



**Australian Energy Market Commission**

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# RULE CHANGE

## **RULE DETERMINATION**

### **National Electricity Amendment (Timing for intervention compensation determinations) Rule 2010**

**Rule Proponent(s)**

AEMO

**Commissioners**

Tamblyn  
Henderson  
Woodward

25 March 2010

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For and on behalf of the Australian Energy Market Commission

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## **About the AEMC**

The Council of Australian Governments, through its Ministerial Council on Energy (MCE), established the Australian Energy Market Commission (AEMC) in July 2005 to be the rule maker for national energy markets. The AEMC is currently responsible for rules and policy advice covering the National Electricity Market and elements of the natural gas markets. We are an independent, national body. Our key responsibilities are to consider rule change proposals, conduct energy market reviews and provide policy advice to the Ministerial Council as requested, or on AEMC initiative.

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## Summary

### The Commission's determination

The Australian Energy Market Commission (Commission) makes this final Rule determination and attached Rule on the Australian Energy Market Operator's (AEMO's) Rule change request relating to the Timing for Intervention Compensation Determinations. The final Rule determination and Rule are made in accordance with sections 102 and 103 of the National Electricity Law (NEL). The Rule is a more preferable Rule to that proposed in the Rule change request. The reasoning for the Commission's decision is provided below.

### Summary of the Rule change request

On 25 November 2009 AEMO submitted a Rule change request to the Commission. The Rule change request seeks to extend the period of time available for AEMO to complete its obligations to finalise intervention compensation amounts when an independent expert is appointed to determine additional claims for compensation.<sup>1</sup>AEMO contends that the current timeframe of 100 business days may not be enough time for it to complete its obligations when an independent expert is required to be appointed to determine additional claims for compensation and is seeking to extend this timeframe to 150 business days.

The Rule change proposal also seeks to correct minor errors in Rules clauses 3.15.7(c) and 3.15.7B(a1).

### The Commission's reasoning for its determination

The Commission has made a more preferable Rule to that proposed by AEMO, that adds an additional 50 business days to the existing timeframes<sup>2</sup>for finalising intervention compensation amounts, when an independent expert is appointed to determine an additional claim for compensation. The more preferable Rule also corrects an additional error in the Rules.

The Commission considers that extending the timeframes will or is likely to contribute to the efficient use of electricity services with respect to the price of supply of electricity:

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<sup>1</sup> The relevant clauses in the Rules are clauses 3.12.2(l), 3.12.2(m), 3.15.7B(c) and 3.15.7B(d). The types of claims for additional compensation that can be made by market participants are defined in:

- clause 3.12.2(g)(3)(affected participants adjustment claims);
- clause 3.12.2(g)(4)(market customer's additional claims); and
- clause 3.15.7B(a)(a1) or (a2) (claims by directed participants).

<sup>2</sup> The existing timeframes may be 100 business days or 150 business days (if an independent expert is appointed under Rules clause 3.15.7A).

- reduces the risk to directed participants, affected participants and market customers<sup>3</sup>, that additional claims for compensation are not adequately assessed thereby potentially providing productive efficiency benefits. Where claims are not considered adequately, the risk of matters going to dispute (which incurs costs) potentially increases. Directed participants, affected participants and market customers may, at the margin, price this risk into their contracts, with increased premia on prices being passed through to consumers;
- increases the certainty for directed participants, affected participants and market customers about finalisation of their additional claims, and when they will receive their entitlements if relevant, thereby providing further productive efficiency benefits. Increased levels of certainty about the compensation determination timetables should help market participants manage the costs they incurred through the AEMO intervention event. In the absence of certainty over the timetable, relevant participants may seek, at the margin, to manage any uncertainties through increased premia on prices which may be passed on to consumers; and
- reduces the risk of AEMO breaching the Rules. Administrative requirements following a breach may result in costs to AEMO and the Australian Energy Regulator (AER).<sup>4</sup>

The Commission considers that the more preferable Rule will or is likely to better contribute to the achievement of the national electricity objective (NEO) compared to the proposed Rule as it has the following further advantages:

- it provides flexibility in situations where an independent expert is appointed twice. If a timeframe extension is not provided in this situation there is a risk that AEMO and the independent expert may not have sufficient time to finalise their obligations; and
- it corrects a further typographical error in clause 3.15.7B(c)(1) of the Rules.

### **Consultation on the Rule change request**

The Commission considered that the Rule change request was a request for a non-controversial Rule under section 96 of the NEL<sup>5</sup> No objections to the treatment of the Rule change request as non-controversial were received, so the Commission has assessed the Rule change request under the expedited process provided in section 96 of the NEL.

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<sup>3</sup> See clauses 3.15.7B(c) and (d) and clauses 3.12.2(l) and (m). For the definition of directed participant see chapter 10 of the Rules (under the heading "Directed Participant"). For a definition of market customer see chapter 10 of the Rules (under the heading "Market Customer"). For the definition of affected participant see chapter 10 of the Rules (under the heading "Affected Participant").

<sup>4</sup> The AER is responsible for monitoring Rules breaches.

<sup>5</sup> AEMO Rule change request, p6.

The consultation period for submissions on the content of the Rule change request closed on 11 March 2010. No submissions were received on this Rule change request.

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# **1 AEMO's Rule change request**

## **1.1 The Rule change request**

On 25 November 2009, AEMO (the Rule Proponent) made a request to the Commission to make a Rule (the Rule change request) regarding:

- extending the period of time provided in the Rules for AEMO to complete its obligations to finalise intervention compensation amounts when an independent expert is appointed to determine additional claims for compensation under Rules clauses 3.12.2(l) and (m) and 3.15.7B(c) and (d); and
- correcting minor errors in Rules clauses 3.15.7(c), and 3.15.7B(a1).

## **1.2 Rule change request rationale**

Currently the Rules provide AEMO with a 100 business day timeframe to finalise intervention compensation amounts. The exception to this timeframe is when an intervention is a direction for services other than energy or market ancillary services (an "other services" direction) and an independent expert is appointed to determine a fair payment price for the service provided. In this situation AEMO has a 150 business day timeframe.

An independent expert may however, also be appointed to determine additional claims for compensation by directed participants, market customers and affected participants. The Rule Proponent contends that the current allowable timeframe of 100 business days is not sufficient time to finalise compensation amounts when an independent expert is appointed to determine additional claims for compensation. The Rule Proponent therefore seeks to extend the 100 business day timeframe in this situation to 150 business days, making the timeframe consistent with the appointment of an independent expert to determine a fair payment price for other services directions.

A further rationale for the Rule change proposal is that under the current intervention compensation framework, directed participants have up to the 100 business day deadline to submit additional claims for compensation. Where claims are received close to the timeframe deadline, AEMO may be left with insufficient time to finalise the additional claim for compensation if an independent expert is required.

## **1.3 Solution proposed in the Rule change request**

The solution proposed in the Rule change request is to extend the timeframe for AEMO to finalise intervention compensation amounts when an independent expert is required to determine additional claims for compensation. The Rule Proponent proposes to extend the timeframe from 100 business days to 150 business days.

## **1.4 Relevant background**

This section of the Rule determination explains the background and context of the Rule change request. It describes AEMO's powers to intervene in the market, and the roles of an AEMO appointed independent expert in the intervention compensation process.

### **AEMO's powers to intervene in the electricity market**

AEMO may intervene in the national electricity market (NEM) through mechanisms provided for in the Rules if the market fails to deliver a safe, secure and reliable supply of electricity. The options that AEMO may utilise are the Reliability and Emergency Reserve Trader (RERT) mechanism and AEMO's powers under clause 4.8.9 of the Rules to issue directions or instructions.

### **RERT**

The RERT mechanism provides AEMO with an avenue to purchase additional reserves (generation or demand-side) needed to meet regional minimum reserve levels. The operation and parameters of the RERT are set out in Rule 3.20 of the Rules.

### **Directions**

Clause 4.8.9 of the Rules gives AEMO the power to direct registered participants with scheduled plant or market generating units to do any act or thing, if it is necessary to do so to maintain or re-establish the power system to a secure, satisfactory or reliable operating state. Directed participants are required to use reasonable endeavours to comply with the direction, unless to do so would (in the participant's reasonable opinion), be a hazard to public safety, materially risk damaging equipment, or contravene any other law.

AEMO is required to pay compensation to the directed participant for the service provided in response to the direction, and to recover the cost of that compensation from market participants in accordance with the Rules. Services that may be provided by directed participants are services for the provision of electricity, market ancillary services or services other than energy or market ancillary services.

### **Instructions**

Clause 4.8.9 instructions are similar to AEMO's directions powers, but apply to registered participants other than those with scheduled plant or market generating units. This power is also used to maintain or re-establish the power system to a secure, satisfactory or reliable operating state. There is no compensation paid to participants the subject of a clause 4.8.9 instruction.

### **Role of an AEMO appointed independent expert in the intervention compensation process**

When an AEMO intervention event occurs, AEMO is required to determine the amount of compensation payable by or to relevant affected participants, market

customers or directed participants.<sup>6</sup> In some circumstances AEMO has an obligation or a discretion to appoint an independent expert to undertake certain functions of the intervention compensation determination process.

An independent expert is required to be appointed under clauses 3.12.2(l) and (m) and 3.15.7B(c) and (d) (which are the clauses the subject of this Rule change proposal) for the purposes of determining additional claims for compensation following intervention events. An independent expert may also be appointed pursuant to clause 3.15.7A(b) to determine the fair payment price for directions for services other than energy or market ancillary services.

### **Appointment of an independent expert under clause 3.12.2 - additional compensation claim following an intervention event**

Clause 3.12.2 of the Rules has the effect that certain participants<sup>7</sup> affected by an AEMO intervention (affected participants and market customers) are able to be paid or are required to pay amounts calculated by AEMO.<sup>8</sup> An independent expert is required to be appointed under this clause where a participant submits a claim for additional compensation to the amount calculated by AEMO and:

- the additional component amount claimed is above \$20,000 and the total amount claimed by all claimants is over \$100,000; or
- where AEMO determines that a claim made under this clause is unreasonable.

The process the independent expert is required to follow is outlined in clause 3.12.3 of the Rules which specifies that the independent expert:

- publish a draft report setting out the total compensation payable or receivable by the relevant parties, and methodologies and assumptions used in making its determination;
- deliver to the relevant parties and AEMO, draft assessments of the compensation payable or receivable by the relevant party;
- call for submissions from all relevant parties after publishing its draft report and take into consideration all submissions received within 15 days of the publication of the draft report;
- meet with relevant parties if requested within 15 days of publication of its draft report and draft assessments; and
- publish a final report, and final compensation assessment for each relevant party.

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<sup>6</sup> Rules clause 3.12.1(a).

<sup>7</sup> These participants are stated in Rules clause 3.12.2 and Chapter 10 of the Rules under the headings "Affected Participants" and "Market Customers".

<sup>8</sup> The claim is referred to in Rules clause 3.12.2(l) and (m) as an affected participant's adjustment claim or a market customer's additional claim.

Currently AEMO has 100 business days to finalise its obligations under this clause. AEMO is seeking to extend this timeframe to 150 business days when an independent expert is appointed.

### **Appointment of an independent expert under clause 3.15.7B - additional compensation claim following a direction**

Clause 3.15.7B of the Rules provides the grounds under which participants who have been directed by AEMO may claim additional compensation (over the amounts calculated by AEMO).

An independent expert is required to be appointed where:

- the additional component amount claimed is above \$20,000 and the total amount claimed by all claimants is over \$100,000; or
- where AEMO determines that a claim for additional compensation made under this clause is unreasonable.

The process the independent expert is required to follow is set out in clause 3.12.3 and is the same as that for additional claims for compensation by affected participants and market participants following an AEMO intervention (under clause 3.12.2 mentioned above).

Currently AEMO has 100 business days to finalise its obligations under this clause. AEMO is seeking to extend the timeframe to 150 business days when an independent expert is appointed.

### **Appointment of an independent expert under clause 3.15.7A - determining a fair payment price for "other" services directions**

Clause 3.15.7A of the Rules outlines the process for compensating participants who have been directed by AEMO to provide services other than energy or market ancillary services. Under this clause an independent expert is to be appointed where AEMO considers that an independent expert could reasonably be expected to determine a fair payment price within a reasonable time for the services provided as part of the direction.

Unlike the other instances under which an independent expert is appointed (described above), the process the independent expert is required to follow is set out in clause 3.15.7A itself, rather than in clause 3.12.3. The actual processes are, however, substantially similar and the independent expert is required to determine and publish a draft report, call for submissions and take submissions into account in its final report.

A key difference in the appointment of the independent expert under clause 3.15.7A is that AEMO currently has, (by virtue of the Rules), 150 business days to fulfil its obligations to determine compensation if an independent expert is appointed under this clause.

## **1.5 Commencement of Rule making process**

On 11 February 2010, the Commission published a notice under section 95 of the NEL advising of its intention to commence the Rule change process and consultation in respect of the Rule Change Request. A consultation paper identifying specific issues or questions for consideration was also published with the Rule Change Request. Submissions closed on 11 March 2010.

The Commission did not receive any submissions to this Rule change request.

The Commission considered that the Rule change request was a request for a non-controversial Rule. Accordingly, the Commission intended to expedite the Rule change request under section 96 of the NEL, subject to any written requests not to do so. The closing date for receipt of written requests was 11 March 2010.

No written requests were received and accordingly, the Rule change request was considered under an expedited process under section 96 of the NEL.

## 2 Final Rule Determination

### 2.1 Commission's determination

In accordance with section 102 of the NEL the Commission has made this Rule determination in relation to the Rule proposed by AEMO. In accordance with section 103 of the NEL the Commission has determined not to make the Rule proposed by the Rule Proponent and to make a more preferable Rule.

The Commission's reasons for making this Rule determination are set out in section 3.1.

The *National Electricity Amendment (Timing for intervention compensation determinations) Rule 2010 No [2]* (Rule as Made) is published with this Rule determination. The Rule as Made commences on 25 March 2010. The Rule as Made is a more preferable Rule.<sup>9</sup> Its key features are described in section 3.2.

### 2.2 Commission's considerations

In assessing the Rule change request the following was material and relevant:

- the Commission's powers under the NEL to make the Rule;
- relevant MCE statements of policy principles (noting that for this Rule change request there are no relevant MCE statements of policy principles);
- the Rule change request; and
- the Commission's analysis as to the ways in which the proposed Rule will or is likely to, contribute to the achievement of the NEO.

### 2.3 Commission's power to make the Rule

The Commission is satisfied that the Rule as Made falls within the subject matter about which the Commission may make Rules. The Rule as Made falls within the matters set out in sections 34(1)(a)(ii)<sup>10</sup> and 34(1)(a)(iii)<sup>11</sup> of the NEL as it relates to:

- finalising compensation payments resulting from AEMO's interventions on the operation of the electricity market; and

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<sup>9</sup> Under section 91A of the NEL the AEMC may make a more preferable Rule.

<sup>10</sup> Section 34(1)(a)(ii) of the NEL refers to the operation of the national electricity system for the purposes of the security and reliability of that system.

<sup>11</sup> Section 34(1)(a)(iii) of the NEL refers to the activities of persons (including Registered Participants) participating in the national electricity market or involved in the operation of the national electricity system.

- the activities of AEMO and independent experts appointed by AEMO to make intervention compensation determinations.

Further, the Rule as Made falls within the matters set out in schedule 1 to the NEL as it relates to:

- the determination of amounts compensating market participants for services provided as a result of AEMO interventions;
- payments for services obtained through directing participants under clause 4.8.9 of the Rules; and
- clauses that were in place prior to the establishment of the National Electricity Rules.

The following items of Schedule 1 are relevant:

- item 7 (the setting of prices for electricity and services purchased through the wholesale exchange operated and administered by AEMO, including maximum and minimum prices);
- item 34 (the payment of money (including the payment of interest) - for any service provided under the Rules in respect of which the Rules require payment); and
- item 36 (any other matter or thing that is the subject of, or is of a kind dealt with by, a provision of the National Electricity Code as in operation and effect immediately before the commencement of section 12 of the *National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005* of South Australia).

## 2.4 Rule making test

Under section 88(1) of the NEL the Commission may only make a Rule if it is satisfied that the Rule will, or is likely to, contribute to the achievement of the NEO. This is the decision making framework that the Commission must apply.

The NEO is set out in section 7 of the NEL as follows:

“The objective of this Law is 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.”

Under section 91A, the Commission may make a Rule that is different (including materially different) from a market initiated proposed Rule (a more preferable Rule) if the Commission is satisfied that, having regard to the issue or issues that were raised by the market initiated proposed Rule (to which the more preferable Rule relates), the more preferable Rule will or is likely to better contribute to the achievement of the NEO.

In the case of a more preferable Rule, the Commission is required under section 102(2)(a)(ii) to include in its Rule determination, the reasons it is satisfied the more preferable Rule will or is likely to better contribute to the achievement of the NEO than the market initiated Rule request to which the more preferable Rule relates.

For the Rule change request, having regard to any relevant MCE Statement of Policy Principles, the Commission considers that the relevant aspect of the NEO is:<sup>12</sup> *"the efficient operation and use of electricity services for the long term interests of consumers of electricity with respect to the price... of supply of electricity."*

The Commission is satisfied that the Rule as Made will, or is likely to, contribute to the achievement of the NEO, for the reasons set out in sections 3.1 and 3.2, and chapters 5 and 6 of this Rule determination.

## **2.5 Other requirements under the NEL**

In applying the Rule making test in section 88 of the NEL, the Commission notes that, with regard to this Rule change request, there are no relevant MCE statements of Policy Principles.<sup>13</sup>

Under section 91(8) of the NEL 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. The Commission may make this Rule as it is not related to AEMO's declared network functions.

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<sup>12</sup> Under section 88(2), for the purposes of section 88(1) the AEMC may give such weight to any aspect of the NEO as it considers appropriate in all the circumstances, having regard to any relevant MCE Statement of Policy Principles.

<sup>13</sup> Under section 33 of the NEL the AEMC must have regard to any relevant MCE statement of policy principles in making a Rule.

## **3 Commission's reasons**

The Commission has analysed the Rule change request and assessed the issues arising out of this Rule change request. For the reasons set out below, the Commission has determined that a Rule be made. Its analysis of the Rule proposed by the Rule Proponent is also set out below.

### **3.1 Assessment**

As noted in chapter 1, the Rule Proponent is seeking to extend the timeframes to determine intervention compensation amounts when an independent expert is appointed to determine additional claims for compensation. The current timeframe is 100 business days, and the Rule Proponent seeks to extend this timeframe to 150 business days. The Rule Proponent also seeks to correct minor cross referencing errors in relevant Rules clauses.

#### **3.1.1 Insufficient time to consider additional claims**

In analysing the intervention compensation framework, the Commission considers that there is a risk that AEMO may breach its timeframes when an independent expert is required to be appointed to determine additional claims for compensation.

There are two reasons for this. Firstly directed participants are able to submit additional claims for compensation right up to the overall timeframe deadline. While this additional claim submission timeframe provides flexibility for AEMO and directed participants to calculate compensation amounts, it also leaves AEMO and the independent expert with potentially little or no time to undertake their respective obligations under the Rules within the timeframe.

Secondly it is expected that the independent expert would require between 40 to 50 business days to undertake its obligations given the process it is required to follow in Rules clause 3.12.3. This is a significant amount of time given that the current overall timeframe for AEMO to undertake its obligations is 100 business days.

#### **3.1.2 Reduced risk and increased certainty**

The Commission considers that where AEMO's and the independent expert's timeframe to determine additional claims for compensation is too short:

- there is a risk that additional claims for compensation may not be adequately assessed. If claims are not adequately assessed there is an associated risk of matters potentially going to dispute, which lengthens the timeframes for affected participants, market customers and directed participants obtaining the outcome of the additional claim for compensation, and adds costs to the claim process; and

- there is reduced certainty for affected participants, market customers and directed participants on when they will receive notification of the outcome of the intervention compensation determination and receive their payments.

These risks impact on the ability of potential affected participants, market customers and directed participants to manage the costs they have incurred during the intervention. For example, where uncertainties exist over the timing of compensation processes or there is a risk that claims may not be adequately assessed, relevant registered participants may at the margin seek to reflect these uncertainties and risks into their contracts. This could take the form of additional risk and price premia which may ultimately be passed on to consumers.

The Commission considers that increasing the timetable certainty and reducing the risk that claims are not adequately assessed, should assist relevant market participants manage their own risks and costs, thereby providing productive efficiency benefits and promoting the efficient use of electricity services. As noted above, it is possible that any cost savings that are achieved will be passed on to consumers.

### **3.1.3 Reduced potential for breach of Rules**

The Commission further considers that where the Rules do not provide sufficient time for independent expert assessments to be undertaken, there is a risk that AEMO may breach the Rules. In these circumstances, it is possible that action may need to be taken against AEMO for a breach of the Rules. The Commission considers that it is preferable for the Rules to be amended to avoid the potential for administrative costs to be incurred in these circumstances.

### **3.1.4 Conclusion**

For these reasons the Commission has determined that the timeframes for AEMO to finalise intervention compensation payments when an independent expert is appointed to determine additional claims for compensation be extended. The Commission considers that this timeframe extension will, or is likely to contribute to the achievement of the efficient operation and use of electricity services for the long term interests of consumers of electricity with respect to price.

The Commission further determines that errors in the relevant Rules clauses be corrected, as these errors create confusion and a lack of clarity to the Rules. This may result in inefficiencies in the administration and compliance of the Rules, and potentially increases the risk of dispute between relevant parties.

## **3.2 Rule as made**

Having concluded that a Rule is required to address the issues identified in the Rule change request, the Commission has determined to make a more preferable Rule to that proposed by the Rule Proponent. The Commission considers that its more preferable Rule adopts the position of the Rule Proponent's proposed Rule and also takes into account the following additional factors:

- it extends the existing 150 business day timeframe when an independent expert is appointed to determine a fair payment price under clause 3.15.7A by 50 business days if an independent expert is also appointed to determine an additional claim for compensation. If an additional 50 business days is not provided for in this situation there is a risk that AEMO and the independent expert will not have sufficient time to undertake their obligations under the Rules leading to the risks outlined above in section 3.1 of this Rule determination. The more preferable Rule therefore provides more flexibility in situations where an independent expert is required to be appointed twice; and
- it corrects a further typographical error in clause 3.15.7B(c)(1) of the Rules.

The Commission considers that in taking into account the additional factors raised above, that the more preferable Rule will, or is likely to better contribute to the achievement of the efficient operation and use of electricity services for the long term interests of consumers of electricity with respect to the price of electricity, than the proposed Rule.

### **3.3 Civil penalties**

The Rules clauses that are the subject of this final Rule determination are currently not civil penalty provisions. The Commission does not consider that any of the new Rules, or amendments to Rules inserted by the Rule as Made be recommended to the MCE for classification as civil penalty provisions. This is because the obligations on AEMO, the independent expert, and relevant registered participants provided in the Rules clauses the subject of this Rule determination are not, in the view of the Commission, so integral to the operation of the power system, or the functioning of the NEM, that they warrant civil penalty provisions to be attached to them.

## 4 Commission's analytical framework

This chapter describes the analytical framework that the Commission has applied to assess the Rule change request in accordance with the requirements set out in the NEL (and explained in chapter 2).

### 4.1 General analytical framework

As noted in section 2.4, the Commission may give such weight to any aspect of the NEO as it considers appropriate in all the circumstances. For this Rule change request, the Commission considers it appropriate to give weight to the following aspect of the NEO: *"the efficient operation and use of electricity services for the long term interests of consumers with respect to the price... of supply of electricity."*

Economic efficiency is a concept central to the NEO. As the Commission has discussed in relation to previous Rule change requests, economic efficiency is commonly considered to have three elements:

- productive efficiency - e.g. the electricity market should be operated on a least cost basis given the existing and likely network and other infrastructure;
- allocative efficiency - e.g. electricity generation and consumption decisions should be based on prices that reflect the opportunity cost of the available resources; and
- dynamic efficiency - e.g. ongoing productive and allocative efficiency should be maximised over time. Dynamic efficiency is commonly linked to the promotion of efficient long-term investment decisions.

In the context of regulated energy markets, a relevant consideration is the extent and form of market intervention. Interventions in the operation of the market should be minimised. This enables resources to be allocated primarily on the basis of prices established through market mechanisms, hence supporting productive, allocative and dynamic efficiency.

The Commission also seeks to apply principles of good regulatory design and practice as it considers that the NEO has implications for the means by which the regulatory arrangements operate (in addition to their ends). In applying these principles, the Commission seeks to have regard to the need, where practicable to:

- promote stability and predictability - market Rules should be stable, or changes to them predictable, so that participants and investors can plan and make informed short and long-term decisions; and
- promote transparency - to the extent that intervention in the market is required, it should be based on, and applied according to, transparent criteria.

## 4.2 Application of analytical framework for the Rule change request

In the present circumstances the application of this analytical framework has involved focussing on the following issues:

- the current framework for determining intervention compensation amounts. This includes the obligations AEMO is required to undertake within the Rules timeframe, and how the process for determining additional claims for compensation relates to other processes within the intervention compensation assessment framework set out in the Rules;
- the effects of extending the timeframes for intervention compensation determinations when an independent expert is appointed to determine additional claims for compensation;
- the impacts of the proposal on the ability of market participants to manage risk;
- analysis of efficiency outcomes of compensation determination timeframes being either too long or too short; and
- analysis of potential costs incurred in the intervention compensation determination process including administrative costs and additional interest payments, and the effects that extending the process timeframes would have on these costs.

The Commission has focussed on this set of issues because they represent the main factors in assessing whether timeframe extensions to the intervention compensation determination process should be implemented, and in particular, whether the proposal will or is likely to promote the efficient use of electricity services.

The application of the Commission's analytical framework in this instance has involved the following tasks and methods:

- detailed analysis of the Rules; and
- discussions with the Rule Proponent.

## 5 Extending the timeframes for intervention compensation determinations

This section outlines the impacts that extending the timeframes for finalising intervention compensation payments when an independent expert is appointed to assess additional claims for compensation has on the efficient use of electricity services. There are four areas of efficiency that have been identified, these are:

- efficiencies arising from reducing the risk that additional claims for compensation are not adequately considered and subsequently form the subject of a dispute;
- efficiencies arising from certainty for directed participants, affected participants and market customers about when they will obtain the outcome of their additional claims, and receive their entitlements if relevant;
- efficiencies arising from reducing the risk of AEMO breaching the Rules; and
- administrative inefficiencies associated with extending the timeframes.

Further explanation of these efficiency impacts are outlined below.

### 5.1 Rule Proponent's view

The Rule Proponent contends that the current timeframes are not adequate for it to finalise intervention compensation payments when an independent expert is appointed to determine additional claims for compensation.<sup>14</sup> The Rule Proponent provided an example in its Rule change request where an additional claim for compensation was submitted close to the timeframe deadline, and would have resulted in AEMO breaching the Rules if an independent expert had been required to be appointed.<sup>15</sup>

The Rule Proponent also raised the issue that affected participants, market customers and directed participants would not be affected adversely by extending the timeframes, as these participants receive interest payments from the date of the intervention event to the date of the compensation payment.<sup>16</sup> This would include interest payments for delays due to the extended timeframe.

### 5.2 Stakeholder views

No stakeholder submissions to the Rule change request were received.

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<sup>14</sup> AEMO Rule change request, p3.

<sup>15</sup> AEMO Rule change request, p3.

<sup>16</sup> AEMO Rule change request, p7.

### 5.3 Time to adequately undertake obligations

In the absence of submissions to the Rule change proposal, the Commission has analysed the Rule change request within the current Rules framework for assessing intervention compensation amounts. The Commission has assessed whether the 100 day assessment timeframe set out in this framework is reasonable given the practical steps involved in making determinations. This context includes the following factors:

- AEMO currently has 100 business days to assess intervention compensation amounts. This timeframe includes assessment of additional claims for compensation by an independent expert appointed by AEMO.
- The independent expert's process may take between 40 and 50 business days (depending on whether there are objections to AEMO's nominee of the independent expert, and the time provided by AEMO in the intervention settlement timetable for the independent expert to assess the additional claim for compensation), given the Rules process the independent expert is required follow.<sup>17</sup> This is a significant portion of the overall 100 business day timeframe.
- Directed participants are able to submit claims for additional compensation right up to the timeframe deadline.<sup>18</sup> This type of timeframe provides necessary flexibility for both AEMO and directed participants. It does however, also expose AEMO to the risk that claims are submitted close to its timeframe deadline leaving it, and the independent expert, with little or no time to undertake their obligations.<sup>19</sup>
- An independent expert may be appointed to determine a fair payment price under clause 3.15.7A and to assess additional claims for compensation under clauses 3.12.2(l), 3.12.2(m), 3.15.7B(c) and 3.15.7B(d).

Against this context, the Commission agrees with the Rule Proponent that AEMO is at risk of breaching the Rules when additional claims for compensation are required to be determined.<sup>20</sup> The Commission considers that there are benefits in extending the timetable for the determination of additional claims when an independent expert is appointed. The reasons for this are set out below.

### 5.4 Reducing the potential for dispute

Where AEMO or the independent expert do not have enough time to undertake their obligations to finalise additional claims for compensation, there is a risk that these additional claims are not adequately assessed. If claims are not adequately assessed

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<sup>17</sup> This process is set out in clause 3.12.3 of the Rules.

<sup>18</sup> This does not apply to market customers and affected participants who are subject to a seven business day timeframe to submit additional claims for compensation under Rules clause 3.12.2(f).

<sup>19</sup> AEMO's obligations are found in Rules clause 3.12.1. The independent expert's obligations are found in Rules clause 3.12.3.

<sup>20</sup> AEMO Rule change request, p3.

there is an associated risk that these matters may be the subject of a dispute, under the dispute resolution procedure outlined in chapter 8 of the Rules.<sup>21</sup> The costs of entering dispute resolution, and the additional time taken to resolve the claim may be reflected in additional risk or price premia in the NEM participant's commercial contracting arrangements which may ultimately be passed on to consumers.

On this basis, the Commission considers that the proposed Rule should reduce the risk of disputes and potentially lead to cost savings and productive efficiencies which may be passed on to consumers.

## **5.5 Certainty to relevant participants**

Timeframes have been included in the Rules to provide relevant registered participants with certainty about when they will be compensated following an AEMO intervention. This certainty allows the relevant registered participants to better manage the costs they have incurred during the intervention. Where AEMO is unable to meet the timeframes, relevant registered participants (in this case affected participants, market customers or directed participants), are exposed to the risk of uncertain delays regarding their compensation payments. These participants may, at the margin, price this risk into their commercial and contractual arrangements.

The Commission considers that the proposed Rule should increase timetable certainty and should allow affected participants, market customers and directed participants to better manage their risks, possibly lowering their risk management costs and providing productive efficiency benefits. Productive efficiency can be achieved when an output is produced at the minimum possible cost given available technology and input prices. It is possible that lower risk management costs to parties could be passed on to consumers through lower prices, although these benefits may be marginal and are difficult to quantify.

## **5.6 AEMO breaching the Rules**

Where AEMO is unable to undertake its obligations within the required timeframes under Rules clause 3.12.1 in relation to intervention compensation amounts, it will have breached the Rules. This would require AEMO to discharge its obligations to the AER relating to a breach of the Rules in accordance with rule 8.7. These breach obligations have an associated administrative cost potentially on AEMO and the AER (which is responsible for monitoring breaches of the Rules).<sup>22</sup> The Commission considers that it is preferable for the Rules to be amended to avoid the potential for costs to be incurred in these circumstances.

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<sup>21</sup> Rules clause 8.2.1(a)(5) which applies to disputes about the payment of monies under or concerning any obligations under the Rules.

<sup>22</sup> Rule 8.7 of the Rules.

## **5.7 Administrative efficiencies**

The use of lengthy timeframes in intervention compensation processes can lead to increased costs being recouped from NEM participants, including additional administrative costs on AEMO and additional interest payments to affected customers, market customers and directed participants. As such, making the timeframes longer than necessary potentially introduces administrative inefficiencies into NEM operations. In this case however, the Commission considers that the timeframe extension has been limited to a situation where additional time is legitimately required. This situation is where an additional claim for compensation has been submitted, and an independent expert is required to be appointed.

## **5.8 Summary of analysis on proposed Rule**

The Commission considers that AEMO requires an additional 50 business days to determine additional claims for compensation when an independent expert is appointed to determine these additional claims.<sup>23</sup> The Commission further considers that limiting the timeframe extension only to the situation where an independent expert is required to be appointed to assess additional claims for compensation, mitigates the potential inefficiencies of an overly lengthy timeframe.

## **5.9 More preferable Rule**

The Rule Proponent has requested a Rule that provides an overall timeframe of 150 business days where an independent expert is required to be appointed to determine a claim for additional compensation.<sup>24</sup> The Commission however considers that a Rule adding a further 50 business days to the existing process (of 100 business days where an independent expert is not required to be appointed under Rules clause 3.15.7A, or 150 business days where an independent expert is required to be appointed under Rules clause 3.15.7A) is more preferable. This is because there is a risk that an independent expert may need to be appointed twice. For example an independent expert could be appointed under both clause 3.15.7A and clause 3.15.7B(c) and (d) or 3.12.2(l) and (m). In this situation a 150 business day timetable may be insufficient for AEMO to finalise its obligations. In these circumstances the more preferable Rule adds a further 50 business days and would provide a more flexible but certain timeframe for when an independent expert is appointed twice.

The efficiency advantages, and the mitigation of risk of AEMO breaching the Rules, would also be applied to the situation where an independent expert is appointed twice. In this situation under the Commission's more preferable Rule AEMO would have 200 business days to undertake its obligations set out in Rules clause 3.12.1. The Commission therefore considers that the more preferable Rule will or is likely to better contribute to the achievement of the NEO than the Rule Proponent's proposed Rule.

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<sup>23</sup> The process the independent expert is required to follow is set out in clause 3.12.3 of the Rules.

<sup>24</sup> AEMO Rule change request, p3.

## **5.10 Conclusion**

The Commission determines that a more preferable Rule be made that extends the existing timeframes of:

- 100 business days where an independent expert is not required to be appointed under clause 3.15.7A, to 150 business days where an independent expert is appointed to determine an additional claim for compensation; and
- 150 business days where an independent expert is required to be appointed under clause 3.15.7A, to 200 business days where an independent expert is appointed to determine an additional claim for compensation.

## 6 Correcting errors contained in the Rules

There are a number of errors in the relevant intervention compensation determination clauses that require amendment. These are:

- an incorrect reference to clause 3.17.17(d) in clause 3.15.7(c). The correct reference is to clause 3.17.7(d);
- an incorrect reference to clause 3.15.7A(a) in clause 3.15.7B(a1). The correct reference is to clause 3.15.7A(b); and
- an incorrect reference to "an *affected participant's adjustment claim or market customer's additional claim*" in clause 3.15.7B(c)(1). The correct reference is to "a claim by a Directed Participant under clause 3.15.7B(a), 3.15.7B(a1) or 3.15.7B(a2)".

### 6.1 Rule Proponent's view

The Rule Proponent stated the following in its Rule change request:

"AEMO has identified a couple of numbering errors in the NER that it considers should be addressed, these are:

- the reference to clause 3.15.17(d) in clause 3.15.7(c) of the [Rules] is incorrect and should refer to clause 3.15.7(d). This seems like a typographical error because clause 3.15.17(d) does not exist in the [Rules]; and
- the reference to clause 3.15.7A(a) in clause 3.15.7B(a1) of the NER appears to be incorrect and should refer to clause 3.15.7A(b). This appears to be a reference to the appointment of an independent expert, however clause 3.15.7A(a) provides no guidance on the appointment of an independent expert, whereas clause 3.15.7A(b) of the NER does."<sup>25</sup>

### 6.2 Stakeholder views

No submissions to the Rule change request were received.

### 6.3 Analysis

The Commission has adopted the Rule Proponent's amendments to clauses 3.15.7(c) and 3.15.7B(a1) and agrees with the proponents reasons.<sup>26</sup>

The Commission has also identified a further error in clause 3.15.7B(c)(1). This clause relates to directed participants. Additional claims for compensation above a certain

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<sup>25</sup> AEMO Rule change request p4.

<sup>26</sup> AEMO Rule change request, p4 and p6.

threshold for affected participants and market customers are already provided for in clause 3.12.2(l). Furthermore clause 3.15.7B is in relation to directed participants. It therefore follows that clause 3.15.7B(c)(1) should refer to directed participants.

The Commission agrees with the Rule Proponent that these errors in the Rules be amended as they create confusion for AEMO and relevant registered participants, thereby detracting from the efficient operation of the intervention compensation determination process.<sup>27</sup>

## **6.4 Conclusion**

The Commission determines that the errors identified in clauses 3.15.7(c), 3.15.7B(a1) and clause 3.15.7B(c)(1) be amended.

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<sup>27</sup> AEMO Rule change request, p4 and p6.

## Abbreviations

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	Australian Energy Market Commission
MCE	Ministerial Council on Energy
NEL	National Electricity Law
NEO	National Electricity Objective
Rule Proponent	AEMO
Rules	National Electricity Rules