

**Application for interim and final
authorisation under s88(1) of the
*Competition and Consumer Act 2010 (Cth)***

Lodged by:

Australian Energy Market Operator Limited
on behalf of itself and energy market participants in
Australia

public version
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1. Summary

1.1. Background

This application is made to the Australian Competition and Consumer Commission (**ACCC**) by the independent Australian Energy Market Operator Limited (**AEMO**). AEMO manages electricity and gas markets and systems across Australia to ensure Australians have access to reliable,¹ secure² and sustainable energy. AEMO's members include both government and industry participants.

The application is made on behalf of:

- AEMO and its related bodies corporate;
- participants in Australian gas and/or electricity markets (other than in Western Australia), being parties with a registration or a registration exemption from the National Electricity Market (**NEM**), and registered participants under the National Gas Rules (other than those registered in respect of operations only in Western Australia), and their related bodies corporate³ (**AEMO Industry Participants**); and
- other entities that become participants registered in the NEM, participants with a registration exemption for the NEM, or registered participants under the National Gas Rules (other than those registered in respect of operations only in Western Australia), and their related bodies corporate, as notified in writing by AEMO to the ACCC (**Future AEMO Industry Participants**).

Australia's energy system and industry is currently facing unprecedented challenges, which are contributing to reduced energy availability at higher prices across Australia (excluding Western Australia). These challenges include:

- **the Ukraine conflict, which has resulted in a reduction in availability and an increase in the price of gas and coal used for thermal electricity generators.** The war in Ukraine has dramatically increased global demand for, and the price of, gas and coal, making exports more attractive to domestic producers. This has contributed to very significant increases in the price of gas and coal domestically and has also made obtaining supply more difficult. In relation to gas, the ACCC has noted that, since May 2022, domestic spot prices for gas are at least two to five times higher than in March 2022 and are now well above international prices.⁴ In relation to coal, the ACCC has noted that since early January 2022, Newcastle prices have exceeded USD\$200/tonne and since mid-May they have been around or above USD\$400/tonne, compared to the price of USD\$50/tonne in winter 2020.⁵
- **the impact of high rainfall and floods in New South Wales and Queensland.** The significant rainfall and severe flooding events in New South Wales and Queensland have significantly affected open cut coal mines, reducing their production. Generators who rely on

¹ Reliability refers to the capacity of the energy system to produce and transport energy of a certain quality that will meet the demand for energy of end-users.

² Security refers to the technical and operational resilience of an energy system. That is the ability for the interconnected networks and connected supply facilities to continue to operate within their defined technical limits. Electricity systems must be operated with a 'buffer' that accounts for the occurrence of a credible contingency.

³ The participants and members registered, or with an approved exemption, in respect of markets and systems operated or managed by AEMO can be found in the lists at the following links:

<https://aemo.com.au/energy-systems/electricity/national-electricity-market-nem/participate-in-the-market/registration>
<https://aemo.com.au/learn/market-participants/gas-market-participants>

These participants and members registered as at 24 June 2022 are listed in Schedule 1 of this application.

⁴ ACCC, Addendum to the Inquiry into the National Electricity Market— May 2022 report, page 8; the ACCC website updated 16 June 2022 <https://www.accc.gov.au/regulated-infrastructure/energy/gas-inquiry-2017-2025/lng-netback-price-series>

⁵ ACCC, Addendum to the Inquiry into the National Electricity Market— May 2022 report, page 9.

coal have also found it difficult to secure rail haulage services as a result of rainfall and flooding. This has exacerbated the increase in the price of coal and made obtaining coal supply difficult. On 16 June 2022, New South Wales Treasurer and Energy Minister Matt Kean was granted temporary emergency powers by regulations to direct a person to do any act or thing to increase, or facilitate the increase of, the supply or distribution of coal to a power station in New South Wales, following advice from AEMO.⁶

- **extreme and/or unusual weather conditions.** As reported by the ACCC, in the first quarter of 2022, higher average temperatures increased electricity demand in all NEM regions compared to the same period in 2021.⁷ In particular, Queensland experienced high humidity and overnight temperatures as a result of La Niña conditions, driving increased demand.⁸ Conversely, in late May into early June, a cold snap caused temperatures to drop in South Australia, Victoria, Tasmania and parts of New South Wales and Queensland, also increasing demand for electricity⁹ and gas. In addition, AEMO has recently observed long periods of low wind and conditions impacting on the availability of solar, which has reduced renewable energy output across the NEM.
- **a significant number of planned and unplanned outages.** While it is normal to see a significant number of planned outages during the 'off peak' shoulder period, AEMO has recently observed a higher than usual decrease in generation capacity as a result of both planned and unplanned outages across the NEM. For example, capacity of c.3000 megawatts of coal fired generation has been removed from the NEM as a result of unplanned outages. There has been a prolonged unplanned outage at the Loy Yang generation plant in Victoria and continuing outages involving a unit at the Callide generation plant (following an explosion last year) and a unit at the Swanbank generation plant (following a fire last year), both of which are located in Queensland. This is coupled with an unseasonably high demand for energy on the east coast due to early onset low temperatures. The ACCC has reported that '*Unexpected outages and fuel supply issues at a number of coal generators have exacerbated the situation and forced the market to rely on more expensive sources of generation, such as gas*'.¹⁰ This resulted in the Iona underground gas storage inventory declining from 19 April instead of continuing to refill prior to winter.
- **the impact of the COVID-19 pandemic on specialised labour and global supply chains.** The COVID-19 pandemic has impacted the reliability and security of the Australian energy system and markets. In particular, AEMO has observed that generators have often had to extend planned and unplanned outages due to:
 - essential workers having to isolate as a result of COVID-19;
 - the arrival of essential workers from overseas being delayed due to travel restrictions; and/ or
 - the arrival of essential parts (both domestic and overseas) being delayed as a result of COVID-19 related supply chain issues.
- **delays and deferral of some maintenance during the last two years.** The COVID-19 pandemic has also resulted in a number of planned maintenance activities being rescheduled due to the impact of COVID-19. As a result, there is a significant amount of overdue maintenance required to be completed that was planned for the current 'off peak'

⁶ ABC, NSW Energy Minister Matt Kean granted temporary emergency powers to force coal to electricity generators – 17 June 2022.

⁷ ACCC, Addendum to the Inquiry into the National Electricity Market—May 2022 report, page 12.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid, page 1.

shoulder period, and some of which has had to be further delayed. Further delays of this maintenance impacts the stability of the system during the peak 'summer' (November to March) period.

together the **Current Market Conditions**.

The Current Market Conditions impacting Australia's energy system have required AEMO to take a number of reactive steps to ensure the ongoing supply of reliable, secure and sustainable energy, particularly to avoid load shedding and blackouts:

- The events described above affecting gas markets, coupled with, the failure of New South Wales gas retailer Weston Energy and the related retailer of last resort event, resulted in AEMO imposing administered price caps in both the Sydney and Brisbane short term trading markets on 24 May 2022 in accordance with the National Gas Rules and the Short Term Trading Market Procedures. AEMO later imposed an administered gas price cap in Victoria on 31 May 2022 when cumulative high prices exceeded a pre-defined threshold.¹¹ The administered price caps ultimately imposed were \$40/GJ. The shadow price for gas that would apply if the administered caps were not in place spiked to the usual market price cap (\$400/GJ in Sydney and \$800/GJ in Victoria). Large industrial customers reportedly typically pay less than \$10/GJ if they are on contract rates.¹²
- On 25 May 2022, AEMO activated the Contingency Gas process for the Sydney Short Term Trading Market hub due to insufficient gas being offered into the market.¹³ After the conference additional gas was made available to the Sydney hub.
- On 1 June 2022,¹⁴ AEMO activated the gas supply guarantee mechanism for the first time. After the conference, gas producers in Queensland directed gas to the southern states and provided additional gas to the domestic market.
- In the NEM, on 12 June 2022,¹⁵ after spot prices reached the Cumulative Price Threshold of \$1,359,100 over seven days, AEMO imposed a wholesale electricity administered price cap of \$300/MWh in the Queensland region in accordance with the National Electricity Rules. Under normal market conditions, spot prices typically average around \$80/MWh.
- On 13 June 2022,¹⁶ AEMO imposed additional wholesale electricity administered price caps in the New South Wales, Victorian and South Australian regions in accordance with the National Electricity Rules after spot prices reached the Cumulative Price Threshold in those regions. After the administered price caps came into effect, the amount of generation being bid into the market did not meet the forecast demand, which resulted in forecast shortfalls across the NEM.
- AEMO issued Lack of Reserve (**LOR**) notices at levels 1, 2 and 3, for the Victorian, South Australian, New South Wales, Tasmanian and Queensland regions, at various times, particularly during the evening 'peak'. Forecast LOR3 notices are issued when AEMO's forecast of available capacity reserves in the short term Projected Assessment of System Adequacy or pre-dispatch schedule is at or below zero (ie, load shedding may be required to protect system security and prevent long-term damage to system infrastructure). This was

¹¹ Australian Energy Market Operator. Gas market update - 7 June 2022.

¹² Australian Financial Review, Gas price 'chaos' forces caps – 31 May 2022

¹³ AEMO website: http://www.nemweb.com.au/Reports/CURRENT/STTM/Contingency_Gas/

¹⁴ Australian Energy Market Operator, AEMO update on tight gas supplies in southern states – 2 June 2022.

¹⁵ Australian Energy Market Operator, Energy price and supply update – 13 June 2022.

¹⁶ Australian Energy Market Operator, 9pm Update: Queensland's electricity supply stabilises, price caps in NSW – 13 June 2022; and Australian Energy Market Operator, 7am Update: Price caps administered across multiple states – 14 June 2022.

the first time that AEMO has had to issue such a large number of LOR3 notices over such a short time period.

- AEMO directed unprecedented amounts of generation to become available, at one stage up to 5GW of generation (approximately 20% of the typical NEM demand) through direct interventions on 14 June 2022. By 15 June the number of interventions and associated constraints meant it was no longer possible to operate the spot market or the power system this way.¹⁷
- On 15 June 2022,¹⁸ AEMO suspended the NEM wholesale spot market in all regions under the National Electricity Rules. AEMO took this step because it had become impossible to continue operating the spot market in accordance with the provisions of the National Electricity Rules. This is the first time that AEMO has suspended the NEM wholesale spot market simultaneously in all regions in its 23 years of operation. Previous suspensions have only been confined to a single region.
- On 15 and 16 June 2022, consumers in New South Wales were asked to reduce their electricity consumption where it was safe to do so by AEMO and state authorities.
- Some plant facilities have been operated towards the limits of their technical capacity, environmental envelope or relevant energy limitations (eg, hydro plants) for long periods under direction from AEMO, and as a result it is foreseeable that we will see unscheduled outages, failures or other restrictions going forward.

Implementing administered price caps for both gas and electricity, issuing directions, repeated LOR3 notices and suspending the NEM spot market are reactive temporary measures that AEMO has taken under the rules to deal with the serious and immediate risks created by the Current Market Conditions. These measures address the immediate risk of unsecure and unreliable energy supply, but they do not address or seek to resolve the short to medium term impacts of the Current Market Conditions. There is therefore a real and continued risk to the reliability and security of energy supply across the NEM.

The ongoing safety, security and reliability of Australia's gas and electricity systems is critical to Australian consumers, businesses, government operations, and the economy. Accordingly, as the independent market and system operator, AEMO seeks urgent interim and final authorisation under section 88(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) on behalf of itself and its related bodies corporate, AEMO Industry Participants and Future AEMO Industry Participants to engage in the conduct described in section 3 of this application (**Proposed Authorisation**).

AEMO acknowledges that the Proposed Authorisation cannot address all of the issues arising from the Current Market Conditions. However, the Proposed Authorisation is nonetheless of significant importance as it will allow cooperation between industry participants in the following areas, so as to reduce the risk of supply shortfalls and blackouts across the NEM:

- coordinating repairs and maintenance, for example, to allow industry participants to mitigate the risk of overlapping outages resulting in reduced market output;
- sharing essential personnel, for example, to allow industry participants to mitigate the risk of shortages in skilled labour prolonging facility outages;
- sharing essential inputs, for example, to allow industry participants to mitigate the risk of significant coal haulage delays resulting in reduced generation / below capacity operation;

¹⁷ Australian Energy Market Operator, AEMO suspends the NEM Wholesale Market – 15 June 2022.

¹⁸ Ibid.

- sharing information regarding ongoing operation, for example, to allow industry participants to discuss operational changes to better manage the impacts of the Current Market Conditions;
- deferring non-essential works, for example, to allow industry participants to mitigate the risk of non-essential outages placing unnecessary stress on total market output; and
- managing system stability, for example, to allow industry participants to coordinate outages or interruptions across the supply chain.


As noted by the ACCC: 'Australian regulators and governments all have a role to play in ensuring safe, reliable, and affordable energy'.¹⁹

1.2. Application for urgent interim authorisation

As discussed in section 3.5 below, AEMO requests that the ACCC grant interim authorisation to enable AEMO, AEMO Industry Participants and Future AEMO Industry Participants to work together as soon as possible and take any steps that may be required to ensure the ongoing safe, secure and reliable supply of energy during the period of the authorisation.

2. Parties to the Proposed Conduct

2.1. Applicant

| Name, address (registered office), telephone number and ACN | Contact person's name, position, telephone number and email address | Description of business activities |
|--|--|---|
| Australian Energy Market Operator Limited (AEMO) Level 22, 530 Collins Street Melbourne Vic 3000 | Tony Snell General Counsel AEMO  | Operation of Australian electricity and gas markets and systems |

2.2. Email address for service of documents in Australia

Ted Hill
Partner
Allens



2.3. Other Persons who propose to engage in the Proposed Conduct

As noted above, AEMO makes this application on behalf of itself, AEMO Industry Participants and any Future AEMO Industry Participants.

3. The Proposed Conduct

3.1. Overview

AEMO is the independent market and system operator for gas and electricity systems across Australia. References in this section to energy include both electricity and gas.

¹⁹ ACCC, Addendum to the Inquiry into the National Electricity Market—May 2022 report, page 1.

AEMO seeks authorisation to enable it and its related bodies corporate, AEMO Industry Participants and Future AEMO Industry Participants to discuss, enter into or give effect to any contract, arrangement or understanding between them, or engage in any conduct, related to:

- 3.1.1. **Co-ordinating repairs and maintenance** – planning for and/or minimising any disruptions to energy supply, for example, by coordinating scheduling of any repairs, maintenance and other works requiring outages;
- 3.1.2. **Sharing essential personnel** – sharing information and/or entering into common arrangements in relation to essential employees and contractors to ensure there are sufficient personnel to maintain and operate energy infrastructure;
- 3.1.3. **Sharing essential inputs** – sharing information about the availability of, and/or entering into arrangements to share sufficient quantities of, essential inputs for energy production, generation, transmission, distribution and supply systems and infrastructure, including:
 - water, gas, coal, diesel, and other fuel for generators (**Generator Fuel**);
 - services for the transport of Generator Fuel;
 - parts, equipment or specialised resources necessary for essential maintenance; and
 - other consumable materials necessary for the operation of such facilities (including odourant in the case of natural gas);
- 3.1.4. **Sharing information regarding ongoing operation** – sharing information about the ongoing availability, performance and/or operation of their energy facilities and any risks to ongoing availability, performance and/or operation;
- 3.1.5. **Deferring non-essential works** – sharing information, and/or entering into arrangements, to defer activities and/or projects not essential to maintaining the safe, secure and/or reliable operation of energy markets; or
- 3.1.6. **Managing system stability** – sharing information and/or entering into common arrangements in order to manage electricity system stability from a technical perspective as a result of changes in system supply and/or demand, including for example managing generation profiles,

provided:

- the purpose for doing so is either to:
 - ensure the safe, secure and reliable operation of Australia's energy systems, and minimise the risk of any energy outages for the benefit of both competition and consumers, during the period of the authorisation; and/or
 - ensure the continued operation and integrity of the NEM and wholesale gas markets in Australia (excluding WA) for the benefit of both competition and consumers, during the period of the authorisation; and
- in the case of paragraphs 3.1.3 to 3.1.6, AEMO considers the conduct in question is reasonably necessary to address a critical risk of energy outages or significant disruption to the operation of the NEM or wholesale gas markets; and
- in relation to 3.1.3, the sharing of gas or diesel (including transportation) as an input is limited to sharing between gas-fired generators; and
- in relation to 3.1.4, this conduct does not include the sharing of specific generators' wholesale price, costs and margins,

the **Proposed Conduct**.

3.2. Limitations of the Proposed Conduct

The Proposed Conduct would be limited to discussions, conduct, contracts, arrangements and/or understandings to which AEMO, the independent market and system operator or its related bodies corporate, is either a party or has facilitated.

Where the Proposed Conduct involves a meeting or discussions between AEMO Industry Participants or any Future AEMO Industry Participants, then:

- AEMO must attend;
- only AEMO Industry Participants or Future AEMO Industry Participants invited by AEMO or its related bodies corporate may attend;
- a lawyer with expertise in competition law, approved by the ACCC must attend, with the purpose of observing and ensuring the conduct engaged in does not go beyond the purposes of the meetings or discussions or breach the CCA;
- the ACCC will be provided with advance notice of the meeting, attendees, agenda and invited to attend; and
- where the Proposed Conduct involves a meeting relating to a specific state or territory jurisdiction or jurisdictions, a senior officer of the relevant state or territory government department or departments with responsibility for energy, or their delegate, will be provided with advance notice of the meeting, attendees, agenda and invited to attend.

Authorisation is not sought to discuss, enter into or give effect to any contracts, arrangements or understandings or engage in any other conduct, regarding the wholesale or retail price of electricity or the wholesale or retail price of gas.

This conduct is a temporary measure, and is not compulsory. Any AEMO Industry Participant or Future AEMO Industry Participant can opt out of any proposed collaboration.

3.3. Proposed conditions of Proposed Authorisation

AEMO proposes the following conditions apply to the Proposed Authorisation:

- 3.3.1. **Condition 1: Reporting Requirements.** AEMO must comply with the reporting and communications protocol attached at Schedule 2.
- 3.3.2. **Condition 2: Compliance with conditions imposed by other authorisations.** Where the Proposed Conduct in this Proposed Authorisation overlaps with conduct authorised under other authorisations, parties to those other authorisations must continue to comply with any relevant conditions imposed by those authorisations, which include:
- (i) where the Proposed Conduct involves the scheduling of maintenance at LNG facilities in WA or the NT, authorisations AA1000396-1 & AA1000396-2;
 - (ii) where the Proposed Conduct involves the scheduling of maintenance at LNG facilities in Queensland, authorisation AA1000544-1; and
 - (iii) where the Proposed Conduct involves parties registered or exempt from registration in the NEM, authorisation AA1000586-1.
- 3.3.3. **Condition 3: Agreements not to endure beyond authorisation period.** Any contract, arrangement or understanding entered into in reliance on the interim authorisation or final authorisation must provide for its immediate termination (other than any provisions dealing with ongoing confidentiality obligations), if the interim authorisation expires or is revoked and final

authorisation is not granted, upon the expiry or revocation of the interim authorisation or upon expiry or revocation of the final authorisation.

3.4. Rationale

Authorisation will allow AEMO Industry Participants and Future AEMO Industry Participants under the auspices of AEMO to work together to reduce the ongoing risks of electricity and gas outages. The authorisation will do so in the following ways:

- 3.4.1. **Co-ordinating repairs and maintenance** – AEMO Industry Participants and Future AEMO Industry Participants will be able to coordinate the scheduling of any repairs, maintenance and other works requiring outages. This will reduce the risk of overlapping maintenance activities affecting the supply of gas and electricity. Although AEMO can work on a bilateral basis with individual participants, allowing meetings involving industry participants, facilitates timely and effective coordination of maintenance.
- 3.4.2. **Sharing essential personnel** – AEMO Industry Participants and Future AEMO Industry Participants will be able to share information and/or enter into common arrangements in relation to essential employees and contractors to ensure there are sufficient personnel to maintain and operate energy infrastructure. Ongoing COVID-19 illnesses, and demand both locally and globally, mean that sharing essential personnel could reduce the risk of unnecessary outages or extended periods of maintenance. Additionally, some of the skills required to maintain Australia's energy systems are highly specialised with a limited number of people able to perform these roles. Sharing these essential personnel will ensure these skills are at the energy facilities with the greatest need, to reduce the risk of energy outages.
- 3.4.3. **Sharing essential inputs** – AEMO Industry Participants and Future AEMO Industry Participants will be able to share information about the availability of, or limitations on, and/or enter into arrangements to share sufficient quantities of, essential inputs for energy production, generation, transmission, distribution and supply systems and infrastructure. For example, electricity generators may be able to share information about, or enter into arrangements to share with each other, Generator Fuel. They may also share information about, or enter into arrangements to coordinate or share, coal transportation services. Facilitating this cooperation would reduce the risk of outages arising from a generator being unable to obtain either Generator Fuel or the necessary haulage services.
- 3.4.4. **Sharing information regarding ongoing operation** – AEMO Industry Participants and Future AEMO Industry Participants will be able to share information about the ongoing availability, performance and/or operation of their facilities and any risks to ongoing availability, performance and/or operation. This may allow generators or gas facility operators to take action (for example, deferring maintenance) to overcome any threat to supply identified through the sharing of such information. Additionally, this will enable market participants to understand the threats to energy supply and the action AEMO may be required to take if the issue is not rectified.
- 3.4.5. **Deferring non-essential works** – AEMO Industry Participants and Future AEMO Industry Participants will be able to share information, and/or enter into arrangements, to defer activities and/or projects not essential to maintaining the safe, secure and/or reliable operation of energy market. This may allow generators or gas facility operators to defer non-essential works to ensure ongoing system reliability.
- 3.4.6. **Managing system stability** – AEMO Industry Participants and Future AEMO Industry Participants will be able to share information and/or enter into common arrangements in order to manage system stability from a technical perspective as a result of changes in system

supply and/or demand. This may allow generators to ensure that essential synchronous generators remain online to provide necessary system strength.²⁰

AEMO considers that these risks will be present until at least the end of March 2023. While the Australian energy market is currently in the 'off-peak' shoulder period (during which a significant amount of maintenance is typically scheduled to occur), the Current Market Conditions (including the unseasonably high demand for energy) make essential maintenance less likely to occur. This exacerbates the risk of unplanned outages occurring during the 'peak' summer period, when demand is typically at its highest. For this reason, the Proposed Authorisation will help to ensure that there is reliable and secure energy supply during both the current shoulder period and upcoming summer period.

3.5. Application for interim authorisation

AEMO seeks interim authorisation for the Proposed Conduct on an urgent basis so that AEMO and its related bodies corporate, AEMO Industry Participants and Future AEMO Industry Participants can work together immediately and take action to address and proactively manage the acute and immediate threats to reliable and secure energy created by the rapidly changing Current Market Conditions.

In particular, an interim authorisation will allow those participants to respond to the Current Market Conditions swiftly by engaging in the Proposed Conduct in an expedited manner. For example, participants will be in a position to work together cooperatively to ensure that the risk of any disruption to the supply of Generator Fuel is mitigated while there remains an immediate and ongoing threat to electricity supplies within the NEM.

If, while interim authorisation is in place, the ACCC is concerned about the effectiveness of the Proposed Conduct, it will be open to the ACCC to revoke that authorisation at any time.

3.6. Provisions of the CCA which might apply to the Proposed Conduct

AEMO Industry Participants may compete in relation:

- to the generation, transmission, transportation and/or supply of electricity and/or gas in Australia; and/or
- the procurement of essential inputs for energy production, generation, transmission, distribution and/or supply systems and infrastructure.

Accordingly, in the absence of authorisation, the Proposed Conduct risks giving rise to contraventions of the CCA, including by provisions of the CCA relating to:

- cartel conduct (Division 1 of Part IV) (ss45AD, 45AF, 45AG, 45AJ, and 45AK of the CCA); or
- contracts, arrangements or understandings, concerted practices, exclusive dealing and other conduct that have the purpose, effect or likely effect of substantially lessening competition (ss 45(1), 46(1) and 47(1) of the CCA).

The Proposed Conduct includes discussions, entering into or giving effect to any contract, arrangement or understanding, or engaging in any conduct, as authorisation is sought for a range of potentially anticompetitive conduct, including exclusive dealing and concerted practices, which can occur without a contract arrangement or understanding.

²⁰ The power system in the NEM is an alternating current system. The system is strong if the voltage wave is very smooth and doesn't deform too much when there is a disturbance in the system. Synchronous generators like coal, gas and hydroelectric generators stabilise the voltage wave formed as a 'byproduct' of their power production. This is due to the fact they are physically coupled to the grid. At the moment, most wind and solar generators don't do this, as they use electronics - computers and inverters - to couple with the grid. See: AEMC, System strength: Getting the grid sorted.

3.7. Term of authorisation sought

AEMO seeks authorisation to engage in the proposed conduct until 31 March 2023, noting that the ACCC could under section 91B of the CCA revoke the authorisation should there be a material change in circumstances (e.g., the effects of the Current Market Conditions subside and essential maintenance can occur before the peak summer period).

4. Persons who may be directly impacted by the Proposed Conduct

The persons who would be directly impacted by the Proposed Conduct include customers, other users of inputs, suppliers and staff of AEMO, AEMO Industry Participants and any Future AEMO Industry Participants.

5. Counterfactual

In the absence of the Proposed Conduct, AEMO and its related bodies corporate, AEMO Industry Participants and Future AEMO Industry Participants may be unable to coordinate certain of their activities in order to ensure the safe, secure and reliable supply of energy during the period of the Proposed Authorisation. This would exacerbate the risk of outages and blackouts in circumstances where energy systems are already under pressure as a result of the Current Market Conditions.

Accordingly, without authorisation, AEMO submits that the ability of AEMO and its related bodies corporate, AEMO Industry Participants and Future AEMO Industry Participants to address issues that have the potential to impact on the safety, security and/or reliability of Australia's energy supply during the period of the Proposed Authorisation is likely to be less effective and less timely than if they are permitted to work together in the manner proposed in this application.

6. Public benefit

AEMO submits that the Proposed Conduct will result in significant public benefits, as outlined below.

Public benefits

The Current Market Conditions are unprecedented and have resulted in significant risks to the ongoing safe, secure and reliable operation of Australia's energy systems and markets. As noted by ACCC Chair Gina Cass-Gottlieb on 20 June 2022:

'There is no doubt that international factors such as the war in Ukraine have heavily impacted the global gas supply and prices. A cold start to winter and a reliance on ageing coal-fired power stations amplified challenges already facing the Australian energy market'.²¹

The Proposed Conduct cannot overcome international factors or the impact of adverse weather events, but it will help to build resilience in the gas and electricity supply system to minimise the risk of load shedding, blackouts and supply interruption.

How the authorisation will reduce these risks is discussed in section 3.4 above, but in summary, the authorisation will:

- **reduce the risk of overlapping maintenance activities affecting the supply of both gas and electricity.** Although under its current powers, AEMO can work on a bilateral basis with individual participants, allowing meetings involving AEMO Industry Participants and Future Industry Participants, together with AEMO, facilitates timely, effective and transparent identification and resolution of potential conflicts and coordination of maintenance;

²¹ ACCC, ACCC updates on recent electricity market challenges – 20 June 2022.

- **reduce the risk of unnecessary outages or extended periods of maintenance caused by lack of personnel.** By sharing essential personnel that are scarce due to specialised skills or may have limited availability due to COVID-19 illness, the skilled resources can be deployed where they are required most urgently to prevent or mitigate the impact of critical outages;
- **reduce the risk of outages arising from a generator being unable to obtain essential inputs such as Generator Fuel or the necessary haulage services,** by sharing information about availability of such essential inputs or entering into arrangements to share or redeploy inputs;
- **facilitate AEMO Industry Participants taking action** such as deferring or bringing forward maintenance, to overcome a threat to supply identified through the sharing of information eg. about risks to ongoing availability;
- **reduce the risk of outages at critical times** by allowing AEMO Industry Participants to share information and enter into arrangements to defer non-essential works; and
- **reduce the risk of system instability,** by allowing AEMO Industry Participants to enter into arrangements and share information to manage system stability from a technical perspective.

AEMO's current powers

While AEMO has in recent times, taken a series of last resort actions within the scope of its powers to address the risks detailed above in 1.1 (for example, suspending the spot market in all NEM regions for the first time in the NEM's history), these powers are largely reactive and insufficient for the purposes of managing the risks created by the Current Market Conditions.

Market interventions such as regular directions and reserve capacity activations are not sustainable on a longer term basis. They are inefficient and generally expensive, adding to consumer price shocks and potentially increasing the disruption already being seen in the energy retail market. Similarly, if AEMO regularly recalls or refuses permission for scheduled maintenance in order to overcome immediate system security and reliability risks, those same risks will almost certainly increase in the longer term. Authorisation is sought to assist AEMO to deal with the Current Market Conditions in a more sustainable manner and minimise the likelihood of needing to take drastic action including load shedding.

To achieve its power system security responsibilities, AEMO will give relevant instructions or directions to market participants based on AEMO's understanding of risks in the market. Ordinarily AEMO obtains this information by information submitted through its PASA and bidding systems and having bilateral discussions with relevant market participants. Under the Rules, AEMO is only able to give directions and otherwise intervene in the market after taking a series of steps and at the latest possible time in order to give the market the opportunity to respond. In normal market conditions this is sufficient.

Under the Current Market Conditions, where there are potential risks and issues across the entire energy system, AEMO does not have the visibility or the time or resources to hold bilateral discussions to gather the necessary information, consider the information and give relevant directions. Relying on bilateral discussions when dealing with critical incidents (or a series of critical incidents) is not efficient, is unlikely to achieve the necessary visibility of interactions across critical infrastructure and runs the risk that the required outcome (sufficient supply of energy) is not achieved.

Experience with COVID authorisations

In AEMO's experience, the previous and current authorisations granted by the ACCC worked well to allow AEMO and electricity industry participants to meet, have open discussions and identify and implement solutions to address the challenges posed and risks created by the COVID-19 pandemic,

particularly in relation to maintenance activities. This allowed AEMO and electricity industry participants to reach resolutions to ensure the ongoing safe, secure and reliable operation of Australia's electricity systems and markets, without having to wait for imminent threats to system security.

AEMO considers that similar public benefits could be realised under the Proposed Authorisation. While the Proposed Conduct is different, this is necessitated by the scope and complexity of the Current Market Conditions being faced by AEMO and other industry participants. In particular, and as outlined at 1.1, the operation of the wholesale electricity market is closely interlinked with the wholesale gas market given gas is also a fuel for electricity generation. In order to properly mitigate the risks created by the Current Market Conditions it is necessary and appropriate to adopt a holistic approach that is tailored to the industry supply chain.

7. Public detriment

AEMO submits that the Proposed Conduct is unlikely to alter the competitive dynamics in energy, and that markets will be able to return to substantially their current state once the period of authorisation subsides. The overall purpose and effect of the Proposed Conduct is to maximise supply of energy by reducing outages for the benefit of both competition and consumers.

In particular:

- (i) gas and electricity are essential services to the Australian community and close coordination by AEMO and its related bodies corporate, AEMO Industry Participants and any Future AEMO Industry Participants will ensure the ongoing safe, secure and reliable supply of energy during the period of the Proposed Authorisation;
- (ii) the Proposed Conduct does not extend to entering into any agreement regarding the wholesale or retail price of electricity or the wholesale or retail price of gas;
- (iii) the Proposed Conduct is not compulsory, and any AEMO Industry Participant or any Future AEMO Industry Participants can opt out of any proposed collaboration the subject of this application;
- (iv) the Proposed Conduct is limited to discussions, conduct, contracts, arrangements and/or understandings to which AEMO, the independent market operator, is either a party or has facilitated;
- (v) the period of authorisation is for a limited period until 31 March 2023. This is no more than is reasonably necessary to address any energy supply challenges that could potentially arise as a result of the Current Market Conditions, a number of years of delayed maintenance and the 'summer' (November to March) peak period.

In relation to the sharing of essential inputs, AEMO submits this is unlikely to have a significant impact on the relevant markets as:

- the sharing of inputs is limited to circumstances where AEMO has identified a critical risk of energy outages or significant disruption to the operation of the NEM or wholesale gas markets; and
- the sharing of inputs relates to the sharing of 'surplus input' (ie. allocating from one generator to another). It is unlikely to affect the total supply and demand for the input as this has not changed. As a result, other users of these essential inputs should not be fundamentally affected.

8. Declaration by applicant

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned is aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Tony Snell

General Counsel, Australian Energy Market Operator

This 29th day of June 2022

Schedule 1: AEMO Industry Participants

Please see the excel spreadsheet titled '*Schedule 2: AEMO Industry Participants as at 24 June 2022*'. As at 24 June 2022, the AEMO Industry Participants are:

- participants registered in the NEM (see tab '*1 NEM registered participants*');
- participants with a registration exemption for the NEM (see tab '*2 NEM registration exemptions*');
- registered participants under the National Gas Rules (other than those registered in respect of operations only in Western Australia) (see tabs '*3 GSH – DAA*', '*4 DWGM STTM and Retail Gas Mkts*' and '*5 GBB*').

Schedule 2: Reporting Protocol

Purpose

1. This is the Reporting and Communications Protocol referred to in condition [1] of the ACCC's interim authorisation decision of [DATE] 2022 (**Interim Authorisation**) and authorisation decision of [DATE] 2022 (**Authorisation**) in respect of proposed arrangements between AEMO and certain industry participants for the purpose of dealing with the effects of unprecedented challenges which are contributing to reduced energy availability at higher prices across Australia (excluding Western Australia) (**Current Market Conditions**).
2. Capitalised terms used but not defined in this document have the meaning given in the Interim Authorisation or the Authorisation.

AEMO's reporting commitments

3. While AEMO engages in conduct enabled by the Interim Authorisation or the Authorisation, AEMO will use its best endeavours to provide each fortnight (or such longer period as the ACCC may approve) a report to the ACCC setting out each material contract, arrangement, understanding or decision made by AEMO and AEMO Industry Participants (and any Future AEMO Industry Participants) in the previous month that involves the conduct enabled by the Interim Authorisation or the Authorisation, including:
 - a) the dates of all material decisions, contracts, arrangements or understandings formed that rely on the Interim Authorisation or the Authorisation,
 - b) the parties to each material decision, contract, arrangement or understanding formed that rely on the Interim Authorisation or the Authorisation,
 - c) what topics were discussed at meetings where those material decisions, contracts, arrangements or understandings were formed, and/or the material content of those contracts, arrangements, understandings or decisions, including key details such as the relevant products or services, quantities, timings, and financial or other compensation,
 - d) a description of the issues arising from the Current Market Conditions that the relevant decision, contract, arrangement or understanding seeks to address and how it will be addressed,
 - e) where possible a non-confidential version of the report for publication on the public register.

Information requested and concerns raised by the ACCC

4. The ACCC may request additional information regarding conduct enabled by the Interim Authorisation or the Authorisation. AEMO, any AEMO Industry Participant and any Future AEMO Industry Participant must promptly provide any further information requested by the ACCC.
5. An ACCC representative may elect to attend any meeting or call where it is intended that material decisions, contracts, arrangements or understandings may be formed as an observer for the purpose of observing that the relevant conduct of those groups which might give rise to concerns under Part IV of the CCA notwithstanding the Interim Authorisation or the Authorisation. AEMO will provide the ACCC with advance notice as soon as reasonably practicable of any meetings or calls (including recurring meetings and ad hoc meetings) where material decisions, contracts,

arrangements or understandings are expected to be formed. The ACCC will give AEMO notice in advance of its proposed representative at the relevant meeting or call.

6. Any notice or request for information under paragraphs 4 to 5 should be provided to the contact person nominated by AEMO for the purposes of this Reporting Protocol.

Confidentiality

7. Unless stated otherwise, AEMO asks that the ACCC receive any information provided under this Reporting Protocol on a confidential basis in accordance with the ACCC's statutory obligations on the basis set out below:
 - a) there is no restriction on the internal use, including future use, that the ACCC may make of the information consistent with its statutory functions;
 - b) the confidential information may be disclosed to the ACCC's external advisors and consultants on condition that each such advisor or consultant is informed of the obligation to treat the information as confidential; and
 - c) the ACCC may disclose the confidential information to third parties (in addition to its external advisors or consultants) if compelled by law or in accordance with section 155AAA of the CCA.
8. Nothing in paragraph 7 limits AEMO's obligations under paragraph 3 above.