



Confidentiality Deed for Independent Expert

National Electricity Rules clause 3.12.3

[insert name of Independent Expert]

Australian Energy Market Operator Ltd
Level 22, 530 Collins Street
Melbourne VIC 3000
TEL: 03 9609 8000
FAX: 03 9609 8080

In July 2003, following completion of the applicable consultation procedures, NEMMCO published a confidentiality deed for use by an independent expert appointed under clause 3.12.11A of the then National Electricity Code.

In May 2012 AEMO republished that confidentiality deed under clause 3.12.3(e) of the National Electricity Rules (Rules), subject to minor amendments as required to reflect the establishment of AEMO and the current version of the Rules.

The form of confidentiality deed to be used for the purposes of clause 3.12.3 of the Rules is set out below.

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DEED POLL

Independent Expert: [insert name] ABN [insert]
[insert address] (“Recipient”)

Contact: [insert]

Referred Parties: [insert each Referred Affect Participant, Referred Market Participant and Referred Directed Participant]

Commencement Date: [insert]

Address for Service of Notices:

AEMO:
Attention: [insert]
Address: Level 22, 530 Collins Street, Melbourne VIC 3000
Facsimile: 03 9609 8080
Email: [insert]

cc:
Attention: Group Manager Legal
Address: Level 22, 530 Collins Street, Melbourne VIC 3000
Facsimile: 03 9609 8080
Email: [insert]

Independent Expert:
Attention: [insert]
Address: [insert]
Facsimile: [insert]
Email: [insert]

Governing Law: Victoria

Operative Provisions

Recitals

- A. In the course of the Independent Expert performing certain services, the Independent Expert may become aware of information belonging to or in the possession of the Referred Party that is confidential.
- B. Clause 3.12.3(c)(8) of the National Electricity Rules requires an independent expert to enter into and deliver a confidentiality deed for the benefit of each of the Referred Parties in the form developed by AEMO pursuant to clause 3.12.3(e) of the Rules.
- C. This Deed Poll is in the form developed by AEMO in accordance with clause 3.12.3(e) of the Rules.
- D. A matter may be referred to an Independent Expert under the Rules, for example pursuant to clauses 3.12.2(l), 3.12.2(m), 3.15.7A or 3.15.7B of the Rules.
- E. The Independent Expert agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Referred Party’s confidential information is kept confidential and has agreed to keep certain information confidential on the terms and conditions of this Deed.

1 Definitions and Interpretation

Interpretation

- 1.1 Reference to:
- (a) One gender includes other genders;
 - (b) The singular includes the plural and the plural includes the singular;
 - (c) A person includes a body corporate;
 - (d) A party includes the party's executors, administrators, successors and permitted assigns;
 - (e) "agent" includes financial advisers, solicitors and other advisers;
 - (f) a statute, regulation or provision of a statute or regulation ("Statutory Provision") includes:
 - (i) that Statutory Provision as amended or re-enacted from time to time;
 - (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision; and
 - (iii) another regulation or other statutory instrument made or issued under that Statutory Provision; and
 - (g) This Deed or any other instrument includes any amendment, variation or replacement of any of them.
- 1.2 "including" and similar expressions are not words of limitation.
- 1.3 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 1.4 Headings are for convenience only and do not form part of this Deed or affect its interpretation.
- 1.5 A provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Deed or the inclusion of the provision in the Deed.

Definitions

- 1.6 In the interpretation of this Deed unless the contrary intention appears or the context otherwise requires or admits the following expressions shall have the following meanings:
- "AEMO"** means Australian Energy Market Operator Limited ACN 072 010 327.
- "Confidential Information"** means information that:
- (a) is, by its nature, confidential;
 - (b) is designated by the Referred Party as confidential; or
 - (c) the Independent Expert knows or ought to know is confidential;
- and includes -
- (d) any financial information of the Referred Party and in particular includes information relating to the assets, liabilities, revenue or expenses (such as fuel, maintenance or labour costs) of the Referred Party;
 - (e) information relating to the internal management and structure of the Referred Party, including and not limited to information relating to the personnel, policies and strategies of the Referred Party;
 - (f) NEM data being information concerning the transactions of the Referred Party in connection with its participation in the National Electricity Market.
- but does not include information which:-
- (g) is or becomes public knowledge other than by breach of this Deed;
 - (h) is in the possession of the Independent Expert without restriction in relation to disclosure before the date of receipt from the Referred Party.

“National Electricity Market or NEM” means the market of that name established in Australia for the trading of electricity between participants in participating jurisdictions under the National Electricity Law.

“Referred Affected Participant” has the meaning given in the Rules.

“Referred Directed Participant” has the meaning given in the Rules.

“Referred Market Customer” has the meaning given in the Rules.

“Referred Parties” means each of the Referred Affected Participant, Referred Market Customer and Referred Directed Participant.

“Referred Party” means the relevant Referred Affected Participant, Referred Market Customer and Referred Directed Participant.

“Rules” means the National Electricity Rules made under the National Electricity Law.

2 Non-Disclosure

- 2.1 The Independent Expert will not directly or indirectly disclose to any person at any time the Confidential Information, without the prior written consent of the Referred Party.
- 2.2 The Referred Party may grant or withhold its consent in its absolute and unfettered discretion.
- 2.3 If the Referred Party grants its consent, it may impose conditions on that consent. In particular, but without limiting the generality of the preceding sentence, the Referred Party may require that the Independent Expert procure the execution of a deed on the same terms and conditions as this Deed by the person to whom the Independent Expert proposes to disclose the Confidential Information.
- 2.4 If the Referred Party grants consent subject to conditions, the Independent Expert must comply with those conditions prior to disclosure of the Confidential Information.
- 2.5 The obligations of the Independent Expert under this Deed shall not be taken to have been breached where:
 - (a) the Confidential Information is required to be disclosed by statute, rule, regulation, the Rules, judicial process, order of a court or dispute resolution panel established under the Rules or in connection with any litigation to which the Independent Expert is a party; or
 - (b) the Confidential Information is disclosed to employees, officers or agents of the Independent Expert who require the information in order for the Independent Expert to determine the relevant claim for compensation pursuant to the provisions of the Rules and matters ancillary to that purpose.

3 Restrictions on Use

- 3.1 The Independent Expert will use the Confidential Information only for the purpose of determining the claim for compensation pursuant to the provisions of the Rules and matters ancillary to that purpose.

The Independent Expert should not copy, reproduce, duplicate or permit or cause to be made any document based on any of the Confidential Information except to the extent reasonably required for the purpose of determining the claim for compensation pursuant to the provisions of the Rules and matters ancillary to that purpose.
- 3.2 The Independent Expert will not make improper use of the Confidential Information, to gain directly or indirectly, an advantage for itself or for any other person or to cause detriment to the Referred Party.
- 3.3 Notwithstanding clause 3.1 the Independent Expert may keep a copy of the Confidential Information for its record keeping and audit purposes.

4 Employees and Agents

The Independent Expert must:

- (a) Ensure that all its employees, officers and agents who receive or have access to Confidential Information are aware of and observe all of the Independent Expert's obligations and undertakings contained in this Deed;
- (b) Nominate an officer, agent or senior employee to receive on behalf of the Independent Expert any documents containing Confidential Information, being the person who will be in charge of the safe custody of the documents and other Confidential Information;
- (c) If requested in writing by the Referred Party, give notice to the Referred Party, before allowing any other employees, officers or agents to have access to the Confidential Information, of their identity;
- (d) From time to time, when requested in writing by the Referred Party, immediately supply the Referred Party with a list of the persons to whom the Confidential Information has been disclosed; and
- (e) Subject to clause 2.5, not disclose Confidential Information to any person including any person to whom the party may otherwise disclose it under this Deed, after the Referred Party has requested in writing that that person not have access to the Confidential Information.

5 Return of Confidential Information

Return of Confidential Information

- 5.1 Subject to clause 3.3, the Independent Expert must return all documents and other media that contain Confidential Information to the Referred Party and delete all Confidential Information electronically stored;
- (a) Immediately when requested by the Referred Party in writing to do so;
 - (b) If not earlier requested, on or before the date notified in writing by the Referred Party.

Employees to return documents and notes

- 5.2 Subject to clause 3.3, the Independent Expert must also at the same time as it returns Confidential Information referred to in clause 5.1 ensure that its officers, employees and agents return any Confidential Information held by them and delete all Confidential Information electronically stored.

Declaration

- 5.3 Subject to clauses 5.1 and 5.2 at the same time as returning documents and other media, if requested by the Referred Party in writing, the Independent Expert must deliver to the Referred Party a certificate by statutory declaration declared by an authorised representative of the Independent Expert that the items referred to in clauses 5.1 and 5.2 have been returned or deleted.

6 Notice in Case of Forced Disclosure

The Independent Expert to give notice

- 6.1 The Independent Expert must:
- (a) Notify the Referred Party immediately upon discovering any apparent unauthorised use or disclosure of any Confidential Information; and
 - (b) Take all reasonable steps to enforce the confidentiality obligations imposed or required to be imposed by this Deed including:
 - (i) if requested in writing by the Referred Party, make all reasonable efforts to assist the Referred Party to regain possession of the Confidential Information from, and prevent any further unauthorised disclosure or use by, the person to whom the Independent Expert had disclosed or allowed access to the Confidential Information.

Immediate notice to be given of anticipated requirement

- 6.2 If the Independent Expert is required, anticipates or has cause to anticipate that it may be required, by law or court order to disclose Confidential Information, the Independent Expert must immediately notify the Referred Party of the actual or anticipated requirement.

7 Preservation of Rights

- (a) The Referred Party reserves all rights in the Confidential Information and no rights or obligations other than those expressly contained in this Deed are granted or to be implied to be granted to the Independent Expert from this Deed.
- (b) The Independent Expert hereby acknowledges that the Confidential Information and all the intellectual property rights in the Confidential Information (including copyright, design and patent rights) are, subject to any intellectual property rights held by AEMO, the exclusive property of and will remain the exclusive property of the Referred Party.

8 Indemnity

Without limiting the rights of the Referred Party at law, the Independent Expert must indemnify the Referred Party in respect of all claims, losses, liabilities, costs or expenses of any kind incurred as a result of a breach by the Independent Expert of this Deed.

9 General

Waiver

- 9.1 A provision of or a right created under this Deed may not be waived or varied except in writing signed by the Referred Party. A waiver shall not prejudice the Referred Party's rights in respect of another or continuing breach of this Deed by the Independent Expert. Any failure by the Referred Party to enforce any clause of this Deed or any forbearance, delay or indulgence granted by the Referred Party will not be construed as a waiver of the rights under this Deed.

Remedies Cumulative

- 9.2 The rights, powers and remedies provided in this Deed are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Deed.

Injunction

- 9.3 The Independent Expert acknowledges that the Referred Party may obtain injunctive relief against the Independent Expert for any breach of this Deed.

Survival

- 9.4 This Deed will survive the termination or expiry of the contract providing for the performance of services by the Independent Expert.

Further Assurances

- 9.5 At the request of the Referred Party the Independent Expert must, at its own expense execute and cause its successors to execute documents and do everything else necessary or appropriate to bind the Independent Expert and its successors under this Deed.

Severance

- 9.6 If the whole or any part of a provision of this Deed is void, unenforceable, or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this Deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Deed or is contrary to public policy.

Assignment

- 9.7 The Independent Expert must not assign, transfer, novate or encumber its rights or obligations under this Deed (or any part of them) or declare itself a trustee in relation to this Deed (or any part of this Deed).

Governing law

- 9.8 Governing law, jurisdiction and service of process:
- (a) The Agreement is governed by the law in force in Victoria.
 - (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and courts of appeal from them. Each party waives any right it has to object to an action

being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

EXECUTED as a Deed

EXECUTED by in accordance with section)
127(1) of the Corporations Act 2001:)

.....
Director/Company Secretary

.....
Director

.....
Name of Director/Company Secretary
(Print Name)

.....
Name of Director (Print Name)