



Australian Energy Market Commission

Rule Determination

**National Electricity Amendment (Timing of
System Restart Ancillary Services Testing)
Rule 2007**

Rule Proponent
NEMMCO

25 October 2007

Signed:

Liza Carver
Liza Carver
Acting Chairperson
For and on behalf of
Australian Energy Market Commission

Commissioners
Tamblyn
Carver
Woodward

Inquiries

The Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

E: aemc@aemc.gov.au

T: (02) 8296 7800

F: (02) 8296 7899

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About the AEMC

The Council of Australian Governments, through its Ministerial Council on energy, established the Australian Energy Market Commission (AEMC) in July 2005 to be the Rule maker for national energy markets. The AEMC is currently responsible for Rules and policy advice covering the National Electricity Market. It is a statutory authority. Our key responsibilities are to consider Rule change proposals, conduct energy market reviews and provide policy advice to the Ministerial Council as requested, or on AEMC initiative.

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Abbreviations

| | |
|------------|--|
| ACCC | Australian Competition and Consumer Commission |
| AEMC | Australian Energy Market Commission |
| AER | Australian Energy Regulator |
| Commission | see AEMC |
| EOI | Expression of Interest |
| ITT | Invitation to Tender |
| MCE | Ministerial Council on Energy |
| NEL | National Electricity Law |
| NEM | National Electricity Market |
| NEMMCO | National Electricity Market Management Company |
| NMAS | Non-Market Ancillary Services |
| NSP | Network Service Provider |
| Rules | National Electricity Rules |
| SCO | Standing Committee of Officials |
| SRAS | System Restart Ancillary Services |
| TNSP | Transmission Network Service Provider |

Summary

On 1 August 2007, the Commission received a Rule change proposal from the National Electricity Market Management Company (NEMMCO) seeking an amendment to the National Electricity Rules in relation to the timing requirements for the physical testing of facilities to provide System Restart Ancillary Services (SRAS). NEMMCO considered the Rules should be clarified to make clear that testing be carried out after NEMMCO has awarded contracts to successful tenderers.

NEMMCO advised in its proposal that it believes the changes made to the Rules by the *National Electricity Amendment (System Restart Ancillary Services and Pricing under Market Suspension) Rule 2006 No. 6* requires testing of offered SRAS to be carried out no later than the close of tenders.

However, NEMMCO stated in its proposal from the discussion in the related Final Rule Determination that the Commission's intention was for physical testing of SRAS to be carried out after contracts are entered into with successful tenderers.

On 27 August 2007, under sections 94 and 95 of the NEL, the Commission commenced initial consultation on this proposal by publishing a notice under sections 95 and 96 of the NEL for an urgent Rule change. The Rule change was open for public consultation for four weeks, with submissions closing on 24 September 2007. Interested parties were required to advise the Commission in writing by 6 September 2007 of an objection to expediting the making of the Rule as an urgent Rule change. The Commission received two submissions on the proposal.

On 9 October 2007, the Commission initiated an additional round of consultation on a specific issue raised during the first round of consultation, as the proposal was undergoing an expedited Rule making process. The specific issue was open for public consultation for one week, with submissions closing on 17 October 2007. The Commission received two submissions on the specific issue.

The Commission recognises that the provision of SRAS is vital to the market as the inadequate provision of SRAS could result in a much longer duration of a 'black system' event, should one occur, resulting in greater financial losses and inconvenience to consumers than would otherwise occur. Securing SRAS that has been sufficiently tested to ensure it is capable of delivering SRAS, is therefore equally important.

By providing flexibility in the timing for the physical testing of SRAS, the Commission removes any unintended barriers to participation in the SRAS tender process and may even increase competition in the provision of these services. Removing any unnecessary uncertainty in the SRAS tender process should enable NEMMCO to ensure that there are adequate SRAS contracts in place from 30 June 2008 to maintain the reliability, safety and security of the NEM in the long term interests of end users.

Having considered the issues raised in the proposal, submissions received and its own analysis, the Commission is satisfied that the proposed Rule will contribute to the achievement of the NEM objective and satisfies the Rule making test in section 88

of the NEL. In accordance with sections 102 and 103 of the NEL, the Commission has therefore decided to make a Rule.

This Rule determination sets out the Commission's reasons for making the Rule, in accordance with the requirements of the NEL.

1 NEMMCO's Rule proposal

On 1 August 2007, the Commission received a Rule change proposal from the National Electricity Market Management Company (NEMMCO) seeking an amendment to the National Electricity Rules in relation to the timing requirements for the physical testing of facilities to provide System Restart Ancillary Services (SRAS). NEMMCO considered the Rules should be clarified to make clear that testing be carried out after NEMMCO has awarded contracts to successful tenderers.

NEMMCO proposed that clause 3.11.4A(e) be amended as follows:

“In order to demonstrate that there is a reasonable degree of certainty that a *facility* is capable of delivering the relevant *system restart ancillary service* if required to do so, NEMMCO must develop and *publish* guidelines for undertaking:

- (1) modelling and assessment of the technical capabilities of *system restart ancillary services* proposed to be submitted as part of a SRAS expression of interest or in response to a NEMAS¹ invitation to tender;
- (2) physical testing of *system restart ancillary services* ~~being submitted as part of a SRAS expression of interest or in response to a NEMAS invitation to tender;~~
and
- (3) any other analysis which NEMMCO considers appropriate,

(the **SRAS assessment guidelines**).”

NEMMCO also proposed that clause 3.11.5(b)(2) be deleted in its entirety:

“3.11.5(b) NEMMCO must determine and *publish* the NEMAS tender guidelines. Separate NEMAS tender guidelines may be prepared in respect of *network control ancillary services* and *system restart ancillary services*. The NEMAS tender guidelines must contain the following:

- ...~~(2) a requirement for persons submitting an NEMAS expression of interest to have the relevant *facility* tested in accordance with the NEMAS tender guidelines;”.~~

NEMMCO advised in its proposal that it believes the changes made to the Rules by the *National Electricity Amendment (System Restart Ancillary Services and Pricing under Market Suspension) Rule 2006 No. 6* requires testing of offered SRAS to be carried out no later than the close of tenders.

¹ NEMAS is a non-market ancillary service, of which SRAS is one.

However, NEMMCO stated in its proposal from the discussion in the related Final Rule Determination that the Commission's intention was for physical testing of SRAS to be carried out after contracts are entered into with successful tenderers.

NEMMCO noted in its proposal that other market participants have now expressed concerns regarding the interpretation of the timing of the physical testing of offered SRAS. NEMMCO's consultation with participants on other SRAS related documents has raised comments that it was the participants' understanding that SRAS testing should occur after the close of tenders.

NEMMCO stated that this Rule change proposal will contribute to the National Electricity Market (NEM) Objective in so far as it proposes to do no more than clarify an ambiguity in relation to the new regime for procuring SRAS, as contained in the *National Electricity Amendment (System Restart Ancillary Services and Pricing under Market Suspension) Rule 2006 No. 6*. NEMMCO indicated that the proposed Rule contributes to the NEM Objective by removing unnecessary uncertainty.

2 Background

On 20 April 2006, the Commission published the Rule determination and made the *National Electricity Amendment (System Restart Ancillary Services and pricing under market suspension) Rule 2006 No. 6*. The Rule also commenced on 20 April 2006. This Rule determination and Rule, among other things, introduced new provisions in relation to the standards for, procurement of and use of System Restart Ancillary Services (SRAS).

Infrastructure and services that facilitate restoration of the power system following a major supply disruption play a fundamental role in the National Electricity Market (NEM), in that they help to reduce the substantial economic costs from a major disruption by ensuring that the power system is restored to full functionality in a timely manner.

If a black system condition were to occur, most generating units would be expected to shut down. These generating units need to be restarted so the power system can be restored. However, most generating units require a source of electrical power for their auxiliary plant so they can be restored. SRAS provides this restart capability.

As part of the determination, the Commission considered the detailed SRAS tendering process proposed by NEMMCO and found the process to be appropriate.²

“The Commission does note however, that NEMMCO’s proposed Rules will entrench a high degree of specificity as to the tendering process in the Rules. This will limit NEMMCO’s flexibility to adapt the tendering process to changing circumstances over time. The Commission considers that it is more appropriate for the Rules to contain some minimum requirements for the tendering process, with NEMMCO able to determine specific aspects of the process in accordance with the Rules consultation procedures.”³

“There may be benefits in clearly specifying the minimum requirements of an SRAS contract, such as meeting testing requirements.”⁴

“The Commission has determined to simplify the tendering requirements for SRAS in the Rules.”⁵

² AEMC 2006, *System Restart Ancillary Services and Pricing under Market Suspension*, Rule determination, 20 April 2006, p30.

³ AEMC 2006, *System Restart Ancillary Services and Pricing under Market Suspension*, Rule determination, 20 April 2006, p30.

⁴ AEMC 2006, *System Restart Ancillary Services and Pricing under Market Suspension*, Rule determination, 20 April 2006, p30.

⁵ AEMC 2006, *System Restart Ancillary Services and Pricing under Market Suspension*, Rule determination, 20 April 2006, p31.

As a result of the *National Electricity Amendment (System Restart Ancillary Services and pricing under market suspension) Rule 2006 No. 6*, clause 3.11.4A⁶ of the Rules requires:

- ...(e) In order to demonstrate that there is a reasonable degree of certainty that a *facility* is capable of delivering the relevant *system restart ancillary service* if required to do so, NEMMCO must develop and *publish* guidelines for undertaking:
- (1) modelling and assessment of the technical capabilities of *system restart ancillary services* proposed to be submitted as part of a *SRAS* expression of interest or in response to a *NMAS* invitation to tender;
 - (2) physical testing of *system restart ancillary services* being submitted as part of a *SRAS* expression of interest or in response to a *NMAS* invitation to tender; and
 - (3) any other analysis which *NEMMCO* considers appropriate,
- (the ***SRAS* assessment guidelines**).

In addition, clause 3.11.5⁷ of the Rules requires:

- ...(b) *NEMMCO* must determine and *publish* the *NMAS* tender guidelines. Separate *NMAS* tender guidelines may be prepared in respect of *network control ancillary services* and *system restart ancillary services*. The *NMAS* tender guidelines must contain the following:
- ...(2) a requirement for persons submitting an *NMAS* expression of interest to have the relevant *facility* tested in accordance with the *NMAS* tender guidelines;...

NEMMCO's Rule change proposal seeks to clarify the issue of timing for the physical testing of *SRAS* as a consequence of the *National Electricity Amendment (System Restart Ancillary Services and pricing under market suspension) Rule 2006 No. 6*.

In the 'Requirement on NSPs' section of the Rule determination, the Commission also recognised that:

"Powerlink proposes that the services provided under this clause be clearly identified as excluded services, either in the glossary or within this clause and as such be covered by the framework included in clause 6.5.9 of the Rules."⁸

⁶ Guidelines and objectives for acquisition of system restart ancillary services.

⁷ Tender process for non-market ancillary services.

The Commission found that:

“the proposal by Powerlink appears to be a reasonable method for addressing this issue, and as such the Commission will include a relevant provision in the Rule.”⁹

Powerlink’s submission on this Rule change proposal again was relevant to this issue.

⁸ AEMC 2006, System Restart Ancillary Services and Pricing under Market Suspension, Rule determination, 20 April 2006, p53.

⁹ AEMC 2006, System Restart Ancillary Services and Pricing under Market Suspension, Rule determination, 20 April 2006, p53.

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3 Rule determination

The Commission has determined in accordance with section 102 of the National Electricity Law (NEL) to make, with amendments, this Rule determination and in accordance with section 103, the attached Rule. The Rule to be made (the Rule) is attached to this determination, which is different to the proposed Rule put forward by the proponent. The Rule commences operation on 25 October 2007.

This determination sets out the Commission's reasons for making the Rule. The Commission has taken into account:

1. The Commission's power under the NEL to make the Rule;
2. The proponent's Rule change proposal and proposed Rule;
3. Submissions received;
4. Relevant MCE statements of policy principles; and
5. The Commission's analysis as to the ways in which the Rule will or is likely to contribute to the achievement of the NEM objective so that it satisfies the statutory Rule making test.

3.1 The Commission's power to make the Rule

The Commission is satisfied that the Rule proposed by NEMMCO falls within the subject matters for which the Commission may make Rules, as set out in section 34 of the NEL and in Schedule 1 to the NEL.

The Rule satisfies the criteria of section 34 of the NEL as it relates to the regulation of the operation of the National Electricity Market and the regulation of the operation of the national electricity system for the purposes of the safety, security and reliability of that system.

3.2 Assessment of the Rule: the Rule making test and the national electricity market objective

The Rule making test, as provided in section 88 of the NEL, requires the Commission to be satisfied that a Rule that it proposes to make will, or is likely to, contribute to the achievement of the NEM objective.

The test requires the Commission to consider the implications of the proposed new Rule for efficient investment in, and efficient use of electricity services, in respect of price, quality, reliability and security of supply, and reliability, safety and security of the NEM, which impact on the long term interests of end users of electricity. The Commission has applied the Rule making test to NEMMCO's proposal and found that it satisfies the Rule making test.

NEMMCO stated that its proposed Rule clarifies an issue of timing as a consequence of the *National Electricity Amendment (System Restart Ancillary Services and Pricing under Market Suspension) Rule 2006 No. 6* (the previous Rule).

Under the previous Rule, the physical testing of system restart ancillary services is required to be submitted “as part of a SRAS expression of interest or in response to a NMAS invitation to tender”¹⁰. However, the Rule to be made now links the timing of the physical testing of SRAS to the Non-Market Ancillary Services (NMAS) tender guidelines, which will provide prospective tenderers (SRAS providers) with more flexibility as to when such tenderers must test the relevant facility as to its capability to provide SRAS services.

The Commission recognises that the timing for the physical testing of SRAS services may vary, depending on the prospective tenderers’ circumstances. Some prospective tenderers may have physically tested their facilities prior to the expression of interest process to demonstrate that it has the necessary capabilities to deliver the required services, whereas other tenderers may provide simulated testing results at the expression of interest process and undertake physical testing of the system once it has secured an SRAS contract, which may be conditional on successfully completing a physical test of the facilities.

The provision of SRAS is vital to the market as the inadequate provision of SRAS could result in a much longer duration of a ‘black system’ event, should one occur, resulting in greater financial losses and inconvenience to consumers than would otherwise occur. Securing SRAS that has been sufficiently tested to ensure it is capable of delivering SRAS, is therefore equally important.

For this reason, by providing flexibility in the timing for the physical testing of SRAS, the Commission removes any unintended barriers to participation in the SRAS tender process and may even increase competition in the provision of these services. Removing any unnecessary uncertainty in the SRAS tender process should enable NEMMCO to ensure that there are adequate SRAS contracts in place from 30 June 2008 (when the current contracts expire) to maintain the reliability, safety and security of the NEM in the long term interests of end users.

3.3 MCE Statements of Policy Principles

The NEL also requires the Commission to have regard to any MCE statements of policy principles in applying the Rule making test. The Commission notes that currently, there are no relevant MCE statements of policy principles relating to this proposal.

3.4 Consultation on the NEMMCO proposal

NEMMCO submitted its Rule change proposal to the Commission on 1 August 2007.

¹⁰ Clause 3.11.4A(e)(2) of the Rules.

On 27 August 2007, under sections 94 and 95 of the NEL, the Commission commenced initial consultation on this proposal by publishing a notice under sections 95 and 96 of the NEL. The notice also sought objections to the Commission's decision to expedite the making of the Rule on the grounds that it is urgent. The Rule change was open for public consultation for four weeks, with submissions closing on 24 September 2007. Interested parties were required to advise the Commission in writing by 6 September 2007 of an objection to expediting the making of the Rule as an urgent Rule change.

The Commission received two submissions on the proposal from the National Generators Forum and Powerlink Queensland.

On 9 October 2007, the Commission initiated an additional round of consultation on a specific issue raised during the first round of consultation, as the proposal was undergoing an expedited Rule making process. The specific issue was open for public consultation for one week, with submissions closing on 17 October 2007. The Commission received two submissions on the specific issue from the National Generators Forum and a joint submission from CitiPower & Powercor Australia. The specific issue is discussed in more detail in section 4.3 of this determination.

3.5 Expedited Rule making process

NEMMCO requested that the Rule change proposal be treated as "urgent" on the basis that:

- As currently framed, the Rules impact "the effective operation or administration of the wholesale exchange operated and administered by NEMMCO"¹¹; and
- Current contracts for SRAS expire on 30 June 2008, and NEMMCO would either need to extend these contracts to a date that would permit the AEMC to conduct a standard Rule making process or run an expression of interest/ invitation to tender process on the basis of its current interpretation of the Rules, which NEMMCO does not consider appropriate.

Section 87 of the NEL defines an urgent Rule as one that "if not made as a matter of urgency, will result in that matter or thing imminently prejudicing or threatening:

- The effective operation or administration of the wholesale exchange operated and administered by NEMMCO; or
- The safety, security or reliability of the national electricity system".

Given the expiry date of 30 June 2008 for the current SRAS contracts, if NEMMCO does not take the necessary steps to extend the current contracts or, as it has indicated in its proposal:

¹¹ NEMMCO's System Restart Ancillary Services Rule change proposal, dated 1 August 2007, p2.

“Unless NEMMCO utilises clause 11.2.1(b)(2) to extend these contracts to a date that would permit the AEMC to conduct a consultation under section 94 of the NEL, NEMMCO would be required to run an EOI/ITT process¹² on the basis of its interpretation of the Rules.

“In light of what is known of the AEMC’s intentions for the SRAS procurement framework, NEMMCO does not consider this to be an appropriate way forward”¹³.

There is a reasonable argument that without adequate SRAS contracts in place, there is a significant risk to the safety, security and reliability of the national electricity system.

Furthermore, the uncertainty that appears to exist in the market in relation to the timing around the SRAS testing may also undermine the effective operation and administration of the NEM, and limit the efficient and effective procurement of SRAS services.

The Commission considered that, in accordance with section 87 of the NEL, this Rule change proposal, if not made as a matter of urgency, has the potential to threaten the safety, security and reliability of the national electricity system, and therefore the Commission expedited the Rule change as urgent in accordance with section 96 of the NEL.

The Commission did not receive any written objections under section 96(2) of the NEL to the expedition of this Rule making process. Therefore, the Commission proceeded directly to this final determination under section 96 of the NEL.

3.6 Differences between the proposed Rule and the Rule to be made

As discussed in section 4 of this determination, the Commission has adopted the substance of NEMMCO’s proposal but has made some amendments to the proposed Rule to link the timing of physical testing of SRAS to the NMAS tender guidelines.

The Commission has not accepted NEMMCO’s proposal to remove clause 3.11.5(b)(2) of the Rules, as the Commission considers this clause contains the requirement for the physical testing of relevant SRAS facilities. However, the Commission has amended this clause to make it clear that the timing for the testing of SRAS facilities will be provided for in the NMAS tender guidelines. The Commission has also separated out the requirements to test in relation to NMAS and SRAS to improve clarity and understanding of these requirements.

The Commission has also made amendments to clause 3.11.5(f)(2) of the Rules to improve its application, recognise the consequential change in timing of testing of SRAS facilities in relation to the party that conducts the testing. It has also substituted the term ‘excluded services’ (a term that does not exist under the Rules)

¹² Expression of Interest (EOI)/ Invitation to Tender (ITT) process.

¹³ NEMMCO’s System Restart Ancillary Services Rule change proposal, dated 1 August 2007, p2.

with the term 'negotiable services'. This amendment is discussed in more detail in section 4.3 of this determination.

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4 Matters arising from consultation and the Commission's analysis

In this section, the Commission addresses a number of issues that have emerged from consultation and during its analysis.

In developing the Rule, the Commission has examined a number of issues. These include:

- Clarification of timing for SRAS testing;
- Rights of the Network Service Provider to refuse testing; and
- Substitution of the term 'excluded services' with 'negotiable services'.

This section details the Commission's analysis and reasons for making the attached Rule in relation to each of the issues identified above.

4.1 Clarification of timing for SRAS testing

NEMMCO's Rule change proposal stated that its:

"...interpretation of changes to the National Electricity Rules (Rules) as a result of the 'National Electricity Amendment (System Restart Ancillary Services and Pricing under Market Suspension) Rule 2006' is that they require testing of offered System Restart Ancillary Services (SRAS) to occur by the close of tenders. This does not appear to reflect the AEMC's intention that SRAS testing could be carried out after contracts were entered into."¹⁴

NEMMCO's "proposed solution removes the requirement that SRAS needs to be tested by the close of tenders"¹⁵.

The National Generators Forum raised in its submission that:

"...the requirement for testing prior to a restart contract being awarded would represent a barrier to the submission of tenders"¹⁶

and cited two possible reasons for this would be the "high costs and risks of conducting SRAS tenders"¹⁷ and the "inability of potential investors in restart services being able to submit a tender"¹⁸.

¹⁴ NEMMCO's System Restart Ancillary Services Rule change proposal, dated 1 August 2007, p2.

¹⁵ NEMMCO's System Restart Ancillary Services Rule change proposal, dated 1 August 2007, p5.

¹⁶ National Generators Forum submission, 13 September 2007, p1.

¹⁷ National Generators Forum submission, 13 September 2007, p1.

¹⁸ National Generators Forum submission, 13 September 2007, p1.

The National Generators Forum submission went on to say:

“The rule change proposed by NEMMCO will remove these barriers to the offer of SRAS tenders, increasing the potential field of suppliers and therefore competition in the tender process. At the same time, NEMMCO will still be able to conduct appropriate testing once contracts are awarded, and therefore be confident that providers will be able to deliver contracted services if required.”¹⁹

The Commission considers that NEMMCO has the discretion to make guidelines about SRAS assessment and Non-Market Ancillary Services (NMAS) tender processes and the timeframes for testing in clauses 3.11.4A and 3.11.5. However, NEMMCO also identified in its Rule change proposal that other market participants have now expressed concerns regarding the interpretation of the current timing requirements for the physical testing of offered SRAS.

The Commission considers it prudent to address this issue in the interests of regulatory certainty. The Commission also considers that transparent and well understood requirements are in the interests of market participants, particularly potential tenderers.

The Commission accepts the substance of NEMMCO’s proposal that SRAS testing prior to submitting an SRAS tender does have the potential to act as a barrier to submitting SRAS tenders. Accordingly, the Commission has amended the current requirement in clause 3.11.4A that the SRAS assessment guidelines must include physical testing as part of an SRAS expression of interest, to include flexible timeframes guided by the NMAS tender guidelines.

However, the Commission considers SRAS testing of a facility is an essential component in the provision of SRAS. For this reason, the Commission has retained the requirement in clause 3.11.5(b)(2) that a facility that will provide SRAS needs to be tested. NEMMCO proposed to delete this provision as it currently requires persons submitting an NMAS expression of interest to have the relevant facility tested. Whilst the Commission has accepted that the timing of SRAS testing will vary depending on the facility being tested, the Commission considers it more appropriate to make clear the basis for how and when SRAS facilities are tested.

The Rule to be made in clause 3.11.5(b) requires a person who is a party to an ancillary services agreement for the provision of SRAS to have the facility tested in accordance with the SRAS assessment guidelines and in accordance with the timeframes in the NMAS tender guidelines. NEMMCO has the discretion, in its role in developing the NMAS tender guidelines, to include timeframes in relation to the physical testing of selected non-market ancillary services.

In making this amendment, the Commission has also separated the requirements to test for other NMAS and SRAS in the Rule to be made. The Commission considers this separation adds clarity to the provision and minimises the potential for future confusion over these requirements.

¹⁹ National Generators Forum submission, 13 September 2007, p1.

4.2 Rights of the Network Service Provider to refuse testing

Powerlink's submission stated that:

"One of the consequences of the Proposed Rule Change on Timing of SRAS Testing is the removal of any acknowledgement of the role of NSPs in any physical testing that may occur beyond the tendering process."²⁰

"The existing Rules ensure that NSPs support the physical testing of SRAS, but only to the extent that it is reasonable and practicable to do so...Removing the requirement of physical testing as part of a SRAS expression of interest or in response to a NMAS invitation to tender, would remove the ability for a NSP to reject physical testing on the grounds that it is either unreasonable or impracticable to do so. To remove this ability to reject physical testing on a NSPs network on these grounds would create an inconsistency within the Rules and potentially conflict with a NSP's licence obligations."²¹

The Commission notes that Powerlink raised similar concerns with NEMMCO during consultation on NEMMCO's SRAS Assessment Guidelines²². NEMMCO's response to Powerlink's concerns were:

"...Powerlink's interpretation assumes two things, neither of which can be assumed. First, that all testing requires the participation or facilitation by an NSP, and secondly, that a test means a full test of the capability of the SRAS from source to Delivery Point, with an NSP's network in between.

The Draft Determination and Report on the SRAS Assessment Guidelines clarifies the nature of the tests expected to be performed and their frequency. In no way is it suggested that an NSP must facilitate or participate in every type of test."²³

The Commission recognises the importance of physical testing of facilities providing SRAS to the market to ensure these facilities are able to deliver these services when required, for the safety, security and reliability of the national electricity system. The Commission, therefore, does not agree with Powerlink's suggestion to remove this requirement. However, the opportunity for an NSP to refuse to facilitate or participate in physical testing which it considers unreasonable or impracticable to do so, is also valid.

The Commission considers that as long as a requirement to test exists, the role of the NSP in relation to this testing should also be maintained. This role allows the NSP to refuse to participate or facilitate SRAS testing where it is unreasonable or impracticable to do so. Accordingly, the Commission has made a consequential

²⁰ Powerlink Queensland submission, 24 September 2007, p2.

²¹ Powerlink Queensland submission, 24 September 2007, p3.

²² NEMMCO's System Restart Services Tender Guidelines Draft Determination and Report, v 0.4, p14.

²³ NEMMCO's System Restart Services Tender Guidelines Draft Determination and Report, v 0.4, p15.

amendment in clause 3.11.5(f)(2) in relation to the party who would be dealing with the NSP in this context. This involved replacing 'prospective tenderer' with 'Registered Participant'. The Commission considers that based on a review of the current arrangements involving SRAS, 'Registered Participant' effectively encapsulates the relevant party in the context of this clause.

4.3 Substitution of the term 'excluded services' with 'negotiable services'

Powerlink requested in its submission that, in relation to clause 3.11.5(f)(2):

"...the AEMC use this opportunity to modify the Rule from "excluded services" to the current term "negotiated services"²⁴.

The Commission notes that the term 'excluded services' in the current Rules, although italicised, is an undefined term and Powerlink has actually identified an error in the Rules. However, the term 'negotiated services' that Powerlink has requested be substituted into the clause is also an undefined term in the Rules.

The Commission recognises that the intent of including the term 'excluded services' in the *National Electricity Amendment (System Restart Ancillary Services and Pricing under Market Suspension) Rule 2006 No. 6* contemplated that these services be covered by the negotiating framework that existed in clause 6.5.9 in Version 4 of the Rules.²⁵

The Commission therefore considered substituting the term 'excluded services' with the term 'negotiable services'. The definition of 'negotiable services' incorporates amendments made by the *National Electricity Amendment (Economic Regulation of Transmission Services) Rule 2007 No. 18*. The substitution of these terms recognises that the transmission network service provider's role in SRAS testing, which if correctly incorporated in the SRAS Rule, would have likely been taken to be an excluded transmission service, can now be captured within a negotiated transmission service.

As this amendment to the Rules was not included in the first round of consultation on NEMMCO's proposal, the Commission considered it prudent to undertake an additional round of consultation on this specific issue to ensure stakeholders had the opportunity to comment. As this Rule change proposal was being considered under an expedited process as an urgent Rule, there would not be a second round of consultation.

The additional round of consultation commenced on 9 October 2007 for one week, with submissions closing on 17 October 2007. Two submissions were received from the National Generators Forum and CitiPower and Powercor Australia (jointly).

The National Generators Forum submission stated that:

²⁴ Powerlink Queensland submission, 24 September 2007, p2.

²⁵ AEMC 2006, *System Restart Ancillary Services and Pricing under Market Suspension*, Rule determination, 20 April 2006, p53.

“In our view, this change proposal will provide generators with access to a negotiate/ arbitrate framework to govern negotiations with a TNSP on the price of the service offered. In the event of disagreement, utilisation of this robust framework would provide access to an independent arbitrator to determine the fair and reasonable price of the service offered. Under the current drafting, generators may be at a disadvantage with respect to the monopoly position of TNSP’s, which may not be consistent with the market objective.

On this basis we believe the proposed rule change is consistent with the market objective, and support it being expedited.”²⁶

The CitiPower and Powercor Australia (joint) submission stated that:

“CitiPower and Powercor agree that modifying clause 3.11.5(f)(2) to replace the undefined term “excluded services” with the defined term “negotiable services” is appropriate and provides greater clarity and consistency.”²⁷

Both submissions received during the additional consultation on this specific issue supported the Commission’s proposition to substituting the term ‘excluded services’ with the term ‘negotiable services’. The Commission considers that treating the services provided by the NSP as a negotiated transmission service (noting the distribution component of negotiable service definition has not substantively changed since the making of the SRAS Rule) contributes to regulatory certainty as it provides for a robust, market tested framework in the place of, effectively, no framework. Given the background to the inclusion of excluded services in the SRAS Rule, the Commission considers ‘negotiable services’ to be the most appropriate term and has made the substitution.

See attached Rule to be made.

²⁶ National Generators Forum submission, 17 October 2007, p1.

²⁷ CitiPower and Powercor Australia (joint) submission, 17 October 2007, p1.

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