

ACCC Authorisation

Electricity System Works – Authorisation Protocol

On 30 November 2023, the ACCC granted authorisation for AEMO to work with industry Participants (see section 3) to engage in certain coordinated activities to ensure the safe, secure and reliable operation of Australia's electricity systems (excluding Western Australia) and minimise the risk of any outages, and to ensure the continued operation and integrity of the National Electricity Market (*NEM*). The authorisation is in force from 22 December 2023 until 22 June 2025.

AEMO requested authorisation given the unprecedented challenges Australia's energy system is facing, which are contributing to reduced energy availability and creating risks of electricity outages.

Participants should read this Authorisation Protocol carefully to ensure they understand what conduct the ACCC has authorised under the authorisation. **This authorisation differs in scope to previous authorisations including the interim authorisation in force immediately before this authorisation. In particular, the ACCC has imposed three new conditions listed in section 2 below.**

The authorisation covers the coordinated activities listed in section 1 below. Importantly, Participants may remain competitors and, except for the listed activities, the usual competition law rules apply.

AEMO is committed to compliance with the *Competition and Consumer Act 2010* (Cth). This Authorisation Protocol sets out important rules for AEMO and the Participants in relation to the authorisation.

1 What can AEMO and the Participants do together?

The ACCC has granted authorisation for AEMO and the Participants to engage in the following coordinated activities during the authorisation period (i.e. until 22 June 2025), provided the purpose of doing so is to ensure:

- the **safe, secure and reliable operation** of Australia's electricity systems and to **minimise the risk of any energy outages**; or
- the **continued operation and integrity** of the NEM,

and provided the activity is solely related to planning for and/or minimising any disruptions to electricity supply:

- (a) **Coordinating outages**: coordinating outages of generation, transmission and distribution assets for the purposes of repairs, maintenance, renewals, upgrades and new connections (**System Works**).
- (b) **Sharing information on essential personnel**: sharing information in relation to essential employees and contractors to ensure there are sufficient personnel to undertake System Works.
- (c) **Sharing information on essential resources**: sharing information about the availability of parts, equipment or specialised resources necessary for System Works.
- (d) **Sharing information regarding risks to ongoing operation**: sharing information about risks to the ongoing availability, performance and/or operation of Participants' electricity facilities solely in order to facilitate the scheduling of System Works.
- (e) **Managing system stability**: sharing information about electricity system stability from a technical perspective solely in order to facilitate the scheduling of System Works.

ACCC Authorisation Protocol – Electricity System Works

The authorised conduct is limited to discussions, conduct, contracts, arrangements and/or understandings which AEMO are either a party to or have facilitated.

Authorisation is not granted to discuss, enter into or give effect to any contracts, arrangements or understandings regarding specific Participants' wholesale prices, bids, costs or margins (other than in accordance with the National Electricity Rules).

If you are not sure if a proposed coordinated activity is permitted under this authorisation, speak to your legal advisor before acting. AEMO would also be happy to discuss this with you.

2 What other conditions apply?

(a) Where authorised conduct involves a meeting or discussions between Participants then:

- **AEMO must attend;**
- only Participants invited by AEMO may attend;
- **an external lawyer with expertise in competition law** engaged by AEMO and approved by the ACCC **must attend** to immediately advise the attendees if the lawyer develops concerns that there is conduct occurring that is outside the scope of the authorisation and risks breaching the *Competition and Consumer Act 2010* (Cth);
- **the ACCC will be provided with advance notice of the meeting, attendees, agenda and invited to attend;** and
- where there is a meeting relating to a specific state or territory jurisdiction(s), 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.

For example, for discussions relating to Victoria, a senior officer from the Department of Energy, Environment and Climate Action (or their delegate) will be provided with advance notice of the meeting, attendees, agenda and invited to attend.

(b) AEMO and Participants must not share any information or enter into any contracts, arrangements or understandings regarding specific Participants' wholesale prices, bids, costs or margins.

(c) Where the conduct will involve a contract, arrangement or understanding between competing Participants then authorisation is only granted to give effect to it **to the extent it has been recorded in a contemporaneous record made by AEMO (or its legal representative)** of:

- the parties to any contract, arrangement or understanding;
- the nature and scope of any conduct the parties will engage in; and
- the anticipated or agreed duration of any conduct.

AEMO (or its legal representative) will prepare contemporaneous records to satisfy this condition and will consult with relevant Participants to ensure they accurately describe the contract, arrangement or understanding.

(d) Where a contract, arrangement or understanding is entered into as part of the authorised conduct that AEMO considers is likely to, or has the potential to, impact the future scheduling of System Works and/or the forecasts or commitment of available capacity by a Participant, AEMO must provide the information contained in any such contemporaneous record (see above) to all Registered Participants as soon as reasonably practicable. This is a new condition.

ACCC Authorisation Protocol – Electricity System Works

- (e) AEMO must inform all Registered Participants of all information shared as part of the authorised conduct (see section 1) that AEMO considers is likely to impact the scheduling of System Works and which is not already made available to Registered Participants through existing processes in the National Electricity Rules. AEMO must provide this information as soon as is reasonably practicable. This is a new condition.
- (f) AEMO must comply with a reporting and communications protocol, including providing monthly reports to the ACCC about decisions or arrangements made at meetings (see section 6).
- (g) Any contract, arrangement or understanding entered into in reliance on the authorisation must provide for its immediate termination upon expiry or revocation of the authorisation, except where another interim authorisation or final authorisation relating to that conduct is granted.

3 Who is covered by the authorisation?

The authorisation covers Australian Energy Market Operator Limited and its related bodies corporate (**AEMO**) and electricity industry participants (**Participants**), defined in the authorisation as:

- participants in Australian electricity markets (other than in Western Australia), being parties with a registration or a registration exemption from the NEM, and their related bodies corporate (**AEMO Industry Participants**); and
- other entities that become participants registered in the NEM, parties with a registration exemption for the NEM, and their related bodies corporate, as notified in writing by AEMO to the ACCC (**Future AEMO Industry Participants**).

4 What confidential information can be shared between the Participants?

The only confidential information which should be shared among Participants under the authorisation is information to enable the Participants to:

- engage in any of the activities listed above in section 1, and
- which is for the purposes listed in section 1, and
- which is **solely related to planning for and/or minimising any disruptions to electricity supply**, during the period of the authorisation.

In addition to any information sharing, participants may only engage in conduct (such as agreeing to coordinate outages) where the conduct **is solely related to planning for and/or minimising any disruptions to electricity supply**. Participants must consider in each case whether the time horizon of information proposed to be shared makes it solely related to these purposes.

Example: if AEMO and the Participants agree to meet and discuss planned maintenance in order to plan for and/or minimise disruptions to electricity supply, it is acceptable for Participants to share information with one another during the meeting solely for that purpose across the time period required to address the risk. However, Participants should not otherwise share more planned maintenance information than required, nor should they share information about any other competitively sensitive matters not covered by the authorisation.

5 What about normal operating procedures under the National Electricity Rules?

The authorisation permits AEMO and the Participants to engage in limited coordination for specific purposes as outlined above. All normal regulatory obligations and operating procedures under the National Electricity Rules continue to apply.

Example: AEMO and the Participants may meet to discuss planned maintenance in order to plan for and/or minimise any disruptions to electricity supply. These discussions are in addition to (and do not replace) the

ACCC Authorisation Protocol – Electricity System Works

normal obligations of the Participants to provide information to AEMO under the National Electricity Rules, which continue to apply.

6 Reporting and Governance

It is a condition of the authorisation that AEMO report to the ACCC monthly (or such other timing as the ACCC may approve) about all conduct enabled by the authorisation. A copy of the Reporting Protocol is attached to the authorisation. Wei-Lynn Lum (weilynn.lum@aemo.com.au) is responsible for all communications with the ACCC in relation to the authorisation.

Tony Snell AM
General Counsel, AEMO
22 December 2023