



16 August 2022

Energy Security Board

By email: [info@esb.org.au](mailto:info@esb.org.au)

Dear Sir/Madam,

**RE: Data Strategy – Initial reforms Consultation paper.**

CitiPower, Powercor and United Energy welcome the opportunity to respond to the Energy Security Board's (ESB) Data Strategy – Initial reforms Consultation paper.

Australia is undertaking an unprecedented transition in the way electricity is supplied and used and data access together with digitalisation is providing unprecedented opportunities to transform the sector into a smarter, more flexible, and affordable system which is responsive to consumer needs.

We support the ESB's proposal to implement a set of targeted, initial reforms designed to remove regulatory barriers and enable various 'class A' and 'class B' bodies more effective access to existing data held by the Australian Energy Market Operator (AEMO). We agree this is a necessary step to facilitate greater data access needed to support policy makers, planners, and research in the energy market transition and the post-2025 market design.

Allowing AEMO to share information with these bodies will assist in reducing duplication of collection and in turn, administrative burden where multiple energy bodies may seek for us to provide the same data.

In this submission, we contend:

1. AEMO should be permitted to disclose protected information to 'class A' bodies
2. AEMO should be permitted to disclose protected information to 'class B' bodies
3. 'Class A' and 'class B' bodies must be liable for the use of protected information and AEMO must receive immunity where it discloses protected information
4. AEMO must be able to recover any costs incurred in responding to data requests
5. Amendment to 'class A' and 'class B' bodies by Ministerial Order is appropriate.

These matters are further discussed in the Appendix.

Should you have any queries please do not hesitate to contact Trent Gibson on 0418 166 169 or [tgibson@powercor.com.au](mailto:tgibson@powercor.com.au).

Yours sincerely,

Brent Cleeve  
Head of Regulatory Policy and Compliance  
**CitiPower, Powercor and United Energy**

## Appendix

### 1. AEMO should be permitted to disclose protected information to ‘class A’ bodies

We support AEMO being permitted to disclose information to ‘class A’ bodies, including derivative works or value-added works. The ‘class A’ bodies, identified on page nine of the consultation paper, represents an expansion of the bodies to which AEMO is already permitted to disclose information.<sup>1</sup>

There is a high level of confidence as to the security and protection of the data being disclosed to these bodies by AEMO. As the paper acknowledges, the proposed ‘class A’ bodies have prescribed statutory functions that are similar to AEMO. We therefore agree that in practice there will be limited need to impose conditions on these bodies when they receive protected information from AEMO as such bodies can be trusted with the protection of the underlying information due to their status as government instrumentalities.

Further, we support AEMO being entitled to impose conditions on the release of protected information should they so choose. As the release of protected information is at AEMO’s discretion, we see no reason why AEMO should be precluded on imposing conditions when disclosing protected information. We appreciate that where AEMO does impose a condition on ‘class A’ bodies, they will be required to contractually enforce this, which may prove difficult and costly in practice. If AEMO are required to enforce data disclosure conditions, we support AEMO being able to recover any costs associated with this.

### 2. AEMO should be permitted to disclose protected information to ‘class B’ bodies

We support AEMO disclosing information including derivative works or value-added works to ‘class B’ bodies. This includes Australian public universities and other higher education institutions, including research schools and researchers that are part of an Australian public university or other higher education institution.

To prevent excessive and unwarranted data requests we agree with the ESB that it is important to limit information disclosures to situations where the requesting body can demonstrate that it intends to use the information to conduct, or proposes to conduct, research related to energy.

As these bodies are not subject to the same regulatory oversight as the ‘class A’ bodies, we believe it is appropriate they fall into a separate category where additional safeguards on their use of and access to data can be imposed. Where ‘class B’ bodies receive protected information from AEMO we support any conditions on the use and disclosure of that protected information being written into law, with civil penalties being imposed for non-compliance.

Adopting this approach would provide greater transparency to potential recipients of protected information. We also agree with the ESB that having clearly identifiable conditions is preferable from an enforcement perspective.

We also support the publication of guidelines to assist bodies in understanding and complying with their obligations in respect of the protected information. We believe that another body with a greater level of understanding of protected information would be better placed to draft the guidelines than AEMO.

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<sup>1</sup> Being the bodies listed in s 54C(2) of the National Electricity Law (NEL)

### **3. 'Class A' and 'class B' bodies must be liable for the use of protected information and AEMO must receive immunity where it discloses protected information**

We agree that it is essential that industry is aware that 'class A' or 'class B' bodies are liable for their own, and any further, use or disclosure of protected information.

As discussed above, we strongly support conditions on the use of information being written into law, and we agree with the ESB that if 'class B' bodies breach those conditions, then liability for the misuse of the information should fall on them. Similarly, as 'class A' bodies will be subject to their own obligations to preserve confidentiality of information, they should be liable for any breaches of those conditions, not AEMO.

While liability ought to rest with 'class A' and 'class B' bodies, we also agree that it is equally important that AEMO is to receive immunity where it makes disclosure of protected information to those bodies. The consultation paper correctly asserts without immunity, AEMO will have little to no incentive to disclose protected information given the risk involved to it as an organisation and its members.

We similarly believe that immunity should extend to any entities that were responsible for collating and preparing data AEMO may subsequently to disclose. This will be important where 'class A' or 'class B' bodies rely on data they receive from AEMO to their detriment. If there is the ability to seek recourse against the entities responsible for preparing data, this will too will disincentivise those entities making data available.

### **4. AEMO must be able to recover any costs incurred in responding to data requests**

In providing protected information to 'class A' and 'class B' bodies, we strongly support AEMO being able to recover its costs incurred in the provision of that information from those bodies as a condition of disclosure.

However, we do not consider that it is appropriate that AEMO recover costs associated with standard data transfers through participant fees. Any costs associated with the disclosure of information should be borne by the party requesting the data.

### **5. Amendment to 'class A' and 'class B' bodies by Ministerial Order is appropriate**

We support amendments to 'class A bodies' and 'class B bodies' by Ministerial Order. We consider this will remove the need to adopt an expanded 'catch all' approach to 'class A' bodies. Instead, it would provide certainty surrounding which bodies to which AEMO may disclose information.

It would also future proof the 'class A' and 'class B' bodies list, by enabling an efficient means of adding bodies without having to amend the National Electricity Regulations.<sup>2</sup>

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<sup>2</sup> National Electricity (South Australia) Regulations (SA)