



# RULE CHANGE

Australian Energy Market Commission

## CONSULTATION PAPER

### National Electricity Amendment (Timing for Intervention Compensation Determinations) Rule 2010

#### **Rule Proponent**

Australian Energy Market Operator

11 February 2010

This consultation paper has been prepared to facilitate public consultation on the Rule change proposal and does not represent the views of the Commission or any individual Commissioner of the Australian Energy Market Commission.

## **Inquiries**

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

**E:** [aemc@aemc.gov.au](mailto:aemc@aemc.gov.au)

**T:** (02) 8296 7800

**F:** (02) 8296 7899

## **Citation**

AEMC 2010, Consultation Paper 11 February 2010, Sydney

## **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 and elements of the natural gas markets. 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.

This work is copyright. The Copyright Act 1968 permits fair dealing for study, research, news reporting, criticism and review. Selected passages, tables or diagrams may be reproduced for such purposes provided acknowledgement of the source is included.

## Contents

Introduction .....	4
1 Background.....	5
1.1 AEMO's powers to intervene in the electricity market .....	5
1.2 Role of an AEMO appointed independent expert in the intervention compensation determination process .....	6
2 AEMO's Rule change proposal.....	8
3 Assessment framework .....	9
4 Issues for consultation .....	10
4.1 Does AEMO require an extension of time? .....	10
4.2 Is there a material cost increase associated with extending the timeframes? .....	10
4.3 Are there more preferred solutions available? .....	11
4.4 Drafting errors .....	11
5 Consultation under the expedited process .....	12

## Introduction

### *Rule change proposal*

On 25 November 2009 the Australian Energy Market Operator (AEMO) submitted a Rule change proposal to the Australian Energy Market Commission (Commission). The proposal seeks to extend the period of time available for AEMO to complete its obligations to determine claims for additional compensation following AEMO's interventions in the market where an independent expert is required to be appointed.<sup>1</sup> AEMO contends that the current timeframe of 100 business days may not be enough time for it to complete its obligations where an independent expert is required to be appointed. AEMO is seeking to extend this timeframe to 150 business days.

The Rule change proposal also seeks to address minor errors in clauses 3.15.7(c), and 3.15.7B(a1) of the Rules, these being:

- in clause 3.15.7(c) that the reference to clause 3.15.17(d) is incorrect as this clause does not exist in the Rules and that the reference should in fact be to clause 3.15.7(d); and
- in clause 3.15.7B(a1) that the reference to clause 3.15.7A(a) should be a reference to clause 3.15.7A(b) as this clause covers the associated subject matter.

*Request that the Rule be considered non controversial and therefore assessed under an expedited process*

AEMO requested that the Rule change proposal be treated as non-controversial and assessed under the expedited process provided for in section 96 of the National Electricity Law (NEL). The Commission has agreed to AEMO's request. This means that the Commission is required to publish a final Rule determination no later than six weeks after the publication of the section 95 notice<sup>2</sup> unless an objection to the expedited process is lodged, and the objection is considered to be not misconceived or lacking in substance. If the expedited process is followed the Commission must publish its final Rule determination no later than 25 March 2010.

As a consequence of the expedited process, the consultation timeframes and processes for the assessment of this Rule change proposal are different to the

---

<sup>1</sup> The relevant clauses in the Rules are clauses 3.12.2(l), 3.12.2(m), 3.15.7B(c) and 3.15.7B(d). The types of claims for additional compensation that can be made by market participants are defined in:

- clause 3.12.2(g)(3) (affected participant's adjustment claims);
- clause 3.12.2(g)(4) (market customer's additional claims); and
- clause 3.15.B(a), (a1) or (a2) (claims by directed participants).

<sup>2</sup> This notice was published on 11 February 2010.

standard (non-expedited) Rule change process.<sup>3</sup> These are described in the Consultation section of this paper.

### *This consultation paper*

This consultation paper has been prepared to facilitate public consultation on the Rule change proposal. The paper does not represent the views of the Commission or any individual Commissioner.

This Consultation Paper sets out:

- some background information on AEMO's powers to intervene in the electricity market and the role of an AEMO appointed independent expert in the intervention compensation determination process;
- an outline of AEMO's proposed changes to the Rules;
- an outline of the assessment framework the Commission will use to assess the proposal;
- some issues for consultation; and
- information about making submissions to this proposal.

## **1 Background**

This section of the paper provides some background information on:

- AEMO's powers to intervene in the National Electricity Market (NEM); and
- the role of the independent expert in the intervention compensation determination process.

### **1.1 AEMO's powers to intervene in the electricity market**

AEMO may intervene in the NEM through mechanisms provided for in the Rules if the market fails to deliver a safe, secure and reliable supply of electricity. The options that AEMO may utilise are the Reliability and Emergency Reserve Trader (RERT) mechanism and AEMO's powers under clause 4.8.9 of the Rules to issue directions or instructions.

#### RERT

The RERT mechanism provides AEMO with an avenue to purchase additional reserves (generation or demand-side) needed to meet regional minimum reserve

---

<sup>3</sup> Section 96 NEL.

levels. The operation and parameters of the RERT are set out in rule 3.20 of the Rules.

### Directions

Clause 4.8.9 of the Rules gives AEMO the power to direct registered participants with scheduled plant or market generating units to do any act or thing, if it is necessary to do so to maintain or re-establish the power system to a secure, satisfactory or reliable operating state. Directed participants are required to use reasonable endeavours to comply with the direction, unless to do so would (in the participant's reasonable opinion), be a hazard to public safety, materially risk damaging equipment, or contravene any other law.

AEMO is required to pay compensation to the directed participant for the service provided in response to the direction, and to recover the cost of that compensation from market participants in accordance with the Rules. Services that may be provided by directed participants are services for the provision of electricity, market ancillary services or services other than energy or market ancillary services.

### Instructions

Clause 4.8.9 instructions are similar to AEMO's directions powers, but apply to registered participants other than those with scheduled plant or market generating units. This power is also used to maintain or re-establish the power system to a secure, satisfactory or reliable operating state. There is no compensation paid to participants the subject of a clause 4.8.9 instruction.

## **1.2 Role of an AEMO appointed independent expert in the intervention compensation determination process**

Where an AEMO intervention event occurs AEMO is required to determine the amount of compensation payable by or to relevant market participants.<sup>4</sup> In some circumstances AEMO has an obligation or a discretion to appoint an independent expert to undertake certain functions of the intervention compensation determination process. An independent expert is required to be appointed under clauses 3.12.2(l) and (m) and 3.15.7B(c) and (d) (which are the clauses the subject of this Rule change proposal) for the purposes of determining compensation values following intervention events. An independent expert may also be appointed pursuant to clause 3.15.7A(b) to determine the fair payment price for directions for services other than energy or market ancillary services.

---

<sup>4</sup> Rules clause 3.12.1(a)

Appointment of an independent expert under clause 3.12.2 – additional compensation claim following an intervention event

Clause 3.12.2 of the Rules states that certain participants<sup>5</sup> affected by an AEMO intervention are to be paid or are required to pay amounts calculated by AEMO<sup>6</sup>. An independent expert is required to be appointed under this clause where a participant submits a claim for additional compensation to the amount calculated by AEMO and:

- the additional component amount claimed is above \$20,000 and the total amount claimed by all claimants is over \$100,000; or
- where AEMO determines that a claim made under this clause is unreasonable.

The process the independent expert is required to follow is outlined in clause 3.12.3 of the Rules which specifies that the independent expert:

- publish a draft report setting out the total compensation payable or receivable by the relevant parties, and methodologies and assumptions used in making its determination;
- deliver to the relevant parties and AEMO draft assessments of the compensation payable or receivable by the relevant party;
- call for submissions from all relevant parties after publishing its draft report and take into consideration all submissions received within 15 days of the publication of the draft report;
- meet with relevant parties if requested within 15 days of publication of its draft report and draft assessments; and
- publish a final report, and final compensation assessment for each relevant party.

Currently AEMO has 100 business days to finalise its obligations under this clause. AEMO is seeking to extend this timeframe to 150 business days when an independent expert is appointed.

Appointment of an independent expert under clause 3.15.7B – additional compensation claim following a direction

Clause 3.15.7B provides the grounds under which participants who have been directed by AEMO may claim additional compensation (over the amounts calculated by AEMO).

---

<sup>5</sup> These participants are stated in Rules clause 3.12.2 and Chapter 10 of the Rules under the heading *Affected Participants*

<sup>6</sup> The claim is referred to in Rules clause 3.12.2(l) and (m) as an *affected participants adjustment claim* or a *market customers additional claim*

An independent expert is required to be appointed where:

- the additional component amount claimed is above \$20,000 and the total amount claimed by all claimants is over \$100,000; or
- where AEMO determines that a claim for additional compensation made under this clause is unreasonable.

The process the independent expert is required to follow is set out in clause 3.12.3 and is the same as that for additional claims for compensation by affected participants following an AEMO intervention (under clause 3.12.2 mentioned above).

Currently AEMO has 100 business days to finalise its obligations under this clause. AEMO is seeking to extend the timeframe to 150 business days when an independent expert is appointed.

*Appointment of an independent expert under clause 3.15.7A – determining a fair payment price for “other” services directions*

Clause 3.15.7A of the Rules outlines the process for compensating participants who have been directed by AEMO to provide services other than energy or market ancillary services. Under this clause an independent expert is to be appointed where AEMO considers that an independent expert could reasonably be expected to determine a fair payment price within a reasonable time for the services provided as part of the direction.

Unlike the other instances under which an independent expert is appointed (described above), the process the independent expert is required to follow is set out in clause 3.15.7A itself, rather than in clause 3.12.3. The actual processes are however substantially similar and the independent expert is required to determine and publish a draft report, call for submissions and take submissions into account in its final report.

A key difference in the appointment of the independent expert under clause 3.15.7A is that AEMO currently has (by virtue of the Rules) 150 business days to fulfil its obligations to determine compensation if an independent expert is appointed under this clause.

## **2 AEMO’s Rule change proposal**

Currently the Rules clearly indicate that where an independent expert is appointed under clause 3.15.7A to determine the fair payment price for an “other” services direction, there is a 150 business day timetable for the compensation amount to be determined. A different timetable (100 business days) applies where an independent expert is appointed under clause 3.12.2 (l) and (m), and 3.15.7B(c) and (d) to determine claims for additional compensation. AEMO considers that 100 business days is not enough time for it to complete its obligations under clauses 3.12.2(l) and (m) and 3.15.7B(c) and (d), when an independent expert is appointed. The proposal therefore seeks to amend this by indicating that a 150 business day timetable applies



in all cases that an independent expert is appointed, thereby facilitating an adequate timeframe for AEMO to resolve the claim.<sup>7</sup>

The reason AEMO has raised this proposal now is that recently, a participant raised an additional claim under clause 3.15.7B close to the 100 business day deadline. Whilst this claim did not need to be referred to an independent expert, AEMO are nevertheless concerned that such a scenario could occur in the future and may prevent AEMO from being able to discharge the requirements placed on it under the Rules for determining claims.<sup>8</sup> As such, AEMO has indicated that more time should be available for the independent expert to assess the claim.

In addition to extending the timetable for compensation claims, AEMO has identified some minor cross referencing errors which it considers should be addressed. In particular, AEMO proposes, in relation to clauses 3.15.7(c) and 3.15.7B(a1) that:<sup>9</sup>

- the reference to clause 3.15.17(d) in clause 3.15.7(c) should instead be a reference to clause 3.15.7(d) as clause 3.15.17(d) does not exist in the Rules; and
- the reference to clause 3.15.7A(a) in clause 3.15.7B(a1) should actually be a reference to clause 3.15.7A(b) as clause 3.15.7A(b) covers the associated subject matter while clause 3.15.7A(a) does not.

### **3 Assessment framework**

The Commission's assessment of this Rule change proposal must consider whether the proposed Rule will or is likely to contribute to the National Electricity Objective (NEO) as set out under section 7 of the NEL. The assessment will include evaluating and comparing the limitations and benefits of the current timeframes under the Rules for determining additional claims for compensation with the timeframes proposed. The comparison of the current arrangements under the Rules with the proposed Rule will consider:

- administrative efficiencies in the compensation determination process – overly lengthy timeframes can produce administrative inefficiencies and higher costs (in the form of administrative costs and interest payments) which are recouped from market participants; and
- regulatory certainty – timeframes must be clear and achievable for market participants to be able to rely on the administrative processes to determine claims for additional compensation.

---

<sup>7</sup> AEMO Rule change proposal, p.3

<sup>8</sup> AEMO Rule change proposal, p.3

<sup>9</sup> AEMO Rule change proposal p.4.

In evaluating the proposal, the Commission will need to compare the administrative and claims related costs (e.g. interest payments) associated with extending the timeframes, with the potential benefits. These benefits could include providing additional regulatory certainty and ensuring that AEMO can meet its obligations for determining claims through establishing more achievable timetables.

## **4 Issues for consultation**

Taking into consideration the assessment framework and potential requirements to implement the proposed Rule change, we have identified a number of issues for consultation that appear to be relevant to this Rule change request.

These issues outlined below are provided for guidance. Stakeholders are encouraged to comment on these issues as well as any other aspect of the Rule change proposal or this paper including the proposed assessment framework.

### **4.1 Does AEMO require an extension of time?**

As outlined above, AEMO propose to extend the timeframes for it to complete its obligations to finalise claims for additional compensation following intervention events under clauses 3.12.2(l) and (m) and 3.15.7B(c) and (d) from 100 business days to 150 business days, when an independent expert is appointed.

We are therefore seeking feedback from stakeholders on the following questions:

- Does AEMO require additional time to finalise its obligations under clauses 3.12.2(l) and (m), and clauses 3.15.7B(c) and (d) when an independent expert is appointed?
- If so, how much additional time does AEMO require to finalise its obligations to determine a claim for additional compensation under clauses 3.12.2(l) and (m) and 3.15.7B(c) and (d) where an independent expert is appointed?

### **4.2 Is there a material cost increase associated with extending the timeframes?**

In submitting the proposal AEMO has indicated that the proposed Rule could result in claims for compensation being delayed. However, AEMO has also stated that the NER includes provisions that allow compensation amounts to be adjusted for interest in these circumstances.

In this context, we would welcome views on whether there are likely to be additional costs to individual claimants or market participants more generally associated with the Rule change proposal and whether these cost increases are reasonable?

### **4.3 Are there more preferred solutions available?**

Our preliminary analysis of the proposal has raised an additional issue that could result in the Commission considering a more preferable Rule to that proposed by AEMO. The Commission may make a more preferable Rule under section 91A of the NEL if it is satisfied that, having regard to the issue or issues raised in AEMO's proposal, the more preferable Rule will or is likely to better contribute to the achievement of the NEO.

Subject to stakeholder comments, further consultation may be undertaken in relation to any more preferable Rule the Commission may propose to make in relation to this proposal. Further consultation can be achieved through extending the timeframes to publish the final Rule determination subject to satisfying criteria set out in section 107 of the NEL.

The additional issue arising from our preliminary analysis is the possibility that an independent expert may need to be appointed to determine a fair payment price (under clause 3.15.7A), and then to subsequently determine a claim for additional compensation (under clause 3.15.7B(c) or (d)). It is unclear from the proposal what an appropriate maximum timeframe would be for AEMO to complete its obligations if this situation occurred.

A more preferable Rule might be an "add-on" arrangement where, if an independent expert is required to be appointed pursuant to clauses 3.12.2 (l), and (m) or 3.15.7B (c) and (d), an extra 50 business days (or other more appropriate number of business days) is added to the compensation determination process, from the time the claim is referred to the independent expert. For example if by the 82<sup>nd</sup> business day of the determination process a directed participant has submitted a claim and it was determined that an independent expert was required to be appointed, AEMO would have an additional 50 days (or other more appropriate number of days) to finalise its obligations. This is slightly different to the AEMO proposal which seeks an overall timeframe of 150 business days to complete its obligations when an independent expert is appointed.

Given this context we are seeking feedback from stakeholders on the following questions:

- Do you think that an "add-on" arrangement as described above is more preferable to the overall timeframe extension proposed by AEMO?
- Are there other more preferable solutions to the ones identified in this paper that deal with the issue of extending the timeframes for AEMO to finalise its obligations to determine additional claims for compensation under clauses 3.12.2(l) and (m) and 3.15.7B(c) and (d) when an independent expert is appointed?

### **4.4 Drafting errors**

As outlined above AEMO has identified drafting errors in clauses 3.15.7(c) and 3.15.7B(a1). In our preliminary analysis we have identified a further error. We

consider that the reference in clause 3.15.7B(c)(1) to “*affected participants adjustment claim or market customers additional claim*” is incorrect. The reference should instead be to “a claim by a *Directed Participant* in respect of that direction pursuant to clauses 3.15.7B(a), 3.15.7B(a1), and 3.15.7B(a2).”

We are seeking feedback from stakeholders on the following questions regarding these issues:

- Do you agree with the drafting changes to clauses 3.15.7(c) and 3.15.7B(a1) proposed by AEMO ?
- Do you agree that the reference to “*affected participants adjustment claim or market customers additional claim*” in clause 3.15.7B(c)(1) is an error ?

## **5 Consultation under the expedited process**

In relation to this Rule change proposal, the Commission has published a notice under sections 95 and 96 of the NEL stating that this Rule change proposal will be assessed following an expedited process (subject to written objections) as it is a non-controversial Rule.

Under the expedited process, stakeholders have two weeks after the publication of the notice under sections 95 of the NEL to object to this Rule change proposal being expedited. Objections need to contain reasoning as to why the stakeholder considers that the Rule change proposal should not be expedited and will be assessed by the Commission in accordance with section 96 of the NEL. Stakeholders are required to lodge objections with the Commission by 25 February 2010.

The expedited process also provides a four week consultation process on the content of the Rule change proposal. Submissions on the content of AEMO’s Rule change proposal are to be lodged with the Commission by 11 March 2010.

Where practicable, submissions should be prepared in accordance with the Commission’s Guidelines for making written submissions on Rule change proposals.<sup>10</sup> The Commission publishes all submissions on its website subject to a claim of confidentiality.

All enquiries on this project should be addressed to Nanda Naidu on (02) 8296 7800.

### *Lodging a submissions electronically*

Comments must be lodged online via [www.aemc.gov.au](http://www.aemc.gov.au). The submission must be on letterhead (if submitted on behalf of an organisation), signed and dated.

Upon receipt of the electronic version of the submission, the Commission will issue a confirmation email. If this confirmation email is not received within 3 business days,

---

<sup>10</sup> This guideline is available on the Commission’s website.

it is the submitter's responsibility to ensure successful delivery of the submission has occurred.

*Lodging a submission by mail*

The submission must be on letterhead (if an organisation), signed and dated by the respondent. The submission should be sent by mail to:

Or mail to:  
Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

Or by Fax: (02) 8296 7899.

The envelope must be clearly marked with the project reference code: "ERC0099".

Except in circumstances where the submission has been submitted electronically, upon receipt of the hardcopy submission the Commission will issue a confirmation letter. If this confirmation letter is not received within 3 business days, it is the submitter's responsibility to ensure successful delivery of the submission has occurred.