

NEMMCO

**National Electricity Market
Management Company Limited**
ABN 94 072 010 327

Melbourne

6 June 2006

Mr Steve Edwell
Chairman
Australian Energy Regulator
G P O Box 520
MELBOURNE VIC 3001

Dear Steve,

Thank you for your letter dated 22 May 2006 enclosing the Memorandum of Understanding between the Australian Energy Regulator and NEMMCO.

I now enclose an executed copy for your records.

NEMMCO's representative to act as a point of contact on matters arising under the Memorandum will be Brett Hausler, General Manager, Corporate Services.

I look forward to developing a good working relationship between our organisations.

Yours sincerely,



Leslie V Hosking
Managing Director and Chief Executive Officer

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Memorandum of Understanding

between

The Australian Energy Regulator

and

**The National Electricity Market Management Company Limited
(ACN 072 010 327)**

1. Purpose

- 1.1 The purpose of this memorandum is to establish an agreed framework for cooperation and liaison between the Australian Energy Regulator (AER) and the National Electricity Market Management Company (NEMMCO) in its capacity as the operator and administrator of the wholesale electricity market.
- 1.2 This memorandum is a statement of principles to guide the relationship between NEMMCO and the AER.
- 1.3 For the purposes of this memorandum 'the parties' are the AER and NEMMCO.
- 1.4 For the purposes of this memorandum, a reference to 'the Law' is a reference to the *National Electricity Law*, and a reference to 'the Rules' is a reference to the *National Electricity Rules*.
- 1.5 This memorandum acknowledges the national electricity market objective to promote efficient investment in, and efficient use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, reliability and security of supply of electricity and the reliability, safety and security of the national electricity system.

2. The roles of the parties

The AER

- 2.1 The AER commenced operations on 1 July 2005 as a constituent part of the Australian Competition and Consumer Commission (ACCC). The AER is established under the new Part IIIAA of the Trade Practices Act. In accordance with section 44AE, the AER is established as a separate legal entity.
- 2.2 The AER is responsible for the regulation of electricity transmission networks under the Law and the Rules, market monitoring and the enforcement of the Law and Rules.
- 2.3 Pursuant to the Australian Energy Market Agreement, the AER will also assume responsibility for regulation of electricity distribution networks and electricity retail regulation (other than retail pricing)

NEMMCO

- 2.4 NEMMCO is a body corporate whose members are the governments of the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania and Victoria. NEMMCO is governed in accordance with its Constitution.
- 2.5 NEMMCO is responsible for the operation and administration of the wholesale electricity exchange in accordance with the Law and the Rules. NEMMCO is responsible for promoting the development of and improving the effectiveness of the operation and administration of the wholesale exchange;
- 2.6 NEMMCO also has responsibility to maintain and improve power system security and to undertake the coordination of the planning of augmentations to the national electricity system.

3. The relationship between the AER and NEMMCO

- 3.1 The AER is required to monitor and enforce compliance by NEMMCO with its obligations as a 'relevant participant' under the Law. The AER also is required to monitor and enforce compliance by NEMMCO with provisions of the Rules.
- 3.2 Cooperation and liaison between the AER and NEMMCO, in its capacity as the wholesale electricity market operator and administrator, will contribute to the performance of both entities' functions in a timely and efficient manner to the benefit of stakeholders.
- 3.3 For the avoidance of doubt, nothing in this memorandum is to be taken to limit or otherwise fetter the performance by the AER of its statutory responsibilities in the event that it takes action of any sort to enforce compliance by NEMMCO with its obligations under the Law or the Rules.
- 3.4 Nothing in this memorandum is intended to affect the statutory functions and responsibilities of the AER under the Law, the Rules, the Trade Practices Act (the TPA) or other relevant legislation; or of NEMMCO under the Law or the Rules.

4. The parties' statutory obligations to report, notify and advise

- 4.1 Where the provisions of the National Electricity Rules require liaison between NEMMCO and the AER, the parties will meet those requirements in accordance with the procedures set out in Attachment 1 to this memorandum.
- 4.2 For the avoidance of doubt, the procedures in Attachment 1 to this memorandum do not replace or negate any reporting requirements, procedures and standards established by the AER under clause 8.7.2 of the Rules.

5. Information sharing

- 5.1 Where NEMMCO is required by the Rules to publish information to Registered Participants the parties agree that, subject to any restrictions provided in the Rules, the information will be provided on request to the AER. All requests by the AER should be submitted to NEMMCO in writing.
- 5.2 The AER and NEMMCO each have obligations and powers under the Law and the Rules in relation to the use and disclosure of confidential information in the performance of their functions.
- 5.3 Both parties recognise that the disclosure of confidential information could adversely affect both their respective operations and the interests of the original provider.
- 5.4 Where information is, under any circumstances, exchanged between the AER and NEMMCO, or between NEMMCO and the AER, the parties agree that they will:
 - subject to any confidentiality obligations to third parties and to any requirements of the law (and in particular to the provisions in cl 8.6 of the Rules and s 44AAF of the *Trade Practices Act 1974*), share confidential information;
 - identify what is confidential in any information provided to the other party; and
 - treat information that is so identified as confidential; and
 - have in place reasonable procedures to ensure that NEMMCO satisfies the requirements of clause 8.6.1(c) of the Rules

6. Meetings and liaison between the AER and NEMMCO

- 6.1 The AER and NEMMCO agree to regular liaison in relation to their respective functions. In particular, the AER and NEMMCO will liaise to avoid duplication of information requests to energy market stakeholders, especially routine or on-going information requests.
- 6.2 The AER and NEMMCO will consult with each other on the performance of their responsibilities and on issues relevant to the further development of energy markets.
- 6.3 The AER and NEMMCO will meet at a senior officer level at least quarterly to discuss the implementation of this memorandum. Other contacts between staff of the parties will take place as required.

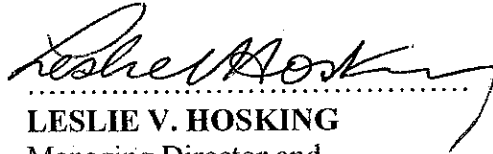
7. Management of the MOU

- 7.1 The AER and NEMMCO will each nominate a representative to act as a point of contact in relation to matters arising under this memorandum. These representatives will be responsible for general liaison under this memorandum and subsequent cooperation arrangements between the parties.

- 7.2 The AER and NEMMCO will review this memorandum within 18 months of its commencement and at further intervals of no more than 3 years.
- 7.3 This memorandum will be published by the AER and NEMMCO on their respective websites.



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STEVE EDWELL
Chairperson
Australian Energy Regulator



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LESLIE V. HOSKING
Managing Director and
Chief Executive Officer
National Electricity Market Management
Company Limited

Date: 22, 05, 06.
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Attachment 1

The following provisions of the National Electricity Rules require liaison between NEMMCO and the AER:

1. *Failure to conform to dispatch instructions*

- 1.1 Under clause 3.8.23(d) of the Rules, if a generating unit, scheduled network service or scheduled load continues to be non-conforming after a reasonable period of time, NEMMCO must prepare a report setting out the details of non-conformance and forward a copy of the report to the Scheduled Generator, Scheduled Network Service Provider or Market Customer (as the case may be) and the AER.

If NEMMCO prepares a report in addition to those prepared in accordance with clause 5.7.1 of its market reporting operating procedure SO_OP4000 or 3.13.4 (r) of the Rules, NEMMCO will forward a copy of the report to the AER at the same time that it forwards a copy to the Scheduled Generator, Scheduled Network Service Provider or Market Customer (as the case may be).

2. *NMI Standing Data*

- 2.1 Under clause 3.13.12 of the Rules, NEMMCO must, in prescribed circumstances, notify the AER of: (a) failure by a Registered Participant to provide NMI Standing Data under clause 3.13.12(f); and (b) failure by a Market Customer to use NMI Standing Data in accordance with clause 3.13.12(g).

NEMMCO will notify the AER of the matters referred to in (a) and (b) as soon as it becomes aware of those matters. The form and contents of the notification will be as agreed by the AER and NEMMCO.

3. *Application of Administered Price Cap*

- 3.1 Clause 3.14.2(c) provides that a trading interval is to be an administered price period if, in a region, among other things, the previous trading interval was an administered price period and, in NEMMCO's opinion, one or more trading intervals in the next business day will be an administered price period and NEMMCO deems, with the consent of the AER, the trading interval to be an administered price period.

NEMMCO will follow the agreed procedure developed in conjunction with the AER, when it deems a trading interval to be an administered price period.

4. *Settlement default procedure*

- 4.1 Under clause 3.15.21(d) of the Rules, NEMMCO must, at the time of issue of a suspension notice under clause 3.15.21(c), or as immediately thereafter as is practicable, forward a copy of the suspension notice to the AER.

NEMMCO will advise the AER that a suspension notice is to be issued at the time

of issue of a suspension notice, and will in any case provide a copy of the suspension notice to the AER no later than the close of business on the business day following the issue of the notice.

5. *Settlement default procedure*

- 5.1 Under clause 3.15.21(j), unless provided with instructions from the relevant participating jurisdiction (or participating jurisdictions) that a nominated third party is to assume financial responsibility for a suspended Market Participant's obligations under the Rules and that person does so, then, following the issue of a suspension notice, NEMMCO must request the AER to seek, and the AER must then seek, an order from a court to physically disconnect market loads for which the defaulting Market Participant is financially responsible.

NEMMCO will make its request to the AER as soon as it becomes aware that no instructions from the relevant jurisdiction (or jurisdictions) have been, or are to be, provided. The AER will seek a court order as soon as practicable after it receives the request from NEMMCO.

6. *Acceptance of software*

- 6.1 Under clause 3.17.1, NEMMCO must not alter, reconfigure, reprogram or otherwise modify or enhance any computer software required under the Chapter 3 for the operation of the market unless such changes have been duly authorised by the AER.

Where software changes are made in accordance with the change management process set out in the letter of authorisation published by the AER, NEMMCO is not required to make a separate application for authorisation to the AER.

7. *Reports*

- 7.1 Under clause 3.18.2(h)(4) of the Rules, NEMMCO must not disclose a report delivered to it pursuant to clause 3.18.2(h)(1) to any person except the AER upon written request to do so.

Upon receipt of a written request from the AER, NEMMCO will provide the report to the AER within 2 business days.

- 7.2 Under clause 3.18.2(h)(5) of the Rules, a Snowy Restricted Bidder may at any time request NEMMCO to prepare a report to be delivered to the AER which, amongst other things: (i) must set out NEMMCO's opinion on the effectiveness of the provisions of clause 3.18.2(h); and (ii) may recommend re-drafting of clause 3.18.2(h), including removal, if appropriate.

NEMMCO will deliver the report to the AER within 21 days of receiving the request from the Snowy Restricted Bidder.

8. *System security directions*

- 8.1 Under clause 4.8.9A(d) of the Rules, NEMMCO must notify the AER in writing of any failure of which it becomes aware by a Registered Participant to comply with a direction issued under clause 4.8.9A(a).

As soon as reasonably practicable after NEMMCO becomes aware of such failure to comply by a Registered Participant, NEMMCO will notify the AER in a form to be agreed upon between the parties.

9. *Review of operating incidents*

- 9.1 Under clause 4.8.15(b) of the Rules, for all cases where NEMMCO has been responsible for the disconnection of a Registered Participant's facilities under the circumstances described in clause 5.9.5, a report of the review carried out in accordance with this clause 4.8.15 must be provided by NEMMCO to the Registered Participant, the AEMC and the AER advising of the circumstances requiring that action.

NEMMCO will provide the report to the AER within 2 business days of the report's completion.

10. *Performance Standard Compliance*

- 10.1 Under clause 4.15(k) of the Rules, if the plant of a Registered Participant remains in breach of a performance standard for a period greater than that determined in accordance with clause 4.15(i), NEMMCO must notify the AER of the breach.

As soon as NEMMCO becomes aware of such circumstances, NEMMCO will notify the AER in a form to be agreed upon between the parties.

11. *Involuntary disconnection*

- 11.1 Under clause 5.9.3(b) of the Rules, in all cases of disconnection by a Network Service Provider at NEMMCO's direction during an emergency in accordance with clause 5.9.5, NEMMCO must undertake a review under clause 4.8.15 and NEMMCO must then provide a report to the Registered Participant, the AEMC and the AER advising of the circumstances requiring such action.

NEMMCO will provide the report to the AER within 2 business days of the report's completion.

12. *Market Settlement and Transfer Solution Procedures*

- 12.1 Under clause 7.2.8(f) of the Rules, if a Registered Participant or Metering Provider remains in breach for a period of more than 5 business days after receipt of a notice from NEMMCO under clause 7.2.8(e), NEMMCO must, in the case of breach by a Registered Participant, advise the AER.

Upon the expiry of the 5 business days referred to in clause 7.2.8(f), NEMMCO will advise the AER in a form to be agreed upon between the parties.