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30 January 2009

Mr Steve Rodgers
ISC Secretariat
National Energy Market Branch
Department of Energy, Resources and Tourism
GPO Box 1564
CANBERRA ACT 2601

Email to: AEMO_ISC@ret.gov.au

Dear Mr Rodgers,

EnergyAustralia's submission on proposed legislative amendments to establish AEMO

The MCE Implementation Steering Committee's (ISC) proposed amendments to the National Electricity Law (NEL) and National Electricity Rules (NER) generally reflect the ISC's proposed approach to establishing AEMO. EnergyAustralia is disappointed that the concerns we raised during consultation on the proposed statement of approach have not been addressed:

- The proposed information powers in the NEL are coercive and do not impose adequate discipline on AEMO to demonstrate that any information requested is necessary to fulfil its National Transmission Planning (NTP) function. We consider AEMO's powers to obtain specific information should be tailored to the function it is performing and therefore are best placed in the NER provisions relating to AEMO's NTP function.
- The proposed confidentiality provisions in the NEL are insufficient to protect confidential and commercially sensitive information. AEMO should be required to consult with the person that provided confidential information before it discloses the information to other regulatory bodies.
- EnergyAustralia should not be required to provide information to AEMO on our dual function assets as these assets are primarily operated to meet our distribution planning and reliability standards and are thus not relevant to the functions of the NTP.

Information gathering powers

EnergyAustralia notes that the proposed NEL amendments relating to AEMO's information gathering powers largely mirror NEL provisions relating to the AER's powers to obtain information for the purposes of economic regulation of monopoly networks. As noted in our earlier submission, the AER's powers are relatively heavy handed, but were justified by policy makers on the grounds that there was a perceived gap in the powers available to support the AER's economic regulatory functions. The ISC appear to consider that equivalent powers are required by AEMO to undertake the NTP function. For instance, it noted in explanatory material that the National Transmission Network Development Plan (NTNDP) will require:

"... more extensive and detailed information than is currently collected for the SOO/ANTS. It is recognised data collected under the existing arrangements will form an important input into the NTNDP and that there are significant efficiency as well as transparency benefits in consolidating information gathering processes to minimise market participants' compliance burden."

EnergyAustralia does not agree that there is a 'gap' in the existing NER framework which necessitates the proposed information powers for AEMO. We are not aware that NEMMCO has experienced problems collecting information to publish the Annual National Transmission Statement and Statement of Opportunities under the existing framework in the NER. We agree that AEMO will have additional data needs to fulfil its NTP function. We consider it appropriate that AEMO be granted powers to request this information, but consider that these powers should be embodied in the Rules rather than the NEL.

Incorporation of the information gathering powers for AEMO in the NEL creates formality and applies penalties that may inhibit the free exchange of information between AEMO and market participants and therefore hamper AEMO's NTP function. By contrast, information gathering powers that are embodied in the Rules would provide both context and focus to the information requirement and facilitate a better working relationship between the AEMO and market participants. A further advantage to incorporating information gathering powers in the Rules rather than the NEL is that the Rules can be changed if existing drafting does not adequately meet the National Electricity Objective. Rules changes are easier to put forward, to consider and to administer compared to bringing about amendments to the NEL.

If the information gathering powers were moved from the NEL to the Rules as we propose, we consider that these powers be placed in the section of the Rules that relates to the NTP function. For instance, the ISC has proposed additional clause 5.6A of the NER which details AEMO's responsibilities for undertaking the NTP function, including the publication of the NTNDP. The Rules could be amended to provide AEMO with the power to gather information for the purposes of fulfilling its obligations under Clause 5.6A.

Regardless of whether AEMO's information gathering powers are placed in the NEL or the Rules, we consider that it is important that an effective and accountable framework is established for information gathering powers. The current drafting places no such accountability on AEMO. The current drafting only requires AEMO to have regard to the reasonable costs of efficient compliance. To be effective this provision should require AEMO to demonstrate firstly that the information it requests is specifically required to fulfil its NTP functions and secondly that the efficient cost of complying with the orders is justified by the benefit to be derived from AEMO obtaining that information. This is particularly the case where AEMO proposes to impose an annual obligation to provide information. This demonstration should be published in draft form at the same time as the proposed order is consulted upon under proposed section 53A. This will enable the affected persons to respond not only to the terms of the proposed order but to the justification for the order.

Without the principles of accountability, demonstration of need, and assessment of the benefits, regulatory bodies may revert to large and frequent information requests without prior consideration of the compliance costs faced by business. EnergyAustralia's experience to date has shown that regulators have sought large amounts of information without consideration of the need or cost of this information.

Confidential information

EnergyAustralia is concerned that the proposed amendments in the NEL are insufficient to protect confidential information provided to AEMO. The ISC noted in its response to stakeholder submissions that the exchange of confidential information between relevant bodies (such as the AER and ACCC) is intended to provide for synergies and efficiencies in regulation of the energy sector.

Our main concern with these arrangements is that AEMO is authorised to disclose information without consulting the affected party which provided the confidential material. In these situations, the information may be misinterpreted or taken out of context by other regulatory bodies and the relevant party would not be given notice or an opportunity to discuss the context or subtleties associated with the confidential information.

This concern would be addressed if proposed amendment 54C(2) included a provision that required AEMO to consult with an affected party before it disclosed protected information to other regulatory bodies. The ISC should consider similar drafting to proposed clause 54H, which requires AEMO to provide an initial disclosure notice to the affected party specifying the nature of the intended disclosure, and requires AEMO to consider every representation made to it by the affected party. Further, once disclosures are made to these bodies there are effectively no restrictions on the use or disclosure of that information by those bodies. Putting aside whether it would always be appropriate for those bodies to use that information for its own functions, those bodies should not be permitted to disclose the information to any other person without the consent of the original person who provided the information. Section 54C(4) provides for the AEMO to impose conditions in relation to the protected information being disclosed, but if AEMO through oversight or omission or any other reasons, does not impose conditions on the disclosure of the information then there is no effective protection for that information. We therefore strongly submit that a regime similar to that set out in section 54H should be applied by any body in receipt of protected information from AEMO.

EnergyAustralia also submits that the ISC should clarify 54C(3) and not enact proposed section 54C(5) of the NEL. In relation to section 54C(3) this provision appears to provide scope for a consultant to the AEMO or one of the other bodies referred to, to use protected information for its own purposes. It should be made clear that a consultant may only use protected information for the purpose of carrying out the functions and powers of the body to whom it is disclosed. In relation to section 54C(5), the intended purpose of this provision is not apparent, but it effectively authorises the disclosure of protected information by AEMO officers or officers of another relevant body if the information is disclosed in the ordinary course of carrying out functions. This totally undermines the process contained in section 54H in relation to disclosures generally and should be deleted. If it is retained (we see no reason why it should be), as a minimum it must be made subject to the requirements of section 54H. This is essential to ensure that there is effective discipline on AEMO to ensure that both its internal processes and external accountability mechanisms adequately protect commercially sensitive information such as investment proposals or generator bidding strategies.

EnergyAustralia's dual function assets

The ISC did not accept Energy Australia's submission that its dual function assets should not be regarded as a transmission network for the purpose of AEMO's national transmission planner (NTP) function. The ISC considered that one subsection of the network can have significant impacts on the wider grid, and for this reason it is necessary for all owners of transmission network assets to provide data and information to the NTP so that the national transmission network development plan (NTNDP) will be a robust and credible document.

The ISC appear to have not fully understood the nature of Energy Australia's dual function assets and their relevance to the functions of the NTP. As noted in our earlier submission, the AEMC considered that the NTP should focus on transmission capability across national transmission flow paths as defined in the Rules. These flow paths are the portions of the transmission system used to transport significant amounts of electricity between major generation and load centres.

EnergyAustralia notes that none of our dual function assets can be regarded as national transmission flow paths. EnergyAustralia assets do not significantly impact on transmission flows in NSW and are built with the primary purpose of meeting our distribution planning and reliability standards. We are concerned that we will be required to provide extensive annual information on dual function assets to AEMO under mandatory information requirements. We are more than happy to provide necessary information to assist the National Transmission Planning function. However, our experience is that applying standard reporting requirements for transmission to our dual function assets is often complicated and difficult.

As a DNSP with dual function assets, it would be more efficient for us to provide relevant information to TransGrid (the jurisdictional transmission planning body in NSW). The arrangement would continue the existing arrangements in the Rules, which more closely align with the planning responsibilities of EnergyAustralia and TransGrid. We expect that EnergyAustralia will not be the only DNSP in New South Wales with dual function assets in the future, and therefore consider there may be wider benefits from having a TNSP co-ordinate this information provision for AEMO.

EnergyAustralia looks forward to further consultations on the legislative package for AEMO. Should you have any questions in relation to this submission, please contact Ms Catherine O'Neill on (02) 9269 4171.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Trevor Armstrong', with a horizontal line extending to the right.

Trevor Armstrong
Executive General Manager (Acting)
System Planning and Regulation