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Associate Professor Penelope Crossley  
The University of Sydney  
Room 416,  
New Law Building F10,  
Eastern Avenue,  
The University of Sydney  
NSW 2006 Australia

By email: [penelope.crossley@sydney.edu.au](mailto:penelope.crossley@sydney.edu.au)

Dear Associate Professor Crossley

**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 the University of Sydney (UoS)<sup>1</sup> 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 UoS'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 UoS 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 UoS to the issues raised in the directions paper.

Yours sincerely



Anna Collyer  
Chair  
Australian Energy Market Commission

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<sup>1</sup> University of Sydney, *Amending the administered price cap*, August 2022:  
<https://www.aemc.gov.au/sites/default/files/2022-08/University%20of%20Sydney.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 rule<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

The AEMC has come to this opinion, after considering the reasons in the UoS 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 UoS objection. (The subheadings below reflect the main points in the objection.)

#### Urgency<sup>5</sup>

The UoS objection states that this matter is clearly controversial and does not meet the alternative basis for an expedited rule change of being 'urgent' under s.96(1)(c) of the Law. The UoS argues:

'that the word 'urgent,' portrays a sense that the market conditions pose an imminent threat or require immediate attention.'

The UoS then states that the:

.."current electricity market conditions do not support the application of the expedited rule-change process, and its consequent impact on energy consumers' ability to participate in a proper two-stage rule change consultation process."

Further, the UoS states that it has had the benefit of reading the EUAA's submission on this point and concurs with their assessment that the conditions that would lead to the administered price threshold being exceeded are not currently present nor are they an imminent threat.

The Commission is of the opinion that this argument is misconceived and lacking in substance as threats to the security or reliability of the national electricity system cannot be predicated solely on whether events that are difficult to forecast are likely or not likely to occur in the near term. They also need to be assessed against the occurrence of unpredictable events leading to sustained high or volatile prices in the electricity market or fuel markets, to ensure the existing market settings are adequate to achieve secure and reliable operation of the system in the event the market breaches the cumulative price threshold (CPT) and the APC is applied.

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<sup>3</sup> National Electricity Law, section 87.

<sup>4</sup> National Electricity Law, section 96(4).

<sup>5</sup> UoS Submission pages 1 - 2

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 generators withdrawing capacity to manage their fuel resources and the threat to market security that prompted the market suspension.

The Commission also considers that the reference to "imminent" needs to be considered in context, namely the matter or thing "imminently prejudicing or threatening" the effective operation of the market or security of the national electricity system. The matter or thing in question is the level of the APC. If the level of the APC is insufficient then that is an existing (not merely imminent) prejudice or threat to 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 electricity system.

In relation to the conditions leading to the application of the APC in June '22, the Commission considers that there may be other conditions that could lead to the recurrence of a breach of the CPT and the application of the APC, particularly in circumstances where the APC may not be sufficient to compensate generators. These include events such as international events causing elevated fuel prices, a prolonged or unexpected heatwave in spring and summer months, interconnector outages or extended coal plant outages or failures.

### **Opportunity to make submissions<sup>6</sup>**

The UoS states that this matter is clearly controversial and even if the AEMC finds that an imminent threat does exist, the potential impact of such a rule change on consumers means that this still does not warrant a rushed expedited process and that the two-stage process of a normal rule change should still be undertaken. The UoS states that consumer submissions are more likely to be incorporated into a final rule determination when they are made at the draft determination stage and the opportunity for consumers to make submissions at the draft determination stage will not be afforded to them in the context of an expedited rule change, and thus the Commission will lose a valuable opportunity for consumers to provide input into what they believe to be in their long-term interests.

The UoS also notes that under the normal rule change process, the process from initiation to final determination will be concluded well before next winter but will still afford robust market and consumer consultation and a transparent deliberate process.

The Commission is of the opinion that this argument 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 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, there will be an additional consultation period on the directions paper, which will provide an opportunity for further stakeholder submissions prior to the final determination.

The Commission welcomes submissions from all stakeholders including the UoS during the additional opportunity for consultation on the directions paper.

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<sup>6</sup> UoS Objection page 2

### **Impact of a twelve-month sunset clause<sup>7</sup>**

The UoS notes concerns regarding representations made to the Commission that the expedited process rather than the normal process should be used because of the presence of a twelve-month sunset clause.

The Commission is of the opinion that this reason is misconceived and lacking in substance as it does not address the issue of urgency. Matters going to the substance of the rule change request will be considered in the rule change process itself. Further, the Commission has not taken into account the twelve month sunset date in forming the view that the rule change is urgent.

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<sup>7</sup> UoS Objection page 3