

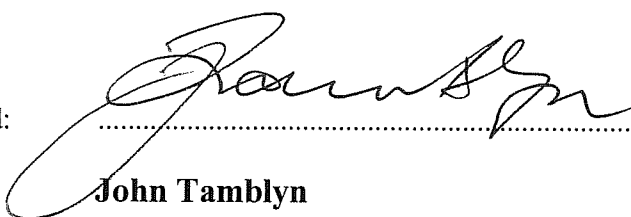
**Australian Energy Market Commission**

**Rule Determination**

*National Electricity Amendment (Statement of Opportunities Update) Rule 2006*

**Rule Proponent: NEMMCO**

**Date: 13 April 2006**

Signed: 

**John Tamblyn**  
**Chairman**  
For and on behalf of:  
**Australian Energy Market Commission**

**Commissioners:** Tamblyn  
Carver  
Woodward

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## Summary

NEMMCO has proposed that a change be made to the National Electricity Rules, to omit the requirement for NEMMCO to publish an update to the annual Statement of Opportunities (“SOO”).

Publishing the annual SOO is a core element of NEMMCO’s power system reliability and planning coordination responsibilities. The SOO provides market stakeholders with projections information on the ability of supply to meet expected demand over the next ten years. It is generally accepted that the SOO has become a reference tool across the electricity supply industry and a key input to investment crucial to the long term reliability of the nations electricity supply.

The SOO update takes into account significant new information which has become available since the publication of the primary document. Particular attention is paid to any further information and experience arising as a result of the most recent winter.

NEMMCO’s proposal sought to remove the obligation for NEMMCO to publish the SOO update. The proposal also requested that the Commission engage the expedited process pursuant to section 96 of the National Electricity Law (“NEL”), on the basis that removal of the SOO update was likely to be a non-controversial Rule change.

One submission was received on behalf of the ERM Group and Wambo Power Station opposing the proposed Rule and contending that the proposed Rule was not a non controversial Rule change pursuant to section 96 of the NEL. The submission arrived after the closing dates for submissions outlined in section 96 of the NEL.

The Australian Energy Market Commission (“the Commission”) considered the submission, in light of the most recently published SOO update (published on 31 January 2005). The Commission’s finding was that information relating to planned generation and transmission augmentations and energy and demand projections contained in the SOO update were likely to be beneficial to market participants and potential investors.

Accordingly the Commission decided to proceed with a full consultation process for this Rule proposal and issued a draft Rule determination and draft Rule for consultation in accordance with section 99 of the NEL to address the issue raised in the proposal and to address the information requirements of new generation developers, investors and their financiers.

The Commission received two submissions to the draft Rule determination, one from NEMMCO and one from Wambo Power Ventures Pty Ltd, both of which were broadly supportive of the Commissions policy position.

The NEMMCO submission proposed some changes to the wording of the draft Rule which the Commission has adopted for the Rule to be made.

## 1. The proponent's Rule proposal

NEMMCO's Rule proposal sought to omit the current obligation contained in Rule 3.13.3(o1) for NEMMCO to publish an update to the annual SOO.

Currently the Rule provides that;

*“By 31 January each year, NEMMCO must prepare and publish at a reasonable charge to cover the cost of production, an update of the statement of opportunities for the current financial year, taking into account significant new information which has become available since the preparation of the primary document. Particular attention is to be paid to any further information and experience arising as a result of the most recent winter.”*

In support of its proposal NEMMCO submitted that the main issues it had with the obligation to publish the SOO update were:

- a) the SOO update could not meet its objective of providing new data that took into account the most recent winter since the release of the SOO;
- b) the process of collecting the data for the update is repeated within two months in preparation for the next SOO; and
- c) other information already published or proposed to be published, including the SOO itself, already met some objectives of the SOO update, undermining the additional benefits of the SOO update.

Furthermore in its proposal NEMMCO outlined that it was granted a participant derogation from the National Electricity Code Administrator (“NECA”) in late 2004 with the effect of:

- a) deferring the publication of the 2005 SOO from 31 July 2005 to 31 October 2005; and
- b) removing the need to publish a 2004 SOO update.

NEMMCO has also proposed to introduce a process whereby the market would be advised of updated load projection information and the status of new generation or network projects on a more frequent basis.

## 2. The Rule determination

The Commission has determined, in accordance with section 102 of the NEL, to make the National Electricity Amendment (Statement of Opportunities Update) Rule 2006 (“the Rule”) set out at Attachment 1 of this Rule determination. The Commission has determined that the Rule will commence on the date of Gazettal. The Rule differs from the draft Rule as put forward by NEMMCO, for the reasons set out at section 5 of this determination.

In coming to its decision, the Commission has considered:

- a) The Rule proposal put forward by NEMMCO (see section 1 of this determination);
- b) submissions received (see section 5 of this determination); and
- c) the requirements under the NEL (see section 3 of this determination).

The Commission has applied the statutory Rule making test and for the reasons set out in section 6 of this Rule determination, is satisfied that the Rule is likely to contribute to the achievement of the NEM objective.

## 3. Requirements under the NEL

### The Rule Making Test

The NEL requires the Commission to apply the Rule making test in its analysis and assessment of a Rule proposal at the Rule determination phase of the Rule making process. The Rule making test states:

*“(1) The AEMC may only make a Rule if it is satisfied that the Rule will or is likely to contribute to the achievement of the national electricity market objective.*

*(2) For the purposes of subsection (1), the AEMC may give such weight to any aspect of the national electricity market objective as it considers appropriate in all the circumstances, having regard to any relevant MCE statement of policy principles.” (s.88 NEL)*

The NEM objective is at the centre of the Rule making test, and is set out in section 7 of the NEL:

*“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.”*

In summary, the Rule making test imposes the following requirements on the Commission in preparing a Rule determination:

- The Commission must be satisfied that a Rule that is to be made will or is likely to contribute to the achievement of the NEM objective;
- The NEM objective is to be understood and interpreted as an economic objective;
- The Commission may only make a Rule if it is satisfied, in accordance with the Rule making test;
- The Commission is empowered to give weight to any aspect of the NEM objective;
- The Commission must have regard to any relevant MCE statement of policy principles; and
- The Commission must set out the reasons as to whether it is satisfied as to the Rule making test in its Rule determination.

### **3.1 The head of power for the Rule**

The Commission needs to be satisfied that the Rule which seeks to remove NEMMCO’s requirement to publish a SOO update falls within the subject matters for which the Commission may make Rules as set out in s.34 of the NEL and in Schedule 1 to the NEL.

The Rule relating to the SOO update is used as a planning tool to facilitate development and expansion of the NEM, and therefore is a Rule that can be made under the heads of power in section 34(1).

In addition section 34(3)(m) provides relevantly that the Commission may make Rules that:

*“... provide for the modification or variation of a provision of the Rules (with or without substitution of a provision of the Rules or a part of a provision of the Rules) as it applies to... NEMMCO...”*

The Rule falls directly under this head of power.

The Rule also falls under the head of power in clause 36 of Schedule 1 of the NEL which states (given effect by section 34(2) of the NEL). Clause 36 of Schedule 1 of the NEL provides relevantly that the Commission may make Rules regarding:

*“... Any other matter or thing that is the subject of, or is of a kind dealt with by , a provision of the National Electricity Code as in operation and effect immediately before the commencement of section 12 of the National Electricity (South Australia) (New National Electricity Law) Amendment Act 2005 of South Australia.”*

The Rule would fall under this head of power as Rule 3.13.3(o1) has been carried over from the National Electricity Code.

The Commission is therefore satisfied that the Rule falls under the subject matters for which the Commission may make Rules.

### **3.2 Other relevant statutory matters**

It is a requirement of the NEL that a Rule made by the Commission satisfy the Rule making test set out in section 88 of the NEL. Discussion as to how the Rule satisfies the Rule making test is set out in section 6 of this Rule Determination.

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

## **4. Consultation process**

The proposal was submitted by NEMMCO to the Commission on 15 November 2005. On 2 December 2005 pursuant to section 94 and 96 of the NEL the Commission determined to commence consultation by publishing a notice under section 95 of the NEL.

The Commission determined at the time to consult on this Rule change proposal under section 96 of the NEL as a non controversial Rule change which permits an expedited process subject to stakeholder submissions.

The expedited process set out in section 96 involved a consultation framework consisting of:

- a) a 2 week period commencing from the date of the section 95 notice for submissions to be made in relation to whether the expedited process is appropriate; and
- b) a 4 week consultation period commencing from the date of the section 95 notice seeking submissions in relation to the proposed Rule change itself.

The Commission received one submission on the proposed Rule, from ERM Group and Wambo Ventures Pty Ltd.

The submission opposed the proposed Rule and also disagreed that the proposed Rule was a non controversial issue pursuant to section 96 of the NEL and that impliedly the expedited process should not be followed.

The submission set out an argument in favour of retaining the SOO update on the basis that it contained information for investors, financiers and project developers.

The Commission has decided to consider the submission despite it being received late on both accounts of the consultation framework set out in section 96 of the NEL. The Commission considers that this is in the public interest as it allows for a more informed and consultative decision on the issue at hand.

## **5. Matters arising from consultation and the Commission's analysis**

In this section, the Commission addresses a number of issues that have been raised in submissions or that have emerged during the Commission's analysis.

### ***5.1 Updated load projections and transmission and augmentation data contained in the SOO update***

#### **What the Proposal Said**

NEMMCO argued that the SOO update could not achieve its objective as stated in the Rules of informing the market of significant new information, particularly new information resulting from the most recent winter, that had become available since the preparation of the SOO.

With respect to demand forecasts and network updates, the SOO update could not meet its objective because its publication date was incompatible with the Annual Planning Review ("APR") timetable.

Transmission Network Service Providers ("TNSP's") and Jurisdictional Planning Bodies ("JPB's") review demand forecasts to meet obligations contained in the Rules to publish the APRs. These forecasts, which take into account the previous winter (which ends in August of each year) are submitted to NEMMCO in draft form in April of the following year and are published in June. The demand projections are then included in the SOO which is published in October.

Information for the SOO update is then collated after October once the SOO has been published, for the SOO update publication date of 31 January. The SOO update therefore cannot meet its objective of including demand forecasts from the most recent winter.



In relation to transmission and generation augmentation data, the process of collecting the data for the update is repeated within two months in preparation for the next SOO.

NEMMCO argued that the data collected for the SOO update includes new information concerning generation projects. Information is collected through December and January leading up to the 31 January deadline. However from February of each year, NEMMCO commences collecting data for market simulations that are used for the Annual National Transmission Statement (“ANTS”), which is published as part of the SOO.

Hence according to NEMMCO the process of collecting data for the SOO update is repeated within two months of data collection for the next SOO. NEMMCO therefore impliedly argues that data collection for the SOO update in relation to new transmission and generation augmentation imposes an unnecessary compliance cost on the NEM.

In its proposal NEMMCO has foreshadowed an intention to make information relating to updated load projection information and the status of new generation or network projects previously available in the SOO update, be made available to the market on a more frequent basis through their website. The proposed facility would be updated whenever relevant information becomes available to NEMMCO.

#### **What the submission said**

The submission argued that mid year updates of demand forecasts and generation and transmission augmentations are important information for new generation developers, investors and financiers.

#### **The Commission’s Consideration and Reasoning**

The Commission notes that the SOO update is published only 3 months after the SOO and that information is collected for the SOO update only two months after the publication of the SOO.

However in examining the 2004 SOO update (published in January 2005) the Commission found that it contained updated load projections and new transmission and generation augmentation data that would have been useful for market participants, new generation developers, investors and their financiers who could be relying upon updated information to make financial and other decisions in relation to their projects.

In its proposal NEMMCO has stated that it is developing a process for frequently publishing changes to load projection information and the status of new generation or network projects as these become available to NEMMCO. The Commission considers that this more frequent update would be a better option for market participants to access updated load projection data and transmission and generation data than the annual SOO update.

If such information is presented in a more frequently updated form and is at least as well presented and clear as the information contained in the 2004 SOO update then the more frequently updated process could be an improvement on the annual SOO update.

A requirement for NEMMCO to publish and update this information should however be made clear in the Rules to ensure that it continues to take place with an appropriate level of clarity and certainty.

#### **The Commission's Finding in relation to this issue**

The Commission considers that updated load projections and transmission and generation augmentation data are important information for market participants, and its release when available to NEMMCO should be a requirement of the Rules.

### **5.2 *Is the information contained in the SOO update already available via other documents provided by NEMMCO?***

#### **What the proponent said**

In its proposal NEMMCO outlined that a significant amount of information published in the SOO update is also provided in;

- a) the SOO itself, which includes historical information from the previous winter;
- b) medium term PASA, which provides a weekly update of information on existing and proposed projects already registered with NEMMCO looking 2 years into the future;
- c) ad hoc notices of major project developments (such as Basslink); and
- d) a proposed process of more frequent disclosure (discussed above in 5.1) for advising the market of any changes to load projections and the status of new generation or network projects as they become available to NEMMCO (subject to confidentiality constraints) to continue to enhance the level of transparency in the NEM.

#### **What the Submission said**

The submission stated that investors and agencies that are not mainstream participants in the electricity market rely on documents such as the SOO update to provide information to analysts prior to financing approvals being able to be obtained.

The submission identified that while updated information relating to electricity load growth projections and generation adequacy projections may not be important to

mainstream market participants this information is particularly relevant to generation developers and investors.

### **The Commission's consideration and reasoning**

From consideration of the 2004 SOO update and in subsequent discussions with NEMMCO the Commission identified that there was information contained in the SOO update that was either not replicated in any other document, or presented in a more accessible form in the SOO update than in other data repositories. This information was also raised as being relevant to new generation developers and financiers by the submission. The unique information identified in the SOO update was;

- a) updated load projections;
- b) updated information relating to proposed transmission and generation data augmentations, which was presented in the SOO update in a form that could be readily interpreted and understood.

In its subsequent discussions with NEMMCO the Commission has considered the NEMMCO proposal to provide certain information on a more frequently updated basis.

The Commission is of the opinion that important information currently released in the SOO update can be of increased value to stakeholders if it is published when available rather than in an annually updated document.

The Commission is of the opinion that the more frequently updated information process would be a more appropriate medium for NEMMCO to publish the information. The information however would need to be presented in a way that is easily understood by inexperienced market users and should be similar to the way the information is presented in the SOO update.

### **The Commission's Finding in relation to this issue**

The Commission has determined that the requirement to publish a SOO update may only be removed if the updated load projection and updated generation and transmission data contained in the SOO update is made available to the market through some other means.

## **5.3 Comments on the draft Rule**

A submission on the draft Rule received from NEMMCO proposed the following amendments to the draft Rule:

- (a) in draft Rule clause 3.13.3(o1)(2) omit the words "anticipated changes to the *transmission network*" and replace with the words "the matters covered by clause 5.6.5(c)(8) and (9)"; and

- (b) in draft Rule clause 3.13.3(o1) omit the words “likely to be understandable by a person who does not have an in depth knowledge of the market” and replace with the words “consistent with the statement of opportunities.”

In relation to NEMMCO’s proposed amendment (a) listed above, NEMMCO argued that the words “anticipated changes to the *transmission network*” were broader than the transmission augmentation data included in the SOO and the Annual National transmission Statement. The information required could therefore include changes to network capability resulting from routine events such as transmission outages, minor augmentations and revision of limits by TNSP’s.

NEMMCO argued that the proposed drafting of the draft Rule may require more information to be published under draft Rule clause 3.13.3(o1) than in the primary document (the SOO itself).

The Commission accepts NEMMCO’s assessment and has determined to reflect this view in the drafting of the Rule to be made in accordance with NEMMCO’s submitted amendments.

In relation to NEMMCO’s proposed amendment (b) listed above NEMMCO argued that the draft Rule may require NEMMCO to produce a document in a form that is more descriptive than the SOO and the SOO update. NEMMCO submitted that the quality of the information presented under draft Rule clause 3.13.3(o1) be referenced to the primary document which that information is intended to update which is the SOO.

The submission from Wambo Power Ventures Pty Ltd was supportive of a requirement to publish data in a way that is easily understood by inexperienced market users.

The Commission notes that there is no quality requirement in the Rules attached to the SOO. The Commission also notes that the SOO is published in a way that it considers is easily understood by inexperienced market users, therefore the quality of the presentation of information currently contained in the SOO is broadly of the quality contemplated by the Commission in draft Rule clause 3.13.3(o1).

The Commission considers that specifically prescribed quality standard required by information that arises primarily out of the SOO should not be prescribed for in documents that provide data that effectively updates the SOO but rather should be prescribed in the SOO itself.

The Commission therefore accepts NEMMCO’s assessment and has determined to reflect this view in the drafting of the Rule to be made to require it to be presented in a form consistent with that of the SOO.

## **5.4 Summary of differences between the proposed Rule and the Rule to be made**

Arising from the above considerations, the Commission has determined to make the following changes to NEMMCO's original proposal in formulating the Rule to be made in light of the statutory Rule making test:

- NEMMCO will be required to publish updated load projection and transmission and generation augmentation data when it becomes available to NEMMCO;
- The data should be published in a way that is easily understood by inexperienced market users.

## **6. Commission's consideration and reasoning in relation to the Rule making test**

The Rule making test is set out in detail in section 3 of this report and requires the Commission to be satisfied that a Rule that it proposes to make will contribute to the achievement of the NEM objective. The NEM objective is concerned with promoting the efficiency of the NEM in an economic sense for the long term interests of consumers of electricity.

### **6.1 Assessment against Rule making test**

The requirement for the publication of updated load projection and transmission and generation augmentation data in a way that is easily understood by inexperienced market users is vital to financiers, investors and new generation developers. To this end the Commission considers that the information is important to help facilitate efficient new investment in the NEM.

Removal therefore of NEMMCO's current obligation under the Rules to publish the updated information would deprive investors and their financiers of information that has potential to support efficient investment decisions, and would not advance the NEM objective.

Replacement of the current SOO update obligation with one that requires more regular updates of information relevant to investors would however make that information available earlier than would be the case in an annually published document. It is expected that this updated information would be beneficial for investors, financiers and new generation developers who rely on such up to date information to obtain the appropriate approvals for their projects.

NEMMCO has also indicated that removal of the need for a second specific annual review of overall investment status in the NEM would have potential to reduce compliance costs for both itself and other participants.

The Commission is therefore of the view that the Rule for the more frequent publication of updated information on load projections and the status of proposed generation and transmission projects could both improve the timeliness of the information that is available to investors, and potentially marginally reduce the costs of providing the information.

On this basis, the Commission is of the view that the National Electricity Amendment (Statement of Opportunities Update) Rule 2006 satisfies the Rule making test.