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Secretary  
Department of Resources, Energy and Tourism  
GPO Box 1564  
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Attention: Mr Steve Rodgers  
Governance and Institutions Section  
National Energy Market Branch  
By email: [steven.rodgers@ret.gov.au](mailto:steven.rodgers@ret.gov.au)

Dear Mr Rodgers

### **AEMO Exposure Drafts – Information Gathering**

The NGF appreciates the opportunity to provide comments on the proposed amendments to the National Electricity Law (NEL) and National Electricity Rules (NER). This submission primarily concerns the information gathering powers provided to the Australian Energy Market Operator (AEMO) pursuant to Division 6 of the National Electricity (Australian Energy Market Operator) Amendment Bill 2009 (the NEL Bill) and by extension the information gathering provisions within the National Gas (Australian Energy Market Operator) Amendment Bill 2009 (the NGL Bill).

The NGF is broadly supportive of AEMO's role as National Transmission Planner (NTP) and believes a consolidated approach to gas and electricity transmission planning and coordination is a positive outcome for market participants.

The NGF believes the use of existing voluntary mechanisms and Transmission Network Service Providers (TNSPs) planning processes form an appropriate model for information gathering in a regulated transmission regime subject to light handed regulation and a competitive market and is therefore concerned with the information gathering arrangements detailed in the NEL Bill and broadly reflected in the NGL Bill. Primarily, the NGF believes that:

- the case for change has not been appropriately articulated;
- the proposed framework undermines cooperative relations between market participants and the AEMO;
- notwithstanding concerns with the use of such powers by AEMO in connection with its NTP function, the extension of these powers to cover other statutory functions administered by AEMO is not justified;

- the exposure draft fails to establish the appropriateness of applying the framework to TNSPs and generators;
- the potential cost implications for market participants and in particular generators has not been fully considered in the development of the proposal; and
- confidentiality and market sensitivity concerns remain.

Each of these matters is discussed in more detail below.

### **A case for change has not been appropriately articulated**

The NER provides the National Electricity Market Management Company (NEMMCO) with the ability to gather data for planning purposes including in the development of the annual Statement of Opportunities.

To that end, NEMMCO gathers information through a range of existing processes including those undertaken by the jurisdictional planning bodies. The information drawn from these processes includes load forecasting, adequacy of connection points, transmission flow paths, possible constraints, inter-jurisdictional developments and projected need for ancillary services amongst others.

Leaving aside perspectives on possible improvements to the deliverables arising from these planning process (which are not related to inputs), the NGF has not been advised how these information gathering arrangements are deficient. As such, the NGF recommends existing arrangements be replicated for the AEMO and that those would be sufficient to meet future NTP obligations.

Alternatively, should an information shortcoming be identified, amendments to existing arrangements should be recommended, as opposed to implementation of a new and burdensome penalty driven framework.

### **The proposed framework undermines cooperative relations between market participants and the AEMO**

The NGF and generators more broadly are active participants in the regulatory space committed to cooperative working relations with a range of Government bodies. This spirit of cooperation extends to the regular provision of information and discussions concerning rule changes, reviews, regulatory outcomes, and Government.

On this basis, the NGF is concerned the use of legal instruments, which includes the power to serve a notice on an individual, with associated civil penalties, will undermine productive relations between the parties.

### **Functions other than those relating to NTP**

The NGF strongly opposes the extension of the proposal to cover statutory functions administered by the AEMO other than those pertaining to NTP. Therefore, we request the deletion of clause 53(2)(d) from the NEL Bill which goes beyond the scope of the original proposal for planning information orders and notices that would be directed at Transmission Network Service Providers only. Similarly, the NGF rejects the need for clause 91F(2)(c) within the NGL Bill.

### **Application to TNSPs and Generators**

While the NGF contends that the Market Information Order (MIO) and Market Information Notice (MIN) instruments are cumbersome and unnecessary, it appreciates that AEMO needs to assure itself that it has access to the information needed to discharge its NTP obligations.

Should it be determined therefore that the MIO/MIN framework is to remain, despite the NGF's objections; it is not apparent why it should be extended to include generators. The NGF contends that the bulk of information required is available from sources other than generators and on that basis the uncertainty created by these instruments, including the lack of clarity regarding the manner of their use, outweighs the benefit of establishing this burdensome legal framework.

### **Potential cost implications and misuse – Procedural improvements**

While it may be argued at this point in time that the AEMO will use MINs and MIOs judiciously, the NGF is concerned that the Bill does not contain appropriate limitations on their use. Given the information driven nature of the planning process the absence of severe limitations on their use will likely give rise to excessive use over time. Such an outcome, reflective of experiences with similar instruments administered by the Australian Energy Regulator, will result in additional and unnecessary costs for generators.

In this regard, the NGF recommends that should the MIN/MIO framework proceed, then clause 53B and 53C be amended to provide that:

- before a notice can be served or an order can take effect the AEMO is obligated to seek information from the nominated party using voluntary means. Only a failure to provide information voluntarily, within an appropriate timeframe, for instance 30 days, can justify the use of a MIO or a MIN.
- following the legislated consultation process concerning a draft MIN or MIO, the instrument or a separate document is required to outline the reasons the AEMO elected not to amend the draft MIN or MIO.

These new provisions will have the effect of encouraging voluntary information exchange by generators and provide greater opportunities to provide feedback to the AEMO about information requests. By their very nature the instruments are bound by the parameters by which they have been drafted whereas voluntary requests can more easily evolve as parties discuss the terms of an individual request. The latter being an outcome in the interests of market participants and the AEMO. The provision of written reasons for a failure to alter an instrument will also improve transparency and accountability.

The NGF also encourages reconsideration of the use of MIOs and MINs for periodic information requests. The NGF strongly believes MINs and MIOs should be single use only. This better reflects good governance practices by ensuring an assessment of the need for a MIO and MIN on each and every occasion and lends support to the use of voluntary arrangements for regular information transfers which meets both parties' needs and relies on mutual cooperation not the threat of penalties.

### **Confidentiality and market sensitivity concerns**

The NGF appreciates that there exists a tension between market sensitive information and the need for accurate planning. However, should the MIN/MIO proposal proceed the NGF requests clause 53(4) be amended to include a provision which requires that a market information instrument must specify the manner in which the information requested will be used.

The NGF rejects the view that information gathered by the AEMO should be fully shared between regulatory bodies or otherwise. Where the AEMO believes there is a case for information transfer the agreement of all parties should be sought and where possible information should only be shared at an aggregate level. Providing information to third parties, even within Government, should not be accepted as good practice and comes at a considerable cost, including loss of trust between industry and regulators, which exceeds any short-term administrative benefits.

These recommendations are a fundamental reflection of good information management: the right information, to the right people, for the right purpose.

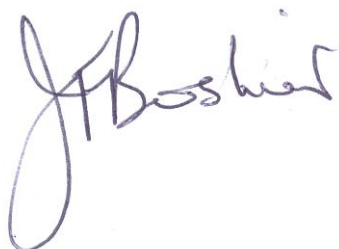
**Mitigate significant concerns**

As it stands, the NGF has significant concerns regarding the use of these instruments and maintains a general opposition to their use both for practical and policy reasons. Should the proposal proceed the NGF believes the AEMO needs to take steps, including those above, to countenance the concerns of industry participants.

Additionally, given the experiences with similar instruments, the NGF is of the view that only the agency head is vested with the power to authorise each instrument and the number of instruments used be reported publicly each year. These are measures of increased accountability and a reflection of the seriousness of any decision by the AEMO to compel an industry participant to provide information under the threat of penalty.

If you have any questions in relation to the comments provided by the NGF please contact, Mr Jamie Lowe, on telephone (03) 9612 2236.

Yours faithfully,

A handwritten signature in blue ink that reads "John Boshier". The signature is written in a cursive style with a large, looping initial "J".

John Boshier  
Executive Director