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AEMO Establishment, Legislative Framework: Statement of Proposed Approach

Dear Mr Rodgers

United Energy Distribution and Multinet (the businesses) appreciate the opportunity to comment on the Ministerial Council on Energy/Implementation Steering Committee (ISC) paper on the Australian Energy Market Operator (AEMO) Establishment - Legislative Framework: Statement of Approach consultation paper. The businesses own an electricity distribution and gas distribution company operating in Victoria connecting approximately a quarter of Victorian homes to electricity or gas supply.

The paper identifies the key legal and policy issues associated with the transfer of the functions undertaken by the various market operators to a national regime. The paper also proposes the arrangements for the jurisdictional rules and procedures to be moved to a national framework. Specifically the paper covers:

- Accountability framework;
- Cost recovery for AEMO;
- Information gathering powers;
- Immunity and indemnity provisions
- Confidentiality;
- Emergency management;
- Delineation of Rules and Procedures;
- Procedures change process;
- AEMO's Victorian electricity transmission system functions; and

- AEMO's revenue from electricity transmission.

The businesses have the following key concerns with the proposed approaches outlined in the paper:

Accountability Framework

- The accountability framework established in the legislation needs to hold AEMO accountable for managing and lowering costs.
- Existing dispute mechanisms should be allowed to continue under the new national arrangements. Issues should be resolved using existing mechanisms without the automatic cost impost of a dispute resolution process.

Cost Recovery Framework

- Allocation principles for market operator fees should be based on sound economics and subject to industry consultation.
- AEMO annual budgets, including all large projects, need to be subject to independent review and consultation processes to ensure cost efficiency. To ensure the benefits of national reform are realised, the forward cost path of AEMO should be lower than the sum of the individual market operators' budgets.

Information Gathering Powers

- The power proposed for Market Information Orders (MIOs) and Market Information Notices (MINs) must be explicit about when the power may be used and exactly what information may be sought. The use of this power should be limited to certain specific requirements that are necessary for the operation of explicit Rule requirements.
- A cost/benefit test must be considered in all cases where AEMO exercise their use of MIO and MIN including consideration of whether the information requirement may be satisfied by other means.
- There is no need for such wide disclosure of information by AEMO (general or confidential) that is not already covered by other regulatory requirements. This is a denial of natural justice. It effectively provides ACCC, AER, ERA, AEMC, ESPIC, EWON, EWOV etc. access to information beyond their individual enabling acts, charters, contracts or constitutions. If a specific information collection power is to be provided, then it should be provided overtly by empowering the recipient organisation to collect – not by stealth through an ancillary power of AEMO.

Immunity Provisions

- The next release of the NGL should provide for the immunity for gas distributors in addition to AEMO given the unclear nature of the linear or triangular customer relationship in gas.

Emergency Management

- The businesses recommend direct industry involvement in the emergency management working group to ensure that system security and market arrangement concerns are appropriately balanced in consideration of the legal framework.

Rules and Procedures

- The delineation of the Rules and Procedures needs to be carefully considered. The existing working groups should be provided an opportunity to review the new split of Rules and Procedures to ensure the documentation being proposed is workable.
- The appropriate jurisdictional committee should provide input to the Rules or Procedures changes processes that impact their jurisdiction
- The businesses suggest that two rounds of consultation on Procedures be adopted in a similar manner to the electricity procedures change process to allow effective consultation. The relevant parties impacted within the collective representative committee could still determine whether a non material change process would be followed.
- The criteria for the change proposal also needs to consider the distributors ability to gain cost recovery for the change, the requirements and consistency with the access arrangements and the need to manage system security and safety above all else.

VENCorp Transmission Functions

- VENCorp transmission functions should be carefully drafted in the National Electricity Rules (NER) to provide clarity of roles and allow an easy carve out to facilitate later national convergence.

Our detailed comments are provided in the attachment.

Should you have any further questions please do not hesitate to contact Verity Watson (03) 8544 9447.

Yours sincerely



Hugh Gleeson
Chief Executive Officer

United Energy Distribution and Multinet – Detailed Response to AEMO Legislative Framework, Statement of Proposed Approach

Chapt	Subject	Issue	Description	Proposed Solution
1	Accountability Framework	Interdependency of MCE work streams not recognised	<p>The MCE paper suggests a robust, comprehensive compliance and enforcement regime. The paper recognises that these AEMO legislative changes may be supplemented by the reforms proposed under the National Energy Customer Framework.</p> <p>The AEMO legislative framework is working to a different timetable than the Customer Framework and the timelines and interdependencies are not clear. There is a risk that requirements may be missed or incorrectly dealt with. This creates a lack of certainty regarding the outcomes of this AEMO establishment process.</p>	MCE SCO to provide clarity of work stream timelines and interdependencies in a published project plan, including allowing time for effective industry consultation.
		AEMO accountability to drive costs down	<p>The cost recovery section of the paper proposes that the current funding arrangements largely transfer over to AEMO. However in the section on the accountability framework, there is no accountability placed on AEMO to control costs.</p> <p>The recommendations made by the businesses about independent review of the budget and consultation provide transparency of the budget process and costs but this does not equate to AEMO being held accountable for costs.</p>	The accountability framework established in the legislation needs to hold AEMO accountable for managing and lowering costs.

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		Resolution of disputes should not be subject to wholesale change	<p>The paper proposes that a panel resolve disputes whether the dispute is under the new gas market Rules or Procedures.</p> <p>The current MSOR provides for a dispute resolution panel process. The Gas Retail Market Rules provide for the ESC involvement at the detailed rule or transactional level where a dispute is more appropriately treated under another instrument or a dispute resolution panel process described in the MSOR. Access arrangements also provide for bilateral dispute processes.</p> <p>Given the high volume of transactions processed each month, we are keen to ensure that current mechanisms for dealing with transactional level issues in the market are allowed to continue. These processes continue to be appropriate for the materiality of these issues and should be allowed to continue.</p> <p>The cost impost of these dispute resolution panels should be subject to the materiality of the issue and the fact that the existing mechanisms have been exhausted.</p>	Existing mechanisms for the treatment of disputes should be allowed to continue under the new AEMO arrangements. It is important that participants try to resolve the issues without the automatic cost impost of a dispute resolution process.
2	Cost Recovery	Impact on network businesses is unclear	<p>The paper suggests that AEMO funding arrangements should broadly reflect current arrangements of each of the bodies whose functions AEMO assumes. The use of terminology Registered Participants as opposed to Market Participants and the review of cost recovery rules makes it unclear whether there will be an upheaval in the current fee allocation principles.</p> <p>The allocation principles for market operator fees should be based on sound economics. The networks are not prime beneficiaries of retail competition or market systems and hence the current framework is based on the distributors not paying fees. The businesses do not want any upheaval created by altering the current allocation principles. If the distributors had to pay market fees then they would need the ability to pass these fees through to retailers.</p>	Allocation principles for market operator fees should be based on sound economics and subject to industry consultation.

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		Cost efficiency driver for AEMO is missing	<p>The paper does not cover any mechanism to ensure that the ongoing costs of AEMO are efficient moving forward. The businesses are concerned that the merger of all these functions into one body, the new tasks and new functions in the gas market, and the potential for large Rule/Procedure and system changes as the markets are merged over time is a concern regarding cost creep.</p> <p>Given the potential for convergence of the energy markets systems and processes, we are concerned that any decisions to move forward with a new market design are based on delivering agreed, well documented, realisable benefits and are subject to whole of industry cost/benefits. Often such large projects involving systems developments are subject to cost/time over runs.</p> <p>We suggest that the annual budget process be subject to an independent review and consultation process to ensure that costs are efficient. The budget should include forward projection of costs e.g. to ensure a cost path that is managed below the combined costs of the existing market operators.</p>	Annual budgets, including all large projects, need to be subject to independent review and consultation processes to ensure cost efficiency.
	Cost Recovery	Status of VENCORP contracts under AEMO	<p>Multinet under the Gas Industry Act (GIA) is required to develop retail market rules in areas where the VENCORP rules do not apply eg South Gippsland. VENCORP and Multinet have an adjunct agreement and service agreement to use the existing gas retail market rules and the some of the normal VENCORP services.</p> <p>Multinet have effectively established contractual market arrangements to encourage retail competition in South Gippsland. These commercial and contractual arrangements should be able to continue to apply under AEMO.</p>	Multinet seeks confirmation that the adjunct agreement and the service agreement will be novated across to AEMO with the existing commercial arrangements.
3	Information Gathering	The Market Information Order (MIO) and Market Information Notice (MIN) are powerful instruments, these must be used frugally	AEMO may use MIOs and MINs where they consider their use reasonably necessary for exercise of the National Transmission Planning (NTP) functions and powers or Gas Statement of Opportunities (GSOO), or otherwise where the NER/NGR allows. This allows extensive use of this information gathering power at the sole discretion of AEMO. This is particularly a concern given the penalty regime involved.	Any Rule created to allow the use of MIOs and MINs should be explicit about when the power may be used and exactly what information may be sought. The use of this power should be limited to certain specific requirements that are necessary for the operation of explicit Rule requirements. AEMO powers to use MIO and MINs should be limited and subject to a dispute resolution or court process so that the use of such powers may be challenged and non compliance issues may be addressed.

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		Provision of information is costly, a cost/benefit test needs to be considered for each MIO/MIN	AEMO may require historic and /or current information to be provided in a certain format. This may require the industry participant to provide the information at significant cost, including significant analysis and derivation of the required information. The information provided may be of limited value to AEMO and may not meet a cost/benefit test	A cost/benefit test must be considered in all cases where AEMO exercise this power. The use of MIOs and MINs also needs to consider whether the information requirement may be satisfied by other means.
		Information collected should not be used for any other purpose other than the purpose for which it was provided	The paper states that there does not seem to be any basis for limiting the use to which AEMO may use the information. The businesses disagree with this proposal. There is a risk that information collected for one purpose may be incorrect or incomplete information when used for other purposes. When information is taken out of context then there is a risk that this may lead to poor decisions or further unnecessary work. Limiting the information collected for one purpose so that it is not used for other purposes is consistent with the restrictions on gas service providers under the NGR.	AEMO should be able to obtain information where there is a clearly demonstrated market requirement and use it for that purpose only. AEMO should not be able to use the information collected for secondary purposes.

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		Unnecessarily wide authority to disclose information	<p>The paper proposes that AEMO should be able to pass on information (including confidential information) to a number of parties – ACCC, AER, ERA, AEMC, ESPIC, energy ombudsmen, relevant jurisdictional regulators and any other person prescribed by regulation. The paper suggests that AEMO receive the same powers as the AER under the TPA.</p> <p>The paper provides no justification why a market operator should have the same powers as the economic regulator in this respect. The NER, for example already provide powers for AEMO to share information with an ombudsman that relates to a particular site that is relevant for an ombudsman case. Given that these information provision powers exist in the NER or NGR where they are required today, we query the need for these additional powers.</p> <p>The businesses have contracts in place including commercially sensitive contract arrangements. These contracts are there for a reason and the businesses should not have to divulge this information.</p> <p>The businesses are concerned with such wide disclosure of information and the potential for leakage of this information or inappropriate use of the information against registered participants in other spheres of regulation.</p> <p>The businesses consider that a clear case needs to be made as to why AEMO should have the power to disclose information, and in particular confidential information.</p>	<p>Existing provisions in the NER/NGR and other instruments provide sufficient information disclosure to market operators, regulatory bodies or ombudsman. There is no need for such wide disclosure of information by AEMO (general or confidential) that is not already covered by these other regulatory requirements. AEMO does not need commercially sensitive contract information to fulfil its market operator role. MIOs and MINs should not be used to gain such information, nor allow the wide disclosure of such information.</p> <p>This is a denial of natural justice. It effectively provides ACCC, AER, ERA, AEMC, ESPIC, EWON, EWOV etc. access to information beyond their individual enabling acts, charters, contracts or constitutions. If a specific information collection power is to be provided, then it should be provided overtly by empowering the recipient organisation to collect – not by stealth through an ancillary power of AEMO.</p>
4	Immunity and Indemnity Provisions	Lack of consistency proposed across gas and electricity	<p>The paper states that NEMMCO and electricity distributors currently have immunity under the National Electricity Law (NEL). We understand that there are no proposed changes to these arrangements.</p> <p>The National Energy Customer Framework is still being developed and is proposing a triangular relationship. Given the implied or unclear increase in liability attributed to gas distributors and the lack of clarity at a detailed level in this new framework, we query why the gas distributors are not provided the same level of immunity as provided to electricity distributors. The gas distributors should be treated in a consistent manner in this respect.</p>	The next release of the National Gas Law (NGL) should provide for the immunity for gas distributors in addition to AEMO given the unclear nature of the linear or triangular customer relationship in gas.

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	Confidentiality	Protection of Information	<p>Where information is collected it may be shared with a large number of other organisations and may be used for any other purposes other than the purpose for which it was collected. Where information is subject to confidentiality, it may be used where the public benefit outweighs the detriment to the company of the disclosure or as required by Ministers in an emergency event.</p> <p>An independent party should review AEMO's compliance with these confidentiality obligations on a regular basis. Such reviews may also include the AEMO Board's ring fencing approach to possible information conflicts.</p>	The Rules should require AEMO to have independent audits of its handling of confidential information and its internal ring fencing of information to manage the potential conflicts.
5	Emergency Management	Industry involvement in the emergency management working group	<p>The paper recognises the complexity of cross jurisdictional emergencies and the growing dependency of electricity on gas fired electricity generation. The paper proposes a working group of officials from the jurisdictions and the market operators will be convened to consider the legal framework.</p> <p>Rather than setting up a new working group, we propose that the work already undertaken by NGERAC to manage gas emergencies be utilised.</p> <p>If the working group of officials and market operators is to proceed, the businesses recommend industry involvement in the working group or at the very least significant industry input into the working group. Industry involvement is required so there is no repeat of the 25 July 2008 gas event, ie so the issues arising from that event may be taken into consideration in future emergency or supply constrained situations. We need to ensure that market arrangements do not create operating excursions or impact security of supply to networks. Protocols for AEMO to manage network security and market activities need to be recognised and treated with the appropriate separation of controls. Jurisdictional control may be needed to override market arrangements.</p>	The businesses recommend direct industry involvement in the emergency management working group to ensure that system security and market arrangement concerns are appropriately balanced in consideration of the legal framework. A guiding principle should be established that any emergency management arrangement must only act to resolve emergencies if it is clear that industry will not cause a resolution independently or where system security and safety are impacted.

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6	Rules and Procedures	Careful consideration of Rules vs. Procedures split	<p>The ISC need to carefully consider the split between the Rules and Procedures. The paper suggests that the Rules contain the rights and obligations of participants, market design and items that have a financial impact on participants. The Procedures would then contain the technical and procedural detail. Procedures should not define extra obligations but rather define how the Rules obligations will work at the transaction or process level.</p> <p>The paper suggests that NEMMCO is an operational rule maker and highlights the NEM Metrology Procedure as an example. The NEM Metrology Procedure is an amalgamation of the jurisdictional metrologies and metering codes made by regulators or governments. The metrology procedure provides a more detailed explanation of the Rules, much of the key technical detail that establishes the meter types, accuracy and hence costs or the obligations on various parties is all contained in the Rules.</p> <p>The Victorian Gas Market Retail Rules are concise, workable rules with a Gas Interface Protocol (GIP) set of documentation to define the process/transactional detail. The documentation is well laid out and has been kept current. The move to AEMO should not detract from maintaining this level of quality documentation moving forward.</p> <p>The translation of this documentation to new Procedures should occur with minimal change. If the documentation is amended too much then there is a risk that aspects will be lost in the translation to the new Procedure. The Victorian gas market documentation should not be rearranged unnecessarily to try to create a structure of documentation similar to electricity.</p> <p>We recommend that the industry working groups within each jurisdiction should be consulted on the split of their documentation to ensure that it is workable. There is a preference to keep this documentation whole within Procedures to have the flexibility of change via an AEMO consultation process.</p>	<p>The rights and obligations of parties, competition matters, technical matters that establish costs etc should be contained in the Rules. The existing Victorian Gas Market Retail Rules and GIP should (to a large degree) be converted into Procedures with some reference and compliance obligations to provide the hook in the Rules.</p> <p>Given the documents produced need to be workable documents for the market operator/industry participants, we recommend that the VENCORP working groups be able to review the drafts of the Rules/Procedures before they are finalised.</p>

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7	Gas Retail Market Procedure Change Process	Appropriate committee for the task	<p>The paper suggests the use of a single gas committee which is able to assess procedural changes and provide input into the change process (eg non material or material changes) on behalf of all jurisdictions.</p> <p>Each of the jurisdictions Rules/Procedures are specific to the jurisdictions market model, participant's rights and obligations etc. We are concerned that a representative committee convened as a single group may not be in a position to understand the implications of the change within each of the businesses to be able to make this call. We suggest that the current committee/working group arrangements within each of the jurisdictions are carried forward either as independent committees or as sub-committees which collectively form the representative committee. The relevant jurisdictional committee could then make the call on the change process used (non material or material within their jurisdiction) for procedural changes.</p> <p>These working groups/committees within each jurisdiction also provide a wealth of knowledge and should assist in the development of future Rule changes in conjunction with AEMO.</p> <p>We suggest that AEMO develop the governance structure for the collective representative committee and working group arrangements. The arrangements need to ensure appropriate representation, ensure transparency of decisions contemplated and taken and that decisions are taken by the representatives impacted by the change.</p>	<p>The appropriate jurisdictional committee should provide input to the Rules or procedures changes processes that impact their jurisdiction.</p> <p>We suggest that AEMO develop the governance structure for the collective representative committee and working group arrangements.</p>

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		Two stage consultation process	<p>The ISC proposes that the bulletin board consultation processes be adopted – 15 business days for a non material change and 35 business days for material amendments. The proposal suggests a single round of consultation for procedure changes.</p> <p>The Victorian Gas Market Retail Rules allow small transactional changes to be agreed by all industry participants impacted and endorsed by the VENC Corp Board subject to a threshold. More expensive industry transactional changes or Rules changes involve industry development with two rounds of ESC consultation.</p> <p>Given that the collective representative committee and working group arrangements are yet to be established we are concerned by a one round consultation change process. The collective committee representation should be limited to the parties with a direct financial impact of the change. It is important to allow open and transparent effective consultation. There should be two rounds of consultation to allow smaller retailers, consumer groups, and ombudsmen etc to be involved in the consultation processes depending on their level of interest.</p> <p>A two round consultation process will provide more effective consultation on more complex changes and will allow the comments of participants to be reviewed by all. This will ensure that issues raised in the first round of consultation that alter the regulatory requirements are subject to proper probity to protect the interests of those impacted by the change.</p> <p>Greater weight should be placed on submissions to a consultation process where there is a financial impact on the party vs other interested parties. The issues raised in consultation should be clearly documented, including AEMO's response to the issue and the amended drafting.</p>	<p>The businesses suggest that two rounds of consultation on Procedures be adopted in a similar manner to the electricity procedures change process to allow effective consultation. The relevant parties impacted within the collective representative committee could still determine whether a non material change process would be followed.</p>

Chapt	Subject	Issue	Description	Proposed Solution
		<p>Relationship of Rules/Procedures change processes with Access Arrangements needs to be taken into account</p>	<p>The paper suggests that the proposal for a change needs to be consistent with the market objective, not unreasonably costly and is more efficient than the rules it is replacing.</p> <p>Changes to Procedures and Rules can have a considerable cost impact and lead time for implementation by registered participants. In proceeding with any change, the ability for distributors to gain cost recovery for the change also needs to be considered within the Access Arrangement framework. The impact of any changes on system security and safety also need to be taken into consideration.</p> <p>In addition changes made through the regulatory processes in the Access Arrangement should be introduced into the Procedures in a timely manner with consultation as to how the change is implemented. Re-invigorating the debate of the need for the regulator approved change in the procedure change process is not efficient.</p>	<p>The criteria for the change proposal also needs to consider the distributors ability to gain cost recovery for the change, the requirements and consistency with the access arrangements and the need to manage system security and safety above all else.</p>

Chapt	Subject	Issue	Description	Proposed Solution
8	AEMO's Victoria Electricity Transmission System Functions	VENCorp functions should not be institutionalised in the Rules in a manner that may prevent later review of the two TNSP roles and possible national convergence	<p>Victoria is the only state where the Shared Transmission Network planning and ownership are separated. The paper proposes that the appropriate VENCORP functions in this shared transmission arrangement be incorporated into the NEL/NER and continue to apply to AEMO. In view of the proposal of documenting the AEMO (VENCORP) functions in the NEL/NER, the paper suggests that it would not be necessary for AEMO to be a registered participant for these services in the NER and that the cost oversight by the regulator would no longer be required.</p> <p>In Victoria, the electricity distribution businesses have licence obligations to plan and direct augmentations of transmission connection assets. This has significantly increased the time and resources required by the distributors when augmenting transmission connection assets because we have to deal with two Transmission Network Service Providers (TNSPs). This is further exacerbated by a lack of clarity in a number of areas, such as who should be the party seeking connection to the shared transmission network, the electricity distributors or SPIP?</p> <p>The paper proposes to institutionalise the VENCORP role in this transmission arrangement within the NER without further review. This is effectively institutionalising a very Victorian approach in the NER at a time when the MCE/SCO are looking for national convergence on issues. Either the other states could merge with the Victorian approach or Victoria could adopt the approach utilised in other states.</p> <p>Regardless of the convergence approach, we are concerned that the drafting of the VENCORP functions should be written in the NER in a manner that takes into account the longer term potential for national convergence. The drafting undertaken in this process should allow AEMO to be easily carved out of this institutionalised role at a later date. At a minimum the drafting should make clear the delineation of the roles between AEMO and SPIP in the network planning and augmentation processes.</p>	VENCORP transmission functions should be carefully drafted in the NER to provide clarity of roles and allow an easy carve out to facilitate later national convergence.

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10	AEMO's Revenue from Electricity Transmission	The new transmission revenue arrangements should not add cost/risk to our business	<p>The paper proposes that the regulatory oversight of the setting of AEMO's transmission revenue may be an administrative burden that fails to achieve the objective associated with such an exercise. The paper suggests that AER revenue determinations do not drive an efficient outcome for monopoly businesses and hence there is no strong basis to continue with AER direct regulatory oversight.</p> <p>The paper proposes that AEMO submit a Negotiating Framework and Pricing methodology to the AER, publishes a methodology for annually determining the aggregate annual revenue requirements to which the pricing methodology will be applied which describes cost allocation and handling of over/under recovery.</p> <p>In line with our comments on Chapter 8, we consider that these proposed arrangement should be drafted in the NER in a manner that allows easy carve out to a nationally consistent solution at a later date.</p> <p>We are concerned regarding the cost overlays added by AEMO within this process and consider that these costs should also be part of the independent annual budget review process to ensure they are efficient.</p>	<p>The NER need to establish an independent annual budget review process to ensure that these costs are efficient.</p> <p>These new arrangements need to be drafted to ensure that they are able to be easily carved out should there be a move to a nationally consistent TNSP model.</p>