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Manager, MCE Secretariat,
Department of Resources, Energy and Tourism
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By email: MCE@ret.gov.au

Dear Sir or Madam,

Australian Energy Market Operator establishment: Legislative Framework: Statement of Proposed Approach

TRUenergy welcomes the opportunity to comment on the consultation paper prepared by the Australian Energy Market Operator (AEMO) Implementation Steering Committee (ISC) that deals with the legislative framework that will apply to the establishment of AEMO.

This response outlines our views regarding the ISC's suggestions and proposals for key elements of the regulatory framework within which the AEMO will operate. We urge the ISC to give serious consideration to the issues raised in this response

For further information on this submission, in the first instance please contact me on telephone (03) 8628-1000 or at mark.frewin@truenergy.com.au.

Yours sincerely,

Mark Frewin
Manager Wholesale Market Regulation

TRUenergy comments on AEMO Legislative Framework – Statement of proposed approach

Subject	Para # In consultation paper	Problem/Issue	Proposed solution
Cost Recovery	60 & 69	Risk of cost growth	Extra principle that costs bench marked to best practice at least every 3 years.
Cost recovery	68	Explicit efficiency measure for Budget revenue	<p>The proposed cost recovery framework should include an explicit cost efficiency “objectives clause” reflecting the principal justification for the formation of AEMO.</p> <p>A practical metric for assessing budget efficiency and whether the objective of overall cost savings is being delivered by AEMO, could be to set up a “CPI-X” target for the AEMO to reduce costs from initial levels. Actual budgets could be assessed against this target, with any proposed exceedance to be justified to the AER.</p> <p>The proposed consultation process is supported and should be adopted in any event to ensure that costs reductions in excess of the X factor can be achieved as well.</p>
Cost Recovery	68	External, independent approval of AEMO budgets	<p>The current proposal for adoption of NEM budget setting excludes independent oversight. We suggest that the current role of the AER in approving the VENCORP budget be retained and embedded into the AEMO process.</p> <p>If the ISC does NOT accept independent oversight of AEMO budget setting process, then all proposed budgets SHOULD be subject to the NER/NGR dispute resolution facility.</p>

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Cost Recovery	70	Decisions of AEMO for special “market development” costs	Special decision making powers of AEMO should be independently approved or be subject to dispute resolution.
Cost Recovery		Include additional principle	AEMO cost recovery framework should include a specific requirement for fee structures that can be incorporated readily into end-use retailer contracts, or equally is in a form that is manageable for liable parties outside the retail sector (eg. power generators etc.).
Information Gathering	104-110	MIO and MIN	<p>The proposed MIO’s and MIN’s appear to be powerful instruments with serious penalties for non compliance. It is not clear why the ISC believes that such additional powers are needed to allow AEMO to perform its functions. In particular, we note that existing market operator data gathering occurs successfully in areas such as the electricity SOO, the ANTS, the gas BB operator functions and in many other areas. These functions occur through Rule obligations – and it is our preference that future AEMO data gathering activities are pursued through this same process. We also note that this process allows for disputes under the Rules – which is a necessary discipline to ensure powers under the Rules are not exceeded.</p> <p>While we suggest the additional MIO and MIN powers should not be implemented through AEMO legislation, if the ISC does decide to follow this course of action, it is essential that AEMO’s powers to issue such notices are subject to the Rules dispute facility, or at least able to be appealed to the AER.</p>

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			<p>Additionally, if ISC pursues the implementation of MIO and MIN powers, these should be limited to cover only regulated NSP information related to NTP functions. The proposal to bring generators under the regime is not required, as existing Rule based obligations in this regard are well established and demonstrated to be sufficient for generators.</p> <p>If, however, the ISC is determined to establish such obligations on generators, these should be limited to only apply as a last resort mechanism should voluntary requests be unsuccessful, and information that can be requested from generators should be limited to that required for NTP preparation. Even as a last resort Rules based obligations enforced by the AER are preferable to the MIO and MIN proposal.</p>
Confidentiality Provisions	111-132	Protection for information providers	<p>There would appear to be a real potential for inappropriate information “leakage” from the list of disclosure scenarios that has been listed in the paper (notwithstanding the good intentions of AEMO staff to comply with their obligations).</p> <p>Suggest that the legislative framework include a specific requirement for independent third party (ie. The AER) to periodically review actual compliance (this mechanism also will serve to address any a public concern of perceived versus actual compliance)</p>

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Immunity & indemnity Provisions	178	Elevation of current REMCO immunity to NGL	Given that AEMO's exposure to "Swing Gas" risk in SA will at best be temporary pending the implementation of STTM, it is unclear why the REMCO immunity provisions should be elevated to NGL. Suggest that this provision be retained as a Rule only, with an explicit sunset period that coincides with the commencement of the STTM.
Emergency management	184	The working group that is to be established to consider emergency management excludes participants (other than through consultation)	The emergency management working group should include equal representation by participants (or at the very least "some" participants). The proposal to limit the group to only Jurisdictional representatives and Market operators is a retrograde step for the gas sector where the NGERAC was established to deal with interstate emergencies, and which includes participant representation. (Although we have concerns regarding the effectiveness of NGERAC which we believe should be addressed through other processes).
Gas Market Rules change process	216-249	Rules change process – interface between AEMO and AEMC	The document draws a sharp distinction between AEMO responsibilities for procedure change and AEMC's jurisdiction over Rule changes. However, the market operator's expertise will be vital to AEMC's development of Rules changes. The framework document should make explicit the interface that is envisaged between AEMO and AEMC in the Rule change process.
Procedure Change process – Stakeholder involvement	229	Proposal to establish an industry body similar to NER's Information Exchange Committee	The IEC is an industry representative body that was established by industry to manage B2B. An important facet of NEMMCO's interaction with the IEC is that it is not able to modify IEC recommendations (i.e. NEMMCO can only approve or reject IEC recommendations). We support this approach and suggest that ISC explicitly states this

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			intention.
Procedure Change process – Stakeholder involvement	233	Proposal for procedure change committee as a pool of eligible members	Because of the technical (almost arcane in many instances) nature of many procedure change proposals, it may be difficult to source suitably skilled members from a fixed pool with adequate up-to-date expertise to constitute a viable committee. B2B in electricity (i.e. subject matter for the IEC) is more nationally homogenous than the individual gas markets. The required expertise for procedure changes will likely be widely dispersed amongst numerous participant organisations. Rather than the “Pool member” proposal, we recommend a model more reminiscent of the Victorian Gas Market Consultative Committee (GMCC). Under this model AEMO facilitates procedure change proposals for development with participant organisations (any organisation that expresses an interest). The output of this process then undergoes industry consultation and the development of a formal recommendation to AEMO Board (with dissenting reports if necessary).
Procedure Change process – Stakeholder involvement	235	Chair of Procedure Change Committee	It is not clear why the Chair of the procedure change committee should be a “senior AEMO employee” given that AEMO may well have as much a vested interest in a particular outcome as any individual participant. The Chair of the procedure change committee should be independent and jointly selected by participants and AEMO.
Proposing and assessing procedure change	240	Proposals for procedure change can be made by anyone	If the ISC is to retain the suggestion that any party may propose a change to a procedure (or presumably may propose a new procedure), then AEMO should have the right to reject the proposal (outright without the requirement to develop a recommendation) if the proposal is

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			considered to be vexatious. In exercising this right, AEMO should be required to publish its written reasons for considering a proposal to be vexatious.
Develop guidelines to manage the risk of potential conflict of interest between AEMO's Victorian Electricity Transmission functions and its market operator functions	264	Conflict of interest in key functions	TRUenergy supports AEMO developing guidelines to manage the risk of a conflict of interest between AEMO's Victorian electricity transmission system functions and its market operator functions. We support the Board finalising the guidelines after a thorough consultation process with stakeholders.
AER oversight of Vencorp Transmission Revenue	300	Fails to ensure cost discipline on Vencorp administrative costs	ISC has determined that AER oversight of Vencorp revenue determinations does not contribute to efficiency. While this may be true in terms of assets procured by Tender, it fails to consider the role the AER can play in ensuring the administrative costs of Vencorp related to its Transmission function are kept reasonable. As pointed out in the discussion, Vencorp fully recovers costs incurred in undertaking these administrative roles, and as such will have minimal drivers to seek efficiencies in how they are undertaken. We support ongoing AER scrutiny of at least this aspect of Vencorp transmission operations, to ensure efficiency opportunities are identified and exploited.