

27 November 2024

Mr Phillip Munro-Laylim,
Project Leader,
Australian Energy Market Commission,
GPO Box 2603,
SYDNEY NSW 2000

Lodged via project page submission portal.

Dear Mr Munro-Laylim,

**SUBMISSION TO ERC403 – ALLOWING AEMO TO ACCEPT CASH AS CREDIT
SUPPORT CONSULTATION PAPER**

Delta welcomes the opportunity to respond to the Australian Energy Market Commission's (**AEMC**) consultation paper on allowing the Australian Energy Market Operator (**AEMO**) to accept cash as credit support.

Delta is a profitable and solvent business and continues to serve a critical role in maintaining the security and reliability of the National Electricity Market (**NEM**). Delta considers the uncertainty caused by financial institutions declining to provide financial services to coal and gas industries, including Delta, due to ESG policies present a real and present risk to the energy system, and specifically the increasing inability for fossil fuel generators to provide credit support as required by the National Electricity Rules (**NER**).

Delta considers this rule change to be urgent as it has been unable to find, after an extensive search, a financial institution to provide a replacement bank guarantee facility for its trading and generation functions. As outlined in Delta's rule change request, the current credit support provisions in Clause 3.3.2 of the NER, which limit credit support to AEMO in the form of a bank guarantee, will result in Delta being unable to provide credit support after December 2024, when Delta's existing bank guarantee facility agreement expires.

This presents a concern not only for Delta but also for the efficient and effective operation of the energy system. In the event that Delta is required to provide credit support to AEMO but is unable to do so in the prescribed form, AEMO may suspend Delta from participating in the market. It is also unacceptable that a Market Participant should rely on AEMO's discretion to not suspend it on this issue. This provides no confidence for business continuity and the reliance on AEMO discretion undermines the integrity of the existing prudential framework.

The remainder of this submission explores these issues further and responds to the AEMC's questions from the consultation paper.



AGL's objection to the expedited process

While the AEMC agreed under the urgency test and initiated the rule change under the expedited process, it is now clear that the AEMC will follow the standard consultation process after AGL's objection to the expedited process was successful.

After review of AGL's objection to the expedited process (published on the AEMC's project page on 21 November 2024), Delta understands AGL's primary argument as to the rule change not being urgent is that the NER currently provides AEMO with discretion not to suspend a Market Participant following a default event, such as failure to provide credit support when required. This discretion is purportedly granted under Clause 3.15.21 of the NER, which states that

“... AEMO **may** issue a suspension notice...” (emphasis added).¹

Delta notes that the intent of Clause 3.15.21 is to establish the conditions under which default and suspension notices are issued, but it does not specify conditions or provide context as to why AEMO might choose not to issue such notices. Therefore, Delta believes that the intent of Clause 3.15.21 was not to address foreseeable issues such as that raised in the rule change request. Delta contends that AEMO should not be expected to rely on this discretionary power to selectively suspend Market Participants based on their ability to meet credit support requirements. Furthermore, such reliance would create significant uncertainty for business such as Delta and undermine the integrity of the existing prudential framework.

Providing cash is already acceptable to AEMO under some circumstances

AEMO currently accepts cash as credit support in specific circumstances, such as in the case of trading margin breaches. However, AEMO does not accept cash as credit support under other circumstances, such as for its Maximum Credit Limit (MCL) assessment. Delta understands that AEMO's discretion to accept cash as credit support is not explicitly stated in the NER. Consequently, Delta's request is straightforward: it seeks to allow cash to be used as credit support more broadly and to formalise this change through an amendment to the NER.

Question 1: Do the current available options for credit support create problems in the NEM?

Yes. Not permitting cash as an option for credit support would introduce significant uncertainty for Delta and increasingly other coal and gas generators who are exposed to the ESG policies financial institutions who provide services such as Bank Guarantees. Given that Delta provides approximately ten percent of New South Wales' electricity needs, this could exacerbate risks to the security and reliability of the NEM.

As the energy transition progresses and the market continues to rely on thermal assets, both the market and AEMO's prudential requirements must account for this ongoing reality. Delta

¹ NER clause 3.15.21 (c).



believes that this issue will become increasingly critical through the transition, as the reliance on the remaining thermal assets intensifies, particularly if delays in the construction of replacement dispatchable capacity persist.

Question 2: What are the potential benefits of allowing cash to be provided as credit support?

Allowing cash as an option for credit support would enable AEMO to maintain its prudential requirements without the need to create exemptions or exceptions for Delta or other market participants facing similar challenges. More importantly, it would provide AEMO with greater assurance that Delta's Vales Point units will remain operational and available, thereby mitigating the risk of unexpected outages or early closures due to the uncertainty created by this issue.

Delta recognises that there may be concerns regarding potential barriers to entry in retail competition if cash is not accepted as a credit support option, particularly for smaller retailers. These concerns stem from the fact that obtaining a bank guarantee facility may require more collateral than the cash AEMO would otherwise require. While Delta has not encountered this issue directly, it encourages the AEMC to further explore the broader benefits of allowing cash as a credit support option, particularly in terms of promoting retail competition.

Question 3: What are the potential costs of allowing cash to be provided as credit support?

Delta believes that the benefits of the proposed change will outweigh any associated costs. Specifically:

- While Delta acknowledges the potential clawback issue, it is confident that this risk can be mitigated through one or more of the solutions proposed by the AEMC (refer to the response to Question 4).
- Delta considers that the proposed change will have minimal, if any, impact on emissions. This is due to the continued need for dispatchable thermal capacity in the power system beyond the current closure dates for Delta's Vales Point units, and potentially other thermal units as well. Not permitting cash as credit support would likely reduce the efficiency of the transition as thermal generation exits the system. In the absence of cash as an option for credit support, AEMO or government intervention may be required to retain thermal generation in the system, should the market or prudential framework fail to accommodate this need. Such intervention could lead to increased costs for consumers.

Question 4: Are there any provisions that could enable AEMO to sufficiently manage insolvency risks when accepting cash as credit support?

Delta views the clawback risk as a technical issue that is solvable, and it also notes that AEMO currently accepts cash as credit support in cases of trading margin breaches. Delta



encourages the AEMC to review the existing controls AEMO may already have in place for managing such risks.

Overall, Delta supports the options presented in the consultation paper. One possible approach could involve a combination of these options, with varying credit support thresholds and corresponding requirements:

- As suggested by the AEC in its submission, a relatively small amount of credit support may not require additional conditions, as any unrecovered amount (in a clawback scenario) could be socialised across Market Participants with minimal impact.
- For higher amounts of credit support, Delta supports the AEMC's proposed option of AEMO registering a security interest in the cash, similar to the practice in the Wholesale Electricity Market (WEM).
- Should the AEMC determine that additional criteria are necessary, Delta suggests the AEMC could investigate the following alternatives:
 - A Parent Company Guarantee; or
 - Cash as credit support above a certain threshold could be limited to Market Participants who, under normal circumstances, are net producers of energy (i.e., generators).

Question 5: Would transitional rules be needed?

Delta believes that maintaining the current rules after December 2024 introduces a significant level of uncertainty for both Delta and the broader market. Should the rule change be implemented with an interim period before its full effect, Delta supports the introduction of a transitional rule that would permit the provision of cash as credit support to AEMO during this period.

As noted above, the AEMC has moved the project to a standard rule change consultation process. Delta seeks guidance from both the AEMC and AEMO on how Delta, and any other thermal generator, would be treated by AEMO should credit support be required but is unable to be provided in the form of a bank guarantee.

Question 6: Are there any additional variations or alternative options to Delta's proposal?

Delta agrees with AFMA's submission that, if the proposed rule change is implemented, AEMO should be required to pay interest on any cash it holds. This could operate in a manner similar to how ASX Clear (Futures) manages initial margin payments and other cash balances held on behalf of participants. It would also align with the standard practice of bank guarantee facilities, where banks typically pay interest on any cash deposits required to secure bank guarantees.



Question 7: Assessment framework

Delta supports the assessment framework, and notes that the criteria of maintaining a safe, secure and reliable power system, as well as market rules that are flexible to the changing needs during the transition should be prioritised.

To discuss further please contact Delta's Market Compliance and Regulation Manager Joel Aulbury at joel.aulbury@de.com.au.

Yours sincerely,

STEVE GURNEY
COMPANY SECRETARY/GENERAL COUNSEL