

21 January 2011

Mr John Pierce  
Chairman  
Australian Energy Market Commission  
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Sydney South NSW 1235

FROM THE OFFICE OF THE  
CHIEF EXECUTIVE OFFICER

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By online submission  
Our ref: EM 2011/001

*John,*  
Dear Mr Pierce

### **Request for change to National Electricity Rules Regarding Business Days**

AEMO requests the AEMC to consider making a rule change under sections 91 and 96 of the National Electricity Law (NEL). The proposed rule seeks to remove inconsistency between the definitions of "business day" under the NEL and National Electricity Rules (NER). The proposed rule seeks to delete the definition of "business day" from the NER.

The attached proposal includes a statement of the issues concerning the existing NER, a description of the proposed rule, an explanation of how the proposed rule contributes to the achievement of the national electricity objective, and its expected benefits and costs.

AEMO would be pleased if you could have these matters considered by the AEMC. For further details, please do not hesitate to contact Terry Grimwade on 03 9609 8520.

Yours sincerely



**Matt Zema**  
**Managing Director and Chief Executive Officer**

Attachment: Rule Change Proposal

# RULE CHANGE PROPOSAL

## 1 Summary

AEMO requests a rule to remove an anomaly in the definition of “business day” in the National Electricity Rules (NER).

Recent examination of the definition of “business day” in the NER has identified an interpretation that would render it impractical and lead to an obviously unintended outcome that, except Saturdays and Sundays, all other days would be “business days”, including the nationally (and internationally) observed holidays such as Christmas and Easter.

The definition of business day under the National Electricity Law (NEL) avoids this potential misinterpretation.

This anomaly has existed, unnoticed, and the national electricity market (NEM) has operated in accordance with a “business day” definition in the NEL, rather than the NER, since commencement of the NEM. It has come to the attention of AEMO at this time due to close examination of the NER to assess its operation and NER obligations with the coincidence of Anzac Day and Easter Monday on 25 April 2011.

Until the AEMC makes a final determination regarding this request, in operating the NEM, AEMO will continue to interpret the definition of “business day” in accordance with the NEL; that is, a day that is observed as a public holiday on the same day in each of the participating jurisdictions (except the Commonwealth) will not be considered a business day.

## 2 Statement of Issues

The definition of “business day” in Schedule 2, clause 10 of the NEL is:

a day that is not –

- (a) a Saturday or Sunday;
- (b) observed as a public holiday on the same day in each of the participating jurisdictions (except the Commonwealth)

In contrast, the definition of “business day” in the Glossary of the NER is:

*A day other than a Saturday, Sunday or a day which is lawfully observed as a national public holiday on the same day in each of the participating jurisdictions.*

Under the NER’s definition of “business day”, a “national public holiday” could be interpreted as one that is generally recognised to commemorate the same purpose or occasion and, furthermore, the definition requires this to be legally observed in each of the participating jurisdictions (unlike the NEL definition, the Commonwealth is not excluded). However, each State and Territory gazettes its public holidays independently and regularly assign different titles to those public holidays, even when these are “nationally” observed on the same day. The Commonwealth, although a “participating jurisdiction” in the NEM, does not gazette or, strictly speaking, “legally observe” any public holidays.

For example, 27 and 28 December 2010 were observed as public holidays in all jurisdictions but were proclaimed differently by various jurisdictions, as follows<sup>1</sup>:

	27 December 2010	28 December 2010
Christmas Day	ACT, SA, Tasmania, Victoria	NSW, Queensland
Boxing Day	NSW, Queensland	ACT, Tasmania, Victoria
Proclamation Day		SA

<sup>1</sup> Source: <http://australia.gov.au/topics/australian-facts-and-figures/public-holidays>.

Similarly, with the coincidence of Easter Monday and Anzac Day on 25 April 2011, the various jurisdictions have proclaimed the following public holidays on 25 and 26 April 2011:

	25 April 2011	26 April 2011
Anzac Day	ACT, NSW, Queensland, SA, Tasmania	Victoria
Easter Monday	ACT, SA, Tasmania, Victoria	NSW, Queensland
Easter Tuesday		SA, Tasmania
In recognition of coincidence of Easter Monday and Anzac Day		ACT

Therefore, since none of the above dates are consistently gazetted or proclaimed legally as a “national public holiday”, a possible interpretation is that all of these days are “business days” under the NER definition.

In contrast, under the NEL definition, since these dates were or will be observed as public holidays in all participating jurisdictions (except the Commonwealth), none of these days would be considered “business days”.

The interpretation under the NEL definition is what has been applied to operation of the NEM since its commencement, and AEMO contends that this is clearly the intended approach.

The alternative interpretation under the NER definition would have the unreasonable outcome that there would rarely, if ever, be a “national public holiday” in the NEM and all days except Saturdays and Sundays would be considered “business days” for the NEM. This would require normal settlement and prudential management processes to proceed on the above dates when, in practice, most (if not all) financial and banking services in Australia (and many overseas) would not be available on those days. This would include the ASX’s Austraclear facility, which is relied on as the primary electronic funds transfer (EFT) facility used for NEM settlements.

Further, AEMO notes the clear error in the NER definition where it refers to “all participating jurisdictions”. The Commonwealth is a participating jurisdiction of the NEM but does not observe or proclaim any public holidays. Hence, the exception of the Commonwealth in the NEL definition.

AEMO is not aware of any reason why the definition of business day in the NER is different to that in the NEL, or whether there was any intent that this should be the case.

## 3 Proposed Rule

### 3.1 Description of the Proposed Rule

The proposed Rule is to replace the definition of “business day” in the NER with words to the effect that the definition has the meaning given in the NEL. This would be consistent with the approach adopted in the National Gas Law and National Gas Rules.

### 3.2 Request for a Non-controversial Rule

AEMO requests that the AEMC considers this rule change proposal under section 96 of the NEL. Section 96 applies if the AEMC considers that a request for a rule is non-controversial, that is, the proposed rule is unlikely to have a significant effect on the NEM. AEMO considers that the proposed rule would not have a material impact on the market, on the basis that it reflects the generally held interpretation of “business day” in the NEM and has been used as the basis for actual operation of the NEM since its commencement. The proposed rule simply removes ambiguity and any possible confusion arising from the inconsistent wording between definitions in the NER and NEL. To allow the alternative interpretation of the NER definition would be both unreasonable and impractical for NEM participants.

### 3.3 Consultation

AEMO has not consulted with Registered Participants regarding the proposed rule, although a number of Registered Participants have raised this matter with AEMO in the context of the Easter and Anzac Day public holidays occurring in 2011. The published settlement calendar for the NEM indicates that both 25 and 26 April 2011 are being treated as non-business days.

### 3.4 How the Proposed Rule Contributes to the National Electricity Objective

Before the AEMC can make a rule it must apply the rule making test set out in the NEL, which requires it to assess whether the proposed rule will or is likely to contribute to the National Electricity Objective (NEO). Section 7 of the NEL states the NEO 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, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.

AEMO submits that the proposed rule is likely to contribute to the NEO because it would provide regulatory certainty for NEM Participants regarding the treatment of “business days” in the NEM, and would cope with inconsistent nomenclature used by jurisdictions when proclaiming commonly observed public holidays. The potential alternative interpretation of the definition of business day in the NER would result in days that are commonly observed by all jurisdictions and financial institutions (in Australia and overseas) as public holidays, as being “business days” in the NEM. This would give rise to significant compliance issues and costs to NEM participants. Unless the current definition of business day in the NER is changed there remains the possibility for confusion or dispute over when certain obligations, including when settlement payments are due.

The proposed rule would allow the market to avoid these risks and their associated costs. This is likely to promote the efficient operation of electricity services for the long-term interests of consumers of electricity with respect to the price of electricity supply, thereby contributing towards the NEO.

## 4 Expected Benefits and Costs of the Proposed Rule

The proposed rule benefits all NEM participants because it makes it clear that where a public holiday is being lawfully observed in all NEM jurisdictions on the same day, these days are considered non-business days. This avoids any costs associated confusion or dispute over when certain obligations, including when settlement payments are due.

As the proposed rule seeks to adopt existing practices, implementation of the rule would not impose any direct costs on NEM participants.

## Glossary

Term or Abbreviation	Explanation
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
NEM	National Electricity Market
NEL	National Electricity Law
NEO	The national electricity objective as stated in section 7 of the NEL
NER	National Electricity Rules