

Draft rule determination

National Electricity Amendment (Improving the workability of the feedback loop) Rule 2024

Proponent

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About the AEMC

The AEMC reports to the energy ministers. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the energy ministers.

Acknowledgement of Country

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Summary

- 1 The Commission has decided to make a more preferable draft rule (draft rule) to improve the operation of the feedback loop by clarifying the required inputs and timing to conduct a feedback loop assessment. This is in response to the rule change request submitted by the Honourable Chris Bowen MP, Minister for Climate Change and Energy.
- 2 The draft rule would promote the efficient, timely, and consistent operation of the feedback loop in its role as a consumer safeguard. Improving the workability of the feedback loop would support the efficient delivery of major transmission projects by Transmission Network Service Providers (TNSPs). It would also help to ensure that the significant expenditure expected to be spent on delivering the Integrated System Plan (ISP) is in the long-term interests of consumers.
- 3 The rule change request seeks to implement recommendations made as part of the stage 2 workstream in the *Transmission planning and investment review* (TPIR) which focused on near-term reforms.
- 4 The rule change request has been fast tracked reflecting the extensive consultation carried out on these issues in TPIR.
- 5 The draft determination proposes the final rule (if made) would commence on 15 March 2024.
- 6 We are seeking feedback on the draft determination and rule by 25 January 2024.

The draft rule addresses workability issues in the feedback loop process to support the timely delivery of major transmission projects

- 7 The draft rule made by the Commission is published with this draft rule determination. The key features of the draft rule address workability issues with the feedback loop that affect its operation as a consumer safeguard and may contribute to delays in project assessment and delivery. The draft rule also provides greater transparency for Regulatory Impact Test for Transmission (RIT-T) proponents regarding timeframes for feedback loop assessment decisions by the Australian Energy Market Operator (AEMO). This supports the efficient and timely functioning of the regulatory framework for actionable ISP projects.
- 8 We have made minor amendments to the wording of the proposed rule in the rule change request. We amended the wording of the draft rule to clarify the timing for AEMO's decision-making when undertaking the feedback loop assessment. It also provides clarity for RIT-T proponents on the requirements should they choose to undertake a feedback loop and Contingent Project Application (CPA) process concurrently.

The Commission has considered the findings from TPIR in making its decision

- 9 The changes proposed in the rule change request reflect the recommendations from the TPIR stage 2 final report, where we consulted with stakeholders on how to best address feedback loop workability issues.
- 10 During that consultation, several stakeholders raised concerns that workability issues were creating a lack of clarity around the assessment process. This in turn affects the feedback loop's ability to act as intended and can impede the timely delivery of major transmission projects. The Commission's draft determination actions the recommendations from TPIR to address these workability issues.

We assessed the draft rule against four assessment criteria using regulatory impact analysis and stakeholder feedback

- 11 The Commission has considered the NEO¹ and the issues raised in the rule change request and assessed the draft rule against the four assessment criteria outlined below. We reviewed stakeholder feedback provided in the TPIR and undertook a regulatory impact analysis in relation to these criteria.
- 12 The draft rule would contribute to achieving the NEO by:
- **Contributing to emissions reduction** – by supporting timely delivery of the transmission infrastructure required to increase renewable penetration in the energy system and transition the grid to net zero.
 - **Promoting principles of market efficiency** – by improving transparency in the feedback loop process and encouraging timely and efficient investment decisions.
 - **Providing timely market-wide implementation** – by introducing timely reform, that is relatively simple to implement across jurisdictions and can be applied to future feedback loop requests by RIT-T proponents.
 - **Promoting principles of good regulatory practice** – by improving predictability, stability and transparency of the regulatory framework while reducing the administrative burden on AEMO.
- 13 The draft rule better contributes to the NEO, than the proposed rule, because it more clearly outlines the obligations of market bodies and TNSPs in the feedback loop assessment, particularly where it interacts with other parts of the economic assessment process, such as the CPA. A clear and consistent regulatory framework increases the likelihood that projects are delivered on time which would result in better outcomes for consumers and more timely emissions reduction.
- 14 The Commission considers that the draft rule would not impose any material costs on TNSPs or other market bodies.

The draft rule would improve consistency and clarity in the application of the feedback loop assessment

- 15 The draft rule:
- Enables the feedback loop to be assessed against the most recent Optimal Development Path (ODP) in a draft or final ISP which is underpinned by the most up-to-date inputs, assumptions and scenarios.
 - Requires the Australian Energy Regulator (AER) to amend its Cost Benefit Analysis (CBA) guidelines² to provide guidance on the timing of a feedback loop request. It also allows the AER to provide guidance on the timing of when Project Assessment Conclusion Reports (PACRs) are published.
 - Allows, but does not require, the feedback loop assessment and CPA processes to occur concurrently.
 - Requires AEMO to complete the feedback loop assessment within 40 business days from the later of the date the request is submitted or additional information is received.³ AEMO would

1 Section 7 of the NEL.

2 AER, Cost benefit analysis guidelines: Guidelines to make the Integrated System Plan actionable, October 2023.

3 Section 3.4 explains the proposed timeframes including if AEMO requests additional information.

also have the power to extend its assessment by 60 days if it determines the assessment involves complexities or difficulties.

Transitional rules would help implement the draft rule

16 Transitional rules are included in the draft determination to:

- Provide the AER up to 12 months to update and publish its CBA guidelines and allow prior consultation in anticipation of the amending rule to satisfy the consultation requirements to update the guideline.
- Apply the proposed feedback loop amendments to an existing actionable ISP project if the RIT-T proponent has not already requested a feedback loop assessment prior to the commencement of the rule.

The draft rule is a more preferable rule

17 The draft rule differs from the proposed rule set out in the rule change request in the following ways:

- Clarifies that the AER CBA guidelines may include guidance on the publication of a PACR by a RIT-T proponent, such as by allowing the AER to specify a period of time in which PACRs may not be published.
- Automatically grants the AER an extension to their CPA process if AEMO submits an extension of the feedback loop process.
- Requires the RIT-T proponent, once notified by AEMO of an extension to the feedback loop process to advise the AER of this extension within one business day.
- Better aligns extension timeframes with the AER's existing CPA timeframes so that AEMO must request an extension no later than 10 days before the end of the 40 day period for a feedback loop assessment.
- Clarifies that the amended framework applies to subsequent, or future, stages of an actionable ISP project in circumstances where a feedback loop request for an earlier stage of an actionable ISP project has been made prior to the commencement of the rule.

How to make a submission

We encourage you to make a submission

Stakeholders can help shape the solution by participating in the rule change process. Engaging with stakeholders helps us understand the potential impacts of our decisions and contributes to well-informed, high quality rule changes.

How to make a written submission

Due date: Written submissions responding to this draft determination and draft rule must be lodged with Commission by **25 January 2023**.

How to make a submission: Go to the Commission's website, www.aemc.gov.au, find the "lodge a submission" function under the "Contact Us" tab, and select the project reference code **ERC0369**.⁴

Tips for making submissions on rule change requests are available on our website.⁵

Publication: The Commission publishes submissions on its website. However, we will not publish parts of a submission that we agree are confidential, or that we consider inappropriate (for example offensive or defamatory content, or content that is likely to infringe intellectual property rights).⁶

Next steps and opportunities for engagement

There are other opportunities for you to engage with us, such as one-on-one discussions or industry briefing sessions.

You can also request the Commission to hold a public hearing in relation to this draft rule determination.⁷

Due date: Requests for a hearing must be lodged with the Commission by 14 December 2023.

How to request a hearing: Go to the Commission's website, www.aemc.gov.au, find the "lodge a submission" function under the "Contact Us" tab, and select the project reference code **ERC0369**. Specify in the comment field that you are requesting a hearing rather than making a submission.⁸

For more information, you can contact us

Please contact the project leader with questions or feedback at any stage.

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4 If you are not able to lodge a submission online, please contact us and we will provide instructions for alternative methods to lodge the submission.

5 See: <https://www.aemc.gov.au/our-work/changing-energy-rules-unique-process/making-rule-change-request/our-work-3>

6 Further information about publication of submissions and our privacy policy can be found here: <https://www.aemc.gov.au/contact-us/lodge-submission>

7 Section 101(1a) of the NEL.

8 If you are not able to lodge a request online, please contact us and we will provide instructions for alternative methods to lodge the request.

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1 The Commission has made a draft determination

This draft determination is to make a more preferable draft rule (draft rule) in response to a rule change request submitted by The Honourable Chris Bowen, Minister for Climate Change and Energy to improve the workability of the feedback loop. The objective of this rule change request is to provide a well functioning and robust transmission infrastructure planning and investment framework for actionable ISP projects that operates in the long-term interest of consumers. We are seeking feedback on this draft rule.

1.1 The draft rule would improve the workability of the feedback loop by making its operation more efficient and transparent

The draft rule addresses issues with the efficient, timely, and consistent operation of the feedback loop assessment process. Specifically, the draft rule clarifies the required inputs and timing for the feedback loop assessment which would improve its operation as a consumer safeguard, and reduce the administrative burden on AEMO. It also supports the efficient and timely functioning of the regulatory framework by providing greater transparency for RIT-T proponents regarding when the outcome of a feedback loop assessment will be known.

It does this by:

- enabling the feedback loop to be assessed against the most recent ODP in a draft or final ISP.⁹
- requiring the AER to amend its CBA guidelines to provide guidance on the timing of a feedback loop request.¹⁰ It may also provide guidance on the publication of PACRs.¹¹
- allowing, but not requiring, the feedback loop assessment and CPA processes to occur concurrently.¹²
- requiring AEMO to complete the feedback loop assessment within 40 business days from the later of the date the request is submitted or additional information is received further to a request from AEMO, with the power for AEMO to extend its assessment by 60 days if it determines the assessment involves complexities or difficulties.¹³

1.2 TPIR identified the benefits of improving the operation of the feedback loop as an effective consumer safeguard

The findings of the TPIR,¹⁴ which was informed by extensive stakeholder input, helped shape the draft determination. The Commission found in TPIR stage 2 that a lack of clarity around the feedback loop assessment process and practical application difficulties undermine its ability to operate as an effective safeguard for consumers.

During consultation for TPIR, stakeholders generally agreed that workability issues were hindering the feedback loop's ability to act as intended and could impede the timely delivery of major transmission projects. For instance, AEMO's experience of the feedback loop to date is that it is

⁹ Clause 5.16A.5(b) of the draft rule.

¹⁰ Clause 5.16A.2(c)(5) of the draft rule.

¹¹ Clause 5.16A.2(d) of the draft rule.

¹² Clause 5.16A.5(b) of the draft rule.

¹³ Clause 5.16A.6 of the draft rule.

¹⁴ AEMC, *Transmission Planning and Investment Review: Stage 2 final report*, https://www.aemc.gov.au/sites/default/files/2022-10/stage_2_final_report.pdf

poorly defined and unworkable,¹⁵ ENA expressed concerns that the feedback loop was extending the regulatory approval process by up to six months.¹⁶ As a result, workability issues with the feedback loop are believed to be impacting on the timely regulatory approval of major strategic projects.

In the TPIR stage 2 final report we identified that the feedback loop would benefit from changes to improve its workability. These changes focused on amendments that would improve consistency and clarity in its application and ensure it could function as an effective consumer safeguard.

The TPIR stage 2 final report recommendations were to:

- allow the feedback loop to be assessed against the ODP in a draft ISP, which is underpinned by the most up to date inputs and assumptions, to address a key driver of workability issues arising from the current requirement to use the final ISP.
- introduce exclusion windows for feedback loop requests and the publication of PACRs to align feedback loop assessments with the publication of a draft or final ISP to narrow the scope for misalignment and to reduce the administrative burden on AEMO of potentially having to maintain and draw on two sets of modelling.
- provide an option for feedback loop assessments and CPAs to proceed concurrently to address the potential risk of delays from the bunching of feedback loop applications, once the draft ISP is published, i.e. multiple feedback loop requests being received around the same time. This approach also sought to maximise flexibility for RIT-T proponents in managing their regulatory obligations and promote timeliness of investment.
- introduce a timeframe for AEMO to complete the feedback loop to provide clarity and transparency to stakeholders regarding when the outcome of the feedback loop will be known and promote consistency in the rules with existing obligations on the AER's decision-making for CPAs.

Together these recommendations sought to address the workability issues identified and were considered necessary to resolve if TNSPs are to deliver major transmission projects efficiently. They also sought to ensure that the significant expenditure expected to be incurred in the short term is in the long-term interests of consumers.

The draft rule and draft determination focus on providing greater clarity and consistency for stakeholders - RIT-T proponents and market bodies - who are involved in the feedback loop process and improve the broader investment and transmission regulatory framework. This is consistent with the intention of the TPIR recommendations and the proposed changes in the rule change request.

In making the draft determination we assessed the regulatory impact of the proposed changes. The draft rule would not impose any material costs on TNSPs or other market bodies.¹⁷ Additionally, we consider the draft rule is beneficial in that it improves the clarity, consistency and predictability of the regulatory framework.

¹⁵ AEMO submission to the TPIR Stage 2 draft report, p. 8.

¹⁶ ENA submission to the TPIR Stage 2 draft report: p. 4.

¹⁷ See appendix B for an overview of the regulatory impact analysis. Chapter 3 discusses the draft rule in more detail.

1.3 The draft determination would support the timely delivery of major transmission while safeguarding consumer interests

As discussed above, the Commission's draft determination is in line with the recommendations made in the TPIR stage 2 final report.¹⁸ This draft determination is part of a broader set of reforms recommended through the TPIR process to support the timely and efficient delivery of major transmission projects which are critical for the transition to net zero.

Progressing these transmission projects as efficiently as possible and at least cost to consumers requires a clear, consistent and predictable regulatory framework. The feedback loop was introduced to the transmission planning and investment framework as part of the actionable ISP reforms and is designed as a safeguard for consumers. However, TPIR and Minister Bowen's rule change request highlights workability issues with the feedback loop that affect its ability to work as intended.

This has consequences for the timely assessment of significant transmission projects and hinders the feedback loop's operation as an effective consumer safeguard.¹⁹ Addressing these workability issues will improve the feedback loop and assist in the timely delivery of major transmission projects while maintaining the integrity of the feedback loop as a safeguard for consumers.

The draft determination complements the work being carried out by the Commission as part of the priority transmission workstream²⁰ which includes:

- [Transmission Access Reform \(TAR\)](#)
- [Enhancing community engagement in transmission](#)
- [Accommodating financeability in the regulatory framework](#)
- [Concessional Finance for Transmission Network Service Providers](#)

This rule change will work to ensure the regulatory framework is fit for purpose to support the timely and efficient delivery of major transmission projects whilst safeguarding consumer interests.

18 AEMC, *Transmission planning and investment review: Stage 2 final report*, 27 October 2022, pp. 45 - 52.

19 Section 1.2 above explores the issues identified in TPIR and in the rule change request.

20 AEMC, Priorities webpage; <https://www.aemc.gov.au/our-work/our-priorities>.

2 The rule would contribute to the energy objectives

2.1 The Commission must act in the long-term interests of energy consumers

The Commission can only make a rule if it is satisfied that the rule will or is likely to contribute to the achievement of the relevant energy objectives.²¹

For this rule change, the relevant energy objective(s) is the NEO:

The NEO is:²²

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; and
- (c) the achievement of targets set by a participating jurisdiction—
 - (i) for reducing Australia’s greenhouse gas emissions; or
 - (ii) that are likely to contribute to reducing Australia’s greenhouse gas emissions.

The targets statement, available on the AEMC website, lists the emissions reduction targets to be considered, as a minimum, in having regard to the NEO.²³

2.2 We must also take these factors into account

2.2.1 We have considered whether to make a more preferable rule

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 is likely to better contribute to the achievement of the NEO.²⁴

For this rule change, the Commission has made a more preferable draft rule. The reasons are set out in section 2.3 below.

2.2.2 We have considered how the rule would apply in the Northern Territory

In developing the draft rule, the Commission has considered how it should apply to the Northern Territory according to the following questions:

- Should the NEO test include the Northern Territory electricity systems? For this rule change request, the Commission has determined that the reference to the “national electricity system” in the NEO includes the local electricity systems in the Northern Territory.
- Should the rule be different in the Northern Territory? The Commission has determined that a uniform rule should apply to the Northern Territory.

See appendix C for more detail on the legal requirements for the decision.

21 Section 88(1) of the NEL.

22 Section 7 of the NEL.

23 Section 32A(5) of the NEL.

24 Section 91A of the NEL.

2.3 How we have applied the legal framework to the decision

The Commission must consider how to address a lack of clarity and practical application difficulties with the operation of the feedback loop against the legal framework.

We identified the following criteria to assess whether the proposed rule change, no change to the rules (business-as-usual), or other viable, rule-based options are likely to better contribute to achieving the NEO:

- Emissions reduction
- Principles of market efficiency
- Implementation considerations
- Principles of good regulatory practice

These assessment criteria reflect the key potential impacts – costs and benefits – of the rule change request, for impacts within the scope of the NEO.

The Commission has undertaken regulatory impact analysis to evaluate the impacts of the various policy options against the assessment criteria. Appendix B outlines the methodology of the regulatory impact analysis.

The rest of this section explains why the draft rule best promotes the long-term interest of consumers when compared to other options and assessed against the criteria.

2.3.1 Supporting emissions reduction

The draft rule assists emission reduction by supporting the timely delivery of the transmission infrastructure required to facilitate the transition to a net zero energy system.

This rule change would address barriers to the efficient operation of the feedback loop by providing clarity to proponents when submitting a feedback loop request and for AEMO in undertaking the assessment.

Improvements to the feedback loop assessment process which result in more timely assessments of transmission infrastructure would facilitate the connection of additional renewable energy generation into the national electricity market. This additional generation would contribute to government targets for reducing Australia’s greenhouse gas emissions which are identified in the targets statement published by the Commission.²⁵

2.3.2 Encouraging principles of market efficiency

The draft rule encourages principles of market efficiency by promoting the efficient allocation of resources to meet the system need identified in the ODP while safeguarding consumer interests. The feedback loop is one component of the economic assessment process in the transmission planning and investment framework and improvements to it should contribute to the overall efficiency and timeliness of the regulatory framework.

It does this by providing clarity for proponents on the timeframes for completion of a feedback loop assessment and providing the option for a proponent to commence the CPA concurrently with the feedback loop assessment.²⁶ This certainty and flexibility should enable a proponent to manage its project timeframes and lead to timely investment decisions for major transmission projects.

²⁵ AEMC, Emissions targets statement under the national energy laws, September 2023.

²⁶ Section 3.4 explains how the more preferable draft rule would provide clarification.

The draft rule does not alter the requirement for the feedback loop assessment to confirm that the preferred option addresses the relevant identified need specified, and aligns with the ODP, in the ISP. It also maintains the requirement that the cost of the preferred option does not change the status of the actionable ISP project.²⁷

2.3.3 Achieving timely implementation

The draft rule is relatively simple to implement as the changes to the rules primarily provide flexibility or clarity for market bodies and TNSPs in the application of the existing framework. The draft rule would likely result in changes to market bodies' and TNSPs' processes, particularly with the introduction of exclusion windows between the final Inputs Assumptions and Scenarios Report (IASR) and draft ISP.²⁸ The draft rule includes transitional arrangements to support market bodies in implementing the proposed reforms, including providing the AER with 12 months to update its CBA guidelines to incorporate guidance on the timing of feedback loop requests. It also makes provision for any equivalent steps taken by the AER to update its guidelines in anticipation of the rule to satisfy the equivalent requirements in the Rules consultation procedures, which sets out the requirements for updating the CBA guidelines. These transitional arrangements provide the AER with flexibility as it implements several updates to its guidelines.

The transitional arrangements also provide clarity to proponents by enabling RIT-T proponents that have already submitted a request for a feedback loop assessment prior to the commencement of the rule to use the existing regulatory framework. This provides certainty for requests made before or after the commencement of the rule. The more preferable draft rule is unlikely to carry significant costs or impose new material obligations on TNSPs.

Implementing the draft rule now would enable the benefits of the rule change to apply to existing ISP projects that have not yet submitted a feedback loop request, which may be for a stage of an actionable ISP project if the actionable ISP project is a staged project. It would also allow time for updated AER CBA guidelines to be in place prior to the publication of the key documents for the 2026 ISP process. Not proceeding with the draft rule would leave workability issues with the feedback loop unresolved.

2.3.4 Promoting principles of good regulatory practice

The draft rule promotes principles of good regulatory practice by improving the efficiency, predictability and transparency of the feedback loop assessment process in the regulatory framework. A clear, consistent and predictable regulatory framework is critical to the timely and efficient delivery of major transmission projects and to safeguard consumer interests.

The draft rule does this by addressing the lack of clarity and workability issues that arise from the current requirement for the feedback loop to be assessed against the ODP identified in the most recent ISP. Allowing the feedback loop to be assessed against the ODP in the most recent ISP (draft or final) which is underpinned by the most up to date inputs, assumptions and scenarios will promote timely completion of AEMO's assessment based on information that will be incorporated into the next ISP. It should also reduce the administrative burden on AEMO of having to draw on two sets of modelling and inputs.

Enabling the feedback loop to be assessed against the ODP in a draft ISP should also improve its operation as a consumer safeguard. A draft ISP is likely to be informed by new government

²⁷ Clause 5.16A.5(b) of the NER.

²⁸ Section 3.2 explains the proposed requirements for the AER regarding exclusion windows for feedback loops and PACRs.

policies or changes to inputs contained in the latest version of the IASR that could materially affect the ODP and therefore the outcome of the feedback loop.

2.3.5 The draft rule better promotes the NEO

The draft rule better contributes to the NEO, rather than the proposed rule, because it provides greater clarity and certainty. The proponent has requested a rule change to improve the workability of the feedback loop and address issues that affect its performance as a consumer safeguard. This includes the need to provide further clarity, certainty and consistency for market bodies and stakeholders in the application of the regulatory framework. The draft rule responds to that request by including amendments such that the AER CBA guidelines may include guidance on the timing of a PACR publication, clarifying the application of the more preferable draft rule to the stages of an actionable ISP project if it is a staged project and ensuring the clear and consistent application of decision-making timeframes for market bodies.

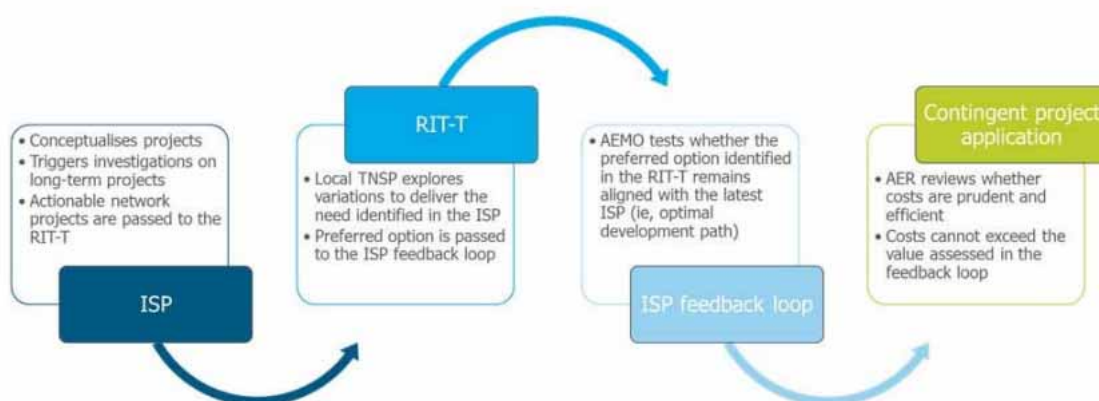
3 How the rule would operate

The feedback loop was introduced as part of the actionable ISP reforms and is designed as a safeguard for consumers. It currently requires the RIT-T proponent to obtain written confirmation from AEMO that:²⁹

- the preferred option addresses the relevant identified need specified in the most recent ISP and aligns with the ODP referred to in the most recent ISP; and
- the cost of the preferred option does not change the status of the actionable ISP project as part of the ODP as updated in accordance with clause 5.22.15 where applicable.³⁰

The feedback loop also caps the costs that can be sought by a RIT-T proponent in the CPA. It provides an important safeguard for consumers by ensuring that only investments that are in their long-term interests are eligible for regulatory funding, and that the level of regulatory funding does not exceed the efficient investment level. Figure 3.1 outlines the role of the feedback loop in the regulatory framework and its relationship to other relevant processes, such as the RIT-T and CPA.

Figure 3.1: The role of the feedback loop in the actionable ISP framework



Source: AEMC

3.1 Enabling a feedback loop request to be assessed against the most recent ODP in a draft or final ISP

Box 1: Draft determination – Feedback loop requests to be assessed against the most recent ODP in a draft or final ISP

The draft determination enables a feedback loop request to be assessed against the most recent ODP in a draft or final ISP.

This change would mean that AEMO can undertake its feedback loop assessment to determine if the RIT-T proponent’s preferred option addresses the identified need and aligns with the ODP which contains the most up to date inputs, assumptions and scenarios.

29 Clause 5.16A.5(b) of the NER.

30 ISP updates are set out in clause 5.22.15 of the NER.

This addresses issues identified in TPIR stage 2 and by the rule change proponent in the practical application of the feedback loop and its efficacy as a consumer safeguard.

The draft rule would allow AEMO to undertake its feedback loop assessment against the ODP in the most recent ISP (draft or final) which is likely to be underpinned by more up to date inputs, assumptions and scenarios included in the latest IASR.³¹ This would address issues with the workability of the feedback loop which affects the ability of the assessment to operate as an effective safeguard for consumers. This change would provide AEMO with the ability to undertake its assessment against the ODP which contains the most up to date information, depending on whether the RIT-T proponent's request is submitted closer to the publication of the most recent draft or final ISP.

The current rules require the feedback loop to be assessed against the ODP in the most recent final ISP which means the inputs that informed that ODP may be outdated by the time a feedback loop request is submitted. As a result, there may be a misalignment between the inputs used to inform the development of the RIT-T preferred option, which requires the RIT-T proponent to use the most recent ISP parameters,³² and the inputs which informed the development of the ISP.

This requirement can create practical difficulties with the feedback loop for AEMO and RIT-T proponents which were explored during the Commission's TPIR stage 2 review and reflected in stakeholder submissions.³³ The latest IASR may contain government policies or inputs that could materially affect the ODP of the next ISP and therefore the outcome of a feedback loop assessment.

The draft rule would improve the workability of the feedback loop assessment without altering its intended function or its role in the broader transmission regulatory framework. Enabling the feedback loop to be assessed against the ODP in the next ISP, particularly where there are significant differences between the ISP candidate option and RIT-T preferred option, is important for the feedback loop to be an effective consumer safeguard. Providing clarity will also promote timely completion of AEMO's assessment by enabling the feedback loop assessment to be tailored to the circumstances of a particular project.

The draft rule would also address the potential administrative burden on AEMO of maintaining two sets of modelling which can affect the timeliness of completing a feedback loop assessment and may affect the resourcing required to prepare the next ISP.

3.2 Requiring the AER's CBA guidelines to provide guidance on the timing of feedback loop requests and project assessment conclusion reports

Box 2: Draft determination – AER's CBA guidelines to provide guidance to RIT-T proponents on the timing of PACR publications and feedback loop requests.

The draft determination aligns the feedback loop assessment with a draft or final ISP by requiring the AER's CBA guidelines to provide guidance on the timing of any request by a RIT-T proponent.

31 The IASR is an annual publication which updates the inputs, assumptions and scenarios and informs the next draft ISP.

32 Most recent ISP parameters include the inputs, assumptions and scenarios set out in the most recent IASR. See clause 5.10.2 of the NER.

33 Some of those views are discussed in Section 1.2.

This change enables the establishment of an exclusion window between the publication of the final IASR and draft ISP to narrow the scope for misalignment between a RIT-T preferred option and the feedback loop assessment. Incorporating the new guidance requirements in the AER's CBA guidelines provides flexibility for AEMO and additional clarity for TNSPs regarding the operation of the feedback loop.

The guidelines should provide AEMO with the discretion to undertake the feedback loop during the exclusion window where appropriate given the circumstances of any particular request.

The CBA guidelines may also provide guidance on the publication of a PACR by a RIT-T proponent, such as by allowing the AER to specify a period of time in which PACRs may not be published.

The draft rule would require the AER to provide guidance on the timing of any request by a RIT-T proponent for a feedback loop assessment, and would allow the AER to provide guidance on the timing of when a PACR is published by a RIT-T proponent. The intention of this reform is to allow the AER to specify a period of time - between the final IASR and the draft ISP - in which feedback loop assessments would not be undertaken and PACRs may not be published. This exclusion window aims to minimise the risk of misalignment between the RIT-T and ISP, reflecting the fact that the RIT-T will have likely used the inputs and assumptions underpinning the next ISP.

The proposed exclusion window would result in a four-to-six month period of the two-year ISP cycle where feedback loops would generally not occur. The next exclusion window would therefore come into effect in mid-2025 ahead of the 2026 draft ISP. Figure 3.2 outlines the proposed feedback loop and PACR exclusion window in the context of the current 2024 ISP cycle. The proposed exclusion window would be implemented through a requirement to provide guidance in the AER's CBA guidelines.

Figure 3.2: Aligning the feedback loop with a draft or final ISP through an exclusion window between the final IASR and draft ISP



Source: AEMC

We consider the AER's CBA guidelines the most appropriate instrument to implement the exclusion window. Providing guidance in the AER's CBA guidelines provides the necessary flexibility for AEMO to manage its obligations while ensuring the timing for submission of feedback loops and publication of PACRs is consistent and transparent. The Commission previously considered alternative options to implement the exclusion window, including amendments to the NER to include explicit prohibitions or informal agreement between RIT-T proponents and AEMO.³⁴ Neither approach was recommended due to it either being too prescriptive or unclear in its guidance. A prescriptive approach would limit AEMO's flexibility to manage its feedback loop assessment based on the circumstances of a particular investment and may have unintended consequences for future projects.

The AER is required to update its CBA guidelines in response to several regulatory changes that have either been recently completed or are underway, including the inclusion of emissions in the national energy law and rule changes resulting from TPIR. For this reason, the draft rule includes transitional arrangements to support the AER during its initial implementation of the proposed amendments to the feedback loop and associated consultation.³⁵

While we are not intending to prescribe the requirements of the exclusion window, we consider that AEMO should retain the discretion to conduct assessments during the exclusion window if it determines that this is appropriate. This could apply where assessments do not require significant remodelling or where a request is submitted just prior to the commencement of the exclusion window. This balances the desired intent to better align the RIT-T and ISP and provide certainty for TNSPs navigating the regulatory process while allowing AEMO the discretion to manage its obligations and resources without creating unnecessary delay to regulatory approvals.

Applying the exclusion window to PACRs

The Commission recommended in TPIR that the exclusion window should apply to both feedback loop assessments and PACRs to minimise the misalignment of RIT-T and ISP processes and promote the feedback loop operating as an effective safeguard for consumers. However, the proponent has specifically asked the Commission to consider "the scenarios exclusion windows are applied, and the need for exclusion windows to apply to PACRs".³⁶

Since the Commission published the TPIR stage 2 final report, AEMO has indicated it no longer supports the exclusion window applying to the publication of PACRs by RIT-T proponents. The intention of an exclusion window for the publication of PACRs was to minimise misalignment between the ISP and RIT-T, as this period is when the latest assumptions have been developed in the IASR but are not yet reflected in the draft ISP for assessment in the feedback loop. AEMO considers that a PACR exclusion window is not required to reduce the risk of misalignment between the RIT-T and ISP, provided the amendments (see section 3.1) are made to allow feedback loop assessments to be based on the ODP in the draft ISP.

In that circumstance, the timing of a PACR publication is not critical as the PACR preferred option would either be assessed by AEMO for the feedback loop after the publication of the draft ISP using the updated ODP or alternatively AEMO could exercise its discretion, as recommended above, to undertake a feedback loop assessment during the exclusion window, if appropriate. AEMO has also raised concerns that an exclusion window for the publication of PACRs may unnecessarily delay the delivery of critical ISP projects if remodelling is not required.

34 AEMC, *Transmission Planning and Investment Review: Stage 2 draft report*, 2 June 2022, pp. 49-52.

35 These transitional arrangements are discussed in section 3.5.

36 Improving the workability of the feedback loop rule change request, p. 3.

The draft rule includes minor changes to the proposed rule

The draft determination makes the following change to:

- Clarify that the AER's CBA guidelines may provide guidance on the timing of publication of a PACR by a RIT-T proponent, such as by allowing the AER to specify a period of time in PACRs may not be published.³⁷

This mirrors the approach to implement the proposed exclusion window for feedback loops and meets the intent of the reform to minimise misalignment between the RIT-T and ISP without being overly prescriptive.

Question 1: Do you consider that a PACR exclusion window is required to reduce the risk of misalignment between the RIT-T and ISP?

3.3 Providing TNSPs with the flexibility to undertake concurrent feedback loop assessment and CPA processes

Box 3: Draft determination – Providing flexibility in the planning and investment framework

The draft determination amends the NER to allow the CPA process and feedback loop assessment to proceed concurrently.

This provides TNSPs with the option to undertake the CPA process and feedback loop assessment concurrently. In addition to introducing flexibility, this change would also address the potential problem of bunching caused by the implementation of an exclusion window for the feedback loop.

The draft determination provides TNSPs with the option to undertake the feedback loop assessment and CPA process concurrently. This addresses the potential for project delays due to a bunching of feedback loop assessments around the publication of a draft ISP.

The Commission's recommendation in the TPIR stage 2 final report to align the feedback loop assessment with a draft or final ISP through an exclusion window may lead to a bunching of feedback loop assessments around the publication of a draft ISP.³⁸ A consequence of this approach is that it could lead to delays in the regulatory process as RIT-T proponents wait for the feedback loop window to open.

Running these processes concurrently is unlikely to increase the regulatory burden on market bodies or TNSPs because the costs sought in the CPA are capped by AEMO through the feedback loop determination. Given the information requirements for a feedback loop assessment, the Commission considers RIT-T proponents will have likely developed their cost estimates to the standard required for a CPA prior to seeking a feedback loop assessment from AEMO. The intent of this recommendation is to promote timeliness of investment by enabling TNSPs to submit CPAs without having to wait for the outcome of the feedback loop assessment. The AER will still

³⁷ The guidance on the timing of PACR publications is proposed as an optional consideration to ensure interoperability with the existing requirement for RIT-T proponents to publish PACRs "as soon as practicable after the end of the consultation period on the project assessment draft report." See clause 5.16A.4(i) of the NER and AER, Cost benefit analysis guidelines: Guidelines to make the Integrated System Plan actionable, October 2023, pp. 83-84.

³⁸ AEMC, *Transmission Planning and Investment Review: Stage 2 final report*, 27 October 2022 p. 51.

be required to wait for written confirmation of the feedback loop assessment prior to its CPA determination.³⁹

The Commission notes that some stakeholders may value the assurance given by finalising the feedback loop assessment before initiating the CPA process to ensure that the RIT-T preferred option is aligned with the ODP. Accordingly, there may be some circumstances where a TNSP still prefers to complete the feedback loop prior to submitting a CPA. The draft recommendation provides TNSPs with this flexibility by not mandating that the two processes run concurrently.

The draft rule includes minor changes to the proposed rule

The draft determination makes the following changes to the application of the concurrent process for the feedback loop and CPA processes:

- Introduces a clause that automatically grants the AER an extension to their CPA process if AEMO submits an extension of the feedback loop process to the RIT-T proponent. Alignment of these processes will ensure AEMO and the AER are able to make their decisions within the timeframes provided for under the rules while achieving the intent of the reform to encourage timely delivery of major transmission projects.⁴⁰
- Requires the RIT-T proponent, once notified by AEMO of an extension to the feedback loop process to advise the AER of this extension within one business day. The more preferable draft rule seeks to provide certainty and transparency for market bodies and TNSPs to support the timely delivery of major transmission projects. More information is provided in section 3.4⁴¹

The draft rule supports a clear, consistent and predictable regulatory framework that will work to ensure the concurrent process is streamlined and workable for all stakeholders.

3.4 Supporting timely decision-making by requiring AEMO to complete its feedback loop assessment within specified timeframes

Box 4: Draft determination – AEMO to complete the feedback loop assessment within specified timeframes

The draft determination places a requirement on AEMO to complete the feedback loop assessment within 40 business days, with the ability to extend the period by up to a further 60 business days if the assessment is particularly complex or difficult.

A clear, consistent and predictable regulatory framework is critical to the timely and efficient delivery of major projects. The Commission considers that there is merit in placing timeframes on AEMO to complete the feedback loop assessment.

This will provide TNSPs with clarity and transparency regarding when the outcome of the feedback loop will be known.

The draft determination places timeframes on AEMO to complete the feedback loop assessment. A clear, consistent and predictable regulatory framework is critical to the timely and efficient delivery of major projects. Incorporating a timeframe for AEMO to complete the feedback loop will

³⁹ Clause 6A.8.2 (e)(1D) of the draft rule.

⁴⁰ Clause 6A.8.2 (i1) of the more preferable draft rule.

⁴¹ Clause 5.16A.6(d) of the draft rule.

promote this objective by providing clarity and transparency to stakeholders regarding when the outcome of the feedback loop will be known.

For consistency, it is recommended that the timeframes placed on AEMO to complete the feedback loop assessment be analogous to the timeframes applying to the AER with respect to assessing CPAs.⁴² These timeframes being:

- AEMO should have 40 business days to complete the feedback loop assessment from the later of the date the request is submitted or additional information is received following an information request issued by AEMO.
- AEMO should be able to extend the period by up to a further 60 business days if the feedback loop assessment is particularly complex or difficult (such as if re-modelling is required).
 - The notice of extension must be made before the 30th day of the feedback loop process (minimum 10 business days notice before the required 40 day time limit).
 - Once a RIT-T proponent is notified of the extension, the RIT-T proponent will be required to notify the AER of the extension within one business day to ensure that any concurrent feedback loop and CPA process is aligned.

The draft rule includes minor changes to the proposed rule

The draft determination makes the following change to the timeframes being placed on AEMO to complete the feedback loop process:

- Requires AEMO to request an extension by no later than 10 days before the end of the 40 day limit instead of the 7 days proposed in the rule change request to more closely align AEMO and the AER's requirements.
 - This provides certainty for RIT-T proponents and other stakeholders, particularly if they are using the concurrent process outlined in section 3.3.

The Commission has done this to more closely align the timeframes for AEMO's feedback loop process with the AER's CPA timeframes.

The draft rule supports a clear, consistent and predictable regulatory framework that will work to ensure the timely and streamlined decision-making in the feedback loop process.

3.5 Including transitional rules which support the timely implementation of the draft rule

Box 5: Draft determination – Including transitional rules for AER guidelines updates and to enable TNSPs that have already applied for a feedback loop assessment prior to the rule commencement to be assessed against the existing rules

The draft determination includes transitional rules which:

- Provide the AER with 12 months to update and publish its CBA guidelines in line with the proposed feedback loop amendments and allow prior consultation, in anticipation of the amending rule, to satisfy the consultation requirements to update the guideline.

⁴² Clause 5.16A.6 of the draft rule.

- Apply the proposed feedback loop amendments to an existing actionable ISP project if, and only if, the RIT-T proponent has not already requested a feedback loop assessment prior to the commencement of the rule.

The transitional provisions ensure the smooth implementation of the draft rule.

The proponent requested that implementation of the amendments proposed in the rule change request not adversely affect existing projects, citing changes to existing processes for market bodies and TNSPs. The draft determination includes the transitional rules proposed in the rule change request.

We consider that the draft determination is unlikely to have adverse impacts on eligible existing actionable ISP projects.⁴³ Projects that have not submitted feedback loop requests prior to the commencement of the rule would benefit from the application of the proposed reforms to their feedback loop requests, as well as benefiting from the option to under the CPA process in parallel. AEMO's draft 2024 ISP may provide further guidance on existing actionable ISP projects.

The draft determination provides TNSPs with certainty regarding the application of the regulatory framework for any feedback loop assessment requests that are made prior to the commencement of the rule. This provides proponents clarity and regulatory certainty that requests submitted prior to the commencement of the rule will be assessed using the existing rules.

The draft rule would apply from the commencement of the rule, noting that any exclusion window resulting from the AER's guidance on timing in the CBA guidelines would be operational at a later date, not likely to have effect until mid-2025 when the next final IASR is published.

The draft rule will require updates to the AER's CBA guideline. To support the AER in updating its CBA guideline, we have included the following transitional provisions in the draft rule:

- The AER must update and publish on its website the CBA guidelines within 12 months after the commencement date of the rule. The AER must review its guideline to comply with the requirements to update the CBA guideline under the NER, and in doing so must comply with the Rules consultation procedures.
- If the AER undertakes consultation to update the CBA guidelines in respect of the draft rule, prior to the commencement of the rule, the consultation may satisfy the necessary requirements under the Rules consultation procedures.

The draft rule includes minor changes to the proposed rule

The draft determination makes the following change to the transitional provisions:

- Clarifies that if a feedback loop request for an actionable ISP project (or stage of an actionable ISP project) is made prior to the commencement of the rule, the existing NER framework would apply. However, if a feedback loop request for a subsequent stage of that actionable ISP project is made after the commencement date, then the amended framework under the draft rule would apply.

⁴³ These projects include HumeLink and VNI West. Of the remaining actionable ISP projects in the 2022 ISP, Sydney Ring and the New England REZ Transmission Link are actionable projects under the NSW Electricity Infrastructure Investment Roadmap and not proceeding under the NER. See AEMO, 2022 Integrated System Plan, p. 67. Marinus Link is progressing its revenue determination through the intending TNSP framework introduced by the Commission in a 2022 rule change and therefore is subject to a modified process for making a revenue determination to include its construction costs under Chapter 6A. See AER, Marinus Link Decision: Transmission Determination Commencement and Process Paper, June 2023, <https://www.aer.gov.au/system/files/AER%20-%20Marinuslink%20-%20Notice%20of%20Decision%20and%20Commencement%20and%20Process%20Paper.pdf> and Marinus Link, Intending TNSP application for a revenue determination, submission to the AER, 31 March 2023, p. 16.

Question 2: Are the transitional rules appropriate?

We are interested in stakeholder views on whether the transitional rules are appropriate.

A Rule making process

A fast track rule change request includes the following stages:

- a proponent submits a rule change request
- the Commission initiates the rule change process by publishing a notice which communicates the Commission’s decision to fast track the rule change
- the Commission publishes a draft determination and draft rule (if relevant)
 - stakeholders lodge submissions on the draft determination and engage through other channels to make their views known to the AEMC project team
- the Commission publishes a final determination and final rule (if relevant).

You can find more information on the rule change process on our website.⁴⁴

A.1 Minister Bowen proposed a rule to improve the workability of the feedback loop

The proposal seeks to implement the TPIR stage 2 recommendations to improve the workability of the feedback loop by providing AEMO with the ability to undertake feedback loop assessments against the ODP in a draft or final ISP, and by improving the alignment of the feedback loop with a draft or final ISP. It also seeks to provide greater flexibility to RIT-T proponents through the use of concurrent feedback loop assessment and CPA processes as well as encouraging timely decision-making by requiring AEMO to make its decision within a specified period.

A.2 The proposal addressed the potential impact of the existing feedback loop arrangements on timely decision-making and on consumer interests

The proposal suggested that workability issues with the feedback loop undermine its ability to function as a consumer safeguard and may contribute to potential delays to major transmission projects. It stated that the lack of clarity and certainty in the regulatory framework contributes to an administrative burden on AEMO. These issues also contribute to the risk of inconsistencies between the inputs underpinning the feedback loop and the RIT-T preferred options.

The proposal also stated that the absence of a clear and consistent regulatory framework may impact the ability to efficiently delivery ISP projects and may impact on the feedback loop’s ability to operate as an effective consumer safeguard.

A.3 The proposal improves consistency and transparency for market bodies and TNSPs

The proposal suggests amendments to the NER in order to improve consistency and transparency in feedback loop assessments as well as encouraging more timely decisions.

The proposed amendments aimed to:

- Enable the feedback loop assessment to be assessed against the most recent ODP in a draft or final ISP which is underpinned by the most up to date inputs, assumptions and scenarios.

⁴⁴ See our website for more information on the rule change process: <https://www.aemc.gov.au/our-work/changing-energy-rules>

- Align the feedback loop assessment with a draft or final ISP by establishing an exclusion window for the feedback loop and PACRs between the publication of the final IASR and draft ISP. To be implemented through amendments to the AER's CBA guidelines with discretion for AEMO to undertake the feedback loop during the exclusion window where appropriate, given the circumstances of that particular investment.
- Allow, but not require, the feedback loop and CPA process to occur concurrently to address concerns of the potential for delay due to bunching of feedback loops around a draft or final ISP.
- Require AEMO to complete the feedback loop assessment within 40 business days from the later of the date the request is submitted or additional information is received following an information request issued by AEMO.
- Give AEMO the power to extend the assessment by 60 business days if it determines the assessment involves complexities or difficulties.

A.4 The process to date

On 16 November 2023, the Commission published a notice advising of its intention to initiate the rule making process in respect of the rule change request.⁴⁵ The Commission decided to fast-track this rule change request. This is because it concluded that the rule change request is consistent with the relevant recommendations made by the Commission in the TPIR stage 2 final report and adequate consultation with the public was undertaken during that review on the relevant recommendations.⁴⁶

Accordingly, the Commission did not publish a consultation paper upon initiation of the rule change process and there has been no formal consultation carried out in this rule change process to date. We note that the issues raised in the rule change request were assessed with extensive consultation throughout the TPIR stage 2 process.

⁴⁵ This notice was published under section 95 of the NEL.

⁴⁶ The decision to fast-track the rule change request was made under section 96A(1)(b) of the NEL.

B Regulatory impact analysis

The Commission has undertaken regulatory impact analysis to make its draft determination.

B.1 Regulatory impact analysis methodology

We considered a range of policy options

The Commission compared a range of viable policy options that are within its statutory powers. The Commission analysed these options: the rule proposed in the rule change request; a business-as-usual scenario where we do not make a rule; and a more preferable draft rule featuring greater clarity and consistency for market bodies and TNSPs in the application of the rule, including specific timing for transitional arrangements. These options are described in chapter 2.

We identified who would be affected and assessed the benefits and costs of each policy option

The Commission's regulatory impact analysis for this rule change used qualitative methodologies. It involved identifying the stakeholders impacted and assessing the benefits and costs of policy options. The depth of analysis was commensurate with the potential impacts. Where commensurate and feasible, the Commission has quantified the impacts. The Commission focused on the types of impacts within the scope of the NEO.

Table B.1 summarises the regulatory impact analysis the Commission undertook for this rule change. Based on this regulatory impact analysis, the Commission evaluated the primary potential costs and benefits of policy options against the assessment criteria. The Commission's determination considered the benefits of the options minus the costs.

Table B.1: Regulatory impact analysis methodology

Assessment criteria	Primary costs Low, medium or high –	Primary benefits Low, medium or high –	Stakeholders affected	Methodology QT = quantitative, QL = qualitative
Emissions reduction	Nil	Timely assessment of major projects which support the transition to net zero.	<ul style="list-style-type: none"> • AEMO • AER • TNSPs 	<ul style="list-style-type: none"> • QL: stakeholder feedback to assess all benefits and costs to market bodies and TNSPs.
Principles of market efficiency	Nil	Costs for major projects are allocated in a timely and efficient manner to address system needs in the ODP.	<ul style="list-style-type: none"> • AEMO • AER • TNSPs 	<ul style="list-style-type: none"> • QL: stakeholder feedback to assess all benefits and costs to market bodies and TNSPs.
Implementation considerations	AER and AEMO implementation	Clarity for AEMO and TNSPs in the operation of the feedback loop assessment.	<ul style="list-style-type: none"> • AEMO • AER • TNSPs 	<ul style="list-style-type: none"> • QL: stakeholder feedback to assess all benefits and costs to market bodies and TNSPs.
Principles of good regulatory practice	AER and AEMO implementation	Reduction in regulatory burden, uncertainty and risk of delay.	<ul style="list-style-type: none"> • AEMO • AER • TNSPs 	<ul style="list-style-type: none"> • QL: stakeholder feedback to assess all benefits and costs to market bodies and TNSPs.

C Legal requirements to make a rule

This appendix sets out the relevant legal requirements under the NEL for the Commission to make a draft rule determination.

C.1 Draft rule determination and draft rule

In accordance with section 99 of the NEL, the Commission has made this draft rule determination for a more preferable draft rule in relation to the rule proposed by The Honourable Chris Bowen, Minister for Climate Change and Energy.

The Commission's reasons for making this draft rule determination are set out in chapter 2.

A copy of the more preferable draft rule is attached to and published with this draft determination. Its key features are described in chapter 3.

C.2 Power to make the rule

The Commission is satisfied that the more preferable draft rule falls within the subject matter about which the Commission may make rules.

The more preferable draft rule falls within section 34 of the NEL as it relates to rules regulating the activities of persons (including Registered participants) participating in the national electricity market under section 34(1)(a)(iii) of the NEL.

C.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NEL to make the draft rule
- the rule change request
- stakeholder input received as part of consultation undertaken by the TPIR
- the Commission's analysis as to the ways in which the draft rule will or is likely to contribute to the achievement of the NEO

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.⁴⁷

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 network functions.⁴⁸ The more preferable draft electricity rule is compatible with AEMO's declared network functions because they would not affect those functions.

C.4 Making electricity rules in 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.⁴⁹ Under those regulations, only certain parts of the NER have been adopted in the Northern Territory.

⁴⁷ Under s. 33 of the NEL and s. 73 of the NGL 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. In December 2013, it became known as the Council of Australian Government (COAG) Energy Council. In May 2020, the Energy National Cabinet Reform Committee and the Energy Ministers' Meeting were established to replace the former COAG Energy Council.

⁴⁸ Section 91(8) of the NEL.

⁴⁹ These regulations under the NT Act are the National Electricity (Northern Territory) (National Uniform Legislation) (Modifications) Regulations 2016.

As the more preferable draft rule relates to parts of the NER that apply in the Northern Territory, the Commission is required to assess Northern Territory application issues, described below.

Test for scope of “national electricity system” in the NEO

Under the NT Act, the Commission must regard the reference in the NEO to the “national electricity system” as a reference to whichever of the following the Commission considers appropriate in the circumstances having regard to the nature, scope or operation of the proposed rule.⁵⁰

1. the national electricity system
2. one or more, or all, of the local electricity systems⁵¹
3. all of the electricity systems referred to above.

Test for differential rule

Under the NT Act, the Commission may make a differential rule if it is satisfied that, having regard to any relevant MCE statement of policy principles, a differential rule will, or is likely to, better contribute to the achievement of the NEO than a uniform rule.⁵² A differential rule is a rule that:

- varies in its term as between:
 - the national electricity systems, 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.

A uniform rule is a rule that does not vary in its terms between the national electricity system and one or more, or all, of the local electricity systems, and has effect with respect to all of those systems.⁵³

The Commission’s draft determinations in relation to the meaning of the “national electricity system” and whether to make a uniform or differential rule are set out in chapter 2.

C.5 Civil penalty provisions and conduct provisions

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

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

⁵⁰ Clause 14A of Schedule 1 to the NT Act, inserting section 88(2a) into the NEL as it applies in the Northern Territory.

⁵¹ These are specified Northern Territory systems, listed in schedule 2 of the NT Act.

⁵² Clause 14B of Schedule 1 to the NT Act, inserting section 88AA into the NEL as it applies in the Northern Territory.

⁵³ Clause 14 of Schedule 1 to the NT Act, inserting the definitions of “differential Rule” and “uniform Rule” into section 87 of the NEL as it applies in the Northern Territory.

Abbreviations and defined terms

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
CBA	Cost Benefit Analysis
Commission	See AEMC
CPA	Contingent project Application
IASR	Inputs Assumptions and Scenarios Report
ISP	Integrated System Plan
NEL	National Electricity Law
NEO	National Electricity Objective
NER	National Electricity Rules
NT Act	<i>National Electricity (Northern Territory) (National Uniform Legislation) Act 2015</i>
Proponent	The individual / organisation who submitted the rule change request to the Commission
RIT-T	Regulatory Investment Test for Transmission
TNSP	Transmission Network Service Provider
TPIR	Transmission Planning and Investment Review