



**Australian Energy Market Operator –  
Application for authorisation AA1000484  
Interim authorisation decision  
3 April 2020**

**Decision**

1. The Australian Competition and Consumer Commission (the **ACCC**) has granted interim authorisation in respect of application for authorisation AA1000484, lodged by the Australian Energy Market operator (**AEMO**) on 30 March 2020 on behalf of itself, the participants in Australian gas and/or electricity markets identified in Annexure A and their related bodies corporate and any other parties involved in energy or related sectors approved by the ACCC in the manner described at paragraph 11 of this interim authorisation decision.
2. Interim authorisation is granted to enable AEMO, the ‘AEMO Industry Participants’ listed in Annexure A and ‘Other Approved Participants’ (as defined in paragraph 11) to have discussions, entering into or give effect to any contracts, arrangements or understandings regarding the following conduct, to the extent that the conduct has one or more of the purposes listed in paragraph 5:
  - a) Co-ordinating repairs and maintenance

planning for and/or minimising any disruptions to energy supply, for example, by coordinating scheduling of any repairs, maintenance and other works requiring outages
  - b) Sharing essential personnel

sharing information and/or entering into common arrangements in relation to essential employees and contractors to ensure there are sufficient personnel to maintain and operate energy infrastructure
  - c) Sharing essential inputs

sharing information about the availability of, and/or entering into arrangements to share, essential inputs for energy production, generation, transmission, distribution and supply systems and infrastructure, such as fuel for thermal electricity generators, parts, equipment or specialised resources necessary for essential maintenance, as well as other consumable materials necessary for the operation of AEMO Industry Participant facilities
  - d) Deferring non-essential works

sharing information, and/or entering into arrangements, to defer activities and/or projects not essential to maintaining the safe, secure and/or reliable operation of energy markets during the pandemic

e) Managing system stability

sharing information and/or entering into common arrangements in order to manage system stability from a technical perspective as a result of changes in system supply and/or demand, including for example managing generation profiles

**(the Authorised Interim Conduct)**

3. Interim authorisation does not extend to any other aspect of the Proposed Conduct or the Proposed Interim Conduct.
4. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

**The application for authorisation and urgent interim authorisation**

5. On 30 March 2020 AEMO lodged an application for authorisation, including a request for urgent interim authorisation, to enable AEMO, AEMO Industry Participants and Other Approved Participants to discuss, enter into or give effect to any contract, arrangement or understanding between them, or engage in any conduct, which has the purpose of:
  - a) ensuring the safe, secure and/or reliable operation of Australia's energy systems and/or the continued operation and integrity of the wholesale markets that underpin energy supply during the [COVID-19] pandemic;
  - b) ensuring ongoing energy supply to support consumers, businesses, government operations and the economy during the pandemic;
  - c) minimising the risk of any energy outages during the pandemic;
  - d) ensuring that there are sufficient resources to maintain and operate energy infrastructure, including personnel and essential inputs such as fuel, parts and equipment; or
  - e) planning or preparing for the impacts of the pandemic in relation to any of the above

**(the Proposed Conduct).**

6. The Applicants seek authorisation for 12 months from the date of final determination.
7. On 2 April 2020 AEMO requested that interim authorisation be provided by 3 April 2020 to enable it to commence discussions at a meeting scheduled for 7 April 2020. AEMO has requested urgent interim authorisation to enable discussions, conduct and entering into or giving effect to any contracts, arrangements or understandings regarding the following conduct, to the extent that the conduct has one or more of the purposes listed in paragraph 5:
  - a) Co-ordinating repairs and maintenance

planning for and/or minimising any disruptions to energy supply, for example, by coordinating scheduling of any repairs, maintenance and other works requiring outages
  - b) Sharing essential personnel

sharing information and/or entering into common arrangements in relation to essential employees and contractors to ensure there are sufficient personnel to maintain and operate energy infrastructure

c) Sharing essential inputs

sharing information about the availability of, and/or entering into arrangements to share, essential inputs for energy production, generation, transmission, distribution and supply systems and infrastructure, such as fuel for thermal electricity generators, parts, equipment or specialised resources necessary for essential maintenance, as well as other consumable materials necessary for the operation of AEMO Industry Participant facilities

d) Deferring non-essential works

sharing information, and/or entering into arrangements, to defer activities and/or projects not essential to maintaining the safe, secure and/or reliable operation of energy markets during the pandemic

e) Managing system stability

sharing information and/or entering into common arrangements in order to manage system stability from a technical perspective as a result of changes in system supply and/or demand, including for example managing generation profiles

**(the Proposed Interim Conduct).**

**Parties to the authorisation**

AEMO

8. AEMO was established by the Council of Australian Governments in 2009 to manage the National Electricity Market in the eastern and south-eastern states and Australian gas markets, this role has expanded to now include responsibility for power in Western Australia and various gas market functions.

AEMO Industry Participants

9. For the purposes of this interim authorisation, 'AEMO Industry Participants' means each of the parties specified in Annexure A to this interim authorisation decision.

Other Approved Participants

10. AEMO have requested that authorisation also extend to any other parties involved in energy or related sectors who in the future wish to engage in the conduct the subject of the application provided the ACCC's prior approval is obtained.
11. The following subparagraphs (a) – (e) apply to any parties other than AEMO and the 'AEMO Industry Participants' identified in Schedule 2 of the application for authorisation who wish to engage in the Proposed Conduct (**New Participants**). For the avoidance of doubt, this includes parties that become or became AEMO industry participants after 28 March 2020.
- (a) Any New Participant that wishes to be an Other Approved Participant must seek the approval of the ACCC by sending an email to [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au) with the subject 'AA1000484 – request to be covered by 3 April AEMO interim authorisation'. This request must identify the entity(ies) that wish to be covered by

this interim authorisation, detail the types of conduct covered by this authorisation that the entity proposes to engage in, and the reasons it wishes to do so.

- (b) If the ACCC approves a New Participant to engage in some or all of the conduct for which interim authorisation is granted, the New Participant will have the protection of this interim authorisation, subject to any condition specified by the ACCC, from the time it is notified of the ACCC's decision.
- (c) When considering the participation of any New Participant, the ACCC may in its absolute discretion refuse to approve the New Participant engaging in any or all of the Proposed Conduct or impose conditions which restrict the type or extent of the Proposed Conduct in which that New Participant may engage.
- (d) Unless the ACCC approves a New Participant engaging in the Proposed Conduct, that entity(ies) will not have the protection of this interim authorisation.

### **The authorisation process**

12. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether a proposed arrangement results in a net public benefit.

### **Interim authorisation**

13. Section 91 of the Act allows the ACCC, where it considers it appropriate, to grant interim authorisation. This allows the parties to engage in the Proposed Conduct while the ACCC is considering the substantive application.

14. In support of their request for interim authorisation, the Applicants submit:

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

ordinate the whole of government responses to issues outside the direct health management of COVID-19; and

- iii) take any necessary steps to ensure the ongoing safety, security and reliability of Australia's energy systems and markets during the pandemic.

## Consultation

15. The ACCC has not conducted a public consultation process in respect of the request for interim authorisation due to the urgency of AEMO's request for interim authorisation and the limited scope of the interim authorisation being granted by the ACCC at this time.
16. Further information in relation to the application for authorisation, including any public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's [Public Register](#).

## Reasons for decision

17. AEMO has sought authorisation for a broad range of conduct (the Proposed Conduct is described at paragraph 5, above). The ACCC considers that, while the application is urgent, there is complexity to the Proposed Conduct and the ACCC therefore cannot grant interim authorisation for the full ambit of conduct sought by AEMO without carefully considering its potential ramifications. So, in order to meet the immediate need to facilitate AEMO's discussions on Tuesday, the ACCC has decided to grant interim authorisation for a more limited range of conduct, being the Authorised Interim Conduct described at paragraph 2.
18. In granting interim authorisation for the Authorised Interim Conduct, the ACCC considers that it is unlikely that interim authorisation will materially alter the competitive dynamics in any market. Interim authorisation is granted to allow enable AEMO, AEMO Industry Participants and Other Industry Participants to coordinate in relation to a narrow range of purposes. Therefore, if the ACCC does not ultimately grant authorisation the markets are able to return to substantially their current state.
19. The ACCC also considers that it is unlikely that any interested party would be harmed if interim authorisation is granted.
20. Further, the ACCC's preliminary view is that the Authorised Interim Conduct is likely to result in a net public benefit.
21. The ACCC also accepts that with AEMO scheduled to attend a meeting on 7 April 2020 at which it is desirous for it to be permitted to discuss matters freely (for the purposes identified at paragraph 2 (a)-(e)) there is urgency regarding the request for interim authorisation.
22. The ACCC has not granted interim authorisation for the Proposed Conduct. The ACCC will consider the public benefits and public detriments likely to result from the Proposed Conduct further before making a draft decision about the substantive application for authorisation.
23. The ACCC expects AEMO, AEMO Industry Participants and Other Approved Participants to use their best endeavours to prioritise the use of existing mechanisms and requirements in the energy laws<sup>1</sup> before engaging in the Proposed Conduct where it is practical and effective to do so in response to issues arising from the COVID-19 pandemic.

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<sup>1</sup> Being the *National Electricity Law, the National Electricity Rules, National Gas Law, National Gas Rules, National Energy Retail Law, and National Energy Retail Rules*

## **Conditions**

24. Interim authorisation is being granted subject to each of the conditions set out below:

### Condition 1: Reporting Requirements

25. Within seven days of the date of this interim authorisation, AEMO must provide the ACCC a reporting protocol acceptable to the ACCC which commits AEMO to regularly notifying the ACCC about all material agreements or decisions made by AEMO, AEMO Industry Participants and Other Industry Participants which involve or otherwise relate to the Authorised Interim Conduct, including all steps, agreements, or decisions referred to in the AEMO update to each Energy Coordination Mechanism weekly meeting; and must comply with that protocol once it has been accepted by the ACCC.
26. AEMO, any AEMO Industry Participant and any Other Approved Participant must promptly provide any further information about the conduct being engaged in under this interim authorisation that the ACCC requests from time to time.

### Condition 2: Compliance with conditions imposed by other authorisations

27. Where the conduct authorised in this interim authorisation overlaps with conduct authorised under other authorisations, parties to those other authorisations must continue to comply with any relevant conditions imposed by those authorisations, which include:
- a) A91516 & A91517, where the condition of authorisation requires the applicants to publicly disclose maintenance information that they have shared among themselves; and
  - b) AA1000396-1 & AA1000396-2, where the condition requires a subset of the applicants to publicly disclose scheduled maintenance information that they have shared with one another.

### Condition 3: Agreements not to endure beyond authorisation period

28. Any contract, arrangement or understanding entered into in reliance on this interim authorisation must provide for immediate termination if the Proposed Conduct is no longer authorised by this interim authorisation or a final authorisation, and all conduct giving effect to any such contract, arrangement or understanding must cease upon termination, other than any provisions dealing with ongoing confidentiality obligations.

## **Reconsideration of interim authorisation**

29. The ACCC may review interim authorisation at any time. The ACCC's decision in relation to interim authorisation should not be taken to be indicative of whether or not final authorisation will be granted.