

Our ref: ERC0404
28 February 2025

Dr Anne S. Smith
Rainforest Reserves Australia

By email: annesusesmith@gmail.com

Dear Dr Smith

Response to objection to the use of an expedited process for the rule change request on removing the requirement to publish transmission information guidelines

I refer to the objection dated 13 February 2025 from Rainforest Reserves Australia to the Australian Energy Market Commission (Commission) in relation to the use of an expedited process for the rule change on *removing the requirement to publish transmission information guidelines*.

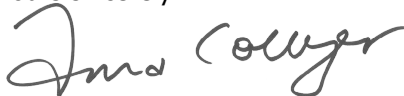
The Commission has carefully considered Rainforest Reserves Australia's objection in light of the relevant test for the use of the expedited process in the National Electricity Law (NEL). We appreciate the time that you have taken to provide us with your views.

For the reasons set out in the Appendix to this letter, the Commission has decided that the reasons given by Rainforest Reserves Australia in the request for the Commission not to use the expedited process are misconceived or lacking in substance. This is the relevant test in the NEL, as described in the Appendix.

Accordingly, the Commission has decided to continue with the expedited rule change process and not to switch to the standard rule making process.

The Commission thanks Rainforest Reserves Australia for its interest in this project. We appreciate the time that you have taken to provide us with your views.

Yours sincerely



Anna Collyer
Chair
Australian Energy Market Commission

Appendix

Relevant provisions of the National Electricity Law

The AEMC's decision to use an expedited process for the rule change on *Removing the requirement to publish transmission information guidelines* was on the basis that the rule change request was a request for a non-controversial rule. That is, a rule that is unlikely to have a significant effect on the national electricity market (NEM).¹

Under the National Electricity Law (NEL) 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 or body its reasons, in writing, for that decision without delay.²

The AEMC has come to this opinion, after considering the reasons in Rainforest Reserves Australia's objection in the context of the meaning of a non-controversial rule. Our reasons are set out below, with reference to each of the reasons in the objection. The sub-headings below reflect the main points in the objection.

Removing access to information

Rainforest Reserves Australia considered that transparency in regulatory frameworks ensures all stakeholders have equal access to essential market data, as transparency is a principle of good governance.³ It noted that regulatory opacity can erode public trust and facilitate corruption.⁴

It considered that a transition to an 'on-request' model increases administrative burdens for stakeholders.⁵ It submitted that this would disproportionately harm smaller entities that lack the resources or bureaucratic knowledge to navigate complex regulatory channels and limit public access to transmission data.⁶ Overall, Rainforest Reserves Australia considers that this change would reduce public participation in energy policy discussions.⁷

The Commission is of the opinion that this reason is misconceived and lacking in substance.

The objection misconstrues what rule 6A.17 of the National Electricity Rules (the NER) (which the rule change request proposes deleting) does. Rule 6A.17 of the NER requires Transmission Network Service Providers (TNSPs) to submit information to the Australian Energy Regulator (AER). There is no obligation in rule 6A.17 of the NER for the AER to publish this information.

Clause 6A.17.2(h)(1) allows (but does not require) the Transmission Information Guidelines (the Guidelines) to cover information that TNSPs must supply to a Co-ordinating Network Service Provider and other TNSPs for the purpose of cost allocation under their pricing methodology, but Co-ordinating Network Service Providers and other TNSPs are not the stakeholders referred to in the objection. Clause 6A.17.2(h)(1) allows (but does not require) the Guidelines to cover information that TNSPs must supply to Co-ordinating Network Service Provider and other TNSPs for the purpose of cost allocation under their pricing methodology, but Co-ordinating Network Service Providers and other TNSPs are not the stakeholders referred to in the objection.

¹ National Electricity Law, section 87.

² National Electricity Law, section 96(4).

³ Rainforest Reserves Australia objection, page 2, section 3.1.

⁴ Rainforest Reserves Australia objection, page 4, section 3.5.

⁵ Rainforest Reserves Australia objection, page 3, section 3.2.

⁶ Rainforest Reserves Australia objection, page 3, section 3.2.

⁷ Rainforest Reserves Australia objection, page 3, section 3.2.

Further, the objection fails to describe why the conclusions drawn by Rainforest Reserves Australia would have a significant effect on the NEM, being the relevant test to consider for an objection.

Introducing discretion over information gathering and dissemination

Rainforest Reserves Australia noted that mandatory publication of transmission guidelines has been a longstanding practice, to ensure equal access to information.⁸ It raised questions about who can request information, whether certain stakeholders would be disadvantaged, and whether key market players exert disproportionate influence over information dissemination.⁹ Rainforest Reserves Australia considered this as a shift in proactive information sharing to a reactive and potentially inefficient process.¹⁰

The Commission is of the opinion that this issue is misconceived, as it misconstrues what rule 6A.17 of the NER does. It is not a mechanism for providing information to stakeholders but rather a mechanism for the AER to obtain information for the AER's purposes. There is also no suggestion in the rule change request that there would be non-AER requesters of information.

Currently, under rule 6A.17 of the NER (the rule proposed to be deleted), there is no obligation on the AER to publish information gathered under the Guidelines, so there is no material change to the AER's discretion on information disclosure. Under clause 6A.17.2(a) of the NER, the AER must publish the Guidelines themselves. However, under the NEL s.281(1), Information Orders must also be published on the AER's website, so a similar level of transparency would be maintained, if the proposed rule were made. Rule 6A.17 of the NER already provides the AER with some discretion over what information the AER may require from a TNSP,¹¹ so the difference in discretion between information collected using Guidelines and information collected using Information Orders is not significant for the AER or the market.

Clause 6A.17.2(e) of the NER also limits the content of annual statements required by the Guidelines to specific information relevant to the AER's monitoring, reporting, enforcement and revenue functions. Since the proposed deletion of rule 6A.17 of the NER would not affect these functions, the AER must continue to undertake these functions, and it will likely continue to require the relevant information, which it can obtain through Information Orders. There will be no new discretion provided to a TNSP in responding to a notice or the Information Orders from the AER, even if the proposed rule is made. The TNSP must comply with whatever regulatory information notices or Information Orders the AER issues under the NEL (s28N and s28O of the NEL are civil penalty provisions).

Further, the objection fails to describe why there would be a significant effect on the NEM.

The expedited process is not appropriate

Rainforest Reserves Australia considered that the expedited process is not appropriate, as it could prevent submissions from important stakeholders, and undermine transparency and fair market access.¹²

The Commission is of the opinion that this issue is lacking in substance. This is because a non-controversial rule means a rule that is unlikely to have a significant effect on the national electricity market. There is no apparent nexus between this objection and why the proposed rule fails to meet the definition of a non-controversial rule.

⁸ Rainforest Reserves Australia objection, page 3, section 3.3.

⁹ Rainforest Reserves Australia objection, page 4, section 3.4.

¹⁰ Rainforest Reserves Australia objection, page 2.

¹¹ Clauses 6A.17.1(c) and 6A.17.2(e) of the NER.

¹² Rainforest Reserves Australia objection, page 1.