

A few
words.

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AEMO Establishment — AEMO Exposure Drafts

Introduction

AGL welcomes the opportunity to comment on the proposed legislation for the establishment of AEMO.

AGL supports the formation of AEMO as a way of moving towards a national approach to wholesale energy market management. AGL believes that the powers conferred upon AEMO should mirror those of the bodies it is to absorb. The process of establishing AEMO should not be used as a way to create additional powers or responsibilities for the market operator to the potential detriment of the efficient operation of the market.

Market Information Notices (“MINs”) and Market Information Orders (“MIOs”)

AGL is concerned about the power of AEMO to issue MINs and MIOs. AGL understands the purpose of the notices is for AEMO to acquire accurate information from market participants for the drafting of the Gas and Electricity Statement of Opportunities (“SOO”). AGL notes that the bodies which currently draft the equivalent SOOs have not had to resort to such onerous information gathering powers (ie: NEMMCo and the Electricity Supply Industry Planning Council (“ESIPC”).

AGL’s specific concerns with the MINs and MIO provisions include:

- These type of onerous information gathering powers are usually reserved for regulators in the enforcement of rules, not market operators carrying out their day to day activities.
- The process of issuing and consulting on MINs and MIOs is time consuming and inefficient. It is a costly and combative process to achieve something which could be more easily done through other means (see AGL’s suggested alternatives below).
- MINs and MIOs are unnecessary, given participants have a history of working with market operators to ensure accurate reports are produced.



Alternatives to the MINs and MIOs process include:

1. The Law and/or the Rules providing a broad outline of the information required from participants for the drafting of the SOOs. The market regulations providing more specific information required from participants; or
2. The electricity SOO process being applied for the gas and electricity SOOs

AGL strongly encourages the MCE to amend the draft legislation to account for our suggested alternative in (1) above.

Confidentiality

AGL is most concerned to ensure that information it supplies to AEMO remain confidential where that information is commercially sensitive. Currently, AEMO can provide any information supplied by AGL to regulators for any purpose within the relevant bodies' power. In addition, once the information has been provided by AEMO there is no requirement on that regulator to keep the information confidential. AGL is most concerned about this given that the release of confidential information could cause the relevant participant serious commercial harm.

AGL is therefore concerned that information supplied to AEMO for one purpose can be used against the participant for another. At its worst, a regulator can use AEMO to gather information through a MIN or MIO to provide it with information it may otherwise not have the power to acquire and which can be later used against the participant in a legal dispute.

Furthermore, given the Australian Competition and Consumer Commission ("ACCC") no longer has a role in energy market regulation, it should not be able to acquire information from AEMO without permission from the relevant market participant.

Accordingly, the Law should only allow commercially sensitive information to be shared by AEMO where the relevant participant has granted permission.

Functions of AEMO

Information provided to Ministers (s51)

AGL understands that the draft legislation allows the MCE or a Minister to request that AEMO supply it with information, a report or other services.

It is important that commercially sensitive information only be supplied to the MCE or a Minister where the relevant participant has granted permission.

There does not appear to be any mechanism for cost recovery for AEMO for the work involved in complying with such a request. Given participants pay the majority of AEMO's fees, this is a concern. AGL would prefer that AEMO be given the power to recover relevant costs from the MCE or Minister where appropriate.

AEMO's adoptive jurisdiction functions (Division 2)

AGL believes that the Law should specifically exclude an expansion of the role of AEMO under these provisions by specifying which jurisdictions can adopt the functions.

- > Being selected as a member of the Dow Jones Sustainability Index 2006/07
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We also believe that the legislation should clearly define that the costs of the function are recovered from the adopting jurisdiction, preferably in a manner consistent with the current mechanisms. We understand, for example, that the costs of ESIPC are recovered from NSPs and Generators in SA via licence fees. This approach should be retained or an equivalent mechanism, such as AEMO charging the costs to the relevant minister, be defined.

In the case of a jurisdiction requesting specific reports, AEMO should be allowed to recover its costs from the requesting jurisdictional authority.

Consultancy services (s52(3))

AGL supports AEMO providing consultancy services on a profit basis where it is considered appropriate and as long as all of the costs of the consultancy, including overheads, are fully recovered.

The AEMO should not provide such services where there is a potential conflict of interest, for example consulting to a party on technical connection requirements.

AGL expects that any profits from consultancy services would be considered revenue and, as such, offset against costs for the purposes of setting fees in future years.

Registration as a Transmission Network Service Provider (“TNSP”) (s50G)

AGL is of the view that, as a declared TNSP, AEMO should be registered as a market participant. AGL believes this could most easily be achieved through VENCORP’s participant id being maintained by AEMO. This would ensure the status quo is maintained for services currently provided by VENCORP.

Initiation of making a rule (s.91)

AGL understands that the draft legislation only allows AEMO, a Minister or a declared transmission system operator to request a rule about the exercise of AEMO’s declared network functions.

AGL believes that any participant should be able to request a rule in relation to AEMO’s declared network functions. There appears no detriment to broadening this provision to be consistent with the ability of participants to request a rule change about any other relevant matter.

Drafting Issues

Definition of Activity (s6(2))

The draft legislation introduces a definition of “Activity”. This change appears unnecessary to the establishment of AEMO. In the current Law and Rules, the term Activity is only used in relation to the registration of a participant. The proposed definition has broad consequences including creating confusion in the scope of those requiring to be registered.

AGL is of the view that the proposed definition of Activity should be deleted.

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The role of AEMO s49(1)(a)

The draft legislation has altered the role of the market operator - AEMO. The current Law states the role of NEMMCo is to “to operate and administer, in accordance with this Law and the Rules, the wholesale exchange”. The draft legislation states AEMO’s role is “to operate and administer the wholesale exchange”.

The term ‘Wholesale Exchange’ is not defined in the draft legislation. Not defining the term, or making reference to the Law and Rules (as in the current Law), creates unnecessary confusion. AGL believes that the original drafting should be retained with minimal modification.

Superfluous defined term s71A(2)

AGL notes that the draft legislation defines Small/Medium User or Consumer Intervener. However, this term is not used in the draft legislation. It should therefore be deleted to avoid any potential confusion.

Consultation process

An essential part of finalising draft legislation which governs the operation of a market, is to ensure adequate consultation with market participants.

AGL believes it is vital that following the current round of consultation that a further opportunity to comment on the redrafted legislation be provided. AGL accepts that further consultation may be limited to drafting issues only.

One further opportunity to comment on the redrafted legislation would avoid any unintended consequences from seemingly innocuous drafting changes. For example, as discussed above, the unintended consequences of introducing a definition for “Activity”.

Should you have any queries, please contact Alex Cruickshank on (03) 8633 6026.

Yours sincerely,

Elizabeth Molyneux
General Manager Energy Regulation

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