

29 June 2007

Dr John Tamblyn  
Chairman  
Australian Energy Market Commission  
PO Box H166  
AUSTRALIA SQUARE NSW 1215

Dear John

**APEC Public Holiday in NSW**

Please find attached a non-controversial Rule change proposal by NEMMCO.

NEMMCO seeks a derogation to defer all settlement payments to NEMMCO due to the declaration of a public holiday on Friday, 7 September 2007 (**APEC Public Holiday**) to the next business day, being 10 September 2007.

The reasons for this are related to the heightened risk of settlement process failure as a result of the APEC Public Holiday and are more fully explored in the proposal.

I look forward to your favourable consideration of this proposal.

Yours faithfully,



**Brian Spalding**  
Chief Operating Officer

Attach.

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## 1. Background

### 1.1 The need for the derogation

The NSW Government has announced details of a public holiday to coincide with the Asia-Pacific Economic Co-operation (**APEC**) Summit to be held in Sydney during September 2007. A public holiday has been declared for the Sydney metropolitan area, Penrith, Camden and Campbelltown on Friday, 7 September 2007 (**APEC Public Holiday**). This coincides with settlement of the National Electricity Market (**NEM**) for the *billing period* starting Sunday 5 August 2007 (**Week 32**).

Access to the northern part of the Sydney Central Business District (**CBD**) will be restricted on the APEC Public Holiday. Although the banking sector is expected to operate, limited access to facilities in the Sydney CBD imposes a higher than normal risk to *NEMMCO's* ability to settle the NEM in a timely manner.

*NEMMCO* believes it would be prudent to avoid settlement on the APEC Public Holiday.

### 1.2 Participant Consultation

*NEMMCO* has not consulted formally with *Market Participants* on this issue, but has been approached by a number of retailer and generator representatives with a view to deferring the Week 32 settlement day.

The issue was discussed at a NEM Settlements Managers face-to-face meeting held on 15 May 2007, where participants present supported *NEMMCO's* seeking this *participant derogation* to allow the industry to comment on the proposal through the Rule change process.

The Australian Financial Markets Association (**AFMA**) has advised that for those OTC contracts that have been established in accordance with part 20 of the "Guide to OTC Documents" then the settlement of those OTC contracts are linked to the NEM Settlement as published in the NEM Settlement Calendar. *NEMMCO* would propose to modify that Calendar if this derogation was accepted.

## 2. Description of the proposed Rule

### 2.1 Proposed Rule

The proposed *participant derogation* would defer all payments for Week 32 from Friday, 7 September 2007 to the next *business day* under the National Electricity Rules (**Rules**), being Monday, 10 September 2007.

### 2.2 Effect on existing Rules

The operation of clauses 3.15.16 and 3.15.17 of the *Rules* would be altered by the proposed *participant derogation*.

Clause 3.15.16 requires (amongst other things) payment to *NEMMCO* on the 20th *business day* after the end of a *billing period*. It is proposed that

payments to *NEMMCO* in respect of Week 32 be made on the 21<sup>st</sup> *business day* after the end of that *billing period*.

Clause 3.15.17 requires payment by *NEMMCO* on the day on which *NEMMCO* is paid under clause 3.15.16. It is proposed that payments by *NEMMCO* for Week 32 would be made on the same day that payment to *NEMMCO* for Week 32 is made (that is, on the 21<sup>st</sup> *business day* after the end of that *billing period*).

The proposed *participant derogation* would not affect the operation of any other *Rules*.

### **2.3 Proposal to make this Rule change as a non-controversial Rule**

*NEMMCO* requests that the Commission treat this Rule change proposal as a request for a 'non-controversial Rule' under section 96 of the National Electricity Law (**NEL**) on the basis that:

- the *Rule* would improve administrative efficiency of the NEM by avoiding settlement at a time when key staff may not be available;
- the APEC Public Holiday is a one-off unforeseen event;
- the *Rule* will have an insignificant effect on the *market* as a whole; and.
- Informal discussions with Market Participants has not identified any opposition.

There is also insufficient time to permit a *Rule* change proposal to be completed in time for the APEC Public Holiday unless it is expedited.

## **3. Statement of Issues concerning the existing Rules**

### **3.1 APEC public holiday**

#### *Statement of Issue*

The APEC 2007 NSW Policy Security Command has released initial details of arrangements for the APEC Leaders Week in Sydney from Sunday, 2 September to Sunday, 9 September 2007<sup>1</sup>. Friday, 7 September 2007 has been declared a public holiday for the Sydney Metropolitan area. Whilst the public will have access to most of the CBD, there will be areas where access will be restricted to accredited persons.

Businesses will have access to their premises on the APEC Public Holiday, however, some premises will be subjected to additional security. In particular, there will be security measures at some businesses within the northern part of the CBD.

Although much of the banking sector is located in this area, banking operations are anticipated for the APEC Public Holiday. For example, the Sydney Futures Exchange has advised that the APEC Public Holiday will be a

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<sup>1</sup> [http://www.apec2007.org/documents/Sydney\\_Bulletin\\_1.pdf](http://www.apec2007.org/documents/Sydney_Bulletin_1.pdf)

normal clearing day<sup>2</sup> and that the NEM clearing system (**Austraclear**) will be operational.

Conversely, Australian over-the-counter Markets (**OTC Markets**) draw a distinction between what is generally accepted as a 'good' business day and other business days that vary between the various States and Territories<sup>3</sup>. The OTC Markets tend to operate in a reduced capacity on NSW public holidays. In general, **AFMA** "recommends that transactions should not be negotiated for settlement or price fixing (rollover) on a non-business day".

If the *Rules* are not amended, *NEMMCO* may settle the NEM on a preferred non-business day for the purposes OTC Markets.

*NEMMCO* would be placed in the position of not knowing whether a delay in a settlement payment is the result of operational risks that have not been attended to in a timely manner, or financial inadequacy of the *Market Participant* due to the higher level of payments to be made. This could place *NEMMCO* in the position of having to manage the risk of financial inadequacy by *Market Participant* payers in a more conservative fashion and commence default proceedings in circumstances where they might not otherwise be warranted.

#### *Proposed solution*

The proposed solution defers settlement of Week 32 to the next 'good' business day to reduce NEM settlement risks and ensure that payments can be made on the same day.

### **3.2 Public holiday coinciding with NEM settlement**

#### *Statement of Issue*

Under the *Rules*, a *business day* is defined as:

*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.*

Irrespective of the APEC Public Holiday, the *Rules* still require settlement to occur if that day coincides with a public holiday in either of the major Australian financial centres of Sydney and Melbourne but is a NEM *business day*.

It is unusual for a public holiday in Sydney or Melbourne to coincide with a settlement day. This is because, generally, the NEM is settled on a Friday, whereas public holidays often occur on Mondays (especially those that are specific to a jurisdiction).

The APEC Public Holiday is the first occurrence of a Sydney or Melbourne public holiday that is both a *business day* and a day on which NEM receipts and payments must clear in respect of a *billing period*. This means that the most critical day in the settlements cycle has not been tested in circumstances where a large number of potentially critical staff are away at a time where there may be limited access to some business premises.

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<sup>2</sup> [http://www.sfe.com.au/content/notices/2007/notice2007\\_040.pdf](http://www.sfe.com.au/content/notices/2007/notice2007_040.pdf)

<sup>3</sup> <http://www.afma.com.au/scripts/runisa.dll?AFMA.2075853616:LISTRIGHT:1471202479:pc=BUSINESSSDS>

*Proposed solution*

This issue means that the NEM is exposed to a higher-than-normal level of risk. The proposed solution manages that risk by prudently avoiding settlement on a day when a proportion of Sydney's financial sector will not be at work and deferring settlement to a day when the sector is operating at full strength.

**3.3 Operational risks**

*Statement of Issue*

Before a payment can be made to *NEMMCO* it must pass through a number of clearing and operational stages between a *Market Participant's* bank account and *NEMMCO's* bank account. The APEC Public Holiday increases the operational risk of a failure at each of these stages.

Although mostly automatic, many of these stages rely on manual intervention to resolve any issues that occur from time to time.

Operational Risk 1

A *Market Participant's* bank account must have sufficient funds or intraday limits setup and they usually need access to their bank relationship manager to resolve any issues (although incidents at this stage are infrequent).

It is expected that a number of Sydney-based relationship managers will be observing the public holiday and will delegate responsibilities to back-up staff who might not be familiar with the financial status of affected *Market Participants*. This could result in settlement issues not being resolved in a timely manner.

Operational Risk 2

Even if a *Market Participant's* bank account contains sufficient funds to cover a payment to *NEMMCO* and the *Market Participant* has correctly entered the payment into Austraclear, it is possible for the payment to be stalled by processing queues within Austraclear.

While *NEMMCO's* experience is that the majority of *Market Participants* comply with the *timetable*<sup>4</sup>, there have been a number of cases where stalling has resulted in payments being cleared late. This is discussed in *NEMMCO's* paper entitled: "Austraclear: Participant's Settlement Responsibilities"<sup>5</sup>, in which *NEMMCO* states that it is the *Market Participant's* responsibility to ensure that its payments are made in accordance with the *timetable*. *NEMMCO* recommends that *Market Participants*:

- have staff available to monitor the clearing of each payment to *NEMMCO*, so any stalling can be detected; and

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<sup>4</sup> Published by *NEMMCO* under clause 3.4.3 of the *Rules* (currently payments are due at 10:00 am on settlement days.)

<sup>5</sup> <http://www.nemmco.com.au/settlements/setprocedures.htm#Austraclear>

- when a stalled payment has been detected, staff should immediately contact their bank contact to ensure that priority of the payment is set to the highest level.

Austraclear opens at 9.15am so that if a payment is stalled *Market Participants* have a maximum of 45 minutes to react. In the absence of timely action, a *Market Participant* could be exposed to processing queues that result in payments to NEMMCO after 10:00 am as required by the *timetable*.

Issues associated with stalled payments are frequent and to resolve require direct contact with the banks relationship manager. The risk of this process failing would be heightened if critical Sydney-based *Market Participant* staff or bank staff are observing the APEC Public Holiday

### Operational Risk 3

Restricted access to the Sydney CBD could impact the banks' and Australian Stock Exchange's capabilities to manage a failure of their IT systems, despite the Sydney Futures Exchange's notice indicating that the APEC Public Holiday will be a normal clearing day.<sup>6</sup>

### Operational Risk 4

Should a *Market Participant* not pay NEMMCO for any reason, NEMMCO may exercise its right to draw down a *Market Participant's credit support*. To do so, NEMMCO would need to contact the Credit Provider's bank contact person, and a number of the bank contacts are based in the Sydney CBD.

Any public holiday that affects either Sydney or Melbourne could be expected to increase the risk that critical bank staff cannot be contacted in a timely manner. The APEC Public Holiday increases this risk to the extent that those critical staff might not be able to access their normal place of business in a timely manner.

Whilst unlikely, if NEMMCO was unable to draw down a *Market Participant's credit support*, NEMMCO would need to reduce payments to *Market Participants* (generally *Market Generators*) in accordance with clause 3.15.22 of the *Rules*.

### *Proposed solution*

The proposed solution applies the principle of prudent avoidance of these higher-than-normal operational risks and manages those risks by deferring Week 32 settlement to the next *business day*.

## **4. How the proposed Rule is likely to contribute to the achievement of the NEM objective**

### **4.1 The objective of the National Electricity Market**

Clause 7 of the National Electricity Law states the NEM Objective as:

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<sup>6</sup> ASX / SFE notice 40/07. "September 7th 2007 APEC Public Holiday - Trading and Clearing Hours' 28<sup>th</sup> March 2007

The national electricity market objective is to promote efficient investment in, and efficient use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, reliability and security of supply of electricity and the reliability, safety and security of the national electricity system.

#### **4.2 Contribution to the objective of the National Electricity Market**

*NEMMCO* submits that the proposed *participant derogation* will promote the NEM Objective because it minimises operational risks on the timely settlement of Week 32 payments created by the APEC Public Holiday.

*NEMMCO* estimates the cost to *Market Participants* that are paid by *NEMMCO* (mostly *Market Generators*) of a delay in settlement to the next *business day* (three calendar days in total) to be of the order of \$50,000. A similar saving would be expected from those who would be required to pay *NEMMCO*.

The benefits of the proposed *participant derogation* come from avoiding a late payment or a non-payment attributable to the APEC Public Holiday, the ramifications of which are presented below.

##### **4.2.1 From NEMMCO's perspective**

A payment that does not meet the *timetable* places *NEMMCO* in the position of having to:

- wait for the processing queue that is stalling the payment to be cleared without being readily able to contact *Market Participant* staff who could take corrective action in circumstances where the timing of clearance could be arbitrary; or
- if the payment remained stalled after 10am, commence default proceedings in accordance with clause 3.15.21(a) of the *Rules*.

The situation could be an unnecessary risk for the NEM if there were multiple *Market Participants* whose payments stalled and timely corrective action could not be taken.

##### **4.2.2 From the perspective of participants that pay NEMMCO (normally retailers)**

A payment that does not meet the *timetable* places a *Market Participant* payer in default. At this point, the *Market Participant* payer is exposed to:

- waiting for the processing queue that is stalling the payment to be cleared without being aware of, or being able to take, corrective action; or
- having *NEMMCO* commence default proceedings in accordance with clause 3.15.21(a) of the *Rules*.

##### **4.2.3 From the perspective of Market Participants that NEMMCO pays (normally Market Generators)**

The best case is that *Market Participants* who receive payment from *NEMMCO* would be unaware that payment to *NEMMCO* has not been in accordance with the *timetable*. For *NEMMCO* to comply with the

*timetable* and pay *Market Participants* by 2pm, certain conditions would need to occur; either:

- the payment clears without corrective action from the *Market Participant*, but before *NEMMCO* commenced default proceedings; or
- in commencing default proceedings, *NEMMCO* would make a claim on the defaulting *Market Participant's credit support* to the value of the amount payable prior to 2pm.

Because the current form of *credit support* instrument gives the *credit support provider* one hour to provide *NEMMCO* with funds coupled with unexpected developments that could occur from managing "real-time" default proceedings, a less favourable case is that *NEMMCO* might not be able to pay *Market Participants* until after 2pm.

The worst case is that the *credit support provider* does not comply with the *credit support* instrument, possibly because it, too, is affected by the APEC Public Holiday and *NEMMCO* is unable to obtain the funds. In this case, the amount that *NEMMCO* will be able to pay will be reduced in accordance with clause 3.15.22 of the *Rules*.

#### **5. This Rule change proposal falls within the matters on which the AEMC is permitted to make changes to the Rules**

This Rule change proposal falls within the subject matter for the National Electricity Rules<sup>7</sup> as detailed in paragraph 34(a) of Schedule 1 of the NEL, being:

- The payment of money (including the payment of interest)—
- (a) for the settlement of transactions for electricity or services purchased or supplied through the wholesale exchange operated and administered by *NEMMCO* ...

#### **6. Proposed Rule**

It is proposed that a *participant derogation* be made in the following form:

Despite anything to the contrary in clause 3.15.16 of the *Rules* and the *timetable*, for the purposes of the *billing period* commencing 5 August 2007, payment by *Market Participants* to *NEMMCO* shall be made on the 21<sup>st</sup> *business day* after the end of that *billing period*.

The derogation would expire on 31 December 2007.

*NEMMCO* does not consider it necessary to amend clause 3.15.17 of the *Rules*, as *NEMMCO's* obligation to pay *Market Participants* flows from the obligation to pay imposed on *Market Participants* by clause 3.15.16. Moreover, payments would continue to be subject to all remaining obligations imposed by various rules in Chapter 3.

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<sup>7</sup> Schedule 1 to the National Electricity Law which is found in the National Electricity (South Australia) Act 1996