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Australian Energy Market Commission

**CONSULTATION PAPER**

**NATIONAL ELECTRICITY AMENDMENT  
(EARLY IMPLEMENTATION OF ISP  
PRIORITY PROJECTS) RULE 2019**

**PROPONENT**

Dr Kerry Schott AO

24 JANUARY 2019

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**RULE**

## INQUIRIES

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## ABOUT THE AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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# 1 INTRODUCTION

On 21 December 2018, Dr Kerry Schott AO (proponent) submitted a rule change request to the Australian Energy Market Commission (AEMC or Commission) to amend the National Electricity Rules (NER) to streamline three regulatory processes that are required to be undertaken by the Australian Energy Regulator (AER) after the completion of the regulatory investment test for transmission (RIT-T) for minor upgrades to the Queensland-New South Wales interconnector (QNI) and the Victoria-New South Wales interconnector (VNI).<sup>1</sup> These two projects were identified as being urgently required by the Australian Energy Market Operator (AEMO) in the 2018 integrated system plan (ISP).<sup>2</sup>

The rule change request proposes that, for the QNI and VNI minor upgrade projects, the following processes be conducted concurrently, rather than sequentially, as is currently required in the NER:

- the period for notification of disputes in relation to the RIT-T under clause 5.16.5 of the NER
- the AER's analysis of the preferred option for the investment identified in the RIT-T under clause 5.16.6 of the NER
- the application for, and assessment of, the revenue allowance for the QNI and VNI projects as contingent projects under rule 6A.8 of the NER.

This consultation paper has been prepared to facilitate public consultation on the rule change request and to seek stakeholder submissions.

This paper:

- provides a summary of, and background to, the rule change request
- identifies a number of questions and issues to facilitate consultation on this rule change request
- outlines the process for making submissions.

## 1.1 Background

### 1.1.1 ISP group 1 projects

AEMO published the inaugural ISP in July 2018. The ISP identifies transmission investments that AEMO states will be required in the National Electricity Market (NEM) over the next 20-30 years. The ISP grouped investments identified in the plan into three phases.<sup>3</sup> The group 1 investment projects are those that AEMO considers should be progressed as soon as possible because they provide immediate benefits. These projects are:<sup>4</sup>

- increase transfer capacity between Victoria, New South Wales and Queensland:

1 Dr Kerry Schott AO, Early implementation of ISP priority projects, rule change request, 21 December 2018. See: <https://www.aemc.gov.au/rule-changes/early-implementation-isp-priority-projects>

2 AEMO, *Integrated System Plan*, July 2018, p.81.

3 This is based on the timing within which the identified network need is forecast to arise, and the time that may be needed to build infrastructure to address the need.

4 AEMO, *Integrated System Plan*, July 2018, p.81.

- increase Victorian transfer capacity to New South Wales by 170 MW
- increase Queensland transfer capacity to New South Wales by 190 MW
- increase New South Wales transfer capacity to Queensland by 460 MW
- access renewable energy in western and north-western Victoria
- remedy system strength in South Australia.

The increase in transfer capacity from Victoria to New South Wales involves a minor upgrade to VNI, and the increase in transfer capacity between Queensland and New South Wales involves a minor upgrade to QNI. This rule change request relates to the regulatory processes for these two projects. The regulatory processes associated with these two projects have already commenced, with the RIT-T project specification consultation report for:

- VNI published in November 2018, which is being conducted as a joint RIT-T between AEMO and TransGrid
- QNI published in November 2018, which is being conducted as a joint RIT-T between TransGrid and Powerlink.

### 1.1.2 **Energy Security Board's December 2018 report to the COAG Energy Council**

At the COAG Energy Council meeting on 10 August 2018, the Energy Security Board was requested to report in December 2018 on:

- how the group 1 projects in the ISP could be delivered as soon as practicable
- how group 2 and 3 projects, should be progressed
- how the ISP would be converted into an actionable strategic plan<sup>5</sup>

This rule change request relates to how the group 1 projects in the ISP could be delivered as soon as practicable.

On 19 December 2018, the Energy Security Board provided a report to the COAG Energy Council outlining how the questions listed above should be addressed.<sup>6</sup> Responding to the report, the COAG Energy Council agreed to a recommendation made by the Energy Security Board that a rule change request be progressed to allow the AER to undertake post RIT-T regulatory processes concurrently for the QNI and VNI minor upgrades identified as group 1 projects in the ISP, reducing the time it would take to implement them.<sup>7</sup>

This rule change request also represents the commencement of stage one (implement reforms that are necessary to advance ISP group 1 projects) of the reforms to the transmission framework that the Commission recommended in the final report published as part of the *Coordination of generation and transmission investment review*.<sup>8</sup>

5 COAG Energy Council, Meeting Communique, 10 August 2018.

6 Energy Security Board, Integrated System Plan - Action Plan, 20 December 2018. See: <http://www.coagenergycouncil.gov.au/publications/integrated-system-plan-action-plan>

7 COAG Energy Council, Meeting Communique, 19 December 2018, p.2.

8 AEMC, *Coordination of generation and transmission investment*, final report, 21 December 2018, pp.iii-iv.

### 1.1.3 The RIT-T and subsequent regulatory processes

For investments in new or replacement transmission assets over \$6 million, transmission network service providers (TNSPs) are required under the NER to undertake a cost-benefit analysis (the RIT-T) of potential options. This cost-benefit analysis is conducted to determine the most appropriate solution for addressing a need (e.g. a forthcoming network constraint or limitation) on the transmission network, and whether addressing the need provides a net positive benefit to consumers. The transmission business must consult with stakeholders when undertaking a RIT-T.

After a TNSP(s) has completed a RIT-T, the AER has to undertake several processes before the relevant network businesses is able to recover the cost of the investment:

#### **RIT-T dispute process**

A number of parties, including registered participants, the AEMC, AEMO and connection applicants, are able to raise a dispute in regard to defined components of the conclusions set out in the final report published at the conclusion of a regulatory investment test process.<sup>9</sup> Notice of the dispute has to be provided within 30 days of publishing the final report for the RIT-T.<sup>10</sup> The AER has to make a determination either rejecting the dispute or publishing a determination setting out whether the network business will be required to amend the conclusions report within 40 days of the receipt of the notice.<sup>11</sup> The AER may only require amendment where it finds that the RIT-T proponent has:

- not correctly applied the RIT-T in accordance with the NER
- erroneously classified the preferred option as being for reliability corrective action
- not correctly assessed whether the preferred option will have a material inter-network impact
- made a manifest error in calculations.

#### **A 5.16.6 determination**

After the expiry of the period that parties have to dispute the RIT-T, and where a preferred option identified through the RIT-T is not for reliability corrective action, the RIT-T proponent may request, in writing to the AER, that the AER make a determination as to whether the preferred option satisfies the regulatory investment test for transmission. If this occurs then the AER:

- must, within 120 business days of receipt of the request from the applicant, make a determination, and specify reasons for its determination
- must use the findings and recommendations in the project assessment conclusions report in making its determination
- may request further information from the RIT-T proponent
- may have regard to any other matter the AER considers relevant.

<sup>9</sup> The defined components that can be disputed are set out in NER clause 5.16.5(a).

<sup>10</sup> For a summary of the RIT-T process, see section 5.3.2 of the options paper for the 2018 CoGaTI review, which can be found here: <https://www.aemc.gov.au/sites/default/files/2018-09/Options%20paper.pdf>

<sup>11</sup> However, the time frame for the AER to consider a dispute can be extended by an additional period of up to 60 days.

Therefore, these determinations typically take around six months to complete.

### **Revenue approval**

The economic regulatory regime allows for limited circumstances in which network revenue can be adjusted during the five-year revenue determination process. One way in which this can happen is through the contingent projects mechanism. This is applied to large discrete projects that are uncertain in terms of their need or timing at the start of the regulatory period. If they are considered necessary during the regulatory period (on the basis of a pre-determined trigger, which is specified in the TNSP's determination), the AER must then make a decision as to whether the trigger events for the contingent project have occurred. The AER must also determine the amount of capital and operating expenditure reasonably required to undertake the project and the impact of allowing such expenditure as revenue. Most of the projects identified in the ISP have been identified in TNSP's revenue determinations as contingent projects. One way in which the time associated with this would be sped up is for businesses to involve the AER through the process of undertaking the RIT-T.

For the contingent project trigger event to be satisfied for most contingent projects that the AER has approved in recent revenue determinations, the AER will need to be satisfied that the RIT-T has been successfully completed before a TNSP submits a contingent project application. The AER determines this through undertaking a 5.16.6 determination.

The rule change request does not seek to change any of these existing processes, but rather seeks to allow the AER to undertake these processes concurrently.

## **1.2 Issue raised in the rule change request**

The rule change request states that the Energy Security Board considers it important that the QNI and VNI minor upgrades identified as group 1 projects in the ISP are able to be commissioned well before the likely retirement of the Liddell generator in NSW in 2022. RIT-T processes for the QNI and VNI upgrades commenced in November 2018,<sup>12</sup> however following the processes and time lines currently outlined in the NER would result in this deadline not being met for either project. The rule change request notes that the Energy Security Board considers that the QNI project needs to be accelerated by at least 18 to 24 months, and the VNI upgrade needs to be sped up by approximately one year.

There are three regulatory processes in the NER that need to be undertaken by the AER after a TNSP(s) has completed a RIT-T:

- resolution of any disputes lodged in relation to the application of the RIT-T conducted by a TNSP under clause 5.16.5
- at the request of the RIT-T proponent, make a determination that a preferred option identified through a RIT-T process conducted by the TNSP(s) satisfies the regulatory investment test under clause 5.16.6

<sup>12</sup> For QNI, see: <https://www.transgrid.com.au/what-we-do/projects/regulatory-investment-tests/Documents/QNI%20PSCR%20November%202018.pdf>. For VNI, see: [https://www.aemo.com.au/-/media/Files/Electricity/NEM/Planning\\_and\\_Forecasting/Victorian\\_Transmission/2018/Victoria-to-New-South-Wales-Interconnector-Upgrade-RIT-T-PSCR.pdf](https://www.aemo.com.au/-/media/Files/Electricity/NEM/Planning_and_Forecasting/Victorian_Transmission/2018/Victoria-to-New-South-Wales-Interconnector-Upgrade-RIT-T-PSCR.pdf)

- amend a TNSP's revenue determination for a contingent project when an application to do so is received under clause 6A.8.2.

Currently under clause 5.16.6(a), the AER cannot commence the assessment of whether a preferred option identified by a TNSP through a RIT-T satisfies the RIT-T until the 30 day RIT-T dispute notification period under clause 5.16.5 has passed. Further, under clause 6A.8.2, the AER must have made a preferred option determination under clause 5.16.6 before a TNSP can submit an application to the AER to amend its revenue determination for a contingent project (if the clause 5.16.6 determination is a trigger event, which it is for the two projects in question). Put simply, currently the end of the preceding process must be complete before the next process can commence.

Undertaking these processes sequentially influences the time lines for implementation of the QNI and VNI minor upgrade projects. The proponent considers that these implementation time lines are currently too long to have the projects commissioned well before the likely retirement of the Liddell generator in NSW in 2022, when reliability in the NEM may be of critical concern.<sup>13</sup>

#### QUESTION 1: ISSUES

- What are stakeholders' views on the issue raised by the proponent?
- Are there any other issues relevant to this rule change request that the AEMC should consider?

### 1.3 Proposed solution

The rule change request proposes that the NER be amended to reduce the time between the completion of the RIT-Ts for the QNI and VNI minor upgrades detailed in the ISP group 1 projects and the AER's approval of revenue associated with these projects, specifically by:

- Allowing the AER to commence its preferred option assessment under clause 5.16.6 while the dispute notification period of 30 days under clause 5.16.5 is still running. The AER will not be able to make a determination on a preferred option if a dispute is raised and has not been resolved.
- Permitting the relevant TNSP(s) to submit an application for a contingent project revenue adjustment for the QNI and VNI minor upgrade projects before the AER has made a preferred option determination under clause 5.16.6.<sup>14</sup> This is achieved by allowing the contingent project revenue application to be made despite the fact that one of the trigger events for the contingent project, the successful outcome of the preferred option analysis by the AER, will not have occurred. This will allow the AER to commence assessing the

<sup>13</sup> Dr Kerry Schott AO, Early implementation of ISP priority projects, rule change request, 21 December 2018, p.3.

<sup>14</sup> This is not relevant for the Victorian component of the works, since under the Victorian transmission planning framework, AEMO is not subject to the AER revenue determination process in order to recover funds from consumers.

revenue application but it will not be permitted to make its revenue decision before the preferred option determination is made.<sup>15</sup>

The rule change request does not propose removing any steps in the regulatory process for the QNI and VNI projects - just to allow the post RIT-T AER processes to be run concurrently, rather than sequentially. Furthermore, put simply, the rule change request does not allow the AER to complete a step before the preceding step has also been completed. It only allows a step to be commenced before a preceding step has been completed.

If made, and in the absence of a dispute notice being lodged, the proposed solution would have the effect of potentially reducing the time between the completion of the RIT-T and the AER's approval of revenue associated with the QNI and VNI minor upgrade projects by six to eight months.<sup>16</sup> The rule change proposal states that, provided the rule is made:

- For QNI, if early works, design and equipment orders are placed prior to the AER's approval of revenue, then it is possible to meet the required time-frame for QNI.
- For VNI, the project could meet its required time-frame if planning approval processes are conducted expeditiously as priorities.<sup>17</sup>

The rule change request includes a proposed rule.<sup>18</sup> The rule change request may be found on the AEMC website, [www.aemc.gov.au](http://www.aemc.gov.au).

#### QUESTION 2: PROPOSED SOLUTION

- Does the proposed rule address the issue stated by the proponent?
- Are there alternatives to the proposed rule that would more effectively address the issue stated by the proponent?
- Do stakeholders envisage any costs of implementing the proposed rule?

## 1.4

### Assessment framework

#### 1.4.1

##### Achieving the NEO

Under the NEL, the Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national electricity objective (NEO).<sup>19</sup> This is the decision-making framework that the Commission must apply.

The NEO is:<sup>20</sup>

<sup>15</sup> Dr Kerry Schott AO, Early implementation for ISP priority projects, rule change request, 21 December 2018, p.2.

<sup>16</sup> The rule change request states that this time saving will only be possible if the relevant TNSP is willing and able to involve the AER in the RIT-T as it is undertaken. Ibid.

<sup>17</sup> Ibid, p.3.

<sup>18</sup> Note that a typographical error has been identified in the proposed rule drafting on page 5 of the rule change request: It should read: 11.ZZZ[x].1 Definitions, ISP Priority projects means the following contingent projects specified in Transgrid's revenue determination for the regulatory control commencing 1 July 2018, being: [...]

<sup>19</sup> Section 88 of the NEL.

<sup>20</sup> Section 7 of the NEL.



to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to -

- (a) price, quality, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.

The AEMC considers that the relevant aspects of the NEO for this rule change request are the promotion of efficient investment in and use of electricity services with respect to the price, reliability and security of the supply of electricity, and reliability and security of the national electricity system. In determining whether the proposed rule is likely to promote the NEO, the Commission proposes to have regard to the following principles:

- **Making the two investments (i.e. minor QNI and VNI upgrades) at the right time:** A process which promotes making investment at the right time reduces the risk of price, reliability and/or security issues arising from investments that are too late.
- **Minimising inefficient increases in regulatory cost:** Increased regulatory costs are ultimately borne by consumers in the form of higher prices. The benefit of any increased regulatory activity needs to outweigh the costs in order for the change to be efficient.
- **Promoting certainty for the market about project status:** A process that minimises uncertainty in the market, or provides certainty earlier, promotes efficient outcomes designed to meet the reliability needs of the national electricity system.

The assessment framework will consider if the benefits of the proposed rule outweigh the costs. The benefits of allowing the three post RIT-T regulatory processes undertaken by the AER to be conducted concurrently for the QNI and VNI minor upgrades detailed in the ISP group 1 projects should outweigh the costs or risks of such a change.

### QUESTION 3: ASSESSMENT FRAMEWORK

- Is the assessment framework appropriate for considering the proposed rule change request?
- Are there other relevant considerations that should be included in the assessment framework?

From 1 July 2016, the NER, as amended from time to time, apply in the Northern Territory, subject to derogations set out in Regulations made under the Northern Territory legislation adopting the NEL. Under those Regulations, only certain parts of the NER have been adopted in the Northern Territory. As the proposed rule is intended to apply to the QNI and VNI ISP group 1 projects only (and those projects do not relate to the Northern Territory), the Commission does not consider that the proposed rule needs to be assessed against additional elements required by the Northern Territory legislation.<sup>21</sup>

<sup>21</sup> See the AEMC website for the NER that applies in the NT. *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015*.

## 2 PROCESS FOR THIS RULE CHANGE

### 2.1 Treatment as a non-controversial rule change

In the rule change request, the proponent proposed the rule change be treated as a request for a non-controversial rule in accordance with s. 96 of the NEL such that it could be processed on an expedited basis. This is on the basis that the rule change proposal only applies to the QNI and VNI minor upgrade projects detailed in the ISP group 1 projects, and it does not remove any steps in the regulatory process, but only allows the three post RIT-T regulatory processes undertaken by the AER to be run concurrently.<sup>22</sup>

The Commission considers that the rule change request is a request for a non-controversial rule (and, as such, should be processed on an expedited basis) because the rule change is unlikely to have a significant impact on the national electricity market.<sup>23</sup> This is because the proposed rule does not remove any steps in the regulatory process but just allows the post RIT-T regulatory steps, for the QNI and VNI minor upgrade projects only, to be run concurrently. While the rule change proposal seeks to allow a subsequent step to be commenced before the end of the previous step, the subsequent step cannot be completed until the previous step has been completed. Therefore, the rule change is not expected to result in any significant adverse impacts or costs on market participants. Any resourcing implications for the AER in implementing the rule change are not considered to be material.

Rule changes that are considered to be non-controversial may be processed under an expedited (faster) process under which there is only one round of consultation and the AEMC must publish its final rule determination within eight weeks of commencing the rule change process.<sup>24</sup>

The Commission has decided to use an expedited process to consider this rule change request provided that it does not receive any valid requests not to use the expedited process by 7 February 2019.<sup>25</sup> To be valid, an objection should set out the reasons why the rule change request will have a significant impact on the NEM.

### 2.2 Key dates

Given the tightly defined nature of the issue, and the background information provided in the rule change request, this consultation paper is brief. Nevertheless, submissions are invited in relation to the matters identified above, and any other relevant issue identified by stakeholders.

The key dates for stakeholders in this process are as follows:

- Commencement of this rule change process: 24 January 2019
- Objections to an expedited process to be received by: 7 February 2019

<sup>22</sup> Dr Kerry Schott AO, Early implementation of ISP priority projects, rule change request, 21 December 2018, p.2.

<sup>23</sup> See definition of non-controversial Rule in section 87 of the National Electricity Law.

<sup>24</sup> Section 96 of the NEL.

<sup>25</sup> The AEMC has published a notice under sections 95 and 96 of the NEL to commence and assess the rule change request as a non-controversial rule.

- Submissions to the proposal to be received by: 21 February 2019
- Final decision to be published under an expedited process by: 21 March 2019.

Note that in contrast to the standard rule making process, an expedited rule making process does not include a draft determination.

## 3 LODGING A SUBMISSION

The Commission invites requests not to make a rule under the expedited process and written submissions on this rule change proposal.

All enquiries on this project should be addressed to Elizabeth Bowron on (02) 8296 0619 or [elizabeth.bowron@aemc.gov.au](mailto:elizabeth.bowron@aemc.gov.au).

### 3.1 Lodging a request not to make a rule under an expedited process

Written requests not to make a rule under the expedited process in s. 96 of the NEL must include reasons for the request, and must be lodged with the Commission by 7 February 2019 online in accordance with the process specified below in section 3.3.

### 3.2 Lodging a submission to this rule change request

Written submissions on the rule change request must be lodged with the Commission by 21 February 2019 online in accordance with the process specified below.

Where practicable, submissions should be prepared in accordance with the Commission's guidelines for making written submissions on rule change requests.<sup>26</sup> The Commission publishes all submissions on its website, subject to a claim of confidentiality.

### 3.3 Lodging online

Submissions, or requests not to make a rule under the expedited process, must be lodged online via the Commission's website, [www.aemc.gov.au](http://www.aemc.gov.au), using the "lodge a submission" function and selecting the project reference code ERC0258.

The request or submission must be on letterhead (if submitted on behalf of an organisation), signed and dated.

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<sup>26</sup> This guideline is available on the Commission's website [www.aemc.gov.au](http://www.aemc.gov.au).

## ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
ISP	Integrated system plan
NEL	National Electricity Law
NEM	National electricity market
NEO	National electricity objective
NER	National electricity rules
QNI	Queensland-New South Wales interconnector
RIT-T	Regulatory investment test for transmission
VNI	Victoria - New South Wales interconnector