

## **APIA submission on governance arrangements for the proposed Australian Market Energy Operator**

25 October 2007

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The Australian Pipeline Industry Association (APIA) welcomes the opportunity to make a submission to the Ministerial Council on Energy (MCE) in regard to the issues surrounding the development of a model for the establishment of the Australian Energy Market Operator (AEMO).

The primary focus of this submission is APIA's position on the establishment and ownership of AEMO.

### **Structure and Ownership of AEMO**

The Market Operator Working Group (MOWG) consultation paper considered two options for the structure of AEMO. APIA strongly supports the establishment of AEMO as a company limited by guarantee. This reflects the structure of the majority of organisations that the AEMO is intended to replace, such as REMCo in WA and SA, Gas Market Company (GMC) in NSW and ACT and NEMMCO.

The only structure that is sufficiently flexible to accommodate a large number of different parties and still have a robust governance framework is a *Corporations Act* company. This structure can be configured to ensure the optimum representation for different classes of owners, unlike a statutory authority which effectively limits ownership to one government only.

An open, transparent and effective governance regime can best be achieved for AEMO by establishing robust accountability measures.

APIA considers that industry ownership of AEMO is the most appropriate model, where industry comprises producers, generators, gas and electricity transmission, gas and electricity distribution, retailers and registered users (or large wholesale purchasers, in the case of gas). Users that buy from retailers should not be considered part of the industry as AEMO's dispatch instructions do not impact on them, and in any event, retailers serve as their proxy.

Industry ownership would hold AEMO more directly accountable to those who will use and pay for its services.

Industry membership as shareholders of AEMO (as a company) is an effective accountability measure with regard to the scrutiny of fees, decision-making and operational efficiency of the operator. Government oversight through shareholding is not necessary and is inappropriate.

APIA agrees with the MOWG view that the governance arrangements must be further supported by the legal framework. The Laws and Rules will provide the operating framework for AEMO and ensure its functions are undertaken consistent with the economic efficiency objective of the Laws. Under these circumstances, the AEMO is not able to discriminate in favour of one set of market participants.

The gas market operators GMC and REMCo are both owned by retailers and network operators in the relevant jurisdictions. By expanding this to include all sectors of the energy chain (eg producers, transmission etc) the GMC model is a useful template for the implementation of an industry-owned market operator.

A government-owned model raises concerns as the government typically has the sole right to make board appointments, and directors owe their duties to the government (as shareholder), while governments can hold assets in competition with the private sector.

An industry-owned model provides a greater separation of energy market operation and policy which is consistent with the objectives for national energy markets governance arrangements established by CoAG.

### **Decision-making process**

Given the Working Group, on behalf of the Ministerial Council on Energy, has recommended that there should not be a mechanism for merits review of AEMO decisions, it is particularly important that the corporate governance structure, including the decision-making process, ensures that decisions of AEMO are fair and appropriate.

This reinforces the argument for an industry-owned body, with membership and directors who reflect the various participants in the industry. Also, we would encourage the inclusion of gas transmission (pipeline) expertise within the body to ensure input that has an understanding of the particular characteristics of the gas transmission industry.

However, while it may not be feasible or necessary for all AEMO's day-to-day decisions to be subject to merits review, there may be a need in the future to revisit this issue once final decisions have been made about the scope of the decisions to be made by AEMO. For example, if AEMO evolves to have power to make decisions that have

material impact on the contractual, property or economic rights of participants, then it would be appropriate that some form of review be introduced.

## **Funding**

APIA notes that the funding arrangements for AEMO are expected to broadly reflect the current arrangements in relation to each of the bodies whose functions it will assume. In relation to gas markets APIA agrees that funding should be by those parties mostly likely to benefit from the market changes; these being the Major Users, Retailers and Generators. The assumed benefits from the proposed Bulletin Board and Short Term Trading Market would flow to those parties rather than to transmission or distribution businesses. APIA also believes it is inappropriate to charge pipeline owners for such services, as transportation agreements are often established for long periods of time. Given the nature of the transmission sector and existing contracts, recovery of funding imposts may be difficult to achieve and lead to financial disadvantage for the pipeline owners.

APIA suggests that funding arrangements should take into account the nature of the business conducted by an organisation. For example, the Victorian system currently charges Market Participants (eg Retailers etc) on a cost-recovery basis.

APIA agrees that the magnitude of the fees of the existing market operator organisations should provide a benchmark for the costs of operating a particular market in a particular jurisdiction.

APIA also supports the principle that the fee setting should be at the discretion of the Board, subject to guiding principles issued by the MCE, including through the Law and Rules. To discharge its responsibilities effectively, the Board needs to be able to set fees in accordance with its assessment of the needs of the organisation, taking into account an appropriate balance between cost minimisation and prudent risk management requirements.

Further, APIA supports the MOWG principles outlined below, to drive the framework for AEMO funding:

- funding should be on a cost-recovery basis;
- the fees charged to particular companies should be reflective of the service AEMO provides to each fee payer, and so should be ring fenced for each function to the extent required;
- there should be no cross subsidies across industries and activities;

- the fees should be competitively neutral between fee payers; and
- the fee structure should be simple, to the extent that is consistent with the other principles.

APIA would further suggest that work carried out by AEMO at the request of the Standing Committee of Officials (SCO) or MCE, outside of the normal scope of AEMO, should be funded on a cost-recovery basis by SCO or MCE respectively.