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30 January 2008

Attn: Mr Steve Rodgers
Governance and Institutions Section
National Energy Market Branch
Department of Resources, Energy and Tourism
GPO Box 1564
Canberra ACT 2601

Dear Sir

Aurora Energy Comment Upon Exposure Drafts of Amendments to the National Electricity Law and National Electricity Rules

Aurora Energy Pty Ltd ABN 85 082 464 622 (Aurora) welcomes the opportunity to comment on the exposure drafts of amendments to the National Electricity Law (NEL) and National Electricity Rules (NER) released by Ministerial Council on Energy's Australian Energy Market Operator Implementation Steering Committee (ISC) in December, 2008, for the establishment of the Australian Energy Market Operator (AEMO).

The creation of an operator for a unified national energy market and centralising the planning of the national transmission network are significant steps towards providing an efficient, effective and secure system capable of supplying the energy needs of Australians into the uncertain future.

Aurora observes, however, that the proposed alterations go beyond those required to implement AEMO's powers as contemplated in the Australian Energy Market Agreement. Indeed, in certain jurisdictions, AEMO becomes, effectively, the sole provider of transmission network services, with the currently existing transmission network service providers being reduced to minor operational roles. As such, AEMO becomes a monopoly provider of transmission network services. But, in the provision of these monopoly services, AEMO is not required to operate under a similar degree of regulation borne by other monopoly service providers in the NEM. Further, AEMO is given the right of veto over certain decisions made by the Australian Energy Market Commission and the Australian Energy Regulator. Neither the minimal regulation nor right of veto seems appropriate given the various discussions by the Ministerial Council on Energy and state regulators about the reasons for regulating monopolies.

In addition, in jurisdictions where AEMO becomes the sole provider of transmission network services, AEMO is apparently empowered to appropriate a portion of the existing, regulated transmission network service providers' annual revenue so that AEMO may provide those services. Appropriating revenue will reduce the opportunity for transmission network service providers to turn a profit, leading to reduced returns to shareholders which, in turn, may lead

to reduced incentive for investment.

Aurora is disappointed by the expectation of the ISC expressed in Energy Market Reform Bulletin 139 that there will not need to be “a second round of consultation given previous consultation, and the need to ensure a smooth transition to the new arrangements by 1 July 2009”. Many substantial amendments are required to the NEL and NER to properly implement the powers and processes of AEMO. It seems imprudent to expedite such a complex process to meet a dead-line, especially since the proposed amendments have potentially significant impacts on providers of transmission services.

In closing, Aurora wishes to note that it supports the position presented by the Energy Networks Association in their submission on this issue. Comments made by Aurora upon specific proposed changes to, or insertions of, the National Electricity Law and the National Electricity Rule are provided in the attachment to this letter.

If you have any questions, please contact the author of this letter, whose contact details are provided at the top of the first page.

Yours sincerely

Leigh Mayne
Regulation Manager
Network Division

ATTACHMENT: Comments on Particular Proposed Changes to the National Electricity Law and National Energy Rules

This attachment contains comments by Aurora Energy Pty Ltd ABN 85 082 464 622 upon particular changes to the National Electricity Law (NEL) and the National Electricity Rules (NER) as proposed in exposure drafts of amendments to the NEL and NER released by Ministerial Council on Energy's Australian Energy Market Operator Implementation Steering Committee in December, 2008, for the establishment of the Australian Energy Market Operator (AEMO)

Abbreviations Used in This Attachment

AEMA	Australian Energy Market Agreement
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
DNSP	Distribution Network Service Provider
MCE	Ministerial Council on Energy
NECF	National Energy Customer Framework
NEL	National Electricity Law
NEM	National Energy Market
NEMMCO	National Electricity Market Management Company
NER	National Electricity Rules
NSP	Network Service Provider
TNSP	Transmission Network Service Provider

Proposed Amendments to the National Electricity Law

1. Substitution of Note to Sub-section 11(2) - Registration of AEMO

The revised note removes the necessity for AEMO to register “in respect of any such activity that falls within its statutory functions”.

In being unregistered, AEMO, in its capacity as a monopoly provider of transmission services will be exempt from all provisions in the NER applicable to service providers, unless explicitly mentioned. Following the tenor of regulatory documentation concerning monopoly providers of network services it seems unusual to exempt such a provider from regulation.

2. Proposed Sub-section 15(3)

This sub-section precludes the AER from regulating either the revenue that AEMO earns, or any prices for any services provided by AEMO other than shared transmission services.

AEMO is a monopoly provider of services: in many cases, the monopoly arises through

legislation directing other parties to use AEMO services. It is not in keeping with the common practice of the NEM to permit a monopoly service provider to be unregulated with regard to charges levied or revenues collected for the provision of monopoly services.

3. Proposed Section 50C - AEMO's Declared Network Functions

This section outlines the functions that AEMO will perform in jurisdictions that choose to invoke the exercise of AEMO's declared network functions.

In essence, AEMO becomes the de-facto TNSP for the jurisdiction. With this section, and those following, the incumbent TNSPs are reduced to transmission network asset owners, and are responsible for providing connection services, minor construction works and project managing larger construction works.

It is unclear how this construct fits into the "AEMC is the rule maker, AER is the rule enforcer, NEMMCO [or AEMO, its successor] operates the market" approach outlined in the Australian Energy Markets Agreement. Nor is it clear how AEMO assuming such a position accords with the objectives of the AEMA.

In addition, such functions appear to be beyond those envisaged for AEMO as outlined in the *Synopsis: Australian Energy Market Operator Implementation Plan* released by the MCE in March, 2008.

4. Proposed Section 50E – Connection Agreements

This section requires DNSPs connected to transmission networks in jurisdictions that have invoked the exercise of AEMO's declared network functions and users that are connected directly (or indirectly, the sub-section 50E(3) does not exempt customers connected through a distribution network) to have connection agreements with both AEMO and the "relevant declared transmission system operator".

Such a connection agreement is not contemplated under the NECF with regard to customers connected through the distribution network.

5. Proposed Section 50F – Augmentation

This section follows on from proposed section 50C and describes the conditions surrounding augmentation of transmission networks in jurisdictions that have invoked the exercise of AEMO's declared network functions. In particular, the existing TNSPs in the jurisdiction have their power to plan, augment and arrange for the construction of their own network removed to AEMO.

The powers given to AEMO exceed those necessary required to plan a coherent and efficient network.

Sub-section 50F(3) is missing.

6. Proposed Section 50G - AEMO's Qualified Exemption

This section, an extension of the proposed note to sub-section 11(2), exempts AEMO from registration under the NEL as a TNSP and, unless the contrary is explicitly noted, from complying with the NER in respect of its NSP activities.

As noted above, following the tenor of regulatory documentation concerning monopoly providers of network services it seems incongruous to exempt such a provider from regulation.

Moreover, given the extremely high level of risk presented by AEMO as the sole transmission network planner and operator in an adoptive jurisdiction, especially considering the potential ability to be multi-jurisdictional system security co-ordinator with the ability to switch loads between jurisdictions, and as a separate legal entity with statutory monopoly and enforceable powers, it would seem prudent to subject AEMO to more and closer regulation, rather than less.

7. Proposed Section 50J – General Principles Governing Determinations

This section provides principles to be followed in the making of a determination by the AER (as per proposed section 50H) in respect of the resolution of a dispute concerning network agreements (as per proposed section 50D) or connection agreements (as per proposed section 50E).

Proposed sub-section (1) directs that the AER must make a determination that is “compatible with the proper performance of AEMO’s declared network functions”, a determination which may, conceivably, be to the detriment of other parties to the determination.

Proposed sub-section 50J(3) provides AEMO that a determination made by the AER may not take effect without the agreement of AEMO. Under the NEL, decisions made by the AER are, in general not reviewable. It is inconceivable that any party participating in the NEM, especially a monopoly provider of network services, should be given a right of veto rather than a right of appeal.

8. Proposed Sections 51 & 51A - Ministerial Requests

These sections require AEMO to respond to a ministerial request, but limit the disclosure of “protected information”.

It does not seem appropriate for a private company that was formed by the agreement of a jurisdiction’s government and which has been assigned by legislation passed by the jurisdiction’s government the task of operating the transmission network in that jurisdiction to withhold information from the Government of that jurisdiction.

9. Proposed Section 52 – AEMO Fees and Charges

This section provides that AEMO may make fees and charges for services provided under the NEL or NER, but there is no requirement upon AEMO to ensure that there is equivalence between the costs for provision of a service and the revenues received for provision of that service.

It is appropriate that AEMO be permitted to charge for services.

It is not appropriate, however, that for services for which AEMO is the monopoly provider (for example, National Transmission Planner, and provider of augmentation technical reports as per the proposed Rule 5.6.3 of the NER) that AEMO recover revenues for a service that are greater than the efficient costs for the provision of such services.

The provision in sub-section 52(3) that the “exact equivalence is not required...if there are reasonable grounds to believe that costs will over time approximate revenue” is not a provision under which a regulated DNSP or TNSP is permitted to operate. It seems inequitable, therefore, that another monopoly service provider in the same industry should be allowed such latitude.

Sub-section (4) allows charging for costs not directly referable to services provided by AEMO under the NEL or NER. Both TNSPs and DNSPs are required under the NER to submit to the AER for approval a Cost Allocation Methodology detailing the principles and policies for allocating costs between service provided by them. It would seem appropriate that AEMO be required to follow a similar practice in respect of all of those services provided under the NEL or NER.

10. Proposed Sections 53 to 53D – Information Gathering

These sections provide AEMO with the power to obtain information on any matter relating to its functions from any person or entity.

While AEMO is a major component of the NEM, AEMO is to be a company incorporated under the Corporations Act 2001 (Cth), rather than a commission or office established by law as are the AEMC and AER. It seems incongruous to give such wide ranging information gathering powers to a separate legal entity.

Proposed section 53D further permits AEMO to use any information for “any purpose connected with the exercise of any of its statutory functions”. Such permission will clearly reduce the compliance load of organisations with respect to AEMO’s functions as wholesale market operator and National Transmission Planner. It does not seem entirely appropriate, however, that such information be shared between AEMO in its capacity as market operator and transmission planner and AEMO in its capacity as a TNSP.

Indeed, it is not entirely clear whether such arrangements may raise some form of ring-fencing concerns. While the proposed changes to the NER (Schedule 1) note that Part G of Chapter 6A dealing with Ring-fencing arrangements is not applicable, AEMO will be providing both contestable and non-contestable functions. As such, Ring-fencing should be applicable.

11. Proposed Section 54C - Disclosure Required or Permitted by Law, etc

This section details the constraints surrounding the disclosure of protected information by AEMO.

To avoid confusion, it should probably be stated explicitly in sub-clauses 54C(1) and 54C(2) exactly who is authorised to disclosed protected information under the given circumstances.

Proposed sub-section 54C(5) explicitly and unconditionally authorises any individual working for AEMO or any other body listed in sub-section 54C(2) to disclose protected information, which seems to render immaterial the remainder of the sections concerning protected information (54A to 54H).

12. Proposed Section 54H - Disclosure of Protect Information for Public Benefit

This section permits AEMO to allow disclosure of protected information if, after a limited

consultation process, AEMO determines that the detriments of disclosure outweigh the benefits. Such a power appears to extend beyond that necessary for a market operator (NEMMCO did not appear to have such power and did not seem to be adversely affected), or a National Transmission Planner, and is completely beyond that necessary for a TNSP.

13. Proposed Section 91(7) - Initiation of Making of a Rule

Sub-section 91(7)(a) restricts the opportunity to request a rule change to only AEMO, a Minister of an adoptive jurisdiction, or a TNSP within an adoptive jurisdiction.

Section 91(1) of the NEL explicitly permits any person to request a rule (which includes requesting a rule change), with no restriction upon the subject of the rule to be created or changed. It seems anomalous, therefore, to place such restrictions around requests for rules that may have a bearing upon AEMO, especially when one of the declared network functions, by proposed sub-section 50C(1)(d), is to act as a monopoly provider of transmission services.

Sub-section 91(7)(b) directs the AEMC to make a rule affecting a jurisdiction in which AEMO performs its declared network functions only if such a rule is compatible with the “proper performance of AEMO’s declared network functions”.

Such a direction is of dubious merit insofar as AEMO’s activities as the National Transmission Planner, but is completely unacceptable with regard to AEMO’s declared network function, by proposed sub-section 50C(1)(d), as a monopoly provider of transmission services.

Sub-section 91(7)(c) directs the AEMC to make a rule affecting “the allocation of powers, functions and duties between AEMO and a declared transmission system operator if AEMO consents to the making of the Rule”.

It seems inappropriate for AEMO, in its capacity as a legislated monopoly provider of transmission services, to have right of veto over rules affecting its operation.

Further, section 88(1) of the NEL directs that “The AEMC may only make a Rule if it is satisfied that the Rule will or is likely to contribute to the achievement of the national electricity objective.” For AEMO to veto a rule implies that the AEMC has not fulfilled its responsibilities under the NEL, which seems to give AEMO a responsibility unbecoming its role as a market operator, transmission planner, or network operator.

14. Proposed Section 110(3) – Jurisdictional System Security Co-ordinator

The proposed subsection 110(3) allowing AEMO to be appointed as a jurisdictional system security co-ordinator in multiple jurisdictions reduces the administrative work-load, but also removes the checks and balances inherent in having 2 separate bodies responsible for the politically sensitive issue of load-shedding.

Proposed subsection 115(4) provides that AEMO, if made jurisdictional system security co-ordinator, may shed or restore load without consultation.

Further, under the provisions of section 117 of the NEL, in the event that AEMO is jurisdictional system security co-ordinator, AEMO need not liaise with the Minister of a jurisdiction in an emergency.

15. Proposed Section 115A – Customer Load Shedding Arrangements

This section allows AEMO, with Ministerial approval, to force a registered participant to enter into a load-shedding arrangement. In the event that AEMO's load-shedding arrangements are not agreeable to the registered participant, the matter is referred to the Minister of the jurisdiction to make a determination on the matter.

It seems unnecessary to refer such a matter to the jurisdictional Minister as load-shedding arrangements seem to fall under the definitions: it seems to be (and should be) an access dispute, a process for the resolution of which already exists.

Proposed Changes to NER

16. Proposed Rules 8.11.4 & 8.11.5 - Contestable Augmentations

This proposed rule is part of group of rules related to proposed Section 50F(4) of the NEL.

In particular, proposed rule 8.11.4 provides that if an augmentation will have a capital cost greater than a given limit, AEMO may declare the augmentation works to be contestable.

Proposed rule 8.11.5 describes how the construction of a contestable augmentation is to be put out to tender.

By taking this approach, the incumbent TNSP loses not only control of the planning and engineering solutions relevant to the provision of transmission network services, but also the choice of parties permitted to construct its assets, and is given the role of project manager. Such an approach is bound to create problems in both work-force planning and management of assets that may, or may not, have been built to suit local conditions.

Proposed rule 8.5.11(e) allowing the incumbent TNSP to tender for a contestable augmentation of its own network potentially introduces the risk of having an unfair competitive advantage. It is without the scope of the NER to promote anti-competitive behaviour.