



Victorian jurisdictional derogation (smelter agreements)

Publication of final rule determination and final rule

The Australian Energy Market Commission (AEMC) has made a rule to allow the deemed registration arrangements for the Point Henry smelter and Anglesea power station to conclude following the expiry of the Point Henry electricity supply agreement on 31 July 2014.

The final determination

The Commission has made a rule in response to a request submitted by the Victorian Minister for Energy and Resources (the rule proponent). The rule clarifies that the arrangements through which the State Electricity Commission of Victoria (SEC) is deemed to be the registered participant for the Point Henry smelter and the Anglesea power station will conclude on 31 July 2014. This will allow Alcoa of Australia, the owner and operator of these facilities, to assume the role of registered participant.

Background to the rule change request

This rule change concerns a jurisdictional derogation. Under the National Electricity Law (NEL), derogations exempt nominated parties, or persons in a jurisdiction, from complying with specific requirements under the National Electricity Rules or, alternatively, modify or vary the application of specific provisions with respect to that party, or in a jurisdiction.

The derogation in question preserves legacy arrangements that existed in Victoria prior to the commencement of the National Electricity Market (NEM) relating to the supply of electricity to the Point Henry and Portland smelters. Under the derogation, the SEC is deemed to be the registered market customer in respect of both smelters, and also the registered generator in respect of the Anglesea Power Station, which provides much of the power to the Point Henry smelter.

The derogation ceases to have effect upon the termination of the last of the relevant agreements, which is currently due to be the Portland electricity supply agreement. This will expire on 31 October 2016. However, the electricity supply agreement for Point Henry expires prior to this, on 31 July 2014.

The rule proponent was concerned that, if the rule was not made, the SEC would retain its deemed registrations, together with the associated financial and regulatory obligations. It would not have been possible for the registered participant for the Point Henry smelter and the Anglesea power station to have been changed in the period between 31 July 2014 and 31 October 2016, potentially inhibiting the continued operation of both of these facilities.

Reasons for the Commission's determination

Under 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 National Electricity Objective (NEO). Broadly, the NEO aims to promote efficient investment in, and operation and use of, electricity services for the long term interests of electricity consumers with respect to price, quality, safety, reliability and security of supply.

The Commission considers that the rule is likely to contribute to the achievement of the NEO because it provides for market participant and investor certainty and confidence by improving regulatory certainty and aligning responsibility for ownership and operation. This will also provide for an incremental improvement in the efficient allocation of risk.

The Commission notes that developments arising since the submission of the rule change request suggest that the Point Henry smelter is unlikely to operate after 31 July 2014. However, the Commission does not consider that this would provide any reason not to remove an unnecessary part of the rules.

The rule corrects an oversight in the rules to allow the standard market registration process to apply.

The Commission's consultation process

The NEL requires that the Commission undertake public consultation on all rule change requests that it assesses. We publish all relevant documentation on the AEMC website (www.aemc.gov.au) and are required to publish notices in a national newspaper.

Under the NEL, there are a number of alternative processes for the assessment of rule changes, including a process for 'non-controversial' rule changes. The NEL defines a non-controversial rule as one which is unlikely to have a significant effect on the NEM. The Commission determined that, while it might have some impact on the continued operation of the Point Henry smelter and Anglesea power station, the Smelter Agreements rule change would not have a significant effect on the wider market.

Under the process followed for the Smelter Agreements rule change, there was a four week consultation period. This closed on 27 March 2014, and one submission was received.

The role of the AEMC in the National Electricity Market

The AEMC was established in 2005 by the Council of Australian Governments as part of new governance arrangements to oversee the NEM. The NEM began operation in 1998 and covers six jurisdictions in southern and eastern Australia: Queensland, New South Wales, Victoria, South Australia, Tasmania and the ACT. Prior to the NEM, each jurisdiction had its own arrangements governing the electricity industry.

One of the AEMC's key roles is to make rules which govern the NEM. Changes to the rules can be proposed by anyone. The AEMC assesses rule changes through a public consultation process, and determines whether or not they should be made through the application of the NEO.

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