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Attn: 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 Drafts of amendments to the National Electricity Law and National Electricity Rules

Jemena is pleased to make this submission to the MCE's Implementation Steering Committee (ISC) on the exposure draft amendments to the National Electricity Law and Rules to establish the Australian Energy Market Operator (AEMO).

In September 2008, Jemena made an extensive submission to the ISC on the Statement of Proposed Approach (SOPA) consultation paper of August 2008. We note the ISC's comment that the exposure draft legislation has been guided by that paper and the ISC's detailed response to stakeholder submissions (now released as part of the current package).

While we generally support the Energy Networks Association's submission on the ISC exposure drafts, Jemena wishes to offer brief comments on particular issues identified in the September 2008 consultation. Please note that these issues are common to both gas and electricity. Jemena will address specific gas issues in a further submission.

1. Information gathering

Jemena and other stakeholders were extremely concerned with AEMO's proposed use of Market Information Orders and Notices (MIOs and MINs) which parallel the AER's use of RIOs and RINs. Stakeholders considered that AER-like powers were inappropriate for AEMO, especially given that that very few constraints were proposed to govern their use.

Jemena recognises that the ISC has moderated its position somewhat in the exposure drafts by restricting the use of information instruments to AEMO's planning functions. There will also be consultation with potential recipients of the instruments and a right of judicial review. AEMO will be required to have regard to reasonable costs of compliance. In addition, the ISC has revised its original suggestion that the Rules might include capacity to use them (which therefore opened the possibility of a Rule change to expand the powers). AEMO's information powers will now be in the Law.

Despite these improvements, Jemena still see regards MIOs and MINs as excessive and unnecessary powers for a planning body. AEMO will still have very broad discretion when to use the powers, including when AEMO considers it *'reasonably necessary for the exercise of*

a *relevant function*' (proposed NEL s 53(1)). Both NEMMCO and the jurisdictional market operators have not sought such powers in the past.

The ISC response (no 23) has justified the use of wide information instruments as necessary to support the NTNDP as '*a more comprehensive and sophisticated document than the ANTS*' and to '*provide a robust and transparent framework to allow AEMO to gather information for the Victorian Electricity Transmission Planning Function, the GSOO and the SA planning functions*'. Jemena considers that an information framework which is *comprehensive, robust and transparent* can readily be designed without resorting to a heavy-handed model such as MIOs and MINs.

Jemena recommends that the Law and Rules should be used to specify the kinds of information which AEMO will reasonably require for each of its relevant functions. AEMO should then develop a cooperative approach with stakeholders to ensure that timely and comprehensive information is provided for each planning function.

2. Confidential information sharing

The August 2008 SOPA proposed allowing confidential information provided to AEMO to be shared with other parties. This was modelled on the AER's power under s 44AAF of the *Trade Practices Act*. Stakeholders were concerned at AEMO's power to share confidential information with other regulatory bodies, including ombudsmen. The exposure drafts maintain the ISC's position, although clarifying the circumstances under which information may be provided to ombudsmen. Also, there is now a right of judicial review of an AEMO decision to pass on confidential information.

Notwithstanding the changes in the exposure drafts, Jemena still regards the sharing model as inappropriate for confidential information. Information provided confidentially for AEMO's planning function can be used for *any purpose* by the external receiving party in connection with that party's functions and powers, even though that party may not have been able to collect the information under its own legislation or controlling instrument.

Jemena previously submitted that if external parties require information presently unavailable to them, then the required powers should be debated and implemented through a Rules change process. Jemena maintains that view.

3. Cost recovery framework

In the September consultation, stakeholders were insistent that AEMO should be held to an explicit efficiency discipline, including budgeting, independent oversight, consultation and dispute resolution.

The ISC has responded (no 11) that it has '*partially accepted*' this view. AEMO will publish a yearly budget of revenue requirements with appropriate disaggregation; develop and consult on participant fee structure for its various functions in accordance with cost recovery principles; and there will be provision for participants to dispute the fee structure (but not the budget). The MCE says the proposed AEMO budget and fee structure framework will generally mirror NEMMCO provisions in the Rules.

Jemena welcomes most of these initiatives, but still has significant reservations. It is a concern that participants will not be consulted on the AEMO budget, thus removing a major potential tool for cost minimisation and efficiency. Jemena considers that there must be greater Board and participant involvement in the budget process.

As a transition measure, the ISC proposes that the fee structures of the existing market operators will be retained for the first two years of AEMO operation, with AEMO carrying out a review of its fees and charges within three years to conform with the '*proposed requirements by which AEMO will operate*'. Jemena welcomes the initial '*rolling in*' of existing market operator fee structures into AEMO. However, it is unclear how AEMO will conduct the required review in three years' time and the extent of participant involvement (if any) in that

review. Jemena is also unclear what is covered in the phrase 'proposed requirements by which AEMO will operate'. Jemena urges the ISC to provide greater clarity about AEMO's review, including terms of reference and appropriate participant involvement.

4. Conclusion

Jemena looks forward to further development of the legislative framework for AEMO.

If required, I can be contacted on (02) 9270 4512 or email: sandra.gamble@jemena.com.au.

Yours sincerely

A handwritten signature in black ink that reads "Sandra Gamble". The signature is written in a cursive, flowing style.

Sandra Gamble
Group Manager Regulatory