



# RULE CHANGE

Australian Energy Market Commission

## SECTION 108A REPORT

### Economic Regulation of Network Service Providers Rule Change

#### **Rule Proponents**

Australian Energy Regulator  
Energy Users Rule Change Committee - Amcor, Australian Paper,  
Rio Tinto, Simplot, Wesfarmers, Westfield and Woolworths

29 November 2012

## Purpose of report

The Australian Energy Market Commission (AEMC or Commission) is required under section 108A of the National Electricity Law (NEL) to publicly report on rules not made within 12 months of the publication of the notification of the commencement of the rule change process.

This report relates to the consolidated *Economic Regulation of Network Service Providers* rule change request which has taken approximately 13 months from when the AEMC formally initiated the rule change process to completion.

## Background

On 29 September 2011, the Australian Energy Regulator (AER) submitted two rule change requests. One rule change request related to various aspects of the economic regulation of electricity transmission and distribution services under the National Electricity Rules (NER) and the other related to the framework for the determination of the rate of return for gas services under the National Gas Rules (NGR).

On 20 October 2011, the AEMC gave notices under section 95 of the NEL and section 303 of the NGL to initiate and assess the AER's rule change requests. The NER rule change request was initiated as the *Economic Regulation of Network Service Providers rule change request* and NGR rule change request was initiated as the *Price and Revenue Regulation of Gas Services rule change request*.

On 18 October 2011, the AEMC received a rule change request from an Energy Users' Rule Change Committee representing Amcor, Australian Paper, Rio Tinto, Simplot, Wesfarmers, Westfield and Woolworths (EURCC). This rule change related to the calculation of return on debt as part of the overall rate of return under Chapters 6 and 6A of the NER (the *Calculation of Return on Debt for Electricity Network Businesses* rule change request). This was also one of the issues dealt with in the AER's rule change request under the NER.

Given that the AER's rule change request raised issues in the rules on similar subject matter to the EURCC's rule change request, on 3 November 2011, the AEMC gave notice under section 93(1)(a) of the NEL to consolidate the *Calculation of Return on Debt for Electricity Network Businesses* rule change request with the AER's *Economic Regulation of Network Service Providers* rule change request. The result of this consolidation was the creation of a new consolidated rule change request that would run to the same process and timetable as the original AER rule change request.

In addition, given the interdependency of issues and the AER's proposed rules seeking to establish a common rate of return framework under the NGR and the NER, the AEMC decided to consider the *Price and Revenue Regulation of Gas Services* rule change request and the consolidated *Economic Regulation of Network Service Providers* rule change request under the same process and timetable.

The final rule determination and the final rule on the consolidated *Economic Regulation of Network Service Providers* rule change request were published together with the final rule determination and the final rule on *Price and Revenue Regulation of Gas Services* rule change request in the same document on 29 November 2012. The rule change process took approximately 13 months before the final rule determinations were made.

## Reason for the final rule determination not being made within 12 months

The final rule determination on the consolidated *Economic Regulation of Network Service Providers* rule change request was not made within 12 months of the publication of the initiation of the consolidated rule request notice under section 95 of the NEL as a result of the detailed and complex nature of the rule change request and the additional rounds of consultation that were undertaken.

The rule change request required consideration of many substantive areas that would have had a significant impact on the way the electricity businesses are being regulated. In particular, the areas covered by the rule change request included changes to:

- the rate of return frameworks;
- the capital and operating expenditure frameworks;
- the expenditure incentive arrangements; and
- the regulatory determination process.

Given the substantive nature of the issues, the Commission anticipated a high level of interest from stakeholders and determined that a thorough consultation process that included extra stages of consultation compared to the standard rule change process under the NEL was necessary.

As identified at the time of commencing the rule change request, the additional rounds of consultations have been necessary in this rule change process given the complexity of the issues raised, the amount of stakeholder input and the level of analysis required. To ensure the Commission's assessment of the rule change request was robust, credible and would promote an outcome that was consistent with, and would contribute to, the achievement of the national electricity objective, the Commission made the decisions, when necessary, to extend the periods of time for considering the rule change request.

The Commission received a total of 167 submissions and met with many stakeholders during this rule change process.

The process that the Commission has undertaken on this rule change request is set out below.

### **Consultation Process**

On 20 October 2011, the AEMC issued a consultation paper on the AER's NER and NGR rule change requests. On 3 November 2011, the AEMC also issued a consultation paper on the EURCC rule change request. The time period for making the draft rule determination was also extended at that time to 26 July 2012.

A public forum on 23 November 2011 was also held in Brisbane to facilitate discussion on the rule change. Submissions on the two consultation papers closed on 8 December 2011. A total of 65 submissions (including supplementary submissions) were received of which 21 were received after the submission closing date.

On 2 March 2012, the AEMC published a directions paper. The directions paper explained the AEMC's initial position on the issues raised and set out its next steps to progress the rule change request. A series of workshops were also held on 2 April 2012 in Melbourne to discuss some of the key issues raised in the directions paper. Submissions on the directions paper closed on 16 April 2012 after an 8 week consultation period. A total of 38 submissions (including supplementary submissions) were received of which 19 were received after the submission closing date.

The AEMC held a further public forum in Sydney on 9 May 2012 with Professors Littlechild and Yarrow. Professors Littlechild and Yarrow presented on the papers they provided for the AEMC's directions paper, which provided stakeholders with the opportunity to raise questions with them.

The AEMC also held a workshop with stakeholders in Sydney on 18 May 2012 to discuss specific cost of debt issues as part of the rate of return framework under the NER and the NGR.

A Consultation Notice was published 21 June 2012 that sought comments on specific cost of debt issues. Submissions on the Consultation Notice closed on 5 July 2012. A total of 9 submissions were received of which 3 were received after the submission closing date.

On 21 June 2012, the AEMC issued further notices under section 107 of the NEL to extend the period of time for the making of the draft rule determinations to 23 August 2012. The purpose of this extension was to facilitate the additional round of consultation on cost of debt issues.

On 23 August 2012, the AEMC published its draft rule determination and draft rule. As required under the NEL, a six week consultation period was provided with submissions closing on 4 October 2012. A total of 32 submissions (including supplementary submissions) were received of which 13 were received after the submission closing date.

On 14 September 2012, the AEMC published a consultation paper on proposed arrangements to transition the network service providers to the proposed new rules. Submissions on the consultation paper and consultation rules closed on 25 October 2012. A total of 23 submissions were received of which 5 were received after the submission closing date.

On 15 November 2012, the AEMC issued a further notice under section 107 of the NEL to extend the timeframe for making its final rule determination by two weeks in order to allow for the additional analysis on the transitional arrangements for the implementation the new rules.

On 15 November 2012, the AEMC also published a final position paper and the final position rule on the rule change request. The purpose of this paper was to inform stakeholders at the earliest possible opportunity of the Commission's position on the rule changes while transitional arrangements to implement the changes were being finalised. The final position paper and final position rules were not subject to consultation.

### **Time for making final rule determination**

The final rule determination and the final rule were made and published on 29 November 2012.