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Attention: Mr Steve Rodgers
Governance and Institutions Section
National Energy Market Branch
Department of Resources, Energy and Tourism
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Dear Mr Rodgers

Release of Exposure Draft of amendments to the National Electricity Law and National Electricity Rules

Ergon Energy Corporation Ltd (EECL) and Ergon Energy Queensland Pty Ltd (EEQ) (together referred as Ergon Energy) welcome the opportunity provided by the Ministerial Council on Energy's (MCE) Australian Energy Market Operator Implementation Steering Committee (ISC) to comment on the proposed legislative amendments to establish the Australian Energy Market Operator (AEMO).

This submission is provided by EECL in its capacity as an electricity Distribution Network Service Provider in Queensland and EEQ in its capacity as an electricity retailer and owner of generation assets and a gas transmission pipeline.

Ergon Energy is generally supportive of the exposure drafts, particularly the proposal to retain the cost recovery framework of the existing market operators for a minimum of two years. However, Ergon Energy is significantly concerned about the proposed information gathering and confidentiality provisions to apply to the AEMO. Furthermore, consideration should also be given to the way fees are determined and recovered. These issues are discussed further below.

Information Gathering

The proposed use of a Minimum Information Notice and Market Information Order (MIN/MIO) by the AEMO represents a significant deviation from the current regulatory arrangements. Whilst the importance of accurate and timely data for the National Transmission Planner (NTP) function is acknowledged, the arguments presented to justify such a significant change fail to give due consideration to the functions currently performed by NEMMCO. For example under the current regime where the information provisions are specified in the National Electricity Rules (NER), NEMMCO has successfully produced the Statement of Opportunities (SOO) and Annual National Transmission Statement (ANTS). Furthermore, at no point in the preparation of either of these reports has the case been made to require more stringent information gathering powers.

MINs/MIOs are based on regulatory information instruments that are used by the Australian Energy Regulator (AER) in seeking information for the economic regulation of networks. Ergon Energy is therefore concerned about the increased regulatory burden on energy market participants from the application of these proposed information instruments. Since the introduction of these tools (for network participants) they have proved to be highly intrusive

and have been used by the AER as a first resort to gather information on a regular basis. Whilst the AEMO will be required to have regard to the costs of compliance and to have consulted with the intended recipient prior to issuing a MIN/MIO, these additional measures do not preclude the use of MIN/MIOs as a first resort or adequately encourage the AEMO to work within the current regulatory framework prior to using a MIN/MIO.

Also, Ergon Energy does not consider the civil and criminal penalties, associated with information gathering powers, to be appropriate. These measures will reduce the likelihood of cooperative approaches to information collection being pursued and could also lead to the increased use of legal action, which may actually result in delays in the collection of data. Furthermore, if inappropriate timelines are applied to data queries or there is no avenue for the granting of extensions, market participants who have every intention to provide the data in a timely manner, may inadvertently face civil and criminal penalties.

Disclosure of Protected Information

It is noted the exposure legislation permits the exchange of confidential information between the AEMO, AER, Australian Energy Market Commission, Economic Regulation Authority of Western Australia, relevant jurisdictional regulators, relevant energy industry ombudsman and any other person prescribed by regulation. Whilst it is proposed the AEMO will only be permitted to collect information relevant to its planning function, the breadth of the provisions outlined in Subsection 2 - Disclosure of Protected Information held by AEMO, is of significant concern. Ergon Energy believes the information collected by the AEMO, to enable it to undertake its statutory role and function should only be used for the purposes in which it was provided. This would provide market participants with some level of confidence that commercially sensitive information will be protected and not disclosed for any purpose other than that intended.

Fees and Cost Recovery

Although the legislative amendments seek to establish an effective cost recovery regime, emphasis must also be placed on the oversight of costs incurred, operational efficiency and cost allocation.

Under the current cost recovery framework, on occasion, there has been a reluctance to adopt more appropriate cost allocation methodologies. In an operating environment of increasing accountability and transparency, this trend is unreasonable particularly when certain costs are allocated to specific market participants.

If you have any questions or require any further information on the matters raised please do not hesitate to contact me on (07) 3228 7711.

Yours sincerely



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