



RULE CHANGE

Australian Energy Market Commission

CONSULTATION PAPER

Victorian jurisdictional derogation (smelter agreements)

27 February 2014

Rule Proponent

Minister for Energy and Resources (Victoria)

Stakeholder submissions invited on rule change request

The Minister for Energy and Resources (Victoria) has submitted a rule change request seeking to correct a perceived error or oversight in the wording of an existing Victorian Jurisdictional Derogation. If made, the rule would allow the particular arrangements for National Electricity Market registration under the derogation, in respect of the Point Henry Smelter and Anglesea power station, to conclude on the expiry of the Point Henry electricity supply agreement at the end of July 2014.

Background

Under the National Electricity Law derogations exempt nominated parties, or persons in a jurisdiction, from complying with specific requirements under the National Electricity Rules or, alternatively, they modify or vary the application of specific provisions with respect to that party, or in a jurisdiction.

The derogation in question preserves certain legacy arrangements that existed in Victoria prior to the commencement of the National Electricity Market. These arrangements were entered into by the State Electricity Commission of Victoria and various counter parties in relation to the Point Henry and Portland smelters and are collectively referred to as the 'Smelter Agreements'.

This rule change request relates specifically to the Point Henry electricity supply agreement, which expires on 31 July 2014 (Point Henry ESA) and, to a lesser extent, the Portland electricity supply agreement which expires on 31 October 2016 (Portland ESA).

Issue for the rule change proponent

Under the derogation, the State Electricity Commission is deemed to be the registered market customer in respect of both smelters, and also the registered generator in respect of the Anglesea power station, which provides approximately 40% of the power to the Point Henry smelter. As a consequence it also carries particular financial and regulatory obligations ascribed to these roles.

The rule proponent contends that, in its current form, the wording of the derogation effectively extends the deemed registration and associated obligations of the State Electricity Commission in respect of the Point Henry ESA, until the expiry of the Portland ESA on 31 October 2016, despite the earlier expiry of the Point Henry ESA. In addition, section 91AC(1)(c) of the *Electricity Industry (Residual Provisions) Act 1993 (Vic)* (EI(RP) Act), provides that while the State Electricity Commission is required to sell or supply electricity to a facility under a Smelter Agreement, no other party may do so.

The combined effect of these instruments is that:

- the State Electricity Commission would continue to be the registered market customer in respect of the Point Henry smelter and the registered generator for the Anglesea power station, and retain all associated financial and regulatory obligations derived from the derogation, and
- for as long as the State Electricity Commission is registered in this manner, Alcoa of Australia Limited (Alcoa), the operator of the facilities, is prevented from registering and would not be able to assume its responsibilities under the National Electricity Law as customer for the Point Henry Smelter and as generator for Anglesea power station until 2016, on expiry of the Portland ESA.

The rule proponent contends that this outcome is inconsistent with the intention of the current derogation of the rules, and of the EI(RP) Act.

What the rule change is seeking to do

The proposed rule change aims to clarify that the arrangements under the derogation, in respect of each smelter, are only effective so long as the pre-existing contractual arrangements continue for that smelter. If made, the rule would have the effect of:

- releasing the State Electricity Commission from the financial and regulatory liabilities under the derogation in respect of the Point Henry smelter and Anglesea power station; and
- facilitating the transfer of these liabilities to Alcoa, from the date of expiry of the Point Henry ESA in 2014.

Treatment as a non-controversial rule change

The rule proponent contends that this rule change will directly affect the State Electricity Commission and Alcoa, as well as the Australian Energy Market Operator and SP Ausnet (as the relevant Victorian declared transmission system operator) only, and will not affect the National Electricity Market.

On this basis the rule change proponent has requested that the matter be considered under an expedited (faster) process, as a non-controversial rule change.

Section 87 of the National Electricity Law provides that a non-controversial rule is one that is unlikely to have a significant effect on the national electricity market. Rule changes that are considered to be non-controversial may be processed under an expedited process. This means that following commencement, provided there are no valid objections received, the AEMC has six weeks to publish its final decision. The AEMC will therefore proceed to make a rule change determination on an expedited basis unless a valid objection is received. To be valid, such an objection would need to demonstrate that the proposal would have a significant effect on the national electricity market.

Rule change process

Given the tightly defined nature of the issue, and the comprehensive background information provided in the rule change request, the AEMC will not be releasing a more detailed consultation paper. Submissions are however invited in relation to the matters identified above, and any other relevant issue.

The **key dates** for stakeholders in this process are as follows:

- Commencement of this rule change process: 27 February 2014
- Objections to an expedited process to be received by: 13 March 2014
- Submissions to the proposal to be received by: 27 March 2014
- Final decision to be published under an expedited process by: 10 April 2014

Copies of the rule change request, and details about how to lodge a submission, may be found on the AEMC website, www.aemc.gov.au.

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