

Our ref: ERC0347

7 September 2022

Mr Craig Memery
Public Interest Advocacy Centre
Level 5,
175 Liverpool Street,
Sydney NSW 2000

By email: cmemery@piac.asn.au

Dear Mr Memery

Response to objection to the use of an expedited process for the rule change request on Amending the administered price cap

We refer to the late objection from the Public Interest Advocacy Centre (PIAC)¹ to the Australian Energy Market Commission (Commission) in relation to the use of an expedited process for the rule change on Amending the administered price cap.

The Commission has carefully considered PIAC's objection in light of the relevant test for the use of the expedited process in the National Electricity Law. The Commission has decided that the reasons given by PIAC in the request for the Commission not to use the expedited process do not meet the criteria under the law for the Commission to switch to the standard rule making process, for the reasons set out in the Appendix to this letter.

The Commission notes that the extended timeframe for this rule includes a directions paper, proposed to be published on 29 September, with a two-week consultation period, following which a final determination will be published in mid November.

The Commission thanks you for your interest in this project and would welcome a submission from PIAC during the additional opportunity for consultation on the directions paper.

Yours sincerely



Anna Collyer
Chair
Australian Energy Market Commission

¹ Public Interest Advocacy Centre, *Amending the administered price cap*, August 2022:
<https://www.aemc.gov.au/sites/default/files/2022-08/Public%20Interest%20Advocacy%20Centre%20-%202022%20August%202022.pdf>

Appendix

Relevant provisions of the National Electricity Law

The AEMC's decision to use an expedited process for the rule change on *Amending the Administrative Price Cap* was on the basis that the rule change request was a request for an urgent rule. That is, a rule² relating to any matter or thing that, if not made as a matter of urgency, will result in that matter or thing imminently prejudicing or threatening—

- a) the effective operation or administration of the wholesale exchange operated and administered by AEMO; or
- b) the safety, security or reliability of the national electricity system.³

Under the National Electricity Law (the Law) the AEMC must not use the expedited process for a rule change if:

- (a) the AEMC receives a written request not to do so; and
- (b) the reasons set out in that request are not, in its opinion, misconceived or lacking in substance.

If the AEMC is of the opinion that the reasons given in a request not to use the expedited process are misconceived or lacking in substance, the AEMC must make a decision to that effect and give the person its reasons, in writing, for that decision without delay.⁴

The AEMC has come to this opinion, after considering the reasons in the PIAC objection in the context of the test for an urgent rule. Our reasons are set out below, with reference to each of the reasons in the PIAC objection. (The subheadings below reflect the main points in the objection.)

Immediate need⁵

PIAC states that there is not an immediate need for the rule change to be progressed or for the APC to be increased, as there are compensation options available for generators whose running cost is above the APC. PIAC also states that the AEMC has not provided compelling evidence the cause of generators withdrawing capacity is the APC rather than the APP compensation regime or bad behaviour by some generators.

The Commission is of the opinion that this reason is misconceived and lacking in substance as the question is whether the rule change request is a request for an urgent rule, i.e. a rule that, if not made as a matter of urgency, will result in imminent prejudice or threat to the national electricity system.

The Commission notes that the issue of the level of the APC relative to the cost of generation, and the appropriateness of the level of the APC is still relevant to the effective operation of the market. It would appear from recent events that some participants may consider the current level of the APC may not, in certain circumstances, adequately compensate market participants' costs or provide incentives to continue to participate in the normal market dispatch process and that the application of the APC resulted in the generators withdrawing capacity to manage their fuel resources and the threat to market security that prompted the market suspension.

If the APC level is insufficient then that is an existing (not merely imminent) prejudice or threat to the effective operation of the market and security of the national electricity system. The market price settings are designed to manage the risk of difficult to predict and unforeseen events occurring in the context of the security and reliability of the national electricity system.

³ National Electricity Law, section 87.

⁴ National Electricity Law, section 96(4).

⁵ PIAC Submission page 1

Increasing the APC would have an impact on market outcomes, and is not uncontroversial.

The Commission is of the opinion that this reason is misconceived and lacking in substance as the test is whether there is a matter or thing which will result in that matter or thing imminently prejudicing or threatening the safety, security or reliability of the national electricity system, not whether the matter or thing is uncontroversial. Matters going to the substance of the rule change request will be considered in the rule change process itself.

Existing timeframes for changes to market settings

PIAC is particularly concerned about the message expediting this rule change process would send to stakeholders and the market. PIAC states that market prices settings, including the APC, are determined by two rigorous processes (the Reliability Standards and Settings Review and subsequent Rule Change). These are undertaken at least two years before they take effect, with extensive stakeholder input, and are in effect for four years at a time, to provide the certainty future and current market participants require to make prudent investment and contract decisions.

The Commission is of the opinion that this argument is misconceived and lacking in substance as it does not address the issue of urgency. Market certainty, transition and predictability of change will be considered by the Commission in this rule change process.

Creating a precedent

PIAC states that the proposal to change the APC could be viewed as a knee-jerk – or at least opportunistic – response to recent events, and agreeing to expedite the process of assessing the change would give the appearance the AEMC is prepared to risk the stability of key investment and operational signals. PIAC considers that this would create a concerning precedent, and leave the AEMC vulnerable to rule change proponents seeking expedited processes as a matter of course.

The Commission is of the opinion that this argument is misconceived and lacking in substance as it does not address urgency. Proponents may, at any stage, submit a rule change request to the AEMC.⁶ Further, the AEMC may use an expedited process if it considers that a rule change request is for a non-controversial rule or an urgent rule.⁷ The Commission makes this decision on a case-by-case basis.

⁶ National Electricity Law, section 91

⁷ National Electricity Law, section 96