



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

**Decision**

1. The Australian Competition and Consumer Commission (the **ACCC**) has decided to revoke the conditional interim authorisation granted to the Australian Energy Market Operator (**AEMO**) and others on 3 April 2020 in respect of application for authorisation AA1000484 (the **3 April Interim Authorisation**) and grant a new conditional interim authorisation allowing an expanded range of conduct (the **17 April Interim Authorisation**), described below.
2. The ACCC has granted conditional interim authorisation in respect of application for authorisation AA1000484, lodged by AEMO on 30 March 2020 on behalf of itself, the participants in Australian gas and/or electricity markets identified in Schedule 2 of the application for authorisation 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 15 of this conditional interim authorisation decision.
3. Subject to the conditions in paragraphs 28 to 31, interim authorisation is granted to enable AEMO, the 'AEMO Industry Participants' listed in Annexure A and 'Other Approved Participants' (as defined in paragraph 15) to engage in the following types of 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

f) Sharing information regarding ongoing operation

sharing of information related to the ongoing availability, performance and/or operation of AEMO Industry Participant facilities and any risks to ongoing availability, performance and/or operation; and/or

g) Other Notified Conduct

any other proposed coordination measures to be undertaken that are not listed at (a) to (f) which AEMO notifies to the ACCC except for sharing information regarding gas availability or supply.

Conduct between parties to the interim authorisation is limited to:

- (i) discussions, conduct, contracts, arrangements and/or understandings to which AEMO, the independent market operator, is either a party or has facilitated; or
- (ii) discussions, conduct, contracts, arrangements and/or understandings to which AEMO is not a party but which are carried out for the purposes of implementing (i) above.

Interim authorisation does not extend to:

- (iii) sharing confidential information relating to retail pricing matters, cost or profits
- (iv) entering into agreements regarding the wholesale or retail price of energy, or the supply or acquisition of gas.

(the **Authorised 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
6. On 17 April 2020 AEMO revised the conduct for which authorisation is sought so that it excludes entering into any contracts, arrangements or understandings in relation to the supply or acquisition of gas in reliance on the proposed authorisation.

**(the Proposed Conduct).**

7. AEMO notes that:
- a) the Proposed Conduct would be limited to:
    - (i) discussions, conduct, contracts, arrangements and/or understandings to which AEMO, the independent market operator, is either a party or has facilitated; or
    - (ii) discussions, conduct, contracts, arrangements and/or understandings to which AEMO is not a party but which are carried out for the purposes of implementing (i) above;
  - b) the Proposed Conduct is intended to ensure the ongoing safety, security and reliability of Australian energy systems and the integrity of wholesale markets during the pandemic. It does not involve entering into any contracts, arrangements or understandings regarding the wholesale or retail price of energy, or the supply or acquisition of gas, that would rely on the authorisation. Nor is it intended that AEMO, AEMO Industry Participants and Other Approved Participants would share confidential information relating to retail pricing matters, cost or profits;
  - c) the Proposed Conduct is not compulsory, and any AEMO Industry Participant or Other Approved Participant can opt out of any proposed collaboration the subject of this application;
  - d) the Proposed Conduct is a temporary measure to ensure the ongoing safe, secure and reliable supply of energy to consumers, businesses, government operations and the economy during the COVID-19 pandemic;
  - e) if authorisation is granted, AEMO will notify the ACCC of any proposed coordination measures to be undertaken and which are not listed at paragraph 3 (a) to (f) above;
  - f) If authorisation is granted, it is intended that AEMO will update the Energy Coordination Mechanism (of which the Australian Energy Regulator (**AER**) is a member) of steps being taken to ensure ongoing energy supplies during the pandemic, including coordination measures as relevant. The newly formed Energy Coordination Mechanism brings together government and industry leaders for weekly meetings to coordinate a national response to the impact of COVID-19 on the energy industry. Members include representatives of the federal and state government departments responsible for energy, AER, AEMO, the Australian Energy Market Commission, the Energy Security Board and Energy Consumers Australia
8. AEMO seeks authorisation for 12 months from the date of final determination.
9. On 2 April 2020 AEMO 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.

10. On 3 April 2020 the ACCC granted the 3 April Interim Authorisation permitting the five forms of conduct identified in paragraph 9 (a) – (e), with conditions.

11. AEMO has requested that the ACCC grant interim authorisation to the full Proposed Conduct, which would expand the scope of conduct permitted by interim authorisation to include:

f) Sharing information regarding ongoing operation

sharing of information related to the ongoing availability, performance and/or operation of AEMO Industry Participant facilities and any risks to ongoing availability, performance and/or operation; and

g) Gas availability

sharing information for the purpose of assessing whether there are secure sufficient quantities of gas for electricity generation during the pandemic.

h) Other Notified Conduct

any other proposed coordination measures to be undertaken that are not listed at a) - e) in paragraph 9 or f) - g) in paragraph 11. AEMO would notify the ACCC of any such conduct.

## Parties to the authorisation

### AEMO

12. 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

13. 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

14. 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.

15. 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 17 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

16. 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

17. 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.

18. In support of their request for interim authorisation, AEMO submits:

- 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**

19. 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.
20. 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**

21. 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. The ACCC has discussed the scope of conduct with AEMO and considers the narrower Authorised Interim Conduct, described at paragraph 3, will address AEMO's needs in the short term and allow time to consider whether any further forms of conduct are appropriate as part of its full authorisation assessment.
22. 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.

23. The ACCC also considers that it is unlikely that any interested party would be harmed if interim authorisation is granted.
24. Further, the ACCC's preliminary view is that the Authorised Interim Conduct is likely to result in a net public benefit.
25. The ACCC also accepts that expanding the forms of conduct to the Approved Interim Conduct will enable AEMO to respond to the issues most likely to arise during the COVID-19 pandemic and, accordingly, there is urgency regarding the request for interim authorisation.
26. 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.

### **Conditions**

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

#### Condition 1: Reporting Requirements

28. AEMO must comply with the Reporting and Communications Protocol attached to this Statement of Reasons (Attachment A), or another reporting protocol agreed between AEMO and the ACCC at a later date.
29. 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

30. 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

31. 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

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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*

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**

32. 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.

# Attachment A:

## Reporting and Communications Protocol

### Interim Authorisation: AEMO

#### Purpose

1. This is the Reporting and Communications Protocol referred to in condition 1 of the interim authorisation granted by the ACCC on 17 April 2020 in respect of proposed arrangements between AEMO and certain gas and electricity industry participants for the purpose of dealing with the effects of the COVID-19 pandemic on Australia's energy systems (**Interim Authorisation**).
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 Interim Authorisation, AEMO will use its best endeavours to provide no later than each Thursday (or if not a business day in Sydney, on the next business day) a report to the ACCC setting out each material agreement or decision made by AEMO, AEMO Industry Participants and Other Approved Participants in the previous week that involves or otherwise relates to the Authorised Interim Conduct, including:
  - a) the dates of all discussions held or to be held and contracts, arrangements or understandings formed that rely on the interim authorisation,
  - b) the parties to each discussion, contract, arrangement or understanding,
  - c) what topics were discussed, and/or the material content of any contracts, agreements or understandings formed, including key details such as the relevant products or services, quantities, timings, and financial or other compensation,
  - d) a description of the issues arising from the COVID-19 pandemic that the discussion, contract, arrangement or understanding seeks to address and how it will be addressed,
  - e) all steps, agreements, or decisions referred to in the AEMO update to the Energy Coordination Mechanism weekly meeting
  - f) where possible a non-confidential version of the report for publication on the public register

#### Information requested and concerns raised by the ACCC

4. The ACCC may request additional information regarding conduct enabled by the authorisation. AEMO, any AEMO Industry Participant and any Other Approved Participant must promptly provide any further information requested by the ACCC.
5. An ACCC representative may elect to attend any meeting or call intended to include discussions enabled by the interim authorisation as an observer for the purpose of

observing that the relevant conduct of those groups which might give rise to concerns under Part IV of the CCA notwithstanding the interim authorisation granted on 17 April 2020. The ACCC will give AEMO notice in advance of its proposed representative at the relevant meeting or call.

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

### Confidentiality

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