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17 May 2024

Alex Biscu
Senior Policy Officer
Department of Climate Change, Energy, the Environment and Water
GPO Box 3090
CANBERRA ACT 2601

Dear Alex,

Re: Consultation paper - Amending the NEL to provide AEMO and industry Participants an authorisation to manage System Works

The Australian Energy Regulator (AER) welcomes the opportunity to respond to the Department of Climate Change, Energy, the Environment and Water's 'Consultation paper – Amending the NEL to provide AEMO and industry Participants an authorisation to manage System Works'.

The proposed amendment would provide the Australian Energy Market Operator (AEMO) and industry participants a competition law authorisation to manage system security and reliability risks associated with system works by coordinating and sharing information about system work. In its role as the wholesale electricity market regulator, the AER would regulate and enforce the amendment if enacted. We offer comments on the issues raised in the consultation paper from this administrative perspective.

Duration and extension options for the authorisation

Since 2020 the ACCC has granted four short-term authorisations to AEMO to engage in certain conduct to manage the scheduling of outages to ensure the continued safe, secure and reliable ongoing operation and integrity of the National Electricity Market (NEM). The AER recommends that the consideration of the duration and extension options for a longer-term authorisation have regard to the dynamic conditions and evolving regulatory framework for the NEM. In particular, improvements to the management of system security and reliability and the minimisation of cartel and coordinated conduct risks must be strongly considered when selecting a period for this longer-term authorisation, its end-date and a review process for its extension.

Conditions on the proposed authorisation

The conditions outlined in the consultation paper can be broadly categorised as conduct requirements (conditions 2 and 5), intended to limit and control 'allowed' anticompetitive conduct among industry participants, and administrative oversight requirements (conditions 1, 3, 4 and 6), intended to

minimise conduct creep and ensure transparency of AEMOs activities for the regulator and the market.

In considering the workability of the reforms the AER believes that it is not appropriate to include authorisation conditions in the NEL, NER or regulations. The AER recommends their inclusion in an AER guideline or similarly flexible instrument. This will allow for them to be more readily adapted to changing market conditions and risks.

The AER appreciates the opportunity to provide feedback and we look forward to continued engagement as the Department of Climate Change, Energy, the Environment and Water progresses this work.

Yours sincerely



Stephanie Jolly
Executive General Manager
Consumers, Policy and Markets

Sent by email on: 17.05.2024