

Australian Energy Market Commission Establishment Regulations 2005

The *Australian Energy Market Commission Establishment Regulations 2005* (AEMC Regulations), made pursuant to the *Australian Energy Market Commission Establishment Act 2004* (AEMC Act), commenced on 1 July 2005. The AEMC Regulations are part of a package of instruments that also includes the *National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005* (new NEL Act), the *National Electricity (South Australia) Variation Regulations 2005* (National Electricity Regulations) and the initial National Electricity Rules, all of which commenced on 1 July 2005.

The Australian Energy Market Commission (AEMC) has been established as part of the national energy market reform program. The AEMC has assumed the rule making and market development roles previously undertaken by the National Electricity Code Administrator Limited (NECA) in relation to electricity. The AEMC will take powers and functions under South Australian energy laws, such as the new NEL, National Electricity Regulations, and the National Electricity Rules, which will be applied by each relevant jurisdiction.

The AEMC Regulations specify:

- The information that is to be included in the Australian Energy Market Commission's annual reports required by section 27 of the AEMC Act; and
- The bodies that the AEMC is authorised to disclose confidential information to, pursuant to section 24(3) of the AEMC Act.

Most of the AEMC's functions were transferred from NECA, which had specific national electricity market reporting functions under the National Electricity Code. These reporting requirements specific to the AEMC's functions under the National Electricity Rules have been set out in the AEMC Regulations to ensure the Annual Report provides all the necessary information to both the South Australian Parliament and interested persons. The AEMC Regulations also reflect the annual reporting requirements for South Australian agencies as found in the *Public Sector Management Act 1995*, the *Public Sector Management Regulations 1995* and the *Public Corporations Act 1993*.

The confidentiality provisions for the AEMC are set out in section 24 of the AEMC Act and are substantially identical to the confidentiality provisions for the Australian Energy Regulator (AER) under the *Trade Practices Act 1974 (Cth)* (TPA). Section 24(3) of the AEMC Act enables the AEMC to make authorised disclosure of confidential information to certain bodies prescribed by regulations.

Stakeholders were advised as part of the consultation processes associated with the new NEL during December 2004 and January 2005 that the AEMC would be able to provide confidential information to the AER, ACCC and NEMMCO. They were also informed that the AEMC has no power to compel information.

Section 44AAF(3) of the TPA states that the AER can provide information to the Australian Competition and Consumer Commission (ACCC), AEMC and National Electricity Market Management Company Limited (NEMMCO) (including staff and consultants). To ensure a consistent national energy governance regime, the AEMC will be authorised to disclose information to the ACCC, AER and NEMMCO and any staff or consultants assisting one of those bodies in performing its functions. Such an exchange of information between these institutions is necessary for their effectiveness, and to avoid duplication of information gathering. The AEMC Regulations allow such disclosure, and is given effect within the National Electricity Market through section 31 of the new NEL.

The Commonwealth Government and all State and Territory jurisdictions were involved in the development of the AEMC Regulations. The Ministerial Council on Energy has unanimously endorsed the AEMC Regulations. It is noted however, Western Australia and Northern Territory will not apply the AEMC Act to their jurisdictions until gas responsibilities are transferred to the AEMC.

1 July 2005