

6 July 2016

Mr John Pierce  
Chairman  
Australian Energy Market Commission

10 Eagle Street  
Brisbane QLD 4122  
T 07 3347 3100

By email

Dear Mr Pierce

**Submission to consultation paper – National Electricity Amendment (Market Participant Suspension Framework) Rule 2016**

AEMO welcomes the opportunity to provide a submission on the AEMC’s consultation paper on the above rule.

**Clarification of AEMO’s discretion**

AEMO supports the removal of any ambiguity concerning its discretion under the Rules to suspend one or more of a market participant’s registrations, or a subset of its trading activities under a particular registration category, and to impose conditions on any such decision. Removing the requirement for a market participant not to be under external administration eliminates the paradoxical outcome that a decision by AEMO not to suspend a market participant under external administration would put that participant in breach of the Rules. AEMO views this as a desirable outcome.

One additional clarification is requested by AEMO to remove any doubt that non-compliance with any conditions imposed on a non-suspension or limited suspension decision can result in AEMO reviewing that decision. We think the clearest way to do this is to add an additional default event in clause 3.15.21(a) – namely a failure to comply with a condition imposed under clause 3.15.21A(d).

**Role of the AER in the suspension decision**

AEMO acknowledges that the AER has an important role to play in the context of a market participant suspension decision through both the Retailer of Last Resort (RoLR) mechanism and its responsibility for monitoring and enforcing compliance with the Rules. In the case of a market participant under external administration AEMO understands that there may be an additional level of regulatory risk which requires management. AEMO believes that this risk can be effectively managed through the establishment of conditions on any decision not to suspend, and continued effective communication between AEMO and the AER. This is reinforced by the requirements to notify the AER of relevant AEMO decisions under clause 3.15.21A(c) and (d) of the proposed draft Rule.

The short timeframes in which a decision to suspend must be made are not conducive to the involvement of a second decision making body. In addition, AEMO is concerned that this would blur the well defined roles that the two organisations have in the NEM. AEMO considers that the existing arrangements in place with the AER through a written communication protocol are sufficient to ensure the AER is fully informed of any default event as it arises.

### **Factors for consideration in a suspension decision**

AEMO takes into account many factors during a suspension decision. Some information will be common to all suspension decisions, for example, the market participant's prudential status. Other information which AEMO takes into account will be unique to a given situation, for example, a written undertaking from an external administrator.

AEMO considers that having a definitive list of factors is likely to be counter-productive, because it may prevent AEMO from exercising its discretion in the most appropriate manner in any given circumstances. The proposed drafting is appropriate because it highlights the importance of the market participant's prudential risk to the NEM whilst allowing the flexibility to take any other relevant factors into account. The latter is important as each default scenario is unique with its own set of circumstances and nuances that requires consideration in determining the prudential and operational risk associated with the suspension, non suspension or partial suspension decision.

### **Conditions on any non suspension decision for a market participant under external administration**

AEMO considers it essential to provide the ability to impose conditions on a market participant that is under external administration and allowed to continue participating in the market, in order to effectively manage financial and operational risk. Examples of conditions that might be imposed include:

- the requirement for a market participant that has generation activities to provide evidence that performance standards and the required level of technical and skilled staff are being maintained
- provision of regular status updates on external administrators' efforts to restructure or refinance the business
- a written undertaking from the external administrator to meet all financial obligations of the market participant in the market
- a requirement that the participant cease or transition certain activities within a particular timeframe (for example the transfer of load associated with an inactive generation connection point to a retailer)
- no material adverse change in circumstances.

To effectively manage the risks associated with a non suspension decision AEMO requires the flexibility to determine the conditions applied on a case by case basis. These conditions act as an incentive on the market participant to meet their regulatory requirements.

As noted previously, failure to meet conditions imposed by AEMO in relation to a non suspension or partial suspension decision would lead to a review of this decision. We therefore consider that this should be an additional default event.

If you would like to discuss or have any questions regarding this submission, please do not hesitate to contact myself or Chin Chan, Group Manager Market Management on (03) 9609 8345.

Yours sincerely



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**Acting Executive General Manager, Markets**