



Australian Energy Market Commission

RULE DETERMINATION

NATIONAL ELECTRICITY AMENDMENT (AER REPORTING ON MARKET OUTCOMES) RULE 2022

PROPONENT

Australian Energy Regulator

19 MAY 2022

RULE

INQUIRIES

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Reference: ERC0340

CITATION

AEMC, AER reporting on market outcomes, Rule determination, 19 May 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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SUMMARY

- 1 The Australian Energy Market Commission (AEMC or Commission) has made a final rule that introduces a principles-based framework for the Australian Energy Regulator (AER) to report on significant price outcomes in the National Electricity Market (NEM).
- 2 On 21 December 2021 the AER submitted a rule change request proposing a principles-based reporting framework to replace the prescriptive reporting requirements under clause 3.13.7 of the National Electricity Rules (NER) relating to significant price variations, spot prices above \$5,000/MWh and market ancillary services prices above \$5,000/MW.
- 3 The Commission considered the rule change request to be non-controversial and unlikely to have a significant impact on the NEM. The Commission decided to use an expedited process consisting of one round of consultation and did not receive any objections to using this process.
- 4 Key aspects of the final rule include:
 - **Price outcomes the AER will report on:** the AER is to report on significant price outcomes in the spot market (which includes the ancillary services markets), and any other market as specified in a new Significant price reporting guideline (Guideline).
 - **Criteria and factors the AER will use to report:** the AER must outline the criteria for determining significant price outcomes in its Guideline, having regard to high price events and any other matter the AER considers appropriate. In preparing a report the AER:
 - must consider the factors that contributed to the significant price outcomes, being available capacity, network availability, and offer, bidding and rebidding behaviour.
 - may consider any other relevant matter.
 - **Type and frequency of reporting:** the AER must publish a single report in a timely manner collating all significant price outcomes for each calendar quarter. In addition to these quarterly reports, the AER may more frequently publish a standalone report on an individual highly significant price outcome.
 - **Transitional arrangements:** the AER must publish the Guideline by the rule commencement date of 29 September 2022 and must report on significant price outcomes that occur in the transitional period in a timely manner in accordance with new clauses 3.13.7(b)(2) and (3).
- 5 The Commission is satisfied that the final rule will contribute to the achievement of the national electricity objective (NEO) for the following reasons:
 - **Improved information transparency:** greater information transparency for stakeholders by enabling the AER to report on more relevant prices and factors that provide more insightful analysis into market outcomes and behaviour.
 - **Increased flexibility:** improved usefulness of reports by enabling the criteria for significant price outcomes in the Guideline to be amended with market developments.
 - **Principles-based approach:** reduced regulatory burden and administrative costs by avoiding prescriptive requirements that are not fit for purpose.

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1 FINAL RULE DETERMINATION

This section sets out:

- the AER’s proposed principles-based reporting for significant prices in the NEM,
- the rule making process and assessment framework against the NEO, and
- key features of Commission’s final rule with more preferable amendments.

1.1 AER’s proposed reporting framework

1.1.1 Issues raised in the rule change request

The AER considered that the reporting requirements under clause 3.13.7 of the NER are inflexible and no longer fit for purpose. More detail on the issues raised can be found in the AER’s rule change request¹ or in the AEMC’s consultation paper.² These issues are summarised below:

- Requirements to report on significant variations between forecast and actual prices in clauses 3.13.7(a) and (b) are inflexible and irrelevant in the current market context.
- The provision under clause 3.13.7(c) for the ACCC or AEMC to request the AER to report on a particular market outcome is outdated and has never historically been used.
- Requirements under clauses 3.13.7(d) and (e) lack flexibility and are outdated, requiring the AER to report on instances where:
 - the 30-minute spot price exceeds \$5,000/MWh, and
 - any market ancillary service price significantly exceeds the spot price over a period, or exceeds \$5,000/MW for a number of 30-minute periods within that period.

1.1.2 The AER’s proposed solution

The AER proposed to replace the prescriptive numerical requirements in clause 3.13.7 of the NER with a principles-based framework for reporting on significant prices, supported by an AER guideline.³

The AER provided a proposed draft rule.⁴ The details of the AER’s proposed draft rule are set out in chapter 2 of this final determination.

1.2 Rule making process and assessment framework

1.2.1 Overview

On 24 March 2022, the Commission published a notice advising of its commencement of the rule making process and consultation in respect of the rule change request.⁵ A consultation

1 AER, *AER reporting on market outcomes*, rule change request, 21 December 2021.

2 AEMC, *AER reporting on market outcomes*, consultation paper, 24 March 2022.

3 AER, *AER reporting on market outcomes*, rule change request, 21 December 2021, p. 1.

4 *Ibid*, pp. 6-7.

5 This notice was published under s. 95 of the NEL.

paper identifying specific issues for consultation was also published⁶ and submissions closed on 21 April 2022.

The Commission was satisfied that the rule change request was a request for a non-controversial rule as defined in s. 96 of the National Electricity Law (NEL). Accordingly, the Commission commenced an expedited rule change process, subject to any written requests not to do so received by 7 April 2022. No objections to carry out an expedited process were received and therefore the rule change request was considered under an expedited process.⁷

The Commission received three submissions from the AER, the Australian Energy Market Operator (AEMO) and Delta Electricity which are discussed and addressed in chapter 2.

1.2.2

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 NEO.⁸ This is the decision-making framework that the Commission must apply.

The NEO is:⁹

- 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 Commission may make a more preferable rule or a differential rule according to the NEL. See appendix A.3.1 and appendix A.3.2 for further detail.

1.2.3

Assessment framework

In assessing the rule change request against the NEO the Commission has considered the following principles:

- **Improving information transparency:** expanding the scope of the AER to report on a wider range of more relevant significant price outcomes should improve information transparency for policymakers, market participants and energy users and thereby contribute to more informed decision-making and increased market efficiency.
- **Increasing flexibility:** increasing the flexibility of the rule to allow price criteria to be set in the Guideline should accommodate a range of market, technological, policy and other changes to ensure ongoing usefulness to stakeholders as the market evolves.
- **Principles-based approach:** avoiding excessively prescriptive requirements in the rule should increase resource efficiency and reduce regulatory burden and administrative costs incurred by the AER and associated stakeholders.

⁶ AEMC, *AER reporting on market outcomes*, consultation paper, 24 March 2022.

⁷ s. 96 of the NEL.

⁸ s. 88 of the NEL.

⁹ s. 7 of the NEL.

1.3

Commission's final rule

1.3.1

The final rule determination

The Commission's final rule determination is to make a more preferable rule, which is attached to and published with this final determination. The more preferable rule replaces prescriptive reporting requirements under clause 3.13.7 of the NER with a principles-based reporting framework supported by an AER Guideline.¹⁰

It improves flexibility, reduces regulatory and administrative burden, and allows the AER to develop more targeted and useful reports on significant price outcomes. It is similar to the AER's proposed draft rule, with amendments to improve the clarity of obligations placed on the AER and increase the transparency of the development of the Guideline.

The key features of the final rule are:

- **Significant price outcomes the AER will report on:** the AER must monitor and report on significant price outcomes in the spot market, ancillary services markets and any other market specified in the Guideline.¹¹
- **Criteria for significant price outcomes:** the AER must outline the criteria for determining significant price outcomes in its Guideline. It must have regard to high price events, and any other matters the AER considers appropriate.¹²
- **Factors to be considered in reports:** in preparing a report, the AER must consider the factors that contributed to the significant price outcomes, being available capacity, network availability, and participant offer, bidding and rebidding¹³ behaviour. The AER may additionally consider broader market trends or behaviours that may be detrimental to efficient market competition or operation, or any other matter considered relevant.¹⁴
- **Type and frequency of reporting:** the AER must publish a single report in a timely manner collating all significant price outcomes that occur in each calendar quarter. In addition to these quarterly reports, the AER may more frequently publish a standalone report on an individual highly significant price outcome.¹⁵
- **Removal of provision for ACCC or AEMC requested reports:** the existing provision under clause 3.13.7(c) that states the AER may provide a report on a particular market outcome as requested by the ACCC or AEMC has been removed.
- **Developing and amending the Guideline:** the AER must publish a draft of its new Guideline on its website, provide at least 20 business days for written submissions and take into account any submissions in its final publication. It must comply with the Rules

¹⁰ See new clauses 3.13.7 and 3.13.7A of the final rule.

¹¹ See new clause 3.13.7(a) of the final rule.

¹² See new clauses 3.13.7A(b) and (c) of the final rule.

¹³ Rebidding is a defined term in new clause 3.13.7(b)(2)(iii) to capture rebidding pursuant to clause 3.8.22 of the NER.

¹⁴ See new clauses 3.13.7(b)(2) and (3) of the final rule.

¹⁵ See new clause 3.13.7(c) of the final rule.

consultation procedures when further amending the Guideline under clause 3.13.7A(e) of the final rule.¹⁶

- **Transitional rule:** prior to the commencement date of 29 September 2022, the AER must monitor and report on significant price outcomes in a timely manner in accordance with new clauses 3.13.7(b)(2) and (3) of the final rule. By the commencement date, the AER must develop and publish its new Guideline.
- **Consistency with Integrated Energy Storage into the NEM rule:** schedule 2 of the final rule amends new clause 3.13.7(b)(iii) to commence on 3 June 2024. This is to ensure the new clause is consistent with the *National Electricity Amendment (Integrating energy storage systems into the NEM) Rule 2021 No. 13* once it commences on 3 June 2024.¹⁷

Further detail on how the Commission made its final rule decisions can be found in chapter 2, and further information on the legal requirements for making this final rule determination can be found in appendix A.

1.3.2

Summary of reasons for final rule

Having regard to the issues raised in the rule change request and during consultation, the Commission is satisfied that the final rule will, or is likely to, contribute to the achievement of the NEO for the following reasons:

- **Improved information transparency:** expanding the scope of the AER to report on a wider range of more relevant significant price outcomes will increase information transparency for policymakers, market participants and energy users.
- **Increasing flexibility:** allowing the AER to determine the criteria for significant price outcomes in a new Guideline and amend these over time will increase the usefulness and relevancy of reports. It will reduce the need for possible future rule changes as it will more easily accommodate a range of market, technological, policy and other changes.
- **Principles-based approach:** avoiding excessively prescriptive requirements reduces regulatory burden and administrative costs incurred by the AER and other stakeholders. It will increase resource efficiency by enabling more relevant significant prices to be targeted and allowing the AER to collate significant price outcomes into a quarterly report and publish more in-depth standalone reports on individual highly significant price events.

¹⁶ The AEMC is currently progressing a rule change request from AEMO to make the Rules consultation procedures more adaptable to different circumstances (rule 8.9 of the NER). A draft determination was published on 14 April 2022 and stakeholder submissions are due on 26 May 2022.

¹⁷ The AEMC notes that the National Electricity Amendment (Integrating energy storage systems into the NEM) Rule No. 13 (IESS Rule) amends clause 3.13.7 (see item 410, schedule 2) to take effect from 3 June 2024.

2 ISSUES CONSIDERED

This section provides a summary of the Commission’s final decisions and analysis, and stakeholder views, on the following key issues considered in this rule change:

- moving from a prescriptive- to principles-based reporting framework,
- significant price reporting obligations on the AER in the NEM,
- removal of AEMC and ACCC requested reports,
- development of the AER’s Significant price reporting guideline, and
- implementation and transitional arrangements.

2.1 Moving to principles-based reporting

2.1.1 Our final determination

The final rule removes prescriptive numerical criteria for determining significant price outcomes from the NER and introduces a principles-based framework for the AER to report on significant price events in the NEM. This is accompanied by a new AER Significant price reporting guideline (Guideline), which the AER can update over time without the need for a rule change, providing the AER with the flexibility to adjust its reporting to align with changing market conditions.

2.1.2 The AER’s rule change proposal

The AER proposed to move to a principles-based reporting approach, supported by a new AER guideline. This would provide flexibility for the AER to adjust its reporting approach over time to address changing market conditions and provide transparency for stakeholders.¹⁸

2.1.3 Stakeholder views and our analysis

Key stakeholder feedback is summarised below:

- Delta Electricity supported shifting to a principles-based reporting approach to allow the AER to better target relevant price outcomes that are of more interest to stakeholders.¹⁹
- AEMO agreed that most of the existing clause 3.13.7 was overly prescriptive and no longer fit for purpose, however suggested replacing the \$5,000/MWh price threshold with a \$7,500/MWh price threshold.²⁰

The Commission considers that the prescriptive reporting requirements in clause 3.13.7 of the NER are inflexible and no longer fit for purpose. We consider that:

- the NER should include high-level reporting principles on what, how and when the AER should report on significant price outcomes, and
- the AER should be provided with the flexibility to determine additional detail around its reporting in its Guideline.

¹⁸ AER, submission to the consultation paper, p. 2.

¹⁹ Delta Electricity, submission to the consultation paper, p. 2.

²⁰ AEMO, submission to the consultation paper, p. 1

2.2 Significant price reporting obligations on the AER

2.2.1 Our final determination

The final rule includes the following significant price reporting obligations on the AER:

- **What price outcomes to report on:** the AER must report on significant wholesale electricity price outcomes in the spot market (which includes ancillary services markets), and any other NEM markets specified in the Guideline.
- **What criteria and factors to report on:** the AER, in preparing the report, must consider the factors that contributed to the significant price outcomes, being available capacity, network availability and offer, bidding and rebidding²¹ behaviour. The AER may also consider whether broader market trends, any behaviours that may be detrimental to effective market competition or operation, or any other matter contributed to the price outcome.²² The Guideline must outline the criteria for determining significant price outcomes, having regard to high price events and any other appropriate matter.²³
- **Type and frequency of reporting:** the AER must report on each significant price outcome that occurs within a calendar quarter in a single collated report in a timely manner.²⁴ The AER may also publish reports more frequently, in a timely manner, on significant price outcomes it considers require an additional standalone report.²⁵

2.2.2 The AER's rule change proposal

The AER's proposed solutions to the three issues are outlined below:²⁶

- **What price outcomes to report on:** the AER must report on significant price outcomes in the wholesale electricity market and must outline the criteria and methodology used to define significant price outcomes in its new Guideline.
- **What criteria and factors to report on:** the AER must consider factors that contributed to each significant price outcome which may include the withdrawal of generation capacity, network availability and participant offer behaviour. The AER may also consider whether broader and ongoing market trends, any events and behaviours that may be detrimental to effective competition and efficient market operation, or any other matters are contributing to the significant price outcome.
- **Type and frequency of reporting:** the AER must report on significant price outcomes each calendar quarter in a collated report, and may publish a standalone report for a single significant price event.

2.2.3 Stakeholder views and our analysis on what prices to report on

Key stakeholder feedback on what prices to report on is summarised below:

21 Rebidding must be considered as a contributing factor to the significant price outcomes pursuant to clause 3.8.22 of the NER, as rebidding is a defined term in new clause 3.13.7(b)(2)(iii) of the final rule.

22 See new clause 3.13.7(b)(2) and (3) of the final rule.

23 See new clauses 3.13.7A(b) and (c) of the final rule.

24 See new clause 3.13.7(a) of the final rule.

25 See new clause 3.13.7(c) of the final rule.

26 AER, *AER reporting on market outcomes*, rule change request, 21 December 2021, p. 6.

- AEMO suggested that the AER should be required to report according to an updated price threshold of \$7,500/MWh as this will make a spot trader “think twice” when making an offer or bid above this threshold.²⁷
- Delta Electricity considered it appropriate for the NER to specify requirements on the development of criteria in the new Guideline, such as high price thresholds.²⁸
- The AER considered it appropriate for the NER to require the new Guideline to have regard to high price events, such as updated high price thresholds.²⁹

The Commission considers that specific numerical price thresholds, such as prices exceeding \$5,000/MWh or \$7,500/MWh, are inflexible and should not be prescribed in the NER. Instead, the AER should have the flexibility to determine and amend the criteria for significant price outcomes in its Guideline. Clause 3.13.7A(c) of the amending rule requires the AER to have regard to high price events when determining the criteria for significant price outcomes.

We do not consider that a specific numerical price threshold in the NER is necessary to provide scrutiny over high priced participant bids, offers and rebids. Clause 3.8.22A of the NER requires that scheduled generators, semi-scheduled generators and market participants must not make a dispatch offer, dispatch bid or rebid that is false, misleading or likely to mislead. In addition, the new principles-based reporting framework will allow the AER to scrutinise a range of bidding behaviours, as prices that exceed a set threshold as well as prices that do not exceed a set threshold yet are still significant may be reported on.

2.2.4

Stakeholder views and our analysis on what criteria and factors to report on

Key stakeholder feedback on what criteria and factors to report on is summarised below:

- AEMO noted that the option for the AER to report on broader market trends and behaviours that may be detrimental to effective competition is unnecessary because the AER separately assesses competition in its two-yearly and five-yearly reports on the wholesale electricity market.³⁰ AEMO noted that there is a risk that participants may expect that the AER must assess competition every quarter.³¹
- AEMO noted that the AER’s proposed rule replicates, to some extent, the factors that the AER must take into account in clause 3.13.7(d) for reporting on \$5000/MWh prices.³²
- Delta Electricity considered the factors proposed by the AER to be appropriate, and suggested an additional factor of ‘change in demand’.³³

In response to stakeholder feedback, the Commission considers that:

- It is reasonable to provide the AER with the option to report on broader market trends and behaviours that may be detrimental to effective competition if this is a contributing

27 AEMO, submission to the consultation paper, p. 1.

28 Delta Electricity, submission to the consultation paper, p. 2.

29 AER, submission to the consultation paper, p. 2.

30 These AER reports are required under 18C(2)(a) and 18C(3) of the NEL.

31 AEMO, submission to the consultation paper, p. 2.

32 AEMO, submission to the consultation paper, p. 1.

33 Delta Electricity, submission to the consultation paper, p. 3.

factor to a significant price outcome, as it may provide useful context around high price events in the short term. This may complement its longer-term reporting around effective market competition, however, the obligation on the AER is optional, and participants should not expect that the AER must report on whether competition is effective in each quarterly significant price report.

- It is appropriate to retain key factors from clause 3.13.7(d) as proposed by the AER. We have made minor amendments to the AER's proposed rule to improve clarity. That is, the factor of 'withdrawal of generation' is not a defined term in the NER, so has been replaced with 'available capacity'.³⁴
- While 'change in demand' may be a relevant additional factor to consider around significant price events, it is more preferable to provide the AER with the flexibility to consider whether it or any other factors, should be taken into account.

2.2.5

Stakeholder views and our analysis on the type and frequency of reporting

Key stakeholder feedback on the type and frequency of reporting is summarised below:

- AEMO considered that the AER's proposal to report on significant price outcomes each calendar quarter appears unnecessary as the AER already publishes the Wholesale markets quarterly report.³⁵
- Delta Electricity suggested that more clarity is needed to distinguish between price events that would be included in a quarterly report, compared to a standalone report.³⁶
- The AER noted that collating multiple significant price events into a single report will decrease its resource burden and allow it to better compare price events in a calendar quarter.

The Commission considers that:

- It will reduce the administrative burden for the AER to collate all significant price outcomes into a single quarterly report, as opposed to the current framework where a separate report is published for each price exceeding \$5,000/MWh.
- It is appropriate to provide the AER with the flexibility to publish additional standalone reports for individual highly significant price outcomes. We suggest that the AER consider Delta Electricity's recommendation of providing example(s) in its Guideline as to the types of significant price events that may be reported in the quarterly or standalone reports.
- It is appropriate that the AER publishes quarterly Significant price outcome reports on individual price events as these have a different purpose from the AER's Wholesale markets quarterly reports, which report on quarterly trends (i.e. average quarterly wholesale prices).³⁷

³⁴ See Chapter 10 Glossary in the NER for the definition of 'available capacity'.

³⁵ AEMO, submission to the consultation paper, p. 1.

³⁶ Delta Electricity, submission to the consultation paper, p. 3.

³⁷ See AER, *Wholesale market quarterly report Q4 2021*, February 2022.

2.3 Removal of ACCC and AEMC requested reports

The final rule removes the provision under clause 3.13.7(c) that states that the AER may provide a report on a particular market outcome as requested by the ACCC or AEMC. Our final rule is as proposed by the AER in its rule change request.

There were no stakeholder submissions on this matter.

The Commission considers it appropriate to remove the provision in clause 3.13.7(c) for the ACCC or AEMC to request a report from the AER as:

- this provision has never been used historically, and
- the AER has broad reporting requirements under the NEL which would likely cover any reports the ACCC or AEMC may request, and
- the AER has produced standalone special reports that the NEL or NER do not directly require which include reports developed in collaboration with the ACCC or AEMC.³⁸

2.4 Development of significant price reporting guideline

2.4.1

Our final determination

The final rule requires that the AER must develop and publish a new Significant price reporting guideline for the monitoring and reporting of significant price outcomes under new clause 3.13.7.³⁹ The Guideline must include:

- the criteria for determining significant price outcomes,
- the details of any markets, other than the spot market, which the AER has determined to monitor and report on under clause 3.13.7, and
- any other matter which the AER considers appropriate.

Our final rule requires the AER to:

- develop and publish the initial Guideline by 29 September 2022,
- undertake one round of public consultation for the development of the initial Guideline,⁴⁰
- adhere to the Rules consultation procedures (RCP)⁴¹ for any future amendments to the Guideline.⁴²

2.4.2 **The AER's rule change proposal**

The AER proposed that:

- it must develop a Guideline outlining the criteria used to decide what is a significant wholesale price outcome,⁴³

38 For example, AER, *Winter energy prices*, June 2016 covered high prices in eastern and southern Australia, AER, *Electricity wholesale performance monitoring - Hazelwood advice*, March 2018 covered the impact on Victoria and South Australia of the Hazelwood power station closure, and AEMC, *Gaming in rebidding assessment (Grattan response)*, 28 September 2018 was done in collaboration with the AER and assessed generator rebidding.

39 See new clause 3.13.7A(a) of the final rule.

40 See new transitional clause 11.150.2 of the final rule.

41 See rule 8.9 of the NER.

42 See new clause 3.13.7A(d) of the final rule.

43 AER, *AER reporting on market outcomes*, rule change request, 21 Decemebr 2021, p. 1.

- in developing and publishing the Guideline the AER must consult with persons it considers appropriate.⁴⁴

2.4.3 Stakeholder views and our analysis

Key stakeholder feedback is summarised below:

- the AER noted that it would perform one round of consultation in developing the Guideline, regardless of whether there was an explicit requirement to consult on the initial development of the Guideline in the NER. The AER considered that the development of, and any further amendments to, the Guideline should not be subject to the RCP and should not require two rounds of public consultation.⁴⁵
- Delta Electricity considered that the Guideline should be consulted on publicly to provide transparency and that one round of consultation was sufficient to reduce regulatory burden, given the non-controversial nature of the issue.⁴⁶

The Commission considered that one round of public consultation was appropriate for the initial development of the Guideline taking into account the following:

- The AER conducted informal consultation with stakeholders on the content and consultation process for its Guideline. It received low levels of stakeholder interest which mirrored the low levels of stakeholder interest received for this rule change.
- This rule change received minimal stakeholder input given its non-controversial nature which also reflects the non-controversial nature of the Guideline as both are unlikely to materially impact the functioning of the wholesale electricity market, market participants or consumers, nor introduce material costs for industry.
- The contents of the new Guideline relate to an existing arrangement that amends the current reporting requirements on significant price outcomes as opposed to introducing new arrangements which stakeholders are unfamiliar with.

The Commission is currently progressing a rule change request from AEMO to amend the RCP to be more adaptable to different circumstances.⁴⁷ The Commission has made a final rule which requires the AER to follow the RCP for any future amendments to the Guideline.

2.5 Implementation and transitional arrangements

2.5.1 Our final determination

The transitional rule in our final rule requires the AER to publish its new Guideline by the commencement date of Thursday 29 September 2022.⁴⁸

⁴⁴ Clause 3.13.7A(a) in the AER's proposed draft rule: AER, *AER reporting on market outcomes*, rule change request, p. 7.

⁴⁵ AER, submission to the consultation paper, pp. 3-4.

⁴⁶ Delta Electricity, submission to the consultation paper, p. 3.

⁴⁷ See AEMC, *Improving consultation procedures*, draft rule determination, 14 April 2022. The draft rule includes a new expedited consultation procedure for non-controversial changes to existing NER subordinate instruments and a new abridged consultation procedure for minor and administrative changes. Stakeholder submissions to this rule change are due 26 May 2022.

⁴⁸ See new transitional clause 11.150.2(a) of the final rule.

During the transitional period prior to 29 September 2022, the AER is not required to comply with clause 3.13.7 but must monitor and report on, in a timely manner, significant price outcomes in accordance with new clauses 3.13.7(b)(2) and (3).

2.5.2 The AER's rule change proposal

The AER's proposed rule recommended a commencement date of 1 July 2022, by which time it must publish its new Guideline under a new clause 3.13.7A.⁴⁹

The AER proposed that it would have discretion to apply its proposed new clause 3.13.7 in relation to any significant price outcome which occurred during the transitional period, prior to the commencement date of the new rule.⁵⁰

2.5.3 Our analysis

There were no stakeholder submissions on the commencement date.

The Commission's analysis is outlined below:

- **Commencement date:** commencement of the new rule on 29 September 2022, as opposed to 1 July 2022, provides sufficient time for the AER to conduct one round of public consultation on its new Guideline. It also aligns with quarterly reporting timelines so the AER can report on significant price outcomes that occur within Q4 2022 from 1 October 2022.
- **Transitional reporting requirements:** transitional arrangements will commence on 19 May 2022. In the period between the commencement of the transitional rule and the commencement date of the new clauses 3.13.7 and 3.13.7A, the AER is not required to comply with clause 3.13.7 as we consider that the prescriptive requirements are no longer fit for purpose.⁵¹ In this period the AER must monitor and report, in a timely manner, on significant price outcomes in accordance with new clauses 3.13.7(b)(2) and (3) and must have regard to high price events and any other matter the AER considers appropriate.⁵²

⁴⁹ AER, *AER reporting on market outcomes*, rule change request, 21 December 2021, p. 15.

⁵⁰ Ibid, p. 15.

⁵¹ See new transitional clause 11.150.3(a) of the final rule.

⁵² See new transitional clause 11.150.3(b) and (c) of the final rule.

ABBREVIATIONS

ACCC	Australian Competition and Consumer Commission
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
Guideline	Significant price reporting guideline
MWh	Megawatt hour
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective
NER	National Electricity Rules
NGR	National Gas Rules
RCP	Rules Consultation Procedures

A LEGAL REQUIREMENTS UNDER THE NEL

This appendix sets out the relevant legal requirements under the NEL for the AEMC to make this final rule determination.

A.1 Final rule determination

In accordance with s. 102 of the NEL the Commission has made this final rule determination in relation to the rule proposed by the AER. The Commission's reasons for making this final rule determination are set out in section 1.3.2. A copy of the more preferable final rule is attached to and published with this final rule determination. Its key features are described in section 1.3.1.

A.2 Power to make the rule

The Commission is satisfied that the more preferable final rule falls within the subject matter about which the Commission may make rules. The more preferable final rule falls within s. 34 of the NEL as it relates to:

- a matter contemplated by the NEL, or that is necessary or expedient for the purposes of the NEL;⁵³
- the conferring of functions on the AER, including a function to develop and issue Guidelines;⁵⁴ and
- provisions of a savings or transitional nature consequent on the amendment of a Rule.⁵⁵

A.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NEL to make the rule
- the rule change request
- submissions received during consultation
- the Commission's analysis as to the ways in which the proposed rule will or is likely to, contribute to the NEO
- its powers to make a more preferable rule.⁵⁶

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.⁵⁷

⁵³ Section 34(1)(b) of the NEL.

⁵⁴ Sections 34(3)(c) and (e) of the NEL.

⁵⁵ Section 34(p) of the NEL.

⁵⁶ See appendix A.3.1.

⁵⁷ Under s. 33 of the NEL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy. On 1 July 2011, the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. The amalgamated council became the COAG Energy Council, and is now the Energy Ministers' Meeting.

The Commission may only make a rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed rule is compatible with the proper performance of AEMO's declared system functions.⁵⁸ The Commission is satisfied that the more preferable final rule is compatible with AEMO's declared system functions as it only relates to AER reporting and it does not change AEMO's functions in any material respect.

A.3.1 Making a more preferable rule

Under s. 91A of the NEL, the Commission may make a rule that is different (including materially different) to a proposed rule (a more preferable 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.

In this instance, the Commission has made a more preferable rule. The reasons are summarised in section 1.3.

A.3.2 Making a differential rule

Under the Northern Territory legislation adopting the NEL, the Commission may make a differential rule if, having regard to any relevant MCE statement of policy principles, a different rule will, or is likely to, better contribute to the achievement of the NEO than a uniform rule. A differential rule is a rule that:

- varies in its term as between:
 - the national electricity system, and
 - one or more, or all, of the local electricity systems, or
- does not have effect with respect to one or more of those systems

but is not a jurisdictional derogation, participant derogation or rule that has effect with respect to an adoptive jurisdiction for the purpose of s. 91(8) of the NEL.

As the rule relates to parts of the NER that currently do not apply in the Northern Territory, the Commission has not assessed the rule against the additional elements required by the Northern Territory legislation.⁵⁹

A.4 Civil penalties

The Commission cannot create new civil penalty provisions. However, it may recommend to the Energy Ministers' Meeting that new or existing provisions of the NER be classified as civil penalty provisions.

The final rule does not amend any clauses that are currently classified as civil penalty provisions under the NEL or National Electricity (South Australia) Regulations. The

⁵⁸ s. 91(8) of the NEL.

⁵⁹ From 1 July 2016, the NER, as amended from time to time, apply in the NT, subject to derogations set out in regulations made under the NT legislation adopting the NEL. Under those regulations, only certain parts of the NER have been adopted in the NT. (See the AEMC website for the NER that applies in the NT.) National Electricity (Northern Territory) (National Uniform Legislation) Act 2015.

Commission does not propose to recommend to the Energy Ministers' Meeting that any of the proposed amendments made by the final rule be classified as civil penalty provisions.

A.5 Conduct provisions

The Commission cannot create new conduct provisions. However, it may recommend to the Energy Ministers' Meeting that new or existing provisions of the NER be classified as conduct provisions.

The final rule does not amend any rules that are currently classified as conduct provisions under the NEL or National Electricity (South Australia) Regulations. The Commission does not propose to recommend to the Energy Ministers' Meeting that any of the proposed amendments made by the final rule be classified as conduct provisions.