

# **Consultation Paper on the Proposed Australian Energy Market Operator (AEMO)**

## **Submission from Australian consumer organisations and community groups to the Ministerial Council on Energy Standing Committee of Officials 26 October 2007**

We welcome the opportunity to comment on the Market Operator Working Group's (MOWG) Consultation Paper on Governance Arrangements for the Proposed Australian Energy Market Operator (AEMO) that has been developed for consideration by the Ministerial Council on Energy (MCE) and Standing Committee of Officials (SCO).

This submission presents the views of the Consumer Utilities Advocacy Centre, Consumer Action Law Centre, Centre for Credit and Consumer Law (Griffith University), Alternative Technology Association, Total Environment Centre, St Vincent de Paul Society Victoria, Victorian Council of Social Service, Western Australian Council of Social Service, Public Interest Advocacy Centre, Ethnic Communities' Council of NSW, Uniting Care Wesley Adelaide, ACT Council of Social Service and Australian Council of Social Service. Our organisations advocate on behalf of residential consumers, particularly low-income and disadvantaged consumers and represent the main consumer and community organisations with a long standing and active interest in the National Energy Market (NEM) reform.

Despite our active participation in a range of policy and regulatory processes, none of the signatories to this submission have been invited to be involved in the MOWG or been consulted about the AEMO arrangements. We believe this signals that small customers' interests have been regarded as less important to this process than the interests of other stakeholders, and are disappointed that the MOWG has been conducted in this manner. The SCO should ensure that MOWG has representation from all stakeholders, including representatives of residential customers, in the future.

The following comments are in regard to the proposed ownership and accountability mechanisms, AEMO's functions and the Board structure.

### **Ownership and accountability mechanisms**

For AEMO to function effectively its operations need to be aligned with government energy policy. Furthermore, AEMO's proposed functions will have a broad and significant impact on public interest issues relating to the supply of electricity and gas to businesses and households across the NEM. As such, we strongly oppose the proposed industry ownership structure models.

For AEMO to adequately operate in the public interest, it must be wholly owned by government. End users, including domestic consumers, are the likely funders as well as recipients of AEMO's services and government ownership is more likely to ensure that the entity has due regard to the interests of all end-users, and operates in accord with

MCE policy. If the MCE or SCO is considering an industry and/or a co-ownership structure, it should explore the possible impacts of a non-government ownership model in detail and convene a separate public consultation on the issue of AEMO ownership.

To complement a 100% government ownership model and enhance the organisation's transparency and accountability, we recommend that AEMO is structured as a public company limited by guarantee. In our view, an independent Board with a clear constitutional mandate will provide clarity of purpose and accountability as well as allowing AEMO to operate with some degree of flexibility – which may be required for AEMO to operate efficiently within a rapidly changing market context.

### **Functions**

The consultation paper states that:

“MOWG notes that the MCE has a capacity, under Division 4 of Schedule 1 of the *National Electricity (South Australia) Act 1996*, to direct the AEMC to undertake reviews of the national energy market. There may be value in a similar power in relation to AEMO given the expertise likely to reside within that organisation. The undertaking of reviews may also warrant cooperation between several market institutions”.<sup>1</sup>

While we accept the argument that AEMO is likely to have considerable internal expertise, we reiterate our concerns formulated above in regards to the ownership structure. If AEMO is legislated with the powers to undertake reviews on behalf of the MCE, it would be crucial that the entity is under 100% government ownership. If AEMO was owned or co-owned by industry we would strongly oppose it undertaking reviews on behalf of the MCE. While such an approach may contribute to a potential under-utilisation of expertise we strongly believe that the principle of public accountability would have to override pragmatism. This just goes to demonstrate the importance, and practicality, of 100% government ownership for entities such as AEMO.

With regard to additional functions, we reiterate our recommendation of a clear constitutional mandate to underpin AEMO's operations. We appreciate the arguments presented in favor of some flexibility in a rapidly changing market but would be unable to support “operational flexibility” if AEMO were to be owned, or partly owned, by industry. With the proviso that AEMO is 100% government owned, we support an arrangement similar to the existing NEMMCO arrangements, where the entity can be authorised to undertake additional functions (or cease additional functions) by the NEM Ministers.

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<sup>1</sup> Market Operator Working Group , Public Consultation Paper on Governance Arrangements for the Proposed Australian Energy Market Operator, October 2007, p 11.

In relation to the AEMO's scope of functions, we do not recommend that different procedures and processes be permitted for gas and electricity. The AEMC has been established as the rule-making body in the NEM, and as such it is required to consult publicly and within certain timelines about a rule change procedure. While we acknowledge that this may result in the implementation of a slightly longer process for rule change, that is more than balanced by increasing the transparency and accountability of the regulatory processes in seeking public consultation. As such, we do not see any reason to change the proposed approach.

### **Board structure**

As stated above, we recommend that AEMO is established as a public company limited by guarantee and thus incorporates a Board structure associated with such entities.

We support the creation of a Market Operations Panel but, in order to provide rigour to the Board's interaction with stakeholders, we urge that the Market Operations Panel be given similar power and functions as NEMMCO's Participatory Advisory Committee.

As AEMO's functions will directly impact on end-users, we strongly recommend that at least one director of the Board has, at all times, a demonstrated understanding of energy consumer issues, including issues relating to specific customer classes. To ensure that at least one director has a satisfactory level of understanding of consumer issues, we recommend that consumer organisations are invited to participate on selection panels, or be consulted in the selection process.