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By online submission

Dear Senior Officials,

## **Consumer Data Right in the Energy Sector – National Electricity Law and Rules Amendments**

AEMO welcomes the opportunity to provide feedback on the draft National Electricity Law (NEL) and National Electricity Rules (NER) changes to facilitate the introduction of Consumer Data Right (CDR) for the energy sector, which were published on 16 September 2021 for consultation. The NEL and NER changes are a critical component to the CDR regime reform package and will operate alongside the Commonwealth CDR legislation.

### NEL Amendments

New obligations will be imposed on AEMO as a Data Holder under the CDR regime in Part IVD of the *Competition and Consumer Act C'th* (CCA) (new CDR functions). Amendments to the NEL are necessary to recognise these new CDR functions, for AEMO to rely on the NEL cost recovery and liability protection provisions. The Energy Senior Official's draft NEL amendments recognise the need for AEMO's statutory functions under section 49 of the NEL to be updated to incorporate the new CDR functions.

AEMO has proposed alternative drafting to clarify and make explicit the CDR functions AEMO must perform under the NEL. The alternative drafting for changes to section 49 would flow through to section 52 (AEMO fees and charges) and section 119 (1) with respect to liability protection without the need to amend section 52 or section 119. AEMO considers the effect of the alternative drafting is that it would remove any doubt as to AEMO's ability to recover establishment and ongoing operating costs and manage risks associated with performing its CDR functions. Attachment 1 sets out AEMO's alternative drafting of NEL amendments and the key considerations in determining required NEL amendments.

### NER Amendments

AEMO considers NER changes are necessary to implement cost recovery for AEMO carrying out functions as a Data Holder under the CDR provisions. AEMO recommends the participant fee arrangements set out in clause 2.11 of the NER be amended to prescribe CDR to be a NEM

declared project. This was foreshadowed in AEMO's electricity fee structure final report and determination published in March 2021<sup>1</sup>.

This ensures CDR is deemed to be a declared NEM project and AEMO will carry out a Rules consultation procedure on the matters set out in clause 2.11.1(bb) namely, the start date for recovery, the period over which recovery will occur and the structure of the participant fee to be used for the recovery of costs. Note, AEMO may commence consultation on these matters prior to finalisation of the NEL and NER amendment package to ensure there is sufficient time to complete the consultation process before the start of tranche 1 of CDR.

AEMO proposes amendments to recognise that fees for carrying out functions under CDR provisions may be a component of participant fees under clause 2.11.1(c). Similarly, projected revenue requirements for carrying out functions under CDR provisions need to be taken into account and identified for budget purposes as part of clause 2.11.3. In addition, AEMO proposes the of new CDR definitions in Chapter 10 (Glossary) of the NER.

The NEL and NER amendments need to operate in a cohesive way with other elements of the CDR regime reform package for the CDR to effectively deliver the expected benefits. As this is a major reform, the NER changes contemplated must be integrated into the existing Participant fee framework to achieve the policy intent.

Should you wish to discuss and/or clarify any of the matters raised in this submission please contact Kevin Ly, Group Manager Regulation on [kevin.ly@aemo.com.au](mailto:kevin.ly@aemo.com.au).

Yours sincerely,



Tony Chappel  
**Chief External Affairs Officer**

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<sup>1</sup> AEMO's Electricity Fee Structures, Final Report and Determination, March 2021, page 25

## Attachment 1

### National Electricity Law Amendments for AEMO as Data Holder under Consumer Data Right (CDR) regime—authorisation, cost recovery and liability

#### Issue

Amendments to the National Electricity Law (NEL) are needed to integrate and reflect AEMO's obligations as a Data Holder under the Consumer Data Right regime in Part IVD of the *Competition and Consumer Act C'th* (CCA) (new CDR functions) into the National Electricity Legislation (the NEL and the National Electricity Rules (NER)). For AEMO to rely on the NEL cost recovery and liability protection provisions, AEMO must take functions under the "Law and Rules". This requires:

1. Authorisation: the functions (services) are conferred under "the Law or the Rules" – section 49 NEL is one statement of some of AEMO's statutory and other functions.
2. Cost recovery – fees and charges are for 'services provided under the Law or Rules' (s52 NEL).
3. Risk management – protection from liability under the statutory immunity (s119 NEL) is tied to "performance or exercise, of a function or power of AEMO under this Law or the Rules"

#### Consumer Data Right (CDR)

The proposal in the CDR Rules from Treasury (September 2021) is for AEMO to be a Data Holder for CDR Data. The Data Holder role will impose both establishment costs and ongoing operating costs and risks to be managed in the future.

AEMO believes that if the NEL cost recovery and liability regime is to apply to AEMO performing CDR functions as Data Holder, the following amendments are needed to the NEL.

AEMO proposed amendments to the NEL for CDR:

1. Amend section 49 NEL

AEMO's CDR Role as a Data Holder must be included as part of the meaning of 'Laws or Rules' under the NEL. Noting that AEMO will not be exercising functions as a gateway due to the application of the CDR Rules, a suggested wording for s49(1) is set out.

Insert after section 49(1)(f)—

(f1) any functions in connection with acting as a ~~designated gateway~~ or data holder under the *Competition and Consumer Act 2010* of the Commonwealth for CDR data relating to the designated energy sector;

In addition, AEMO considers the following further change is necessary

Insert after section 49(3)—

49(4) The functions referred to in this section are taken to have been conferred under this Law.

The language “functions referred to in this section” tracks the existing wording in subsection 49(3) when the Act (the NEL) charges AEMO with complying with the NEO.

These changes to s49 drafting would then flow through to both s52 (AEMO fees and charges) and to s119(1) with respect to liability protection without the need to amend s52 or s119.

2. Section 52 NEL AEMO fees and charges

AEMO considers that with the proposed amendments to s49(1) and 49(4), s52 would encompass the functions in s49 with respect to fees without amendment to s52.

3. Section 119 (Immunity)No amendment to s119 NEL

Section 119(1) would encompass the functions in s49 with respect to liability protection without amendment to s52.

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## Attachment 2

### National Electricity Rule Amendments for AEMO as Data Holder under CDR regime – Marked-up Version in current Rules

## 2.11 Participant Fees

### 2.11.1A Application

For the purposes of rule 2.11 only, *Third Party B2B Participants* (other than *Third Party B2B Participants* who are also *Embedded Network Managers*) and *book build participants* who are not otherwise *Registered Participants* are deemed to be *Registered Participants*.

### 2.11.1 Development of Participant fee structure

- (a) *AEMO* must develop, review and publish, in consultation with *Registered Participants* and *interested parties* and such other persons as *AEMO* thinks appropriate, in accordance with the *Rules consultation procedures*, the structure (including the introduction and determination) of *Participant fees* for such periods as *AEMO* considers appropriate.
- (ab) In determining *Participant fees*, *AEMO* must have regard to the *national electricity objective*.
- (b) The structure of *Participant fees* must, to the extent practicable, be consistent with the following principles:
  - (1) the structure of *Participant fees* should be simple;
  - (2) *Participant fees* should recover the budgeted revenue requirements for *AEMO* determined under clause 2.11.3 on a basis where:
    - (i) the following principles are relevant to the recovery of recurrent expenditure:
      - (A) if *AEMO* recovers an excess of revenue over expenditure from the provision of a particular service in a financial year, it may roll over the excess to a later financial year (or later financial years) so as to reduce revenue requirements in the later financial year (or years);
      - (B) *AEMO* may recover a shortfall of revenue as against expenditure for the provision of a particular service in a later financial year or later financial years;
      - (C) *AEMO* may take any other action it considers desirable to smooth the impact of actual or anticipated cost variations on the users of a service provided by *AEMO*;

- (ii) capital expenditures (incurred after *market commencement*) are recovered through the depreciation or amortisation of the assets acquired by the capital expenditure in a manner that is consistent with generally accepted accounting principles;
  - (iii) costs of transition are recovered over a period of 4 years from the *changeover date*.
  - (iv) notwithstanding clauses 2.11.1(b)(2)(i), (ii) and (iii), expenditure incurred by, and depreciation and amortisation charged to, *AEMO* associated with a *declared NEM project* are recovered from the start date and over the period determined for that *declared NEM project* under clauses 2.11.1(bb) or 2.11.1(bd). Amounts associated with a *declared NEM project* determined in accordance with this clause are to be recovered through an additional *Participant fee* determined in accordance with clauses 2.11.1(bb) or 2.11.1(bd) until the next general determination of all *Participant fees* is made under clause 2.11.1(a);
- (3) the components of *Participant fees* charged to each *Registered Participant* should be reflective of the extent to which the budgeted revenue requirements for *AEMO* involve that *Registered Participant*;
  - (4) *Participant fees* should not unreasonably discriminate against a category or categories of *Registered Participants*; and
  - (5) the fixed component of *Participant fees* for a *Market Ancillary Services Provider* who is registered with *AEMO* solely for the purpose of providing *market ancillary services*, may be zero.
- (ba) *AEMO* may determine any of the following projects to be a *declared NEM project*:
    - (1) a major reform or development (including an anticipated reform or development) of the *market*; or
    - (2) a major change (including an anticipated change) to a function, responsibility, obligation or power of *AEMO* under the *Rules*; or
    - (3) a major change (including an anticipated change) to any of the computer software or systems that *AEMO* uses in the performance of any of its functions, responsibilities, obligations or powers under the *Rules*.
  - (bb) When *AEMO* determines a project to be a *declared NEM project* under clause 2.11.1(ba), it must also determine the start date for recovery and the period or periods over which recovery will occur for the *declared NEM project*. *AEMO* must also determine the structure of an additional *Participant fee* to be used in the recovery of costs associated with a *declared NEM project* until the next general determination of all *Participant fees* is made under clause 2.11.1(a).
  - (bc) In making determinations under clauses 2.11.1(ba) and (bb), *AEMO* must comply with the *Rules consultation procedures*.

(bd) The introduction and facilitation of full retail competition is taken to have been determined to be a *declared NEM project* under clause 2.11.1(ba) and AEMO will be entitled to recover through *Participant fees* expenditure incurred by, and depreciation and amortisation charged to, AEMO in respect of full retail competition. The period or periods over which recovery will occur for this *declared NEM project* will be determined by AEMO using the *Rules consultation procedures*. If any amounts associated with the introduction and facilitation of full retail competition are to be recovered prior to the next general determination of all *Participant fees* under clause 2.11.1(a), such recovery must be through an additional *Participant fee* determined using the *Rules consultation procedures*.

(be) The introduction and facilitation of the consumer data right, requiring AEMO to carry out CDR functions, is taken to have been determined to be a declared NEM project under clause 2.11.1(ba) (“a CDR declared NEM project”).

(bf) For a CDR declared NEM project, clause 2.11.1 (bb) applies and AEMO must comply with the Rules consultation procedures in making a determination under clause 2.11.1(bb).

- (c) The components of the *Participant fees* may include, but are not limited to:
- (1) registration fees, comprising an annual fee payable by each person for each *Registered Participant* category in which they are registered;
  - (2) *ancillary service fees*, to recover AEMO's budgeted revenue requirements in relation to its procurement of *non-market ancillary services*;
  - (3) *power system operations fees*, to recover AEMO's budgeted revenue requirements in relation to its *power system* operation activities described in clause 2.11.3(b)(2);
  - (4) metering fees to recover AEMO's budgeted revenue requirements for the collection, storage and processing of *metering data*;
  - (5) billing and *settlements fees*, to recover AEMO's budgeted revenue requirements as described in clause 2.11.3(b)(4); and
  - (5A) *NTP function fees* to recover AEMO's budgeted revenue requirement as described in clause 2.11.3(b)(4A), such fees to be allocated to *Co-ordinating Network Service Providers*, including AEMO in its capacity as a *Co-ordinating Network Service Provider* providing *shared transmission services*;
  - (5B) *additional advisory function fees* to recover AEMO's budgeted revenue requirement as described in clause 2.11.3(b)(4B);

(5C) fees for carrying out CDR functions to recover AEMO's budgeted revenue requirement as described in clause 2.11.3(b)(4C);

- (6) administration fees, to recover the remainder of *AEMO's* budgeted revenue requirements;

and each component of the *Participant fees* may take into account adjustments which may be appropriate in light of the matters described in clauses 2.11.3(b)(7) or (8).

- (d) In undertaking the process described in clause 2.11.1(a) *AEMO* must consider other fee structures in existence which it thinks appropriate for comparison purposes.
- (e) *AEMO* must publish to *Registered Participants* and to such other persons as *AEMO* thinks appropriate, the structure of *Participant fees* determined, the methods used in determining the structure and an assessment of the extent to which the structure complies with the principles set out in clause 2.11.1(b) at least 3 months prior to the implementation of the structure.

### **2.11.2 Payment of Participant fees**

- (a) *AEMO* may charge a *Registered Participant* the relevant components of *Participant fees* in accordance with the structure of *Participant fees* by giving the *Registered Participant* a statement setting out the amount payable by that *Registered Participant* and the date for payment.
- (b) In the case of a *Market Participant*, *AEMO* may, alternatively, include the relevant amount in the statements described in clause 3.15.15.
- (c) A *Registered Participant* must pay to *AEMO* the net amount stated to be payable by that *Registered Participant* in a statement issued under clause 2.11.2(a) or in accordance with clause 2.11.2(b) to meet *AEMO's* budgeted revenue requirements by the date specified for payment, whether or not the *Registered Participant* disputes the net amount payable.

#### **Note**

This paragraph is classified as a tier 2 civil penalty provision under the National Electricity (South Australia) Regulations. (See clause 6(1) and Schedule 1 of the National Electricity (South Australia) Regulations.)

### **2.11.3 Budgeted revenue requirements**

- (a) *AEMO* must prepare and *publish* before the beginning of each *financial year* a budget of the revenue requirements for *AEMO* for that *financial year*.
- (b) The budget prepared by *AEMO* under clause 2.11.3(a) must take into account and separately identify projected revenue requirements in respect of:
  - (1) *AEMO's* procurement of *non-market ancillary services*;
  - (2) *AEMO's* expenditures in relation to its *power system* operation activities, including meeting its obligations in terms of *power system security* and the facilitation and operation of the central bidding and dispatch processes in accordance with the *Rules*;

- (2A) *AEMO's* expenditures in relation to *inter-network tests*;
  - (3) *AEMO's* expenditures in the collection, storage and processing of *metering data*;
  - (4) *AEMO's* expenditures in the facilitation of the billing and *settlement* of *market transactions*;
  - (4A) *AEMO's* expenditures in carrying out *NTP functions*;
  - (4B) *AEMO's* expenditures in carrying out additional advisory functions;
  - (4C) *AEMO's* expenditures in carrying out *CDR functions*;
  - (5) *AEMO's* other expenditure requirements, operating costs and margin so far as they relate to the electricity industry;
  - (5A) the proportion of *AEMO's* residual expenditures allocated to the electricity industry under paragraph (c).
  - (6) *AEMO's* consumer advocacy funding obligation under rule 8.10;
  - (7) any revenue shortfall or excess from each of the requirements specified under clause 2.11.3(b)(1)-(5) from the previous *financial year*; and
  - 7A *AEMO's* expenditure in relation to *B2B costs*;
  - (7B) *AEMO's* expenditure in relation to a *voluntary book build* under Chapter 4A, Part H; and
  - (8) the funding requirements of the *Participant compensation fund* in accordance with rule 3.16 (which requirements must only be recovered from *Scheduled Generators*, *Semi-Scheduled Generators* and *Scheduled Network Service Providers*).
- (ba) For the purposes of clause 2.11.1(c)(5A), *AEMO* must:
- (1) allocate between *Co-ordinating Network Service Providers* *AEMO's* budgeted *NTP function* fees to recover the projected revenue requirement described in subparagraph (b)(4A); and
  - (2) by 15 February each year, advise each *Co-ordinating Network Service Provider* of its allocation of *NTP function* fees under subparagraph (1) for the next *financial year* to allow each *Co-ordinating Network Service Provider* to reflect its allocation in the prices for each *category of prescribed transmission services* it publishes for that *financial year* in accordance with clause 6A.24.2(c).
- (c) *AEMO* must allocate expenditures that cannot be specifically related to electricity activities or gas activities (**residual expenditures**) between the electricity and gas industries in a manner that:
- (1) ensures that the total amount of the residual expenditures is allocated appropriately between the electricity and the gas industries; and

- (2) ensures that each industry bears an allocation at least equal to the amount by which residual expenditures would be reduced if services were no longer provided to that industry; and
- (3) promotes the efficient use of electricity and gas services.
- (d) *AEMO's expenditures in carrying out declared network functions, and the NTP function fees applicable to AEMO as a Co-ordinating Network Service Provider under clause 2.11.3(ba), are to be recovered through fees charged as a Transmission Network Service Provider and not through participant fees.*

## 10. Glossary

*CDR provisions* has the same meaning as in the NEL.

*CDR functions* means a function or obligation under the CDR provisions.

## Attachment 2

National Electricity Rule Amendments for cost recovery for AEMO as Data Holder under CDR regime – Formal Amending Rule

### **National Electricity Amendment (Consumer Data Right) Rule 2021**

#### **1 Title of Rule**

This Rule is the *National Electricity Amendment (Consumer Data Right) Rule 2021*.

#### **2 Commencement**

This Rule commences operation immediately after the commencement of the National Electricity Law Amendments (Consumer Data Right) Act 2021.

#### **3 Amendment to the National Electricity Rules**

The National Electricity Rules are amended as set out in Schedule 1.

## Schedule 1      Amendment to the National Electricity Rules

(Clause 3)

### [1] Clause 2.11.1      Development of Participant fee structure

After clause 2.11.1(bd), insert:

- (be) The introduction and facilitation of the consumer data right, requiring *AEMO* to carry out *CDR functions*, is taken to have been determined to be a *declared NEM project* under clause 2.11.1(ba) (“a CDR declared NEM project”).
  
- (bf) For a CDR declared NEM project, clause 2.11.1 (bb) applies and *AEMO* must comply with the *Rules consultation procedures* in making a determination under clause 2.11.1(bb).

### [2] Clause 2.11.1      Development of Participant fee structure

After clause 2.11.1(c)(5B), insert:

- (5C) fees for carrying out *CDR functions* to recover *AEMO's* budgeted revenue requirement as described in clause 2.11.3(b)(4C);

### [3] Clause 2.11.3      Budgeted revenue requirements

After clause 2.11.3(b)(4B), insert:

- (4C) *AEMO's* expenditures in carrying out *CDR functions*;

### [4] Chapter 10      Glossary

Insert a new definition in Chapter 10 in alphabetical order:

*CDR provisions* has the same meaning as in the NEL.

*CDR functions* means a function or obligation under the CDR provisions.

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