



Australian Energy Market Commission

CONSULTATION PAPER

NATIONAL ELECTRICITY AMENDMENT (RECOVERING THE COST OF AEMO'S PARTICIPANT FEES) RULE

PROPONENT

Energy Networks Australia

28 APRIL 2022

RULE

INQUIRIES

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Reference: ERC0335

CITATION

AEMC, National Electricity Amendment (Recovering the cost of AEMO's participant fees) Rule, Consultation paper, 28 April 2022

ABOUT THE AEMC

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

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1 INTRODUCTION

On 24 June 2021, Energy Networks Australia (ENA) submitted a rule change request to the Australian Energy Market Commission (AEMC or Commission). The rule change request seeks to establish a new mechanism that allows Transmission Network Service Providers (TNSPs) to more directly pass on to their customers new participant fees that the Australian Energy Market Operator (AEMO) recently decided to allocate to TNSPs.

TNSP customers include transmission-connected end-users and Distribution Network Service Providers (DNSPs). DNSPs would pass the fees on to retailers, who would then likely pass them on to end-users.

ENA also requested that the AEMC consider the proposal as a request for a non-controversial rule under section 96 of the National Electricity Law (NEL).

To help us assess the rule change request, we are seeking feedback from stakeholders on the specific issues and solutions identified by ENA in relation to the recovery of AEMO's participant fees by TNSPs, and other related questions. Our proposed assessment framework is set out in the next chapter. Issues, potential solutions and related questions are set out in chapter 3; and the process for making submissions is set out in chapter 4.

1.1 Background

1.1.1 **AEMO's 2021-26 electricity fee structure allocates new participant fees to TNSPs between 1 July 2023 and 30 June 2026**

Under the National Electricity Rules (NER) AEMO must publish:

- an annual budget of its revenue requirements by the start of each financial year,¹ and
- a structure setting out how its budgeted revenue is to be recovered through participant fees.²

In March 2021, AEMO published a final determination of its electricity fee structure for the period from 1 July 2021 to 30 June 2026.³ Key points included that:

- AEMO will start to charge specific TNSPs⁴ a proportion of AEMO's core NEM fees⁵ for the first time, to reflect AEMO's increasing involvement in network related activities, such as power system security.⁶
- There is a transitional period of two years, so that TNSPs are not charged a proportion of core NEM fees until 1 July 2023, to provide time for a rule change related to TNSP recovery of these participant fees.

1 NER clause 2.11.3(a)

2 NER clause 2.11.1(a)

3 AEMO, Electricity fee structures - Final report and determination, March 2021

4 Excluding Murraylink and Directlink which have no direct involvement with AEMO's revenue requirements. Ibid, p 16.

5 17.5% of the directly allocated cost component of AEMO's core NEM fees are allocated to TNSPs. Ibid, p. 6.

6 Ibid, p. 16.

In response to this decision, ENA proposed this rule change, as explained in section 1.1.2 below.

1.1.2 The rule change request proposes a new mechanism for TNSPs to recover AEMO's participant fees

ENA's rule change request proposes a mechanism that allows TNSPs to pass on the cost of AEMO participant fees recently allocated to TNSPs, in a similar manner to existing National Transmission Planner (NTP) fees, which TNSPs can already recover (as explained in section 1.1.3).

Key features of the proposed rule are:

- amendments to revenue and pricing methodologies to allow for direct cost recovery, rather than recovery through an AER revenue determination,
- alignment of AEMO's budgeting process and TNSPs' publication of transmission charges, and
- clarifying transfer payment arrangements between a Co-ordinating Network Service Provider (CNSP) and a TNSP.

In the absence of a rule change TNSPs would have to recover costs (where possible) using existing mechanisms, as set out in section 3.1.

Further information on the issues, proposed solutions and questions relating to the rule change request are outlined in chapter 3.

1.1.3 The rule change request is closely aligned with rules made in 2020 that allowed CNSPs to recover AEMO's NTP fees

ENA's rule change request is closely aligned with current rules, which allow Coordinating Network Service Providers (CNSPs)⁷ to recover AEMO participant fees for the NTP function. According to ENA:

"[t]he purpose of this Rule change is to achieve the same outcome in relation to the other components of Participant fees in clause 2.11.1(c), being 'core NEM fees', that are allocated to TNSPs."

Background to NTP participant fee cost recovery arrangements

On 2 April 2020 new ministerially made rules⁸ were signed (commencing 1 July 2020). Among other things, these rules were intended to permit TNSPs' maximum allowed revenues to adjust automatically to recover fees for planning costs advised by AEMO.⁹

⁷ A Co-ordinating network service provider is responsible for the allocation of all relevant Aggregate Annual Revenue Requirement within a region. See the NER chapter 10.

⁸ National Electricity Amendment (Integrated System Planning) Rule 2020

⁹ Energy Security Board, Converting the integrated system plan into action, Recommendation for National Electricity Amendment (Integrated System Planning) Rule 2020 Decision Paper March 2020, sections 2.1.7 and 3.9.

On 29 October 2020 the Commission made a rule¹⁰ that clarified and addressed missing administrative and transitional mechanisms of the above ministerially made rules, to facilitate their original policy intent. These changes provided correct transitional and administrative mechanisms within the NER so that:¹¹

- AEMO could recover its NTP function fees for the 2020-21 financial year from Co-ordinating network service providers (CNSPs), and CNSPs could include these fees in their transmission pricing,
- there was alignment between AEMO's budgeting process and CNSPs' transmission pricing processes, and
- it was clear how NTP function fees are recovered in Victoria, where AEMO is the CNSP.

1.2 The Commission considers the rule change to be non-controversial and proposes an expedited process

ENA has requested that the rule change request be treated as a non-controversial Rule in accordance with section 96 of the NEL. ENA considers that the proposed rule is unlikely to have a significant effect on the National Electricity Market (NEM) and therefore satisfies the definition of non-controversial Rule.¹²

We consider that the proposed rule meets the definition of non-controversial Rule under section 87 of the NEL. The rule change does not impact the market and market participants as the proposal only relates to improving the processes for TNSPs to pass on to their customers AEMO's fees that are allocated to TNSPs. As set out in section 3.1, under current arrangements these fees should ultimately be passed on to consumers through existing mechanisms, but these mechanisms may be less administratively efficient.

The Commission can process rule change requests that are considered to be non-controversial under an expedited (faster) process under which there is only one round of consultation and a requirement to publish a final determination within eight weeks of commencing the rule change process.¹³

The Commission has decided to use an expedited process to consider this rule change request provided that we do not receive any valid requests not to use the expedited process by 12 May 2022.¹⁴ To be valid, an objection should not be misconceived or lacking in substance.¹⁵ The process for submitting an objection is set out in chapter 4.

1.3 Key dates in rule change process

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

10 AEMC, Reallocation of national transmission planner costs, Rule determination, 29 October 2020.

11 AEMC, Reallocation of national transmission planner costs, Rule determination, 29 October 2020, p. i.

12 ENA, rule change proposal, p. 8.

13 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.

14 NEL s. 96(3)

15 NEL s. 96(3)

Commission starts this rule change process and publishes this consultation paper	28 April 2022
Due date for written requests not to use the expedited process	12 May 2022
Due date for submissions to the consultation paper	26 May 2022
Commission publishes final determination and final rule (if made)	23 June 2022

2 MAKING OUR DECISION

When considering a rule change request, the Commission takes into account a range of factors.

This chapter outlines:

- issues the Commission must take into account;
- the assessment criteria we propose to use; and
- decisions the Commission can make.

We would like your feedback on the proposed assessment framework.

2.1 We must consider the NEO and the revenue and pricing principles

2.1.1 **The Commission may only make a rule if it is in the long-term interests of consumers**

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).¹⁶

The NEO is:¹⁷

- 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.

2.1.2 **The Commission must also take into account the revenue and pricing principles**

The Commission must take into account the revenue and pricing principles set out in section 7A of the NEL in making certain rules.¹⁸ Relevantly for this rule change request, we must take those principles into account in making rules with respect to the regulation of revenues earned, or prices charged, by owners, controllers or operators of transmission systems, for the provision by them of services that are the subject of a transmission determination.¹⁹

Relevantly, the revenue and pricing principles provide that a regulated network service provider should be provided with a reasonable opportunity to recover at least the efficient costs the operator incurs in complying with a regulatory obligation or requirement, or making a regulatory payment.²⁰

¹⁶ Section 88 of the NEL.

¹⁷ Section 7 of the NEL.

¹⁸ NEL section 88B.

¹⁹ NEL schedule 1 items 15 and 16.

²⁰ NEL section 7A(2).

2.2 The proposed assessment framework focuses on whether the rule change promotes efficient processes

In determining whether the rule change request is likely to contribute to achieving the NEO, and to take into account the relevant revenue and pricing principle and the issues raised in the rule change request, the Commission proposes to assess the rule change request using these assessment criteria:

- **Implementation considerations - Cost and complexity** - Whether the proposal provides efficient administrative processes that, in accordance with the NEL revenue and pricing principles, provides TNSPs with a reasonable opportunity to recover the efficient costs of complying with a regulatory obligation to pay the participant fees that AEMO allocates to them (excluding NTP fees).
- **Principles of good regulatory practice - Simplicity and transparency:** Whether the proposal provides a simple, transparent and timely mechanism for AEMO to notify TNSPs of, and TNSPs to recover, the relevant participant fees.

QUESTION 1: ASSESSMENT FRAMEWORK

(a) Is the proposed assessment framework appropriate for considering ENA's rule change request?

(b) Are there any other considerations that should be included in the assessment framework, or principles included here that are not relevant?

2.3 We have three options when making our decision

After using the assessment framework to consider the rule change request, the Commission may decide:

- to make the rule as proposed by the ENA,²¹
- to make a rule that is different to the proposed rule (a more preferable rule), as discussed below, or
- not to make a rule.

The Commission may make a more preferable rule (which may be materially different to a proposed rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule will or is likely to better contribute to the achievement of the NEO.²²

²¹ ENA's rule change request provides proposed drafting in the final three pages of the request.

²² NEL section 91A.

2.4 We may make a differential rule for the Northern Territory

The NER, as amended from time to time, apply in the Northern Territory, subject to modifications set out in regulations made under the Northern Territory legislation adopting the NEL.²³

The majority of the proposed rule would not apply in the Northern Territory, as it amends provisions in NER chapters 2 and 6A that have no effect in the Northern Territory. However, the proposed rule includes changes to definitions in chapter 10 of the NER, which does apply in the Northern Territory.²⁴

The Commission will therefore assess the proposed rule against additional elements required by Northern Territory legislation:

- *Should the NEO test include the Northern Territory electricity systems?* For this rule change request, the Commission will determine whether the reference to the “national electricity system” in the NEO includes the local electricity systems in the Northern Territory, or just the national electricity system, having regard to the nature, scope or operation of the proposed rule.²⁵
- *Should the rule be different in the Northern Territory?* The Commission will consider whether a uniform or differential rule should apply to the Northern Territory, taking into account whether the different physical characteristics of the Northern Territory’s network would affect the operation of the rule in such a way that a differential rule would better contribute to the NEO.²⁶

23 *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (NT Act)*. The regulations under the NT Act are the National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016.

24 Under the NT Act and its regulations, only certain parts of the NER have been adopted in the Northern Territory. The version of the NER that applies in the Northern Territory is available on the AEMC website at: <https://energy-rules.aemc.gov.au/ntner>.

25 Clause 14A of Schedule 1 to the NT Act, inserting section 88(2a) into the NEL as it applies in the Northern Territory.

26 Clause 14B of Schedule 1 to the NT Act, inserting section 88AA into the NEL as it applies in the Northern Territory.

3 ISSUES FOR CONSULTATION

This chapter outlines and seeks stakeholder comments on:

- the problem: existing mechanisms allow TNSPs to apply to recover AEMO's participant fees (excluding NTP fees), however they may not be administratively efficient, and
- the proposed solution: TNSPs directly recover the participant fees AEMO allocates to them from their customers through adjusted annual revenue requirements.

3.1 Existing mechanisms allow TNSPs to apply to recover AEMO's fees, however they may not be administratively efficient

AEMO has allocated a portion of core NEM fees to be paid by relevant TNSPs

AEMO has allocated a portion of core NEM fees to relevant TNSPs between 1 July 2023 and 30 June 2026. ENA notes that the revenue and pricing principles in the NEL require that a regulated network service provider should have a reasonable opportunity to recover the efficient costs of complying with a regulatory obligation. ENA notes that it is a regulatory obligation to pay participant fees, so the NER should allow relevant TNSPs to recover these costs.²⁷

Existing mechanisms for TNSPs to recover these fees may not be administratively efficient

Under the standard NER arrangements, TNSPs to which AEMO has allocated core NEM fees (relevant TNSPs) can apply to recover those fees through either of the following two mechanisms (if they meet the criteria to do so):

- **Five year revenue determination:**
 - A TNSP could apply for an allowance for AEMO's participant fees to be included for each five yearly revenue determination, which the AER would assess. For example, the AER's final AusNet Services' 2022-27 revenue determination included a category-specific forecast allowance of \$6.5 million for AEMO's core NEM fees.²⁸ In addition, for each year of the five year regulatory control period, a TNSP's annual revenue requirement could potentially be adjusted by the actual amount of AEMO's core NEM fees allocated to the TNSP.
 - ENA noted issues related to the recovery of AEMO's fees through the revenue determination process, in that TNSPs are unable to control or accurately forecast the costs of AEMO core NEM fees allocated to them, as these fees are determined through AEMO's annual budgeting process. ENA noted that the proposed rule is similar to the 2020 rule on AEMO's NTP fees, where the ESB considered that TNSPs could be exposed to costs beyond their control if AEMO's NTP fees were recovered using the existing revenue determination framework.²⁹

²⁷ ENA, rule change proposal, p. 4.

²⁸ AER, AusNet Services Transmission determination 2022 to 2027, Final decision, Attachment 6 - Operating expenditure, p. 6-34.

²⁹ ENA, rule change proposal, pp. 3-4.

- **Cost pass through application** - After the AER has made a revenue determination, a TNSP may apply for a positive cost pass through amount under NER clause 6A.7.3 if the allocation of AEMO's participant fees to TNSPs is a regulatory change event. The AER would then assess the application. However, to satisfy the definition of "regulatory change event", the allocation of fees to the TNSP would (among other things) need to:
 - substantially affect the manner in which the TNSP provides prescribed transmission services; and
 - exceed one per cent of the maximum allowed revenue (MAR) for the TNSP in a regulatory year.³⁰

It should be noted that this one per cent threshold may not be reached.

QUESTION 2: IS THERE A SUBSTANTIVE ISSUE WITH THE CURRENT ARRANGEMENTS?

Do the current NER provide administratively efficient mechanisms for relevant TNSPs to recover the cost of AEMO's participant fees? If not, is the issue material enough to warrant the proposed changes?

3.2

ENA proposes that TNSPs recover AEMO's participant fees from their customers through adjusted annual revenue requirements

The proposed solution allows TNSPs to recover AEMO's participant fees (excluding NTP fees, which TNSPs can already recover) directly from customers through adjusted annual revenue requirements, rather than seeking to recover them through an AER revenue determination or cost pass-through application. ENA considers that the proposed rule is required so that relevant TNSPs can efficiently recover the cost of AEMO's participant fees.³¹

ENA proposes amendments to the principles for the allocation of the annual service revenue requirement, such that AEMO's participant fees allocated to TNSPs are recovered through the pre-adjusted non-locational component in new clause 6A.23.3(e)(7).³² This is consistent with the treatment of AEMO's NTP function fees which TNSPs also recover through the pre-adjusted non-locational component in clause 6A.23.3(e)(6). The proposal allows AEMO's annual costs of participant fees to be included in TNSPs' transmission prices each year.

QUESTION 3: ARE THE PROPOSED PRINCIPLES APPROPRIATE?

Are the proposed amendments to the principles for the allocation of the annual revenue requirement appropriate? Are there any other factors to consider?

³⁰ NER chapter 10, definitions of "regulatory change event" and "materially".

³¹ ENA, rule change proposal, p. 5.

³² ENA, rule change proposal, p. 6 and p. 11.

The Commission encourages stakeholders to comment on the following implementation considerations related to the proposed solution, as well as any other issues with the proposed solution, as it intends to progress this rule change on an expedited basis with only one round of consultation.

3.2.1

Alignment of AEMO budgeting process and TNSPs' publication of transmission charges

AEMO's annual notification of participant fees to TNSPs

ENA proposes that, by 15 February each year, AEMO sends a notification of the annual cost of participant fees (excluding NTP fees) to be recovered from each TNSP.³³ ENA suggests that this would allow TNSPs to reflect these costs in their annual transmission charges that must be published by 15 March each year.³⁴ This is consistent with current requirements for AEMO to provide notification of annual NTP fees to relevant TNSPs by 15 February each year.³⁵

Allocation of AEMO's budgeted revenue to TNSPs through AEMO's participant fees

ENA's proposed rule³⁶ refers to "Participant fees (excluding NTP function fees) to recover the projected revenue requirements allocated to [TNSPs]". NTP fees are already addressed in existing clause 2.11.3(ba). To support simplicity in the Rules, a consideration is whether to amend the wording of that existing clause, incorporating elements of proposed clause 2.11.3(bb) to the effect that, where AEMO has allocated any participant fees to TNSPs or CNSPs, it must calculate the amount to be recovered from each relevant network service provider and notify them, in order to allow them to recover those amounts. This could streamline the rules by combining existing references to TNSPs' recovery of AEMO's NTP fees in clause 2.11.3(ba) with the proposed recovery of AEMO's other participant fees in proposed new clause 2.11.3(bb).

QUESTION 4: ARE THE PROPOSED AEMO BUDGETING AND TNSP PUBLICATION OF TRANSMISSION CHARGES ARRANGEMENTS EFFICIENT AND CLEAR?

- (a) Do the proposed arrangements allow AEMO's budget to be linked to transmission charges in an efficient, transparent and timely manner?
- (b) Should parts of the proposed rule (such as clauses 2.11.3(ba) and (bb), and clauses 6A.23.3(e)(6) and (7)) be streamlined, where appropriate, to combine existing references to AEMO's NTP fees into a broader reference to AEMO's 'participant fees'?

3.2.2

Amendments to definitions of under- and over-recovery of revenue

ENA proposes to amend the definitions of under-recovery amount and over-recovery amount in Chapter 10 of the NER to exclude participant fees from these calculations. ENA considers

³³ Proposed new NER clause 2.11.3(bb). ENA, rule change proposal, p. 11.

³⁴ NER clause 6A.24.2(c).

³⁵ NER clause 2.11.3(ba)(2).

³⁶ Proposed new NER clause 2.11.3(bb).

that if this change is not made, a TNSP would be able to include the cost of AEMO's participant fees in its annual network charges, through the proposed rule, but the amount collected in respect of participant fees would be treated as an over-recovery amount and returned to customers, so that the TNSP does not recover the cost. ENA considers that this issue also applies for TNSPs' recovery of AEMO's NTP fees.³⁷

The terms "under-recovery amount" and "over-recovery amount" relate to the differences between actual revenue collected from prescribed transmission services and the aggregate annual revenue requirement in previous regulatory years. However, the allocations referred to under clause 2.11.3(ba) (for NTP fees) and proposed new clause 2.11.3(bb) (for other participant fees allocated to TNSPs) are forward-looking amounts for upcoming expenditure (ie projected revenue requirements by AEMO) for the next financial year.

QUESTION 5: ARE THE AMENDMENTS TO DEFINITIONS OF UNDER-RECOVERY AMOUNT AND OVER-RECOVERY AMOUNT APPROPRIATE?

Are the proposed amendments to the definitions of under- and over-recovery of revenue necessary and appropriate? Is it appropriate that these amendments also cover NTP fees?

3.2.3

Clarifying transfer payment arrangements between a CNSP and a TNSP

ENA proposes amendments to clarify that, where a CNSP recovers AEMO's participant fees on behalf of a TNSP, the amount of any financial transfer between a CNSP and TNSP should include the recovery of AEMO's participant fees.³⁸ This addresses the situation in Victoria where AEMO (as the CNSP) collects participant fees on behalf of AusNet Services (the TNSP).

The proposed rule drafting may put the credit risk on the TNSP, and not the CNSP, as the CNSP only pays 'to the extent' that AEMO's costs are recovered (noting that in practice any credit risk may be small).³⁹

QUESTION 6: ARE CHANGES TO TRANSFER PAYMENT ARRANGEMENTS BETWEEN A CNSP AND A TNSP NECESSARY?

Are the proposed amendments to transfer payment arrangements between CNSPs and TNSPs necessary and appropriate?

3.2.4

Recognising the broader role of CNSPs in transferring payments to other TNSPs

ENA also proposes amendments to recognise the broader role of CNSPs in recovering participant fees, including NTP fees, on behalf of TNSPs and transferring these funds to the

³⁷ ENA, rule change proposal, p. 6.

³⁸ Proposed new NER clause 6A.27.4(d); see also proposed new clause 6A.29.1(a)(4), discussed further below.

³⁹ Proposed new clauses 6A.27.4(d) and 6A.29.1(a)(4).

relevant TNSP.⁴⁰ This would provide that the role of CNSPs is fully and clearly described in the NER.⁴¹

The 2020 rule on the Reallocation of NTP costs⁴² did not address the collection or transfer of NTP function fees by CNSPs on behalf of TNSPs, other than to state that NTP function fees are to be recovered by the TNSP and not through participant fees.⁴³

QUESTION 7: SHOULD THE BROADER ROLE OF CNSPS IN TRANSFERRING PAYMENTS BE RECOGNISED IN THE RULES?

Are the proposed amendments to recognise the broader role of CNSPs in transferring payments to TNSPs necessary and appropriate?

40 Proposed new NER clause 6A.29.1(a)(4).

41 ENA, rule change proposal, p. 7.

42 AEMC, Reallocation of National Transmission Planner costs, Rule determination, 29 October 2020.

43 NER clause 2.11.3(d).

4 LODGING A SUBMISSION

The Commission invites both:

- requests not to make a rule under the expedited process, and
- written submissions on the rule change request.

All enquiries on this project should be addressed to Andrew Pirie on (02) 8296 7800 or andrew.pirie@aemc.gov.au.

4.1 Lodging a request not to make a rule under the expedited process

If you would like to request the Commission not to use the expedited process for this rule change, your request must:⁴⁴

- be in writing and contain reasons for the request
- be lodged with the Commission by **12 May 2022**, and
- be submitted online in accordance with the process specified below.

4.2 Lodging a submission to this rule change request

Written submissions on the rule change request must be lodged with Commission by **26 May 2022**. Submissions must be lodged online in accordance with the process specified below.

Where practicable, submissions should be prepared in accordance with the Commission's guideline for making written submissions on rule change requests.⁴⁵

The Commission publishes all submissions on its website, subject to a claim of confidentiality.

4.3 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, using the "lodge a submission" function and selecting the project reference code ERC0335.

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

⁴⁴ NEL section 96.

⁴⁵ This guideline is available on the Commission's website www.aemc.gov.au.

ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
CNSP	Co-ordinating Network Service Provider
Commission	See AEMC
ENA	Energy Networks Australia
MAR	Maximum allowed revenue
NEL	National Electricity Law
NEO	National electricity objective
NER	National electricity rules
NEM	National Electricity Market
NTP	National Transmission Planner
TNSP	Transmission network service provider