it applied for authorisation so that it could continue to hold the maintenance forums with industry participants which it has run on a relatively regular basis since approximately April 2020 under previous authorisations. AEMO submits that these forums have typically been run on a fortnightly basis, however AEMO would, if circumstances required, convene the forums on an urgent basis (for example, in periods of heightened risk due to plant failure or critical weather events).

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<sup>24</sup> AEMO initially also sought authorisation in respect of s 47 of the Act. On 4 July 2023, AEMO confirmed that it no longer seeks authorisation for s 47 and considers, in any event, that the proposed conduct will not involve exclusive dealing. This clarification is available on the ACCC's [public register](#).

<sup>25</sup> However, the ACCC considers that it is not necessary to precisely define the relevant markets for the purpose of considering this application for authorisation.



- 4.9. AEMO submits that these forums involve AEMO gathering information pursuant to its regulatory powers, synthesising that information to brief industry participants on upcoming scheduled outages (typically via visual charts) and AEMO's analysis of potential system issues and risks arising from planned and unplanned System Works, and then consulting with industry on those issues and risks, and actions that can be taken to address them.
- 4.10. AEMO submits that, when held under ACCC authorisation, these forums allow AEMO to test with participants, in an open setting, the drivers of their scheduled maintenance and the extent to which potentially or actually problematic maintenance scheduling can be rescheduled or accelerated. With the legal protection provided by the authorisation, AEMO submits that the participants have the confidence to participate in frank discussions where they can share information, and immediately clarify or supplement information provided in the forums in real time. Through these forums, particularly as a result of visual charts used by AEMO to convey underlying data, AEMO submits that it can quickly and impactfully illustrate to industry participants the potential risks of overlapping outages.

#### AEMO's current powers

- 4.11. AEMO submits that there are a number of existing regulatory tools (including as a result of recent regulatory changes) which AEMO can and does use to help it manage the security of Australia's power system. AEMO submits that its existing powers largely do not contemplate or provide for the type of collaboration and proactive consultation with industry available under the Proposed Conduct. AEMO submits that its existing powers are instead premised on the assumption that AEMO will use reasonable endeavours to ensure the system operates effectively with a minimal amount of intervention by AEMO. While this approach is generally appropriate, AEMO submits that proactive and collaborative management of outages is essential at this critical stage of Australia's energy transition.
- 4.12. AEMO submits that existing measures contained in the National Electricity Rules and the proposed measures under consideration by the AEMC cannot by themselves overcome the challenges described in paragraphs 2.8 – 2.20. AEMO submits that addressing these challenges requires close to real-time sharing of information and multilateral coordination as contemplated by the Proposed Conduct. AEMO submits that it does have some powers under the National Electricity Rules in approving outages for System Works purposes for transmission networks (but not for generators) and can give relevant instructions or directions to market participants based on its understanding of risks in the market in order to achieve its power system security responsibilities. AEMO however submits that it 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 an opportunity to respond.
- 4.13. AEMO advises that, ordinarily, it obtains information through its Projected Assessment of System Adequacy, bidding systems and through bilateral discussions with relevant market participants.
- 4.14. AEMO has powers under the National Electricity Rules to assess and approve (or not approve) outages affecting transmission networks. Transmission Network Service Providers, and some distribution network service providers, enter proposed outages into the Network Outage Schedule. The Network Outage Schedule lists the planned network outages for work on the transmission system.<sup>26</sup>

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<sup>26</sup> Available here: <https://aemo.com.au/en/energy-systems/electricity/national-electricity-market-nem/data-nem/network-data/network-outage-schedule> (accessed on 30 November 2023).

- 4.15. In the medium term, AEMO conducts an analysis to determine the effect of an outage under various conditions and AEMO then communicates to the Transmission Network Service Providers that an outage will not be approved if specified conditions exist (such as in the event of particular weather conditions or an unplanned generator outage). In the short term, generally on the day of the network outage, AEMO makes a decision if the outage can proceed based on whether the specified conditions have in fact occurred. AEMO submits that, in those circumstances, the cancellation of an outage on the day can cause significant costs to be wasted if resources have already been deployed in the readiness for System Works.
- 4.16. The Projected Assessment of System Adequacy is the principal method that AEMO uses to forecast the adequacy of the power system to stay within the relevant reliability standard and is one way in which AEMO obtains information about generator availability. AEMO is required to prepare these forward-looking projections in 2 time frames, being short term (covering a period of 6 trading days) and medium term (covering a period of up to 36 months). The objective of the Projected Assessment of System Adequacy is to provide information to the market on the expected level of short-term capacity reserve and allow the market to respond to the power system needs as well as allow participants to make decisions about supply, demand and transmission network outages over the medium term.<sup>27</sup>
- 4.17. In its administration of the Projected Assessment of System Adequacy, AEMO must, on a weekly basis, collect and analyse certain information from a variety of market participants<sup>28</sup> about their intentions for the relevant forward-looking period.<sup>29</sup> This includes information about maintenance scheduling, energy constraints and other conditions which could materially impact upon power system security and the reliability of electricity supply. AEMO must then:
- prepare the *unconstrained intermittent generation forecasts*<sup>30</sup> for the following 24 months, and
  - following analysis and assessment of this information, publish information that will inform the market regarding forecasts of supply and demand over both the short and medium-term outlook,<sup>31</sup> noting that AEMO is required to use its reasonable endeavours to ensure that it publishes sufficient information to allow the market to operate effectively with a minimal amount of intervention by AEMO.<sup>32</sup>
- 4.18. In the context of the Projected Assessment of System Adequacy, the ACCC notes the following:

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<sup>27</sup> National Electricity Rules, r 3.7.1(b).

<sup>28</sup> This includes Scheduled Generators, Market Customers, Transmission Network Service Providers and Market Network Service Providers, as defined in Chapter 10 of the National Electricity Rules.

<sup>29</sup> National Electricity Rules, r 3.7.1(c).

<sup>30</sup> This is a forecast of the available generating capacity of each *semi-scheduled generating unit*. A *semi-scheduled generating unit* is a unit, or part of a group of units, which has a nameplate rating of 30MW or greater where the output of the generating unit is intermittent: National Electricity Rules, r 2.2.7(a).

<sup>31</sup> This information is available here: <https://aemo.com.au/en/energy-systems/electricity/national-electricity-market-nem/nem-forecasting-and-planning/forecasting-and-reliability/projected-assessment-of-system-adequacy> (accessed on 30 November 2023).

<sup>32</sup> National Electricity Rules, r 3.7.1(d).

- AEMO may publish additional updated versions of both the short-term and medium-term Projected Assessment of System Adequacy in the event of changes which, in the judgement of AEMO, are materially significant.<sup>33</sup>
  - AEMO can, in certain circumstances, request any other information from certain market participants that is reasonable to assist it to meet its obligations to administer the Projected Assessment of System Adequacy. For example, AEMO may request Network Service Providers to provide any other information on planned network outages.<sup>34</sup>
  - AEMO may request certain participants who may otherwise be exempt from providing information under the short-term Projected Assessment of System Adequacy to do so if AEMO considers it reasonably necessary for adequate power system operation and the maintenance of power system security and reliability of supply.<sup>35</sup>
  - However, information collected that has been requested by AEMO is typically unable to be made publicly available by AEMO due to certain confidentiality arrangements within the National Electricity Rules.<sup>36</sup>
- 4.19. AEMO submits that the Projected Assessment of System Adequacy does not always adequately reflect delays with respect to planned outages; for example, in circumstances where a generator has not provided updated information because they do not yet know when the unit will be available. AEMO further submits that the Projected Assessment of System Adequacy also does not provide AEMO and market participants with contextual information about outages (for example, issues that have arisen during planned maintenance) which can assist with the planning for System Works.
- 4.20. The ACCC considers that these processes (including changes to these processes as discussed above at paragraph 2.23) provide AEMO with a framework to collate, visualise and plan required generator and transmission maintenance and other planned outages well in advance of them occurring.
- 4.21. More generally, much of the legislative framework that governs the NEM operates on the assumption that AEMO uses reasonable endeavours to ensure the market operates effectively with a minimal amount of intervention by AEMO. In the event that intervention by AEMO is necessary (such as to maintain power system security), AEMO has a number of different mechanisms that it can use to effectively ensure the secure and reliable operation of the NEM.<sup>37</sup>
- 4.22. Where AEMO determines that there is unlikely to be adequate generator availability and/or threats to the security of the system, AEMO can hold bilateral discussions with the relevant generators to obtain information and to secure additional supply to avert blackouts or potential crises prior to using its formal direction powers. AEMO may also

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<sup>33</sup> National Electricity Rules, r 3.7.2(b) and 3.7.3(c).

<sup>34</sup> National Electricity Rules, r 3.7.1(e).

<sup>35</sup> National Electricity Rules, r 3.7.3(f).

<sup>36</sup> The AEMC has previously noted that, in the context of generator availability, this can make it challenging for market participants, policymakers and other stakeholders to remain appropriately informed about generator availability given information collected through AEMO requests is not made publicly available: AEMC, Enhancing information on generator availability in MT PASA, Rule determination, 18 August 2022.

<sup>37</sup> These include issuing directions, suspending the spot market, activating Reliability and Emergency Reserve Trade contracts and the mechanisms under the Power System Emergency Management Plan.

engage the Reliability and Emergency Reserve Trader Mechanism<sup>38</sup> to contract for and dispatch emergency reserve supply into the NEM, or engage in load shedding to reduce demand. If the issue is not resolved through bilateral discussion/s, AEMO does have the power to issue directions to certain participants to take any action AEMO sees fit to remedy the issue.<sup>39</sup> AEMO does, however, submit that a generator can refuse to comply with a direction if there is a safety risk or a risk of damage to equipment if they were to operate.<sup>40</sup>

4.23. AEMO submits that it already relies heavily on obtaining information and instructing industry participants through bilateral means to manage these issues. However, it submits that this is not a substitute for the immediacy and effectiveness with which information can be shared, clarified or supplemented in real time in a maintenance forum conveyed by AEMO and attended by relevant industry participants as a result of the Proposed Conduct.

4.24. AEMO submits there are a number of significant issues with relying on bilateral means to resolve issues:

- **Information delays:** obtaining information bilaterally involves iterative contact across multiple industry participants so as to obtain a complete view on how scheduled outages may affect supply, which requires time and resources. As the number of industry participants increases (through additional dispersed renewable generation across the NEM), it is becoming more complex and time consuming to coordinate bilateral engagement. AEMO considers that there is a risk that information delays will lead to it being forced to make decisions without the benefit of the best quality information from industry participants.
- **Lack of transparency:** AEMO's briefing (which is provided to participants as part of the forums) provides participants with a whole-of-system perspective, which they would not otherwise have been required or incentivised to have done the analysis to gain, despite having access to much of the same information (e.g., via the information made publicly available via the Projected Assessment of System Adequacy and the Network Outage Schedule). While AEMO may be able to brief generators bilaterally and encourage them to consider taking action to address identified system risks, generators may also perceive they are being called on to forego their own interests without complete transparency of why this may be necessary and whether alternatives have been explored, and they may be reluctant to concede any potential advantage by taking action unless directed to do so.
- **Additional resources:** AEMO must commit significant resources to seeking information and instructing multiple participants in each jurisdiction on a bilateral basis and this is becoming increasingly challenging as thermal powered plants retire, generation sources are diversified and the number of participants in the NEM is increasing substantially.

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<sup>38</sup> The Reliability and Emergency Reserve Mechanism is a function conferred on AEMO to maintain power system reliability and system security using reserve contracts from large users, such as industrial or manufacturing businesses, that sit outside the market. If necessary, AEMO can call on these supply reserves and demand management contracts to mitigate risk to energy supply.

<sup>39</sup> AEMO submits that they cannot direct a generator to operate if it is listed as not available for direction via the Projected Assessment of System Adequacy.

<sup>40</sup> The ACCC also notes that a registered market participant is not required to comply with a direction by AEMO if doing so would contravene another law.

- **The Reliability and Emergency Reserve Trader Mechanism is costly:** AEMO may engage the Reliability and Emergency Reserve Trader Mechanism to avert unforeseen supply shortfalls. However, engaging this mechanism for even a short period can involve significant cost which is ultimately borne by consumers and businesses in increased electricity costs.
- **Load shedding can have significant impacts:** in extreme events, AEMO may be required to shed load, which will have significant impacts to consumers and businesses affected by the forced disconnection of power and incurs significant economic cost.

4.25. Directions are designed to be a last-resort mechanism and are not intended to be a primary mechanism to maintain the security of the system. Under the National Electricity Rules, there is a compensation scheme available to participants who are directed by AEMO to provide energy, market ancillary services and other security services.

4.26. The ACCC considers that, in the future without the Proposed Conduct, any issues that arise in the electricity systems and fall within the scope of the Proposed Conduct could largely be managed using AEMO's existing powers. The ACCC considers that AEMO may also liaise and negotiate with generators and transmission network service providers on a bilateral basis in order to achieve some degree of coordination, but that this coordination may be somewhat less timely or efficient in mitigating or resolving issues in the electricity systems that fall within the scope of the Proposed Conduct – particularly in responding to emergencies.

## Public benefits

4.27. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that in considering public benefits:

*... we would not wish to rule out of consideration any argument coming within the widest possible conception of public benefit. This we see as anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.<sup>41</sup>*

## Minimising interruption to electricity systems

### AEMO submissions

4.28. As a result of the challenges outlined at paragraph paragraphs 2.8 – 2.20, AEMO submits 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 the periods in which outages are occurring.

4.29. AEMO submits that the Proposed Conduct will reduce the ongoing risks of electricity outages and will therefore result in public benefits in the following ways:

- **Coordinating scheduling of System Works:** As a result of the coordination of the scheduling of any outages for the purposes of System Works, AEMO submits that this will reduce the risk of overlapping outages arising from

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<sup>41</sup> Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

System Works affecting the supply of electricity. Although AEMO acknowledges that it could, absent the Proposed Conduct, work on a bilateral basis with individual participants using its current powers, it submits that the Proposed Conduct will allow for the timely, effective and transparent identification and resolution of potential conflicts.

- **Sharing information in relation to essential personnel to undertake System Works:** AEMO submits that, by sharing information about essential personnel undertaking System Works, the Proposed Conduct will assist the Participants to identify necessary personnel and their availability so as to be able to plan System Works effectively and reduce the risk of unnecessary or extended outages because of an inability to undertake System Works. Some of the skills required to maintain Australia's energy systems are highly specialised with a limited number of people able to perform these services; as a result, AEMO submits that 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.
- **Sharing information about essential inputs necessary for System Works:** AEMO submits that, 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 the Participants to secure essential inputs for System Works and reduce the risk of extended outages because of an inability to secure essential inputs necessary for System Works.
- **Sharing information regarding ongoing availability, performance, and operation of other generation facilities for the purposes of scheduling System Works:** AEMO submits that the Proposed Conduct will minimise risks to system availability by ensuring the scheduling of System Works takes into account information of any risks to ongoing availability, performance and operation of other generation facilities. As part of the Proposed Conduct, the Participants will be able to share information about any risks to the ongoing availability, performance and/or operation of their facilities for the purpose of scheduling System Works. Information on availability through AEMO's Projected System of System Adequacy systems is publicly available; however, AEMO submits that the Proposed Conduct would allow the Participants to provide further context regarding that information. AEMO submits that the purpose for doing so is to allow for the prioritisation of System Works by allowing Participants to factor in risks, especially the risks of breakdown of plant and equipment, for the purpose of reducing the likelihood of avoidable extended outages occurring.
- **Sharing information about system stability for the purposes of scheduling System Works:** AEMO submits that, by allowing the Participants to share information about electricity system stability from a technical perspective for the purpose of scheduling System Works, that this will allow AEMO and generators to ensure that essential synchronous generators remain online to provide necessary system strength.

4.30. AEMO submits that where there are potential risks and issues across the entire energy system, absent the Proposed Conduct, it does not have the visibility, time or resources to hold bilateral discussions (or a number of bilateral discussions) to gather the necessary information and consider the information before giving relevant directions. AEMO submits that 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, being the sufficient and reliable supply of energy, is not achieved.

- 4.31. AEMO acknowledges that, in the past, the greater simplicity and predictability of the electricity system, and the availability of many large synchronous generators providing redundancy, meant that slower bilateral discussions may have been adequate. However, AEMO submits that there is now not enough surplus capacity in the system to accommodate the inefficiencies of AEMO seeking to use existing, unilateral or bilateral measures to address these challenges and that to do so is wholly inadequate.
- 4.32. With reference to AEMO's current powers (as discussed at paragraphs 4.11 – 4.25), AEMO submits that these measures are not of themselves effective to allow it to manage outages efficiently through unilateral directions and bilateral discussions and therefore cannot overcome the challenges created by the transition; AEMO submits that only through the Proposed Conduct can the necessary exchange of information and coordination and planning occur.
- 4.33. AEMO submits there are a number of existing regulatory tools (including as a result of recent regulatory changes), such as those discussed at paragraphs 4.11 – 4.25 above) which AEMO can and does use to help it manage the security of Australia's electricity power system. AEMO submits that, while these remain important regulatory tools, many of these tools are longstanding and were developed at a time when there was significant dispatchable generation capacity in the NEM; however, this is no longer the case. As a result of this, AEMO submits that there are a number of respects in which its existing powers do not provide for proactive management of outages or industry collaboration in the manner that AEMO has been able to facilitate under ACCC authorisations to date.
- 4.34. AEMO submits that information collected via the ST PASA is not sufficient to enable it to manage system risk as it:
- Does not provide real time information about the actual timing of outages or the risks to timings – for example, if there are delays or overruns causing changes to scheduling timing of outages – that may have crystallised since the last submission by participants.
  - Does not provide information about the nature of the outage to enable AEMO to understand potential risks to a generating plant's scheduled return to service. For example, it is often the case that, while ST PASA provides dates for an outage relating to repair of a breakdown of a generator plant, AEMO still needs to speak with the generator to obtain accurate information about the nature of the breakdown and repair required, the progress of repairs, and therefore the likelihood that the plant will actually be available at the estimated outage end date.
- 4.35. AEMO submits that access to accurate, precise timings for a generating plants return to service enables it to effectively anticipate and mitigate system risk. AEMO considers that the need to access this information becomes even more acute in critical incidents and emergencies. The ACCC notes that, as a result of changes to MT PASA (discussed at paragraph 2.23 above), AEMO does now have greater visibility as to the recall time of generators than it had in the past.
- 4.36. While AEMO does have the power to direct a generator to operate, or to vary its output, if it considers it necessary to do so, AEMO submits that, importantly, it does not have power to direct a generator to shift a maintenance outage to a more suitable time so as to avert a period of constrained capacity or even a shortfall in supply. In the event of a critical incident, AEMO submits that its options in refusing outages, issuing directions or otherwise intervening in the market can be limited. The ACCC understands that intervention by AEMO via formal directions typically arises in response to a crisis, such as weather events or unexpected shutdowns of generators, and that, in these circumstances, it can often be too late for AEMO to provide for an



immediate fix. For example, coal fired generators have a long start-up time (of up to 48 hours) which means that AEMO would be unable to direct a certain generator to turn on immediately to provide necessary supply of electricity and/or essential system services to the network. AEMO submits that, in these circumstances, the utility of directing a generator in this way is also limited in circumstances where demand is peaking and there is a potential shortfall in supply created by overlapping outages, since available generators are already likely to be supplying if they can.

- 4.37. Once it reaches this point, the ACCC understands that the ability of AEMO to respond is often limited to directing rotational load shedding<sup>42</sup> in the intervening period while a generator comes online, which results in the disconnection of electricity supply to a number of users.
- 4.38. AEMO submits that its powers to intervene at or around the time of a critical incident cannot solely be depended upon to resolve system security and reliability issues. AEMO submits that it is instead preferable to prevent critical incidents from arising in the first place, particularly while the likelihood of incidents occurring is greater due to the structural changes occurring during the transition and an ongoing reliance on aging large generators to support the system while that transition occurs. AEMO submits that the Proposed Conduct enables it to more effectively plan for the medium term and thereby both reduce the likelihood of critical incidents occurring and ensure the remainder of the system is better prepared and more resilient to deal with these issues when they do occur.
- 4.39. Within its submission in response to the ACCC's draft determination, AEMO noted that the ACCC had proceeded on the basis that AEMO would not use the Proposed Conduct in the event of an emergency and that maintenance forums would be limited to the fortnightly cadence that AEMO has utilised to date. AEMO has since clarified that this is not the case. AEMO submits that it has convened forums in the context of a critical or emergency incident and would do so in the future if the need arose (subject to authorisation being granted).
- 4.40. Regarding the Energy Crisis Authorisation, AEMO advises that the conduct that occurred pursuant to it was largely limited to fortnightly meetings of electricity generators to discuss System Works. AEMO submits that the Energy Crisis Authorisation worked well to provide timely information about System Works and, where necessary, allowed for steps to be taken to minimise threats to system reliability. Further, AEMO considers that the conditions outlined in paragraphs 2.8 – 2.20 above are likely to worsen over the near term and therefore the Proposed Conduct is likely to become even more critical in avoiding such situations moving forward.
- 4.41. AEMO submits that it has received feedback from industry participants about their concerns in sharing information and participating in the forums in the absence of a clear competition law exemption or ACCC authorisation. AEMO submits that ACCC authorisation is therefore crucial to facilitating better management of supply risks pending any regulatory reforms and in light of current constraints on AEMO's powers.
- 4.42. AEMO considers that there is real evidence that the ability to discuss matters in AEMO-convened forums under ACCC authorisations to date has led to material advantages. By way of example, AEMO described a circumstance where, through the forums, it was able to illustrate the impact of the significant overlap in scheduled outages within a given period in Queensland and promote voluntary action from

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<sup>42</sup> Load shedding is the controlled reduction of electricity supply to parts of the power system to protect system security and mitigate damages to infrastructure – it is a last resort measure to avert the risk of system collapse, physical damage to parts of the power system and long-term outages.

participants. As a result of this, AEMO submits that the forum galvanised voluntary action by several participants to reschedule their outages to spread these over a longer period and therefore boost available capacity during a critical period. AEMO submits that this multilateral action resolved the potential risks and avoided the need for AEMO intervention (and its consequences including costs to industry and consumers) and consider that this would not have been possible without the interim authorisation.

4.43. In response to the ACCC's draft determination, AEMO further submitted the Proposed Conduct would result in significant public benefits in the form of:

- **Real time information and decisions:** AEMO, with industry participants, are able to obtain critical information regarding anticipated outages that is not conveyed through the Projected Assessment of System Adequacy or other means. AEMO's experience is that, as a part of the forums, participants are able to provide detailed insights directly from operations and maintenance and that this information can be used to more effectively and efficiently manage energy reliability and security in the NEM.
- **Transparency and improved context:** Industry participants benefit from the increased transparency provided by discussing these matters in an AEMO-convened forum, subject to the competition law safeguards outlined in AEMO's application. Without these forums, AEMO considers that participants are generally unaware of the broader NEM-wide ramifications of outages and will only consider outages from the perspective of impact to their own operations. AEMO submits that the forums provide useful context for participants to understand the impact of multiple coinciding outages and transparency that AEMO is providing all participants with the same information so that it can then request the participants to consider taking voluntary action to mitigate system risks.
- **Increased efficiency:** AEMO considers that, in some situations, relying on bilateral means to coordinate participants would involve AEMO committing significant time and resources which may not be practically feasible. AEMO submits that the Proposed Conduct results in efficiency and effectiveness by having immediate and constructive input from industry participants that can assist AEMO to determine the best course of action to manage coinciding outages and secure supply.

#### ACCC's assessment

4.44. The ACCC considers that the current application for authorisation arises in a materially different context than earlier applications lodged by AEMO for similar coordination and information sharing and that this application seeks to address different issues than earlier applications. The ACCC considers that there has been a shift from the short-term use of coordination in response to unprecedented or imminent threats to a desire for longer-term coordination between the Participants beyond the powers already available to AEMO under the relevant regulatory frameworks to manage the impacts of the transition towards renewable electricity generation.

4.45. The ACCC acknowledges that, due to the transition to renewable generation, a lack of detailed information on generator availability is becoming an issue, where it had not been in the past, with this sort of information being particularly important as the mix of electricity generation in the NEM becomes more complex.<sup>43</sup>

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<sup>43</sup> AEMC, Enhancing information on generator availability in MT PASA, Rule determination, 18 August 2022.

- 4.46. As outlined in greater detail at paragraphs 4.11 – 4.25 above, AEMO obtains a broad range of information from industry participants regarding System Works as a result of other processes it undertakes as the market operator, and it does have some powers that allow it to manage and coordinate System Works.
- 4.47. As a result of its processes, AEMO collects and analyses a significant amount of information regarding maintenance scheduling and other conditions which could materially impact upon power system security and the reliability of electricity supply up to 36 months in advance.
- 4.48. In response to the ACCC's draft determination, the ACCC received a number of submissions from interested parties (which included industry participants and state government agencies) strongly in support of AEMO's application and the significant public benefits that they consider will arise as a result of the Proposed Conduct. In addition, the ACCC has had the benefit of the further submissions made by AEMO.
- 4.49. The ACCC considers that, through utilising its current powers and information collected by other processes, AEMO has access to a variety of tools which allow it to manage System Works. The ACCC also considers that these provide AEMO, as well as the Participants and the market more broadly, with a high degree of visibility over, and opportunity to address, issues relating to the scheduling of System Works. The ACCC further notes that, as relevant rule changes are implemented (such as those to ST PASA and MT PASA), AEMO's ability to manage these issues will continue to increase.
- 4.50. However, having now had the benefit of the further information provided since the draft determination, the ACCC considers that the Proposed Conduct provides a more efficient mechanism for AEMO to obtain a broader set of information, and potentially useful context, regarding the scheduling of System Works and relevant risks than would likely be available without the Proposed Conduct. The ACCC considers that the Proposed Conduct will allow for the sharing of potentially critical information that would otherwise not be conveyed through the Projected Assessment of System Adequacy or other means. As a result of this, the ACCC considers that the Proposed Conduct is likely to result in public benefits in the form of increased ability to manage System Works and that this is likely to enable AEMO to manage System Works in a manner that allows the NEM to better respond to challenges created by the energy transition than would be possible without the Proposed Conduct.
- 4.51. As illustrated by the example provided by AEMO discussed in paragraph 4.42, the ACCC considers that the Proposed Conduct has the potential to provide a more efficient mechanism for AEMO to increase the level of transparency available to Participants of the broader impacts of System Works on the NEM and increase accountability on the Participants to consider matters beyond their own interest. As a result of this, the ACCC considers that the Proposed Conduct is likely to result in public benefits to the extent it allows for greater voluntary action by Participants that ultimately helps AEMO mitigate risks to the security and reliability of electricity supply created by the energy transition.
- 4.52. The ACCC considers that, in the event of an emergency, if AEMO were to utilise the Proposed Conduct to facilitate more timely multilateral coordination and information sharing with a number of key people (such as generators and/or transmission network service providers in a particular area) to work out how to best manage System Works while responding to the emergency, the Proposed Conduct would be likely to result in significant public benefits in those circumstances.
- 4.53. Accordingly, the ACCC considers that the Proposed Conduct is likely to result in a number of public benefits that ultimately will allow AEMO to respond to issues created by the energy transition more efficiently. The ACCC also considers that, in the event of

an emergency or critical incident, the efficiency with which AEMO could share information and potentially better coordinate System Works would result in a significant public benefit.

## Public detriments

4.54. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

*...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.<sup>44</sup>*

4.55. The ACCC has considered the following public detriments:

- reduced competition in wholesale electricity markets
- reduced competition for maintenance services.

## AEMO's submissions

4.56. AEMO submits that the Proposed Conduct is unlikely to alter the competitive dynamics in electricity markets as 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.

4.57. In particular, AEMO submits:

- Electricity is an essential service to the Australian community and close coordination by the Participants during the transition is essential to ensure the ongoing safe, secure and reliable supply of electricity during the period of the proposed authorisation.
- The Proposed Conduct does not extend to entering into any agreement regarding the wholesale or retail price of electricity.
- The Proposed Conduct is not compulsory, and any AEMO Industry Participant or Future AEMO Industry Participant can opt out of any proposed collaboration.
- The Proposed Conduct is limited to discussions, conduct, contracts, arrangements and/or understandings to which AEMO is either a party or has facilitated.
- The limitations of the Proposed Conduct and the addition of the proposed conditions, such as the requirement for a competition lawyer approved by the ACCC to attend, and for the ACCC and representatives of state governments to be invited, removes any risk of meetings being used for purposes of coordination beyond the scope of the Proposed Conduct.

## Reduced competition in wholesale electricity markets

4.58. The ACCC considers that sharing a variety of commercially sensitive information regarding the ongoing operation of facilities and reaching agreements regarding System Works could lessen competition in wholesale electricity markets. Further, such

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44 Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

information sharing and coordination increases the risk of collusion or coordinated conduct beyond that authorised.

- 4.59. The transparency afforded to the Participants over the operations of their competitors could facilitate anti-competitive and inefficient behaviours. For example, the bidding behaviour of generators may change if they learn through the Proposed Conduct that a particular competitor's plant is suffering technical issues or extended periods of outages. Other generators may then withhold supply in order to artificially inflate prices by manipulating the spot market which could potentially create further issues for the security and reliability of the supply of electricity.
- 4.60. AEMO submits that, in practice, although the forums seek to facilitate collaborative discussion to manage System Works, the information exchanged is unlikely to be highly sensitive as the key information inputs for AEMO's briefings to participants are already publicly available, such as via the Projected Assessment of System Adequacy or the Network Outage Schedule. AEMO submits that new information which emerges in the forums (for example, changes to the scheduling of outages or return to service dates) is reflected soon after in the participants' regular reports to AEMO, and subsequently also becomes publicly available information.
- 4.61. The ACCC notes that the participants have obligations to update information provided under the Projected Assessment of System Adequacy if there are changes to information previously provided to AEMO – including changes flowing from discussions in AEMO-facilitated forums.
- 4.62. The ACCC notes that, once the information is reported to AEMO by participants, there is a delay before the information is made available on AEMO's website:
- For the Network Outage Schedule, AEMO's website indicates that this schedule is updated every half hour.<sup>45</sup>
  - For the ST PASA, AEMO is required under the National Electricity Rules to publish the required information daily but AEMO's website indicates that the report is published every hour.<sup>46</sup>
  - For the MT PASA, AEMO publishes its comprehensive reporting on a weekly basis.<sup>47</sup> AEMO also publishes updates to certain region supply availability data 4 times a day.<sup>48</sup>
- 4.63. The ACCC notes that, overall, the NEM is concentrated with a few large participants controlling significant generation capacity and output within each region. This concentration provides a number of participants with the potential to exercise market power; however, concentration is significantly lower in the middle of the day, as a result of the contribution from intermittent renewable energy like wind and solar where

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<sup>45</sup> See <https://aemo.com.au/en/energy-systems/electricity/national-electricity-market-nem/data-nem/network-data/network-outage-schedule> (accessed on 30 November 2023).

<sup>46</sup> See <https://aemo.com.au/en/energy-systems/electricity/national-electricity-market-nem/data-nem/market-management-system-mms-data/projected-assessment-of-system-adequacy-pasa> (accessed on 30 November 2023).

<sup>47</sup> See [https://www.nemweb.com.au/REPORTS/CURRENT/MEDIUM\\_TERM\\_PASA\\_REPORTS/](https://www.nemweb.com.au/REPORTS/CURRENT/MEDIUM_TERM_PASA_REPORTS/) (accessed on 30 November 2023).

<sup>48</sup> See <https://aemo.com.au/en/energy-systems/electricity/national-electricity-market-nem/data-nem/market-management-system-mms-data/projected-assessment-of-system-adequacy-pasa> (accessed on 30 November 2023).

there is more diversity of ownership.<sup>49</sup> These trends are strengthening year on year as more renewable generation enters the market.<sup>50</sup>

4.64. Market participants are more likely to be able to exercise market power in a market with few participants, especially during periods of limited interconnector capacity, when demand is high, and/or when supply is constrained. While participants in the NEM may have an ability to exercise market power at times, they may not have an incentive to do so for a number of reasons, such as exposure to spot prices through contracting or vertical integration and government intervention.<sup>51</sup>

4.65. The ACCC notes that the performance of wholesale electricity markets can have a significant impact on retail prices and electricity bills for consumers; however the ACCC acknowledges that it is difficult to measure the extent of that impact given the way in which the NEM operates in practice.<sup>52</sup>

4.66. Within its most recent performance report, the Australian Energy Regulator noted the following:

- As the NEM continues to transition from a system dominated by large thermal generators to one that incorporates an increasing volume of widely dispersed intermittent renewable generators, significant new entry of large-scale solar and wind generation has increasingly put downward pressure on prices and reducing concentration in the market.<sup>53</sup>
- Despite this, over the past 2 years, electricity prices in the NEM have, at times, increased to unprecedented levels as supply-side conditions, including increases in international fuel prices, significant outages of thermal generation and fuel supply problems, have put pressure on the market.<sup>54</sup>
- Movement in spot prices are not necessarily indicative of the state of competition or efficacy in the market. In fact, changes in supply conditions have predominantly contributed to a sustained increase in electricity prices in 2021-22.<sup>55</sup>
- A major contributor to the tight supply conditions over 2022 was a reduction in baseload generation availability as instances of outages increased.<sup>56</sup>

4.67. Given these intermittently tight supply conditions, the ACCC considers that the Proposed Conduct is capable of altering competitive dynamics in electricity markets and considers that the Proposed Conduct is likely to impact competition in the relevant markets. However, the ACCC acknowledges that the risk of the Proposed Conduct lessening competition in wholesale energy markets may be limited in circumstances where:

- A variety of generation data, including maintenance information, is already publicly available on AEMO's website such as the short and medium-term

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<sup>49</sup> AER, Wholesale electricity market performance report 2022, 1.

<sup>50</sup> Ibid, 28.

<sup>51</sup> Ibid, 28.

<sup>52</sup> Ibid, 9.

<sup>53</sup> Ibid, 1.

<sup>54</sup> Ibid, 1.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

forecast data prepared by AEMO as part of its Projected Assessment of System Adequacy.

- The purpose for the sharing of information and coordination is limited to ensuring the safe, secure and reliable operation of electricity systems, minimising the risk of any energy outages and/or ensuring the continued operation and integrity of the NEM.
- Discussions between AEMO Industry Participants and Future AEMO Industry Participants would only be allowed to occur within the limitations outlined in paragraph 1.9 – 1.11.
- The Participants would not be authorised to have discussions or reach agreements without the oversight of AEMO.
- If the Proposed Conduct involves coordination between AEMO Industry Participants and/or any Future AEMO Industry Participants, a lawyer with expertise in competition law will be present and the ACCC and a senior officer of the relevant state or territory government department with responsibility for energy (or their delegate) will also be invited to attend.
- The electricity market is overseen by a number of market bodies and is governed by a range of State and Territory legislation, including a national set of energy laws, rules and jurisdictional legislation, as well as guidelines, standards and procedures.

4.68. The ACCC notes that, as part of the Proposed Conduct, the participants are able to share information with AEMO and other participants about any risks to the ongoing availability, performance and/or operation of their electricity facilities for the purposes of scheduling System Works. In those circumstances, the ACCC considers that there may be information shared within the forums that the participants are not required to report to AEMO and would therefore not be made publicly available. For example, if a generator was undertaking a planned outage and, in the course of doing so, discovered an issue that may require that outage to be extended, that information would likely not be captured by the reporting requirements of the Projected Assessment of System Adequacy but could impact the behaviour of other market participants who become aware of that information.

4.69. The ACCC considers that, in those circumstances, the Proposed Conduct has the potential to create an information asymmetry for market participants that did not attend the meeting where that information was shared and that they would be unlikely to otherwise have access to this information. The ACCC considers that this information asymmetry also has the potential to result in public detriments. To address this potential detriment, the ACCC has decided to propose additional conditions; these are discussed at paragraph 4.83 below.

### **Reduced competition for maintenance services**

4.70. The Proposed Conduct allows Participants to coordinate on a wide range of matters relating to System Works, including the sharing of information in relation to essential employees and contractors and the availability of parts, equipment or specialised resources.

4.71. A coordinated approach on these types of matters may be less efficient in allocating goods and services to the most valuable use and may impact the revenue of providers of these goods or services.

4.72. While the Proposed Conduct would allow for information sharing in relation to essential employees and contractors, it does not cover entering into any common arrangements,



which will somewhat reduce the likely detriments in relation to the supply of these services more.

4.73. Nevertheless, the ACCC considers that the Proposed Conduct is likely to lessen competition for the acquisition of maintenance services.

### Balance of public benefit and detriment

4.74. The ACCC considers that the Proposed Conduct is likely to result in public benefits in the form of greater ability to manage System Works which will ultimately allow AEMO to respond to issues created by the energy transition more efficiently. The ACCC also considers that, in the event of an emergency or critical incident, the greater efficiency by which AEMO could share information and potentially better coordinate System Works would result in a significant public benefit.

4.75. The ACCC considers it is likely that the Proposed Conduct would result in public detriments in the form of a lessening of competition in wholesale electricity markets, in part due to information asymmetries, as well as a lessening of competition in the acquisition of maintenance services.

4.76. For the reasons set out above, the ACCC is not satisfied that the likely detriments will outweigh the likely benefits. Therefore, as set out below, the ACCC has decided to impose conditions to reduce the likelihood of these detriments occurring.

4.77. The ACCC considers that refinements to the conduct and the inclusion of additional conditions to those proposed by AEMO are necessary to ensure sufficient transparency and to mitigate likely public detriments.

4.78. As a result, with the conditions set out below, the ACCC is satisfied, in all the circumstances, that the amended form of the Proposed Conduct (set out below and defined as the Authorised Conduct) would be likely to result in a public benefit that would outweigh the likely detriment to the public from the Proposed Conduct.

4.79. In summary, the key changes made by the ACCC to the conduct proposed by AEMO in its application are:

- Authorisation has only been granted for the Participants to discuss, enter into or give effect to any contract, arrangement or understanding between them, or engage in conduct, solely related to planning for and/or minimising any disruptions to electricity supply. The ACCC considers that this limitation is necessary to reduce ambiguity.
- Several changes to the Reporting and Communications Protocol (contained in Schedule 2 of AEMO's application) have been made to provide a greater degree of transparency in AEMO's reporting (refer to the Reporting and Communications Protocol attached at Schedule 1 of this Authorisation).
- Where the Proposed Conduct will involve a contract, arrangement or understanding between competing AEMO Industry Participants and/or Future AEMO Industry Participants, then authorisation is only granted to conduct to give effect to such a contract, arrangement or understanding as recorded in a record made by AEMO (or its legal representative) in accordance with Condition 4 (as outlined below).
- The sharing of 'specific generators' wholesale price, costs and margins' is expressly precluded as a condition of the authorisation (this is discussed further below).

## Conditions

- 4.80. The ACCC may specify conditions in an authorisation. The legal protection provided by the authorisation does not apply if any of the conditions are not complied with.<sup>57</sup>
- 4.81. AEMO proposes that authorisation be granted with 3 conditions requiring certain reporting, the immediate termination of any contract, arrangement or understanding entered into in reliance on any interim authorisation or final authorisation upon expiry or revocation of the authorisation, and the presence of a competition lawyer at meetings or discussions between AEMO Industry Participants or any Future AEMO Industry Participants.
- 4.82. As discussed at paragraph 4.69, the ACCC considers that, in the absence of further conditions, the conduct is likely to create information asymmetries in circumstances where information may be shared with AEMO and/or other participants that is not ultimately made available to all market participants.
- 4.83. The ACCC considers that further conditions (being conditions 5, 6 and 7 as outlined at paragraph 5.13 below) in addition to those specified in the interim authorisation are necessary to address the public detriments that are likely to arise from the Proposed Conduct to:
- ensure that the information shared that impacts, or has the potential to impact, the scheduling of System Works, as well as any contracts, arrangements or understandings that are reached as a result of the Authorised Conduct, is available to all market participants, irrespective of whether they attended the particular forum or meeting, and
  - reduce the likelihood of Participants sharing information or entering into or giving effect to any contracts, arrangements or understandings regarding specific Participants' wholesale prices, bids, costs or margins (by specifying a condition that expressly prohibits such conduct).
- 4.84. An additional condition (Condition 4) has also been maintained from the interim authorisation which requires AEMO to make and keep a contemporaneous record of certain details when contracts, arrangements or understandings are discussed and/or entered into and/or arrived at between competing Participants and make it available to the parties as soon as practicable. The ACCC has maintained this condition as it considers it is necessary to sufficiently reduce the risk of likely detriment and to ensure that the parties have clarity as to what specific conduct has been agreed.

## Length of authorisation

- 4.85. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>58</sup> This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the likely detriments for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.

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<sup>57</sup> Subsection 88(3) of the Act.

<sup>58</sup> Subsection 91(1) of the Act.

## **AEMO's submissions**

4.86. As noted above, in its 15 November 2023 response to the ACCC's draft determination, AEMO amended its application to request an 18-month authorisation period from the date of the ACCC's final determination.

4.87. AEMO noted that:

[It] has been exploring longer term, regulatory based solutions with stakeholders and government which will better equip AEMO to manage outages during the energy transition. While the precise nature of these changes is to be determined, they are likely to include (subject to the AEMC's usual processes and consultation), changes to the National Electricity Rules and/or changes to the National Electricity Law or Regulations as required.

4.88. AEMO submits that an 18-month authorisation period would:

- enable AEMO to have the benefit of the forums to manage the next 2 critical summer periods
- provide sufficient time for a longer-term regulatory-based solution to be developed, consulted on and implemented.

4.89. AEMO submits that it would need to work closely with government and other stakeholders to scope and draft the appropriate proposed regulatory changes. The length and complexity of the process to consult on and implement the proposed regulatory changes would also depend on which form(s) of legislation are amended.

4.90. AEMO submits that the shorter period of authorisation creates even stronger arguments that the public benefits of the Proposed Conduct outweigh any potential for public detriment and that the ACCC should authorise the Proposed Conduct.

## **ACCC's views**

4.91. In the circumstances of this matter, the ACCC has concerns that the likely public detriments associated with the Proposed Conduct would increase over time as the actions of the market participants evolve in response to any incentive towards profitable coordination. The ACCC considers that this is likely to change the balance of likely public benefits and detriments over time.

4.92. The ACCC notes AEMO's submissions that it is exploring longer term regulatory based solutions to better equip it to manage outages during the transition to renewable generation.

4.93. The ACCC considers that longer-term arrangements are more appropriately considered as part of the regulatory arrangements governing the NEM. Under these processes, full consideration can be given to any proposal against the backdrop of the existing rules that govern the market.

4.94. The ACCC considers that an 18-month period of authorisation is appropriate to provide adequate time to seek to address these issues through an AEMC rule change process within the operation of the NEM Rules and any accompanying legislative or regulatory changes, while at the same time balancing the potential need to address critical issues in the short-term. Given the ACCC's concerns about likely detriments of the Proposed Conduct, the ACCC considers it important that AEMO pursue any necessary changes to the regulatory framework to enable it to effectively address issues arising from the transition to renewable generation as a matter of urgency in order to ensure that necessary processes are completed within the 18-month period of authorisation.

## 5. Determination

### The application

- 5.1. On 7 June 2023, AEMO lodged application AA1000643 with the ACCC, seeking authorisation under subsection 88(1) of the Act.
- 5.2. AEMO seeks authorisation for the Proposed Conduct (as defined in paragraph 1.7).

### The authorisation test

- 5.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the proposed conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the proposed conduct.
- 5.4. For the reasons outlined in this determination and with the refinements to the conduct and the conditions specified below, the ACCC is satisfied, in all the circumstances, that the Authorised Conduct (as specified in paragraphs 5.7 to 5.9) would be likely to result in a benefit to the public that would outweigh the detriment to the public that would result or be likely to result from the Conduct, including any lessening of competition.
- 5.5. Accordingly, the ACCC has decided to grant authorisation with conditions.

### Conduct authorised

- 5.6. The ACCC has decided to grant authorisation AA1000643 with the conditions specified at paragraph 5.13 to the Participants (as defined in paragraph 1.6) to engage in the Authorised Conduct specified in paragraphs 5.7 to 5.9 below.
- 5.7. Authorisation with conditions is granted to enable the Participants to discuss, enter into or give effect to any contract, arrangement or understanding between them, or engage in conduct, solely related to planning for and/or minimising any disruptions to electricity supply by:
  - a. coordinating outages of generation, transmission and distribution assets for the purposes of repairs, maintenance, renewals, upgrades and new connections (**System Works**)
  - b. sharing information in relation to essential employees and contractors to ensure there are sufficient personnel to undertake System Works
  - c. sharing information about the availability of parts, equipment or specialised resources necessary for System Works
  - d. sharing information about risks to the ongoing availability, performance and/or operation of their electricity facilities solely in order to facilitate the scheduling of System Works
  - e. sharing information about electricity system stability from a technical perspective solely in order to facilitate the scheduling of System Works,provided:
  - f. the purpose for doing so is either to:
    - o ensure the safe, secure and reliable operation of Australia's electricity 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

(the **Authorised Conduct**).

- 5.8. The Authorised Conduct is 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 Authorised 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 Authorised 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.
- 5.9. Where the Authorised Conduct described in paragraph 5.7 will involve a contract, arrangement or understanding between competing AEMO Industry Participants or Future AEMO Industry Participants, then authorisation is only granted to give effect to such a contract, arrangement or understanding to the extent it falls within the scope of a contract, arrangement or understanding recorded in a record made by AEMO (or its legal representative) in accordance with Condition 4 below.
- 5.10. Authorisation is granted in relation to Division 1 of Part IV of the Act, and sections 45(1) and 46(1) of the Act.
- 5.11. The ACCC has decided to grant authorisation until 22 June 2025.

## Conditions of authorisation

- 5.12. The ACCC may specify conditions in an authorisation. The legal protection provided by the authorisation does not apply if any of the conditions are not complied with<sup>59</sup>.
- 5.13. Authorisation AA1000643 is granted with the following conditions:

**Condition 1 – Reporting requirements:** AEMO must comply with the Reporting and Communications Protocol (as outlined at Schedule 1 of this determination). This protocol includes AEMO providing monthly reports to the ACCC about the contracts, arrangements or understandings made at meetings during the preceding period, allows the ACCC to observe meetings and request additional information about the Authorised Conduct.

**Condition 2 – Agreements not to endure beyond authorisation period:** Any contract, arrangement or understanding entered into/arrived at in reliance on the authorisation must provide for its immediate termination (other than any provisions dealing with ongoing confidentiality obligations), upon the expiry or revocation of the

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<sup>59</sup> Subsection 88(3) of the Act

authorisation (unless another interim authorisation or final authorisation relating to that conduct is granted).

**Condition 3 – Presence of competition lawyer:** Where the Authorised Conduct involves a meeting or discussion between AEMO Industry Participants and/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 Act.

**Condition 4 – AEMO to make and keep a record:** Prior to or at the time Participants give effect to any contract, arrangement or understanding between competing AEMO Industry Participants and/or Future AEMO Industry Participants, which has been discussed and/or entered into and/or arrived at as part of the Authorised Conduct, AEMO (or its legal representative) must make and keep a contemporaneous record of:

- the parties to the contract, arrangement or understanding
  - the nature and scope of the conduct the parties will engage in, and
  - the anticipated or agreed duration of the conduct
- and make it available to the parties as soon as practicable.

**Condition 5 – No sharing of information related to wholesale prices, bids, costs or margins:** The Participants must not share any information or enter into or give effect to any contracts, arrangements or understandings regarding specific Participants' wholesale prices, bids, costs or margins (other than in accordance with the National Electricity Rules).

**Condition 6 – AEMO to provide certain shared information to all Registered Participants:** AEMO must ensure that all information shared pursuant to the Authorised Conduct (as part of any discussion, conduct, contract, arrangement and/or understanding) that AEMO considers is likely to impact the scheduling of System Works is provided to all Registered Participants<sup>60</sup> as soon as is reasonably practicable (to the extent that such information is not already made available through existing processes in the National Electricity Rules). This includes the categories of information described at paragraphs 5.7(a) to (e) of the Authorised Conduct.

**Condition 7 - AEMO to provide certain information to all Registered Participants about any contracts, arrangements or understandings reached as part of the Authorised Conduct:** Where a contract, arrangement or understanding is entered into as part of the Authorised Conduct that AEMO considers is likely to, or has the potential to, impact the future scheduling of System Works and/or the forecasts or commitment of available capacity by a Participant, AEMO must, as soon as reasonably practicable, provide the following details to all Registered Participants:

- the parties to the contract, arrangement or understanding;
- the nature and scope of the conduct the parties will engage in; and
- the anticipated or agreed duration of the conduct.

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<sup>60</sup> As defined in chapter 10 of the National Electricity Rules.

AEMO is not required to disclose information to the extent doing so would be inconsistent with any confidentiality/protected information provisions in the National Electricity Law and/or National Electricity Rules, in which case AEMO must notify the ACCC as soon as practicable.

- 5.14. The ACCC may authorise a Committee or Division of the ACCC, a member of the ACCC or a member of the ACCC staff, to exercise a decision making function under the conditions of authorisation on its behalf.

## 6. Date authorisation comes into effect

- 6.1. This determination is made on 30 November 2023. If no application for review of the determination is made to the Australian Competition Tribunal it will come into force on 22 December 2023.



### Purpose

1. This is the Reporting and Communications Protocol (**Reporting Protocol**) referred to in condition 1 of the ACCC's authorisation decision of 30 November 2023 (**Authorisation**) in respect of 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 National Electricity Market.
2. Capitalised terms used but not defined in this document have the meaning given in the Interim Authorisation.

### AEMO's reporting commitments

3. While AEMO engages in conduct enabled by the Authorisation, AEMO will provide each month (or such other period as the ACCC may approve in writing) a report to the ACCC setting out each contract, arrangement, 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 Authorisation, including:
  - a) the dates of all contracts, arrangements or understandings entered into or arrived at that rely on the Authorisation
  - b) the parties to each contract, arrangement or understanding entered into or arrived at that relies on the Authorisation
  - c) what topics were discussed at meetings where those contracts, arrangements or understandings were entered into or arrived at, and/or the content of those contracts, arrangements or 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, and
  - e) where possible a non-confidential version of the report for publication on the public register.
4. For the avoidance of doubt, the AEMO's reports under this protocol must include all records made pursuant to condition 4 of the Authorisation.

### Information requested and concerns raised by the ACCC

5. The ACCC may request additional information regarding conduct enabled by the Authorisation. AEMO, any AEMO Industry Participant and any Future AEMO Industry Participant must promptly provide any further information requested by the ACCC.
6. An ACCC representative may elect to attend any meeting or call as an observer where it is expected or intended that contracts, arrangements or understandings may be discussed, entered into or arrived at. 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 may be discussed, entered into or arrived at. The ACCC will give AEMO notice in advance of its

proposed representative at the relevant meeting or call, where reasonably practical to do so.

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