

Memorandum of Understanding

Between

Australian Energy Market Commission

And

Australian Energy Regulator

And

Australian Competition and Consumer Commission

Part A: Recitals

1 Purpose and principles

Purpose

The Ministerial Council on Energy (now the COAG Energy Council) reported to the Council of Australian Governments (COAG) in December 2003 on major reforms to Australian energy markets. These reforms were subsequently endorsed by COAG in June 2004 in the Australian Energy Market Agreement 2004 (AEMA), as amended.

A key element of the reform agenda was to improve and streamline the governance arrangements for Australian energy markets. Reforms included the establishment of two new bodies—the Australian Energy Market Commission (AEMC) and the Australian Energy Regulator (AER).

The National Electricity Law (commenced 1 July 2005), the National Gas Law (commenced 1 July 2008) and the National Energy Retail Law (commenced 1 July 2012), confer important governance functions on the AEMC and the AER with respect to Australia's energy markets.

The AEMA, the *AEMC Establishment Act* and the Second Reading Speech introducing the National Electricity Law into South Australian Parliament foreshadowed a Memorandum of Understanding (MoU) between the AEMC, the AER and the Australian Competition and Consumer Commission (ACCC) as the three agencies with responsibilities for Australian energy markets.

A MoU was signed in 2005 and updated in 2009. The revised MoU provided that the agencies would review the MoU within five years. This MoU updates and replaces the 2009 MoU.

This MoU sets out the arrangements agreed between the AEMC, the AER and the ACCC to promote effective cooperation, communication and co-ordination between the three agencies in the performance of their different, but complementary, roles in Australia's energy markets.

The MoU is a public document and communicates, in a transparent way to all energy market stakeholders, the administrative arrangements that operate between the agencies.

The MoU is a statement of principles to guide the relationships between the three agencies. The MoU is not legally binding on the agencies, however the agencies intend to use their best endeavours to abide by the objectives, principles and terms set out in this MoU.

Nothing in this MoU affects the exercise of functions or responsibilities of the AEMC, the AER or the ACCC.

This MoU applies to current and any further functions conferred on the AEMC, the AER and the ACCC unless an agency gives the other agencies notice in writing to the contrary.

Communication

The agencies recognise the importance of regular and open communication between them at both commissioner / board member and officer levels. This communication will enhance the effectiveness of the institutions, individually and collectively, in fulfilling their roles within Australia's energy markets.

Co-operation

The agencies will work together to achieve the effective regulation, oversight and development of energy markets in Australia, recognising that each agency has different roles and functions with respect to these markets.

The agencies recognise that overall outcomes for the energy markets and stakeholders, including the long term interests of consumers, will be improved if the agencies work co-operatively and maintain a close working relationship in dealing with energy market issues.

Reciprocity

Each of the agencies has specific statutory responsibilities. These roles will be performed more effectively where the agencies have agreed reciprocal commitments.

2 The agencies and their roles in energy markets

The AEMC

The AEMC is established under the *Australian Energy Market Commission Establishment Act 2004* of South Australia. It is responsible, under the national energy laws¹, for making rules relating to the National Electricity Market (NEM), access to natural gas pipeline services and broad elements of the natural gas markets and the sale and supply of energy to customers.

In addition to its rule making role, the AEMC conducts reviews and provides advice on energy market related matters for the Ministerial Council on Energy (through the COAG Energy Council). The AEMC also reviews the effectiveness of competition in retail electricity and gas markets in NEM jurisdictions.

The AER

The AER operates under Part IIIAA of the *Competition and Consumer Act 2010* (CCA). It has an independent board and shares staff, resources and facilities with the ACCC. Its responsibilities include:

- monitoring electricity and gas wholesale markets
- regulating electricity transmission and distribution networks, and access to natural gas transmission and distribution networks
- undertaking regulatory functions in energy retail markets

¹ National Electricity Law, National Gas Law and National Energy Retail Law

- compliance monitoring and enforcement of the national energy laws.

The ACCC

The ACCC is established under the CCA and is responsible for functions affecting the gas and electricity industry in Australia, including:

- enforcement of competition laws and authorisation of anti-competitive conduct
- enforcement of consumer protection and fair trading laws
- access regulation under Part IIIA of the CCA
- price monitoring under Part VIIA of the CCA.

Part B: Operational provisions

3 Keeping each other informed

Each agency recognises that in the course of performing and exercising its duties, functions and powers it may come into possession of information which could assist the other agencies to fulfil their responsibilities. Each agency will use reasonable endeavours to notify the relevant agency in a timely manner of the existence of such information, even if it has not received a request from that agency to do so.

4 Information sharing

The agencies have been empowered to share information to assist each other in the performance and exercise of their respective duties, functions and powers.

The agencies will use their best endeavours to provide, in a timely manner, relevant information that has been requested by the other agency, subject to any relevant legal or operational considerations.

5 Confidential information

The agencies each have statutory obligations and powers in relation to the use and disclosure of confidential information in the performance of their functions. The agencies recognise that the disclosure of confidential information could adversely affect both the operations of that agency and the interests of the original provider.

Where:

- the ACCC/AER requests information from the AEMC, or
- the AEMC requests information from the ACCC/AER

the agencies agree that:

- they will, subject to any confidentiality obligations to third parties and to any requirements of the law, share confidential information

- the agency providing confidential information will identify what is confidential in any information it provides to the requesting agency
- the requesting agency will treat information that is so identified as confidential
- where the requesting agency has a legal obligation to disclose confidential information provided, it will notify the agency that provided the information.

6 Consultation and cooperation

The agencies agree that there will be regular cooperation and liaison between them in relation to their respective functions, powers and duties.

Where appropriate, the agencies will consult with each other on the performance of their responsibilities (including formal decisions and public statements that may be of interest to or have an effect on the other agency) and on issues relevant to the further development of energy markets.

In particular, the AEMC will at an early stage in the rule making process, and prior to preparing a draft rule determination, consult on implementation issues with the AER/ACCC in relation to:

- compliance, enforcement and economic regulation issues
- access issues (pending certification of a national energy access regime)
- competition issues.

7 Regular meetings between agencies

Chairpersons of the AEMC and AER or a nominated commissioner / board member will meet at least every six months to assess the operation of the MoU and the ongoing relationships between the agencies as the bodies responsible for administration of the Australian energy market regulatory arrangements.

The AEMC and AER will also meet at an executive or senior officer level at least every three months to discuss the implementation of this MoU and the development and ongoing effectiveness of regulatory arrangements. An ACCC representative may also attend these meetings. Where an ACCC representative is not present, the AER representative will communicate all relevant matters discussed to the ACCC. Other contacts between staff of the agencies will take place as required.

8 Staff exchange

The agencies recognise that staff exchange arrangements can provide benefits to them by the sharing of expertise, training and staff development opportunities. The agencies will seek to identify appropriate opportunities to exchange staff.

9 Management of the MoU

Liaison officers

The AEMC and the ACCC/AER will nominate a liaison officer to serve as a point of contact in relation to matters arising under this MoU and to be responsible for general liaison under this MoU and subsequent cooperation arrangements between the agencies.

Disagreements

In the event of any disagreement between the agencies as to the implementation of this MoU or the performance of their respective functions, powers and duties, the chief executive officers of the agencies (or their delegates) will seek to resolve the matter in accordance with the principles of this MoU.

Review


The agencies will review this MoU within five years.

Publication

This MoU will be published by the agencies on their respective websites.

Dated: 23 JUNE 2014




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