

Our ref: ERC0347

7 September 2022

Mr Leigh Creswell
Snowy Hydro Limited
Lot 3, Pier 8/9,
23 Hickson Rd,
Walsh Bay NSW 2000

By email: leigh.creswell@snowyhydro.com.au

Dear Mr Creswell

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 objection from Snowy Hydro Limited¹ 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 Snowy Hydro'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 Snowy Hydro 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 Snowy Hydro Limited for your interest in this project and would welcome a submission from you to the issues raised in the directions paper.

Yours sincerely



Anna Collyer
Chair
Australian Energy Market Commission

¹ Snowy Hydro Limited, *Amending the administered price cap*, August 2022:
<https://www.aemc.gov.au/sites/default/files/2022-08/Snowy%20Hydro.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 Snowy Hydro objection in the context of the test for an urgent rule. Our reasons are set out below.

Snowy Hydro's basis for objection

Snowy Hydro objects to the treatment of the rule change request as urgent because it enlivens complex issues with significant implications for market participants and it considers that these issues are most effectively considered through a comprehensive rule change process. Snowy Hydro states that assessing the rule change request as urgent would reduce the period available to participants to engage with the consultation, whereas the complexities of the matters raised in the request militate against a shortened consultation period.

Snowy Hydro states that as well as impacting the operation of the National Electricity Market, the APC influences the contracting decisions of participants in the contracts market and changing the APC will have significant implications for hedging contracts and the ability of generators to service those contracts.

Snowy Hydro state that increasing the APC while existing hedges are on-foot implies "an increase in the volume of generation required to defend the financial obligations owed by sellers under those hedges". Generators that are fuel constrained, such as hydro assets, may in the view of Snowy Hydro, be unable to source additional fuel to increase generation. Where generators cannot source additional fuel to defend contracts, they will be potentially exposed to very high spot prices including the market price cap, according to Snowy Hydro. Snowy Hydro states that during the period when existing hedges are on foot, the financial consequences of increasing the APC for sellers of hedges could be severe and the complexity and importance of these matters demonstrates that they should be considered under a comprehensive rule change process.

Snowy Hydro state that given the volume of energy traded in the contracts market, it is important that sufficient opportunity is given to adequately address the impact on both markets, otherwise this proposal risks undermining the role of contracts as hedging instruments.

³ National Electricity Law, section 87.

⁴ National Electricity Law, section 96(4).

Snowy Hydro clarifies that it is not objecting to the rule change itself, rather that the significance of these matters illustrates that the Rule Change Request is deserving of assessment through the comprehensive rule change process, not an expedited process.

The Commission is of the opinion that this argument, in addressing the complexity of the request and significance of the potential impacts on the contract market, is misconceived and lacking in substance as it does not address the issue of urgency and whether or not, if the rule was not made, it would result in an imminent prejudicing or threatening of the security or reliability of the national electricity system.

The Commission recognises and will consider the interaction of reliability settings such as the administered price cap and cumulative price threshold on participant costs and behaviours throughout the rule change process but this does not relate to urgency. The Commission notes that an expedited rule change process still affords stakeholders input into the rule change process through submissions to the proposed rule. Further, the Commission also notes that under the extended timeframe for this rule, a directions paper is proposed to be published on 29 September, with a two-week consultation period, following which a final determination will be published.

The Commission welcomes submissions from all participants including Snowy Hydro Limited during the additional opportunity for consultation on the directions paper.