



Australian Energy Market Commission

RULE DETERMINATION

National Gas Amendment (Unintended scheduling results - decision timing) Rule 2017

Proponent
AEMO

31 October 2017

**RULE
CHANGE**

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About the AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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Summary

On 26 May 2017, the Australian Energy Market Operator (AEMO) made a request to the Australian Energy Market Commission (AEMC or Commission) to make a rule regarding the time by which AEMO must publish a decision if a market participant in the Victorian declared wholesale gas market (DWGM) requests an investigation into an unintended scheduling result (rule change request).

The AEMC has decided to make the proposed rule with minor amendments. As a result, the deadline by which AEMO must publish a decision on whether an unintended scheduling result has occurred is to be the later of:

- 20 business days after the request to investigate an unintended scheduling result was made; or
- 20 business days after the publication of final statements that include the gas day being investigated.

This new deadline enables AEMO to use final settlement data when determining if an unintended scheduling result has occurred. This should improve the quality of decision making by AEMO.

The Commission assessed the rule change under an expedited rule change process on the basis that it was a non-controversial rule change request.

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1 AEMO's rule change request

1.1 The rule change request

On 26 May 2017, the Australian Energy Market Operator (AEMO) made a request to the Australian Energy Market Commission (AEMC or Commission) to make a rule regarding the time by which AEMO must publish a decision if a market participant in the Victorian Declared Wholesale Gas Market (DWGM) requests an investigation into an unintended scheduling result (rule change request).

AEMO also requested that the rule change request be considered a non-controversial¹ rule change request and, as a result, be assessed under an expedited rule change process.

The AEMC considered the rule change as being non-controversial, and as a result, has assessed it under an expedited rule change process.

1.2 Current arrangements

AEMO operates the Victorian DWGM according to the NGR and associated procedures. On occasions, AEMO may issue scheduling instructions for the market's operating schedule that are erroneous.² Such incorrect scheduling instructions may meet the requirements of an 'unintended scheduling result'. If AEMO decides after an investigation that the definition of an unintended scheduling result is satisfied, then a market participant may be able to seek compensation in respect of the event.³

1.2.1 What is an unintended scheduling result?

In the Victorian DWGM, there are four components in the definition of an unintended scheduling result.

Firstly, scheduling instructions must produce one or more of the following results:⁴

- equally beneficial bids are not scheduled to the same extent
- gas under an injection bid above the market price, is scheduled for injection but the market participant does not receive the bid price for that gas
- a quantity of gas under a withdrawal bid below the market price is scheduled for withdrawal
- a quantity of gas under an injection bid below the market price is not scheduled for injection
- a quantity of gas under a withdrawal bid above the market price is not scheduled for withdrawal
- a scheduling instruction is not issued in accordance with the gas procedures.

1 Section 304 of the National Gas Law (NGL).

2 Rule 217(1) of the NGR.

3 Rule 218(5) of the NGR.

4 Rule 217(1) of the NGR.

Secondly, the result must not arise from the application of, or the exercise of rights or performance of obligations in accordance with any of the following exceptions specified in the NGR:⁵

- intervention and market suspension under the NGR
- system security procedures or emergency protocol
- ancillary payment procedure
- service envelope agreement
- an agreement entered into between AEMO and a distributor or the owner or operator of a facility at a relevant system point
- constraints applicable to controllable quantities accredited by AEMO at a relevant system point
- authorised maximum daily quantity or authorised maximum daily quantity credit certificates associated with a relevant system point
- supply-demand point constraints or directional flow point constraints as defined in the gas scheduling procedures
- compensation already paid.

Thirdly, an error made in determining a market price or a pricing schedule, is not considered an unintended scheduling result.⁶

Fourthly, there is materiality threshold. This requires the error to have had an estimated financial impact that exceeds either \$20,000 for an individual market participant, or \$50,000 in aggregate, for all affected market participants.⁷

1.2.2 Decision timing with respect to an unintended scheduling result

The issue raised in the rule change request relates to the process that AEMO undertakes in order to determine if an unintended scheduling result has occurred.

A market participant can currently request that AEMO investigate if an unintended scheduling result has occurred.⁸ The NGR require AEMO to investigate the matter and publish a decision by no later than 20 business days from the date of receipt of the request.⁹ Depending on when the request is made, the 20 business day cut off may occur before AEMO obtains final settlement data.

The figure below outlines an example timeline for reviews of an unintended scheduling result.

⁵ Rule 217(2) of the NGR.

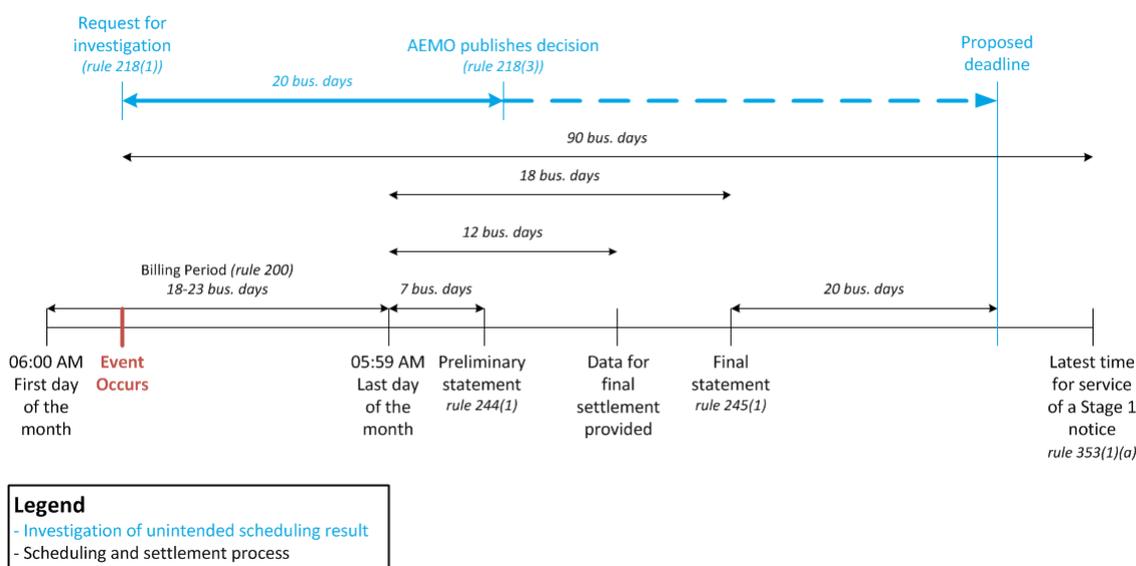
⁶ Rule 217(3) of the NGR.

⁷ Rule 217(4) of the NGR. These values are defined in 2009 dollars and are indexed to CPI in accordance with rule 217(5) of the NGR.

⁸ Rule 218(2)(a) of the NGR. Note that AEMO can also, at its discretion, self-initiate an investigation into an unintended scheduling result even if not requested.

⁹ Rule 218(3) of the NGR.

Figure 1.1 Timeline for unintended scheduling results



Note that the timeline relating to the investigation of an unintended scheduling result (in blue) is dependent on when the scheduling event in question occurs and when the request for an investigation is made. Whether the date by which AEMO must publish a decision occurs before or after the publication of final statements depends on when the request for investigation is made.

If a market participant decides to seek compensation as a result of an unintended scheduling result, rule 353(1)(a) of the NGR provides market participants with up to 90 days after an unintended scheduling result to serve a notice to initiate proceedings to claim compensation.

1.3 Rationale for the rule change request

AEMO has stated that under the current provisions of the NGR, it may in some instances have to make a decision based on provisional settlement data rather than settlement quality data. Such provisional data may not be complete. In particular, provisional data may not include critical information such as contractual title to gas injected at the Longford system injection point which is only available at final settlement.

AEMO has pointed out that publishing a decision based on provisional data reduces the usefulness of that decision.

In any event, when AEMO publishes a decision based on provisional data and a market participant seeks compensation in relation to an event, AEMO will have to re-examine the decision using final settlement data. Thus, the publication of a decision based on provisional data is unlikely to be of much value.

1.4 Solution proposed in the rule change request

AEMO has proposed in its rule change request to extend the deadline for when a decision on whether an unintended scheduling result has occurred must be published to the later of:¹⁰

- 20 business days after the request was made; or

¹⁰ Rule change request, p. 5.

- 20 business days after the publication of final statements.

We note that the extension of time proposed by AEMO does not directly affect the timeline by which market participants receive compensation for an unintended scheduling result. This is because when AEMO finds that an unintended scheduling result has occurred, market participants are still required to initiate a separate dispute resolution process to receive compensation.

As mentioned earlier, rule 353(1)(a) NGR, which AEMO has not proposed to amend, provides market participants with up to 90 days after an unintended scheduling result to serve a stage 1 notice to initiate proceedings to claim compensation. This would be at least 29 business days after the extended deadline proposed by AEMO (20 business days after the publication of final statements).

The rule change request included a proposed rule, which would amend rule 218 of the NGR.¹¹

1.5 Relevant background

AEMO notes in its rule change request that it has informed market participants of its views on this matter in a report published on 4 January 2017 and through the Gas Wholesale Consultative Forum on 12 December 2016. AEMO states that no objections to the proposed solution were raised.¹²

1.6 The rule making process

On 19 September 2017, the Commission published a notice advising of its commencement of the rule making process and consultation in respect of the rule change request.¹³ A consultation paper identifying specific issues for consultation was also published. Submissions closed on 17 October 2017.

The Commission accepted that the rule change request was a request for a non-controversial rule as defined in s. 290 of the NGL. Accordingly, the Commission commenced an expedited rule change process, subject to any written requests not to do so. The closing date for receipt of written requests was 3 October 2017.

No requests to not carry out an expedited rule change process were received. Accordingly, the rule change request was considered under an expedited process.¹⁴

The Commission received no submissions in relation to AEMO's rule change request.

¹¹ Rule change request, p. 5.

¹² Rule change request, p. 4.

¹³ This notice was published under s. 303 of the NGL.

¹⁴ Section 304 of the NGL.

2 Final rule determination

2.1 The Commission's final rule determination

The Commission's final rule determination is to make, with amendments, the final rule proposed by AEMO. The final rule made by the Commission is attached to, and published with, this final rule determination. It will commence on 1 November 2017.

The Commission's reasons for making this final rule, and additional amendments made, are set out in section 2.4.

This chapter outlines:

- the rule making test for changes to the NGR
- the assessment framework for considering the rule change request
- the Commission's consideration of the proposed rule against the national gas objective.

Further information on the legal requirements for making this final rule determination is set out in Appendix A.

2.2 Rule making test

2.2.1 Achieving the national gas objective

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 gas objective (NGO).¹⁵ This is the decision making framework that the Commission must apply.

The NGO is:¹⁶

“to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, safety, reliability and security of supply of natural gas”

2.3 Assessment framework

In assessing the rule change request against the NGO the Commission has considered the following principles:

- **Does the proposed rule improve the quality of regulatory decisions?** If made, the proposed rule will extend a deadline for AEMO so that it can use better information to inform its decisions. If AEMO makes a decision based on preliminary data, it may be required to revisit the issue using final settlement data as part of the process by which market participants obtain compensation. The Commission considered whether the proposed rule improves the quality of the decisions produced and therefore improves the predictability, reliability and conclusiveness of decisions made by AEMO.

¹⁵ Section 291(1) of the NGL.

¹⁶ Section 23 of the NGL.

- **Does the proposed rule unduly increase the burden of regulatory and administrative delay on market participants and AEMO?** To the extent that the proposed rule extends a deadline for AEMO, it may delay when market participants can receive a final decision from AEMO. The Commission considered whether as a result, market participants will face a slightly higher regulatory burden associated with this delay. The Commission sought to balance the burden associated with any delay against the potential benefits of the proposed rule.

2.4 Summary of reasons

The final rule made by the Commission is attached to and published with this final rule determination. The key feature of the final rule is that AEMO will be required to respond to a request for an investigation into an unintended scheduling result by the later of 20 days after the request was made and 20 business days after the final statements which relate to the alleged unintended scheduling result are issued.

The final rule is largely the same as the proposed rule. The differences between the final rule and the proposed rule are limited to minor drafting changes for clarity, and to reflect that ‘final statements’ as referred to in the NGR, are issued rather than published.

Having regard to the issues raised in the rule change request, the Commission is satisfied that the final rule will, or is likely to, contribute to the achievement of the NGO for the following reasons:

- the rule improves regulatory decision making
- the rule does not unduly increase the burden of regulatory and administrative delay on market participants and AEMO.

2.4.1 Improve the quality of regulatory decisions

The Commission considers that the final rule will improve the quality of regulatory decisions made by AEMO. In particular, allowing AEMO the time to utilise final settlement data will allow it to publish decisions that better reflect actual events.

The Commission also notes that if AEMO were to make a decision based on preliminary data, and a market participant were to seek compensation on that basis, AEMO would have to remake any determination regarding the occurrence of an unintended scheduling result using final settlement data. As such, allowing AEMO sufficient time to use final settlement data under rule 218 of the NGR allows for AEMO to make a more certain and final decision regarding the occurrence of an unintended scheduling result.

Ultimately, this allows for the more efficient operation of gas services in the Victorian DWGM. This promotes the efficient operation of natural gas services in the long-term interests of consumers of natural gas with respect to price.

2.4.2 Undue increase in burden of regulatory and administrative delay

Extending a timeline for AEMO to publish a decision, increases the time between when a market participant requests an investigation into an unintended scheduling result and when it receives an answer on the matter from AEMO. However, the increase in delay for participants is unlikely to be material. This is particularly so given that participants

seeking financial compensation will have to do so through a separate process which is not affected by the rule change.

2.4.3 Conclusion

On balance, the Commission concludes that the benefits associated with improved regulatory decision making outweighs any increase in burden due to regulatory and administrative delay. Therefore, the final rule may lower the overall cost associated with delivering gas services to consumers in the Victorian DWGM and promotes the efficient operation of natural gas services in the long-term interests of consumers of natural gas with respect to price.

Abbreviations

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
Commission	See AEMC
DWGM	Declared Wholesale Gas Market
MCE	Ministerial Council on Energy
NGL	National Gas Law
NGO	National gas objective
NGR	National Gas Rules

A Legal requirements under the NGL

This appendix sets out the relevant legal requirements under the NGL for the AEMC to make this final rule determination.

A.1 Final rule determination

In accordance with s. 311 and 313 of the NGL the Commission has made this final rule determination in relation to the rule proposed by AEMO.

The Commission's reasons for making this final rule determination are set out in section 2.4.

A copy of the final rule is attached to and published with this final rule determination. Its key features are described in section 1.4.

A.2 Power to make the rule

The Commission is satisfied that the final rule falls within the subject matter about which the Commission may make rules. The final rule falls within s. 74 of the NGL as it relates to AEMO's declared system functions and the operation of a declared wholesale gas market. The rule change request was made by AEMO¹⁷ and furthermore, the final rule falls within the matters set out in schedule 1 to the NGL as it relates to AEMO's declared system functions because it relates directly to the obligations of AEMO as part of the Victorian DWGM.¹⁸

A.3 Commission's considerations

In assessing the rule change request, the Commission considered:

- its powers under the NGL to make the rule
- the rule change request
- the fact that there is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request¹⁹ and
- the Commission's analysis as to the ways in which the proposed rule will or is likely to, contribute to the NGO.

¹⁷ Section 295(3) of the NGL.

¹⁸ Section 74(1)(a)(v) of the NGL.

¹⁹ Under s. 73 of the NGL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for Energy. On 1 July 2011 the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. The amalgamated council is now called the COAG Energy Council.

A.4 Other legal requirements

A.4.1 Compatibility with AEMO's declared system functions

Under s. 295(4) of the NGL, 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 system functions. The Commission is satisfied that the rule as made is compatible with AEMO's declared system functions because it does not derogate from AEMO's ability to perform its obligations.

A.4.2 Civil penalty and conduct provisions

The rule as made does not amend or omit any clauses that are currently classified as civil penalty provisions under the NGL or National Gas (South Australia) Regulations.