

Our Ref: AER212467
Your Ref:
Contact Officer: Scott Johnston
Contact Phone: 08 8213 3426
21 December 2021

Ms Anna Collyer
Chair
Australian Energy Market Commission
GPO Box 2603
SYDNEY, NSW, 2001

Dear Ms Collyer

Re: Rule change proposal – AER reporting under clause 3.13.7 of the National Electricity Rules

Please find attached a rule change request proposing amendments to clause 3.13.7 of the National Electricity Rules (the rules), which relate to AER reporting obligations on significant price variations and high price events in the National Electricity Market (NEM).

Currently, clause 3.13.7 of the rules places a number of wholesale market reporting requirements on the AER:

- Reporting quarterly on ‘significant price variations’.
- Reporting on any market condition the AEMC or ACCC asks the AER to report on, if the AER agrees.
- Reporting on energy 30-minute prices above \$5,000/MWh.
- Reporting on ancillary service 30-minute prices above \$5,000/MW.

While it is important that the rules require the AER to analyse and report on significant wholesale price outcomes in the NEM, the AER considers that the current requirements are overly prescriptive and no longer fit for purpose.

The AER's proposal is to replace the current rule with a principles-based reporting framework, supported by AER guidance. The intent is to replace the current clause 3.13.7 with a new, less prescriptive framework for reporting on significant price outcomes. This would provide flexibility on:

- The prices the AER will report on, to enable the AER to adjust to changing market conditions without a further rule change.
- The timing and format of reporting, to enable the AER to look at prices more holistically e.g. grouping prices in where there is an observed behavioural trend.
- The factors the AER must consider in the reports, to tailor reporting to the particulars of the price events.

Increasing flexibility in this way would ensure the AER's reporting provides more insightful analysis into market outcomes and behaviour, supporting the achievement of the National Electricity Objective.

The AER requests that the AEMC expedite this proposed rule change. The AER considers this proposed rule change is non-controversial, as it relates specifically to AER reporting requirements and it is unlikely to have a significant effect on the wholesale electricity market or the interconnected national electricity system.

Finally, I note the work done at a staff level between the AER and AEMC including meetings and guidance on the principles-based approach to drafting the amendments. I would like to thank the AEMC staff for their assistance in developing this rule change proposal.

For any further information please contact Scott Johnston on 08 8213 3426.

Yours sincerely



Justin Oliver
Board Member
Australian Energy Regulator

Sent by email on: 21.12.2021

Rule Change Proposal

Amendments to wholesale
electricity reporting
requirements

December 2021

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Inquiries about this publication should be addressed to:

Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601
Tel: 1300 585 165

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Amendment record

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1 Request to make a rule

1.1 Name and address of the person making the request

Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

1.2 Request to make an expedited rule

This is a request under section 92(1) of the National Electricity Law for the making of a Rule. The AER requests that this Rule be treated as a non-controversial rule under section 96(1)(b) of the National Electricity Law. We consider the rule change to be non-controversial as it merely makes incremental changes to the AER's wholesale electricity market reporting functions under the National Electricity Rules (rules). The rule change has minimal impacts on market participants and other stakeholders. Assuming an expedited rule change is accepted, we request that the new reporting requirements take effect from 1 July 2022.

This request to make a Rule is structured to address the information requirements set out in regulation 8(1) of the National Electricity (SA) Regulations.

2 Description of the proposed Rule

Currently, clause 3.13.7 of the rules places a number of wholesale market reporting requirements on the AER:

- Reporting quarterly on significant price variations as defined by a criterion.
- Reporting on any market outcome the AEMC or ACCC requests the AER to report on, if the AER agrees.
- Reporting on 30-minute prices above \$5,000/MWh, including -
 - the significant contributing factors
 - whether rebidding contributed
 - the marginal scheduled generating units and semi-scheduled generating units.
- Reporting on ancillary service 30-minute prices above \$5,000/MW.

While it is important that there is a rule requirement that the AER analyse and report on significant wholesale price outcomes in the NEM, the AER considers that the current rule requirements are overly prescriptive and no longer fit for purpose.¹

The AER's proposal is to replace the current rule with a principles-based reporting framework in the rules supported by AER guidance.

2.1 Proposed rule

The intent is to replace the current clause 3.13.7 of the rules with one that is less prescriptive than the current rule to provide flexibility on:

- What prices we will report on, to enable us to adjust to changing market conditions without a further rule change.
- The timing and format of reporting, to enable us to look at prices more holistically e.g. grouping prices in where there is an observed behavioural trend.
- The factors we must consider in the reports, to tailor reporting appropriately to the particulars of the price events.

Increasing flexibility in this way would ensure our reporting provides more insightful analysis into market outcomes and behaviour, supporting the achievement of the National Electricity Objective

¹ The specific concerns with each of the provisions are highlighted in the following section.

It may also help reduce the reporting burden of some events and allow us to better allocate resources, with a stronger focus on analysing key market outcomes and events.

Our proposed rule places high level reporting principles in the rules, with more detail on how the AER would undertake its reporting rule in accompanying guidance published by the AER. The proposed rule:

- Requires the AER to monitor and report on significant price outcomes that occur in each calendar quarter.
- Provides principles around what factors to consider in the reports, with further detail on content and timing, including whether we issue a standalone report for a significant event, to be provided in guidance.
- Requires the AER to publish guidance outlining the criteria and methodology used to decide what is a significant wholesale price outcome, and requirements for consulting on the development of the guidance.

Our proposed rule drafting is:

3.13.7 Reporting on significant wholesale price outcomes by the AER

- (a) The *AER* must monitor and report on significant price outcomes in the *wholesale electricity market* each calendar quarter.
- (b) In reporting on significant price outcomes under clause 3.13.7(a), the *AER* must:
 - i. consider the factors that contributed to the significant price outcomes which may include, but are not limited to, withdrawal of *generation* capacity, *network* availability and participant offer behaviour.
- (c) In reporting on significant price outcomes under clause 3.13.7(a), the *AER* may also consider:
 - i. broader and ongoing *market* trends that may be contributing to high price events;
 - ii. any events and behaviours that may be detrimental to effective competition and the efficient operation of the market; and
 - iii. any other matters that the *AER* considers relevant.
- (d) The *AER* may report on significant price outcomes in the wholesale electricity market at times other than as required under clause 3.13.7(a).

3.13.7A Preparation of AER guidance

- (a) The *AER* must *publish* guidance outlining, at a minimum:
 - i. the criteria and methodology it uses to decide what is a significant price outcome relevant to clause 3.13.7; and

- ii. the content and timeframes for reports prepared under clause 3.13.7(a) and (d).
- (b) The *AER* must consult with persons it considers appropriate in developing and *publishing* guidance as described in clause 3.13.7A(a).

We consider this approach delivers the original intent of the reporting requirements, by providing transparency of market outcomes during high price events, and is a better way of meeting that intent given changing market conditions.

At a high level this approach would involve the AER reporting at least quarterly on significant price outcomes. Significant price outcomes would include both the electricity and ancillary services prices. The flexibility provided by defining a significant price outcome in guidance would enable us to adapt to reporting on any new markets, e.g. if an inertia ancillary service market is established.

The AER envisages that generally it would report on all significant prices for the quarter in a quarterly report, but could report on an individual significant event in a standalone 'special report'. Timelines for producing these reports would be outlined in the guidance.

The reports would analyse and report on the key drivers of the significant price outcomes. These reports would consider similar factors to current reports, but with discretion to better tailor reporting to the key drivers of the price outcomes. This would enable us to consider how these significant price outcomes also fit within the broader context of our reporting on effective competition in the wholesale electricity market under Part 3, Division 1A of the National Electricity Law.

Detail on how the AER would undertake this reporting task would be contained in guidance. In developing the guidance we propose issuing a draft guidance and seeking comment from relevant stakeholders, before finalising the guidance. We envisage a similar process for considering material amendments to the guidance in future.

We consider that this approach would deliver the benefits of current AER reporting, but would provide a more flexible reporting framework that could adapt to changing market circumstances. Notably, this approach does not impact on the AER's other functions relating to compliance and enforcement in the rules.

For completeness, we have set out transitional provisions for reporting obligations which relate to market events which have occurred, but not yet published on under the existing rule, at the time of commencement of the rule change.

3 Nature and scope of the issue and an explanation of how the proposed Rule would address it

There are issues with each of the reporting requirements in the current clause 3.13.7 which would be addressed by the proposed rule.

3.1 Clause 3.13.7 (a) and (b)

Clause 3.13.7 (a) and (b) require the AER to report on significant price variations between forecast and actual prices, as defined by a criteria developed by the AER after consulting with the AEMC.

The current criteria are published on the AER website² and are set out in Figure 1.

Figure 1: Criteria for significant price variation used by the AER

Upper Trigger = Actual + 8	When actual price <= \$8/MWh
Lower Trigger = Actual - 8	
Upper Trigger = 1.23* Actual + 6.92	When \$8/MWh < actual price <=\$100/MWh
Lower Trigger = 0.769* Actual - 6.92	
Upper Trigger = 1.3* Actual	When \$100/MWh < actual price <= \$600/MWh
Lower Trigger = 0.699* Actual	
Upper Trigger = Actual + 200	When actual price > \$600/MWh
Lower Trigger = Actual - 200	

3.1.1 Issues with this clause

The following issues have been identified:

- We are not aware of anyone who uses the significant price variation reports we produce in accordance with this rule, including the AEMC which has stopped asking us for this data.
- The reporting triggers in the criteria are inflexible and arguably not relevant anymore. They were developed in relation to the 30 minute settlement framework, and have yet to be updated since the start of 5 minute settlement.
- To change the criteria, consultation with the AEMC is required. This was a requirement introduced when the AER was first established. The consultation requirement introduces inflexibility around adapting the criteria for relevant market outcomes.
- In practice, the criteria captures hundreds of price variations each week and most of these prices are not problematic.
- In order to practically review any prices which trigger the criteria and provide transparency to the market, we have adopted our own thresholds in the weekly

² https://www.aer.gov.au/system/files/Electricity%20rule%203_13_7_a%20criteria%20for%20forecast%20vs%20actual%20price%20variations.pdf

reports. We consider that these internal thresholds are more likely to identify problematic market outcomes and are more flexible to changes in the wholesale electricity market.

3.1.2 How the amendments address the issues

The proposed rule removes the requirement to produce significant price variation reports according to a criteria that is no longer useful. It achieves this by removing the requirement to develop criteria and report against only that criteria.

Removing the requirement to report against criteria is preferred against changing the criteria as there no longer appears to be a need or demand for the significant price variation reports. Further, changing the criteria does not address the issues around inflexibility of the criteria and any future changes would still require ongoing consultation with the AEMC for what may be minor adjustments in practice.

We intend to continue with reporting on prices according to our own thresholds. The thresholds would be consulted upon and then published on our website.

3.2 Clause 3.13.7 (c)

Clause 3.13.7 (c) provides that the ACCC or AEMC can request that the AER report on a particular market outcome and the AER may provide a report on this outcome.

3.2.1 Issues with this clause

This provision has never been used and given our broad reporting requirements under the National Electricity Law, we consider it is not needed. We note that the preparation of any report under clause 3.13.7(c) is at the AER's discretion in any case.

The reporting roles of the AER have changed significantly since this rule was made. In particular, the National Electricity Law requires the AER to review the performance of the wholesale electricity market, including analysing and identifying whether there is effective competition and whether there are market features that may be detrimental to effective competition or the efficient functioning of the market.

This is a broad provision which gives the AER the ability to report on a range of possible market outcomes. Not only does the AER produce biennial reports assessing the state of market competition and efficiency in the wholesale electricity market, but we have also reported into NSW wholesale market outcomes in 2017³

³ <https://www.aer.gov.au/wholesale-markets/performance-reporting/aer-electricity-wholesale-performance-monitoring-nsw-electricity-market-advice-december-2017>

and South Australian market outcomes in 2016.⁴ We have also produced a special report into the impact of Hazelwood's exit in Q1 2017.⁵

We are confident that these provisions give us the ability to sufficiently report on a wide variety of market outcomes and as such, we would not require direction from the ACCC or AEMC to undertake such reporting.

3.2.2 How the amendments address the issues

Our proposed rule would remove this unnecessary and unused provision from the rules.

3.3 Clause 3.13.7(d)

Clause 3.13.7(d) requires the AER to produce a report whenever 30-minute prices are greater than \$5,000/MWh. This requirement to report was introduced in 2001 as part of a suite of amendments to increase the price cap from \$5,000 to \$10,000/MWh. The reporting requirement was designed to address a concern that with the increase in the level of the price cap, generators would have an increased incentive to offer their plant strategically to the market and force prices up.

The rules require the AER to undertake a 'competition assessment' of all half hourly prices over \$5,000/MWh. The report must describe significant factors that contributed to the price exceeding \$5,000/MWh (including the withdrawal of generation capacity and network availability), assess whether rebidding contributed to the price exceeding \$5,000/MWh, and identify marginal generating units and all generating units with offers over \$5,000/MWh.

3.3.1 Issues with this clause

These reporting requirements lack flexibility and discretion, with the AER required to address each of the factors referred to above, even if they are not particularly applicable to the high price event. For example, on 22 January 2021, price reached \$5,031/MWh in South Australia for the 4 am trading interval. The driver of this price was the trip of the Pelican Point Power Station. However, the prescription in the rules required the AER to undertake a 'competition' assessment of this event, looking at rebids, who was setting price and had capacity offered at high prices, even though the high prices were caused by a technical issue.

The fixed \$5,000/MWh reporting threshold is also inflexible. The AER would be required to report on one half hour price of \$5,000/MWh in one region, but not report on an event where there were hours of \$4,900/MWh prices across multiple regions.

⁴ <https://www.aer.gov.au/wholesale-markets/performance-reporting/winter-energy-prices-2016>

⁵ <https://www.aer.gov.au/wholesale-markets/performance-reporting/aer-electricity-wholesale-performance-monitoring-hazelwood-advice-march-2018>

The inflexibility in this rule may also not keep pace with changes in the market. Reporting on a \$5,000/MWh 30-minute price may no longer be appropriate with the introduction of 5 minute settlement or if a capacity market is introduced.

In addition, it does not allow us to rationalise our high price reports with our wider reporting framework.

3.3.2 How the amendments address the issues

We propose using a principles-based approach where the AER would report on significant wholesale price outcomes on (at least) a quarterly basis, as defined in guidance. The guidance would also set out what kind of information would be contained within the report and the timeframes for reporting.

Our proposed rule would give the AER the flexibility to:

- have regard to the relevant key factors that contributed to the high price(s), rather than having to consider prescribed matters which may not be relevant
- adjust the threshold for reporting as appropriate in response to changing market conditions
- in addition to the quarterly report, and at the AER's discretion, report on an individual event (depending on severity) or group events into a consolidated report to allow for more targeted analysis.

3.4 Clause 3.13.7(e)

Clause 3.13.7(e) requires the AER to report on 30-minute market ancillary prices greater than \$5,000/MW, where prices for a market ancillary service exceed \$5,000/MW for a number of 30-minute periods. This report must describe the significant factors that contributed to the ancillary service prices exceeding \$5,000/MW, identify any linkages between spot prices in the electricity market and ancillary service prices, and assess whether rebidding contributed to ancillary service prices exceeding \$5,000/MW.

3.4.1 Issues with this clause

The issues with this clause are similar to those for clause 3.13.7(d).

In addition, the current rule has drafting ambiguities which need to be corrected. For example, it incorrectly references an ancillary service price of \$5,000/MWh when it should be \$5,000/MW.

3.4.2 How the amendments address the issues

We propose to align the ancillary services reporting requirements with the electricity reporting provisions. This would include setting out the threshold for significant price outcome, considerations and timeframes in guidance.

This approach would enable us to continue reporting on when there are linkages between prices in the electricity and ancillary services markets.

4 An explanation of how the proposed Rule will or is likely to contribute to the achievement of the national electricity objective

The National Electricity Objective (NEO) as stated in the National Electricity Law is:

“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:

- price, quality, safety and reliability and security of supply of electricity*
- the reliability, safety and security of the national electricity system.”*

The AER considers that the proposed rule change would contribute to meeting the objective by facilitating more insightful AER reporting into market events and outcomes.

The greater flexibility provided by the rule change will promote better quality and more relevant reporting by the AER. Greater flexibility in reporting will give the AER the ability to tailor our reports more to the circumstances surrounding the event and current market conditions.

Reporting of key drivers of market outcomes provides important information for policy makers, market participants and energy users. In particular, reporting provides transparency around whether price outcomes reflect underlying supply and demand conditions or reflect market inefficiencies or participant behaviour. In addition, while these reports do not themselves assess compliance, in the past AER analysis of these events has identified potential non-compliance with the rules by market participants.

The greater reporting flexibility provided by the rule change means that these benefits can be realised in a changing market environment. Notably, the introduction of 5 minute settlement may mean that a threshold of an average 30-minute price over \$5,000/MWh is no longer appropriate. The reporting flexibility provided by the rule change will give the AER the discretion to report on significant price outcomes, whether they reach this threshold or not.

We also note that the rule change removes errors that are currently in the rules (such as the incorrect references to ancillary services prices) and removes redundant provisions (such as the never-used ability for the ACCC or AEMC to request the AER to report on market outcomes). We consider that these changes promote efficiency and improve clarity on reporting responsibilities.

5 An explanation of the expected benefits and costs of the proposed change and the potential impacts of the change on those likely to be affected

The benefits of this proposal are outlined above. In summary, the rule change provides an enhanced reporting framework, which will provide transparency around the key drivers of market outcomes that will assist a broad range of stakeholders, including policy makers, market participants and energy users.

Any costs of this proposal are minimal.

The additional flexibility in how the AER reports on significant prices may mean that some events are not reported on to the extent they are presently. However, the rule change would still allow the AER to report in detail on key market events. In practice, the AER considers that it will report in detail on periods of sustained high prices, particularly where these are driven by market inefficiencies, but undertake a more streamlined assessment of an occasional price spike driven by tight prevailing market supply–demand conditions or a short-term technical issue.

A potential cost of the change is that reporting on some high priced events may not occur within the current 40 business days timeframe. However, the rule change proposal would still give the AER the flexibility to report on key market events within shorter timeframes (rather than just within the quarterly report) where it considers appropriate (for example, in a stand-alone ‘special’ report for individual or grouped events). In practice, the AER considers that it will report within these sorts of timeframes where there is a need to quickly inform the market of key market events or outcomes.

We don’t consider there to be any material consequences for the the AEMC and ACCC in that these bodies will no longer have a power to request for the AER to report on certain market outcomes. This is because the provision has never been exercised and in any case, the AER has a discretion as to whether it would prepare any such report. We consider the market reporting framework has evolved to the point where the provision is unnecessary.

6 Appendix – Transitional Rule

We also propose to include a transitional rule, which would apply to any high price events which occur before commencement of the rule change and for which a report had yet to be issued.

Definitions

In this rule [insert rule number]:

amending Rule means the [insert title of amending Rule];

effective date means the date of commencement of the amending Rule (being 1 July 2022)

new clause 3.13.7 means clause 3.13.7 of the *Rules* as in force on and from the effective date

old clause 3.13.7 means clause 3.13.7 of the *Rules* as in force immediately before the effective date.

new clause 3.13.7A means clause 3.13.7A of the *Rules* as in force on and from the effective date.

Publishing of Guidance and reporting obligations arising after the effective date

- (a) By the effective date, the *AER* must have published its guidance in accordance with new clause 3.13.7A.
- (b) The *AER* is not required to comply with old clause 3.13.7 in respect of any reporting obligation which has arisen under that clause, but which the *AER* has not yet published a report, as at the effective date.
- (c) The *AER* may, in its complete discretion, apply the new clause 3.13.7 with respect to any significant price outcome which occurred prior to the effective date.