

25 November 2009

FROM THE OFFICE OF THE
CHIEF EXECUTIVE OFFICER

Dr John Tamblyn
Chairman
Australian Energy Market Commission
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By online submission

Dear Mr Tamblyn,

Re | Time allowed for the Determination of Compensation Amounts

AEMO requests the AEMC consider making a Rule under sections 91 and 96 of the *National Electricity Law (NEL)*. The proposed Rule seeks to amend clause 3.12.1(a) of the *National Electricity Rules (NER)* to allow AEMO 150 business days to complete and fulfil its obligations to determine compensation amounts under clauses 3.12.2 and 3.15.7B where it is required to appoint an independent expert. This is consistent with the time allowed for the determination of compensation amounts where the appointment of an independent expert is required under clause 3.15.7A of the NER. In addition, AEMO seeks to address a number of minor errors in the NER.

AEMO considers that the proposed Rule change is non-controversial as it is unlikely to have a significant effect on the National Electricity Market, as is required for an expedited consultation process under section 96 of the NEL.

A description of the proposed Rule change, statement of the issues concerning the existing Rules, and how the proposed Rule addresses those issues consistent with the national electricity objective is contained in Attachment A.

AEMO would be pleased if you could have these matters considered by the AEMC. For further details, please do not hesitate to contact Taryn Maroney on (02) 8884 5609.

Yours sincerely



Matt Zema
Managing Director and Chief Executive Officer

Attachment A: Rule change proposal

Attachment A

1. Statement of Issues

AEMO considers that clause 3.12.1 of the National Electricity Rules (**NER**) is ambiguously drafted in its differentiation of the time available to AEMO to reach a final determination on compensation payments depending upon whether or not it is required under the Rules to appoint an independent expert. As currently drafted, AEMO considers this clause may provide inadequate time for AEMO to reach a final determination in some circumstances where it is required to appoint an independent expert.

1.1 Background

Compensation for directions

Under clause 4.8.9 of the NER, AEMO may direct a Registered Participant to maintain or re-establish the power system to a secure, satisfactory or reliable operating state. Where AEMO issues a direction for energy, market ancillary services or for services other than energy or market ancillary services (**other services**), compensation may be payable under clauses 3.12.2, 3.15.7, 3.15.7A and 3.15.7B of the NER.

Compensation payments to Directed Participants for energy and market ancillary services are calculated by AEMO using the formula set out in clause 3.15.7 of the NER.

However, compensation payments to Directed Participants for other services must be calculated by an independent expert determining a fair payment price.¹

Under clause 3.15.7A of the NER, AEMO must determine whether an independent expert could determine this in a reasonable timeframe, in accordance with the intervention settlement timetable (**timetable**) and any guidelines.² Where AEMO determines that this is likely, it must publish its determination and appoint an independent expert in accordance with

¹ Refer to clause 3.15.7A of the NER.

² Refer to clause 3.15.7A(b) of the NER.

the timetable. Where it determines that it is unlikely, a Directed Participant can make a claim to AEMO.³

Affected Participants, Market Participants, and Directed Participants who are entitled to compensation payments under clauses 3.12.2, 3.15.7 and 3.15.7A of the NER may also make adjustment or additional claims for compensation under clauses 3.12.2 and 3.15.7B of the NER.

The appointment of an independent expert

AEMO must appoint an independent expert to assess compensation payments under the following provisions of the NER:

- clause 3.12.2(l), where an Affected Participant's adjustment claim, or a Market Customer's additional claim, is \$20 000 or more and the additional intervention claim that includes that claim, is \$100 000 or more;
- clause 3.12.2(m), where AEMO has determined that an adjustment claim or additional claim is unreasonable;
- clause 3.15.7A(b1), where AEMO has determined that an independent expert could reasonably be expected to determine a fair payment price within a reasonable time period; and
- clause 3.15.7B(c), where a Directed Participant makes an additional claim for compensation under clause 3.15.7B.

Time for AEMO to make final determination of compensation payments

Clause 3.12.1 of the NER establishes the time allowed for AEMO to finalise its determination of compensation payments. This clause differentiates between the time allowed for AEMO to finalise its determination where an independent expert is, or is not, required to be appointed, but only under clause 3.15.7A of the NER, allowing:

- 100 business days to fulfil and complete its obligations where it is not required to appoint an independent expert; and

³ Refer to clause 3.15.7B(a1) of the NER.

- 150 business days to fulfil and complete its obligations where it is required to appoint an independent expert.

However, clause 3.12.1 of the NER is silent on the time within which AEMO must finalise its determination of compensation payments where it is required to appoint an independent expert under clauses 3.12.2(l), 3.12.2(m) and 3.15.7B of the NER.

Hence, it could be read that, unless an independent expert is appointed under clause 3.15.7A of the NER (even if an independent expert is required to be appointed under clauses 3.12.2 or 3.15.7B), that AEMO has only 100 business days to reach its final determination.

1.2 The Issue with the Current Requirements

AEMO considers that the current drafting of clause 3.12.1 of the NER is ambiguous and likely to be an error that was included when the National Electricity Code was introduced. Nonetheless, the clause is unlikely to provide sufficient time for AEMO to appoint an independent expert and the expert's consideration and preparation of a determination where this is required under clauses 3.12.2 and 3.15.7B of the NER.

In a recent example, a direction for energy occurred. In accordance with clause 3.12.1(b) of the NER, AEMO published the intervention settlement timetable with the compensation to be determined in 100 business days. AEMO published its determination to the Directed Participant on the 57th business day. The Directed Participant then lodged a claim for additional compensation on the 91st business day. AEMO was required under clause 3.15.7B(c)(2) of the NER to determine whether the additional claim was reasonable. In this case, the claim was determined to be reasonable, however, if the claim had been determined to be unreasonable, AEMO would have been obliged to refer the matter to an independent expert under 3.15.7B(d) of the NER for determination in accordance with the intervention settlement timetable, i.e. by the 100th business day. This would not have been achievable in the nine business days remaining.

AEMO considers that it is necessary to allow 150 business days in all cases where an independent expert is appointed to determine the compensation amount payable. This time is necessary to determine whether AEMO is required to appoint an independent expert, to give the independent expert reasonable time to complete the compensation determination and give the Directed Participant or Affected Participant time to assess the initial compensation determination.

Minor numbering errors

AEMO has identified a couple of numbering errors in the NER that it considers should be addressed, these are:

- the reference to clause 3.15.17(d) in clause 3.15.7(c) of the NER is incorrect and should refer to clause 3.15.7(d). This seems like a typographical error because clause 3.15.17(d) does not exist in the NER; and
- the reference to clause 3.15.7A(a) in clause 3.15.7B(a1) of the NER appears to be incorrect and should refer to clause 3.15.7A(b). This appears to be a reference to the appointment of an independent expert, however clause 3.15.7A(a) provides no guidance on the appointment of an independent expert, whereas clause 3.15.7A(b) of the NER does.

2. Proposed Rule

This section provides a description of the proposed Rule developed by AEMO, AEMO's right to submit the proposed Rule changes to the AEMC, and the power that AEMO considers that the AEMC has to consider this proposed Rule change.

2.1 Description of Proposed Rule

The proposed Rule amends clauses 3.12.1(a)(1) and (2) of the NER to make it clear that the maximum period allowed for determination of compensation under clauses 3.12.2, 3.15.7A and 3.15.7B of the NER should be 100 business days if AEMO makes the determination and 150 business days if an independent expert is appointed to make the determination under these clauses. The proposed drafting of the Rule is:

Clause 3.12.1 Intervention settlement timetable

- (a) *AEMO* must use reasonable endeavours to complete and fulfil its obligations set out in clauses 3.12.2, 3.12.3, 3.15.7, 3.15.7A, 3.15.7B, 3.15.8 and 3.15.10C as soon as practicable and no later than:
- (1) 100 *business days* after the end of the *AEMO intervention event* or the end of a series of related *AEMO intervention events* if *AEMO* is not required to appoint an independent expert under any of these clauses ~~pursuant to clause 3.15.7A~~; and
 - (2) 150 *business days* after the end of the *AEMO intervention event* or the end of a series of related *AEMO intervention events* if *AEMO* is required to appoint an independent expert under any of these clauses ~~pursuant to clause 3.15.7A~~.

Minor Amendments

Clause 3.15.7 Payment to Directed Participants

- (c) Subject to clause 3.15.7(d) and clause 3.15.7B, the compensation payable to each *Directed Participant* for the provision of *energy* or *market ancillary services* pursuant to a *direction* is to be determined in accordance with the formula set out below:

Clause 3.15.7B(a1) Claim for additional compensation by Directed Participants

- (a1) Subject to clause 3.15.7B(a4), if *AEMO* determines pursuant to clause ~~3.15.7A(a)~~ 3.15.7A(b) that an independent expert could not reasonably be expected to determine within a reasonable period of time the relevant fair payment price, a *Directed Participant* may, in accordance with the *intervention settlement timetable*, make a written submission to *AEMO* claiming compensation from *AEMO* for the provision of services under the *direction* equal to:

2.2 AEMO's Right to Submit this Proposal

AEMO is requesting that the AEMC make this proposed Rule in accordance with section 91 of the National Electricity Law (**NEL**).

AEMO has the following relevant functions under the NEL:

- to operate and administer the National Electricity Market (**NEM**); and
- to promote the development and improve the effectiveness of the operation and administration of the NEM.

Under section 91(1) of the NEL, the AEMC may make a Rule at the request of any person, the MCE or the Reliability Panel. As such, AEMO may request the AEMC make a Rule.

2.3 Power of the AEMC to Make the Proposed Rule

The subject matter about which the AEMC may make Rules is set out in section 34 and Schedule 1 of the NEL.

AEMO considers that the proposed Rule falls within the subject matters that the AEMC may make Rules about, as it relates to the activities of persons participating in the NEM. The proposed Rule is within matters set out in Schedule 1 to the NEL, as it relates to the methodology and formulae to be applied in setting prices for electricity services purchased through the wholesale exchange operated and administered by AEMO.

2.4 Request for a Non-controversial Rule

AEMO requests that the AEMC reviews this Rule change proposal under section 96 of the NEL. Section 96 applies if the AEMC considers that a request for a Rule is a request for a non-controversial Rule. A non-controversial Rule means a Rule that is unlikely to have a significant effect on the NEM.

AEMO considers that section 96 applies to this proposal because the Rule would:

- have an insignificant effect on the NEM;
- set an achievable maximum time limit to determine compensation payable to Directed Participants, Affected Participants and Market Customers in all circumstances; and
- make the maximum time limit consistent with that allowed for compensation payable under clause 3.15.7A of the NER.

3. How the Proposed Rules Contribute to the National Electricity Objective

Before the AEMC can make a Rule change 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 promotes good regulatory practice because it:

- sets an achievable and reasonable time limit for the determination of compensation payable to Directed Participants, Affected Participants and Market Customers in all circumstances where an independent expert is appointed; and
- removes ambiguity and corrects numbering anomalies in the current NER, hence making obligations in the NER clearer for market participants.

This would improve the clarity, consistency and efficiency of the NER which, in turn, fosters an environment of efficient investment and use of electricity services.

4. Expected Benefits and Costs of the Proposed Rule

AEMO does not expect that any party would be adversely affected by this proposed Rule change. AEMO recognises that the proposed Rule could result in claims for additional compensation being delayed. However, the NER includes provisions that allow the compensation amount to be adjusted for interest in recognition of the dates between the direction and the compensation payment.⁴ AEMO does not expect that there will be any costs associated with implementing this proposal.

⁴ Refer to clauses 3.15.7 and 3.15.8 of the NER, respectively, for Directed Participants and Affected Participants and Market Customers.

Glossary

TERM OR ABBREVIATION	Explanation
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
MCE	Ministerial Council on Energy
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
other services	Services other than energy and market ancillary services which are provided in accordance with a direction issued by AEMO under clause 4.8.9(a1)(1) of the NER.
timetable	The timetable published by AEMO under clause 3.12.1 of the NER which details the timing of NER obligations in relation to the determination of compensation payments for AEMO intervention events.