

19 September 2008

Manager, MCE Secretariat,  
Department of Resources, Energy and Tourism  
Canberra, ACT.

By email: [mce@ret.gov.au](mailto:mce@ret.gov.au)

**RE: Australian Energy Market Operator (AEMO) legislative framework –  
Statement of proposed approach**

The Energy Retailers Association of Australia (ERAA)<sup>1</sup> is pleased to have the opportunity to comment on the statement of approach to the AEMO legislative framework.

AEMO is a key central body that retailer businesses all need to work effectively with. Energy retailers perform roles that touch on many aspects of AEMO operations including: Wholesale market energy procurement, customer management functions, market settlement functions, all of which span both Electricity and Gas markets.

On this basis we place a high priority in ensuring a smooth transition to AEMO, and in ensuring that it will continue to perform its functions in an efficient and effective manner. Our comments on the proposed approach focus on areas which we believe may not achieve these objectives.

## **1. Cost control**

A key objective of creating the AEMO from existing market operators was to minimise the costs across the wider energy industry of maintaining the current independent operators. We are concerned that the proposed process does not have sufficient incentives to ensure that cost efficiencies will be delivered over time.

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<sup>1</sup> The ERAA is an independent association representing twelve retailers of electricity and gas throughout the National Electricity Market (NEM) and the jurisdictional gas markets. ERAA members collectively provide electricity to 11 million customers in the NEM and are the first point of contact for end use customers for both gas and electricity.

The proposal to consult on the budget is supported, however in addition we believe that the budget should be subject to be appeal to the AER, or at least subject to a rules dispute process. An appeal process is required to provide some recourse if participants believe that available efficiencies are not being fully delivered.

Further there may be merit in establishing a cost reduction target for AEMO (perhaps a CPI-X target), that could be used to benchmark whether efficiencies are being delivered over time. Budget outcomes in excess of this target would then need to be justified to the AER.

## **2. Concerns with information gathering proposals**

The ERAA does not support the proposal to implement legislation that provides scope for the issue of Market Information Orders (MIOs) and Market Information Notices (MINs) by AEMO. As proposed AEMO could be granted (under the Rules) powers to issue such notices to participants, which could incur civil penalties.

This is a major deviation from the current regulatory arrangements, where market operators and other participants operate under the Rules, and the AER enforces the Rules.

In our view that these current arrangements have operated very satisfactorily, and provide the benefit of the AER ensuring that the market operator is also subject to supervision and enforcement as are participants. Moves to provide regulatory powers like the proposed MIO and MIN power to the market operator blur the boundary between rule enforcement and operation.

Apart from this governance concern, we are not aware of any deficiencies in the current approach of having information provision requirements specified in Rules enforced by the AER. Indeed for many years NEMMCO has successfully produced the SOO and ANTS under these powers, and more recently the Bulletin Board Operator (VENCorp) has managed to obtain information required under the National Gas Rules to meet its requirements (a more challenging task given it was the first time many entities involved had come under Rule coverage). In none of these successful cases do we see any need for more stringent information gathering powers.

We also note that a legal approach to information gathering, such as an MIO or MIN is likely to substantially increase compliance costs across industry. This would occur because participants subject to these instruments would need to get legal staff involved to ensure that the requests were complied with to the letter so that the risk of legal breach is minimised. This would work at odds to the current approach to dealing with information requests, which can be undertaken less formally, and fosters good working relationships between the market operator and participants.

In this context, we do not support the ISC proposal to adopt the MIO, MIN option for information provision, and rather suggest that such powers be restricted to the AER. In addition we suggest the existing NER approach of Rules based information obligations be adopted across all information gathering functions.

If despite our arguments, the ISC continues down the approach of implementing these instruments, they should be restricted to the NTP function only, and preferably only be available as a last resort if reasonable requests by AEMO are ignored by participants.

### **3. Confidentiality of information**

It is critical that participants can provide information to AEMO with the confidence that it will only be used for the purpose for which it is provided, and will not be disclosed to any other entity unless required by Law.

This should be the default position for all information gathered by AEMO under the Rules, with any exception specifically granted under the Rules.

In addition AEMO should be obligated to put in place strong confidentiality procedures, to minimise the risk of information leakage. The current ISC proposal fails to provide such protections given the broad definition of parties to whom information may be provided to notwithstanding any confidentiality claim. If such leakage was perceived to have occurred or that the current proposal was upheld, it would deeply effect the willingness of participants to disclose information to AEMO – which would have large cost implications as participant willingness to provide information or use voluntary AEMO facilities like reallocation would diminish, reducing overall market efficiency.

### **4. VENCORP transmission functions**

In order for the NSP functions of VENCORP to be appropriately implemented, it is critical that robust governance arrangements between VENCORP's electricity planning/procurement functions and other AEMO transmission functions are implemented. This will ensure that NTP and Victorian NSP activities remain appropriately separated, and that AEMO operational concerns do not inappropriately impact on transmission planning and investment decisions.

AER should continue to oversight VENCORP electricity NSP revenue. While this role is minimal in terms of assets which have been procured under tender, it is important that oversight of costs related to VENCORP administrative functions continues, so that efficiencies in this area are pursued and costs remain reasonable.

## **5. Emergency management group**

The proposed emergency management group should contain participant representatives. The proposal that only AEMO and jurisdictional representatives are involved is not appropriate, and is a step backwards in the case of the gas industry where the recently established NGERAC has specifically allowed for participant input.

## **6. SA gas market immunities**

As the SA gas market arrangements are to be phased out following the implementation of the STTM, the proposed indemnity for swing-gas should have an explicit sunset date – possibly linked to the implementation of the STTM.

## **7. Transition of gas retail market rules into national framework**

The proposal to break down existing gas market rules into “rights and obligations” and “procedures” in parallel with creating AEMO implementation rules is questionable.

Given the other complexities associated with forming AEMO, and the complex and detailed interactions in the existing gas market rules in the various jurisdictions, it may be more prudent to initially transition existing rules documents in full either into Rules or procedures. These could be maintained in their existing form until the STTM rules are ready to be implemented, at which time a detailed re-drafting will be required in any case.

Even for cases like Victoria, which will continue post STTM, the existing Rules and procedures documents could be retained in full, with any subsequent streamlining process to be performed as an independent project.

Our proposals in this regard aim to minimise implementation risk for AEMO, by allowing the institutional reform to occur and be finalised before introducing the risk of market risk changes that could result from unintended drafting problems should the existing rules be simultaneously reconstructed.

In order to maintain the principle that “rights and obligations” should be in Rules and “procedures” should contain a more operational focus – the implementation legislation could outline these as guiding principles for future Rule and Procedure development. A legislative deadline for completion of a post AEMO implementation Rules review could be included as well to ensure that this principle was implemented within a reasonable period in Victoria, or if the STTM was delayed for a long period.

## 8. Retail gas market procedure change process

The ERAA supports an approach along the lines of the current Victorian gas markets Gas Market Consultative Committee (GMCC). This ensures participant input, and allows for appropriate consultation. Rather than mandating that AEMO chair the committee an independent chair should be considered.

We also note that prior to implementation of a consistent STTM across the AEMO area, it may be difficult to constitute a committee that will have enough detailed understanding of gas market issues in each state to successfully perform this function. For this period (and potentially for longer in the case of Victoria), separate sub-committees for each of the gas market rules groups should be maintained to progress procedure development and maintenance.

Should you require any further information in relation to this matter please feel free to contact me on (02) 9437 6180.

Yours sincerely

A handwritten signature in cursive script, appearing to read "Cameron O'Reilly". The signature is written in dark ink on a light-colored background.

Cameron O'Reilly  
Executive Director  
**Energy Retailers Association of Australia**