



## **Draft National Electricity Amendment (Compensation following directions for services other than energy and market ancillary services) Rule 2020**

under the National Electricity Law to the extent applied by:

- (a) the National Electricity (South Australia) Act 1996 of South Australia;
- (b) the Electricity (National Scheme) Act 1997 of the Australian Capital Territory;
- (c) the Electricity - National Scheme (Queensland) Act 1997 of Queensland;
- (d) the Electricity - National Scheme (Tasmania) Act 1999 of Tasmania;
- (e) the National Electricity (New South Wales) Act 1997 of New South Wales;
- (f) the National Electricity (Victoria) Act 2005 of Victoria;
- (g) the National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 of the Northern Territory; and
- (h) the Australian Energy Market Act 2004 of the Commonwealth.

The Australian Energy Market Commission makes the following Rule under the National Electricity Law.

Merryn York  
Acting Chairperson  
Australian Energy Market Commission

## **Draft National Electricity Amendment (Compensation following directions for services other than energy and market ancillary services) Rule 2020**

### **1 Title of Rule**

This Rule is the *Draft National Electricity Amendment (Compensation following directions for services other than energy and market ancillary services) Rule 2020*.

### **2 Commencement**

This Rule commences operation on [the date rule is made].

### **3 Amendment to the National Electricity Rules**

The National Electricity Rules are amended as set out in Schedule 1.

### **4 Savings and Transitional Amendment to the National Electricity Rules**

The National Electricity Rules are amended as set out in Schedule 2.

## **Schedule 1      Amendment to the National Electricity Rules**

(Clause 3)

### **[1] Clause 3.12.2      Affected Participants and Market Customers entitlements to compensation in relation to AEMO intervention**

In clause 3.12.2(k)(1), before the first occurrence of "*AEMO intervention event*", omit "a" and substitute "an".

### **[2] Clause 3.12.2      Affected Participants and Market Customers entitlements to compensation in relation to AEMO intervention**

In clause 3.12.2(k)(2), omit ", 3.15.7B(a1)".

### **[3] Clause 3.12.3      Role of the Independent Expert in calculating payments in relation to intervention by AEMO and market suspension pricing schedule periods**

In clause 3.12.3(a), after "3.14.5B(g)," insert "3.15.7A".

### **[4] Clause 3.12.3      Role of the Independent Expert in calculating payments in relation to intervention by AEMO and market suspension pricing schedule periods**

In clause 3.12.3(b), after "3.14.5B(a)," insert "3.15.7A(e)(3), 3.15.7A(h)".

### **[5] Clause 3.12.3      Role of the Independent Expert in calculating payments in relation to intervention by AEMO and market suspension pricing schedule periods**

Omit clause 3.12.3(c)(1)(i)(B) and substitute:

- (B) the total amount of compensation payable to *Referred Directed Participants* pursuant to either clause 3.15.7A or clause 3.15.7B, as the case may be; and

**[6] Clause 3.12.3 Role of the Independent Expert in calculating payments in relation to intervention by AEMO and market suspension pricing schedule periods**

Omit clause 3.12.3(c)(1)(iii) and substitute:

- (iii) deliver to each *Referred Directed Participant* and to *AEMO* a draft assessment detailing the calculation of the amount of compensation receivable by that party pursuant to clause 3.15.7A or 3.15.7B as the case may be; and

**[7] Clause 3.12.3 Role of the Independent Expert in calculating payments in relation to intervention by AEMO and market suspension pricing schedule periods**

In clause 3.12.3(c)(4)(ii), after "3.14.5B," insert "3.15.7A".

**[8] Clause 3.12.3 Role of the Independent Expert in calculating payments in relation to intervention by AEMO and market suspension pricing schedule periods**

In clause 3.12.3(c)(6), after "3.14.5B(a)," insert "3.15.7A(e)(3), 3.15.7A(h)".

**[9] Clause 3.15.7 Payment to Directed Participants**

After clause 3.15.7(a), insert:

- (a1) *AEMO* must compensate each *Directed Participant* for the provision of:
  - (1) *energy* or *market ancillary services* pursuant to a *direction*, under this clause 3.15.7 and clause 3.15.7B, as the case may be; and
  - (2) services, other than *energy* or *market ancillary services*, pursuant to a *direction* (a **non-market service**), in accordance with the fair payment compensation for those services determined under clause 3.15.7A.
- (a2) For the purpose of paragraph (a1) a *Directed Participant* provides *energy* or *market ancillary services* if it was *directed* to provide one or more of the following services:
  - (1) *energy*;
  - (2) any one of the *market ancillary services*;

- (3) a service that is a direct substitute for *energy* or a *market ancillary service*; or
  - (4) a service that was provided by the *Directed Participant* incidental to the provision of *energy* or *market ancillary services*.
- (a3) For the avoidance of doubt, any component of a *direction* that satisfies paragraph (a2) is to be considered for compensation under this clause 3.15.7 and clause 3.15.7B, as the case may be. Any other component of the *direction* that does not satisfy paragraph (a2) is to be considered for compensation under clause 3.15.7A.

### **[10] Clause 3.15.7A Payment to Directed Participants for services other than energy and market ancillary services**

Omit clause 3.15.7A in its entirety and substitute:

#### **3.15.7A Payment to Directed Participants for services other than energy and market ancillary services**

##### **AEMO to determine if Directed Participant provided a non-market service**

- (a) If *AEMO* has issued a *direction*, *AEMO* must, in its reasonable opinion, determine whether the *Directed Participant* that was issued the *direction* was required to provide a *non-market service* in order to comply with that *direction*.
- (b) *AEMO* must within 10 *business days* of issuing the *direction* referred to in paragraph (a), notify the relevant *Directed Participant* of *AEMO's* determination under paragraph (a), and such notice must include:
  - (1) the date and time of the relevant *direction*;
  - (2) the *scheduled plant* or *market generating unit* the subject of the relevant *direction*;
  - (3) the circumstances of the relevant *direction*;
  - (4) *AEMO's* determination as to whether a *non-market service* was provided in order to comply with the *direction* and, if applicable, a description of the *non-market service* provided; and
  - (5) *AEMO's* reasons for its determination.
- (c) If *AEMO* determines pursuant to paragraph (a) that the *Directed Participant* was not required to provide a *non-market service* in order to comply with the relevant *direction*, the *Directed Participant* may, within 10 *business days* of receipt of the notice referred to in

paragraph (b), make a written submission to *AEMO* setting out its reasons for why it considers that a *non-market service* was required to be provided by the *Directed Participant* in complying with that *direction*.

- (d) *AEMO* must take into consideration any submissions referred to in paragraph (c), and must within 10 *business days* of receipt of such submissions, notify the *Directed Participant* of its final determination as to whether a *non-market service* was required to be provided by the *Directed Participant* in complying with the relevant *direction*, including *AEMO's* reasons for its determination.

**Directed Participant not required to provide a non-market service can only claim direct costs**

- (e) A *Directed Participant* that was not required to provide a *non-market service* in order to comply with a *direction*:
- (1) is not entitled to compensation at the fair payment compensation of the *non-market service* as determined in accordance with this clause 3.15.7A;
  - (2) is not entitled to claim additional compensation under clause 3.15.7B;
  - (3) subject to paragraph (f), may within 15 *business days* of receipt of either of the notices referred to in paragraphs (b) or (d), make a written submission to *AEMO* claiming the net direct costs incurred by that *Directed Participant* in respect of its relevant *scheduled generating unit, semi-scheduled generating unit, market generating unit, ancillary service generating unit, scheduled load, ancillary service load, or scheduled network services*, as the case may be, as a result of the *Directed Participant* complying with the relevant *direction* including without limitation the types of direct costs listed in paragraph (i)(3).
- (f) In respect of a single *direction*, a *Directed Participant* that was not required to provide a *non-market service* in order to comply with a *direction* may only make a claim for direct costs pursuant to paragraph (e)(3) if the amount of the claim is greater than \$5,000.
- (g) A *Directed Participant's* claim pursuant to paragraph (e)(3) must:
- (1) itemise each component of the claim;
  - (2) contain sufficient data and information to substantiate each component of the claim for direct costs incurred; and
  - (3) be signed by an authorised officer of the applicant certifying that the written submission is true and correct.

**Directed Participant required to provide a non-market service can claim fair payment compensation**

- (h) If *AEMO* determines pursuant to paragraph (a) that the *Directed Participant* was required to provide a *non-market service* in order to comply with the relevant *direction*, the *Directed Participant* may, within 15 *business days* of receipt of the notice referred to in paragraph (b), make a written submission to *AEMO* claiming compensation under this clause 3.15.7A at the fair payment compensation of the *non-market services* provided pursuant to that *direction*.
- (i) For the purpose of determining the fair payment compensation under this clause 3.15.7A, the following must be taken into account:
  - (1) relevant contractual arrangements which specify a price for the relevant service;
  - (2) the loss of revenue incurred by the *Directed Participant* in respect of a *scheduled generating unit*, *semi-scheduled generating unit*, *scheduled load*, *ancillary service generating unit*, *market generating unit*, *ancillary services load* or *scheduled network services*, as the case may be, as a result of the provision of the *non-market service* under *direction*;
  - (3) the net direct costs incurred by the *Directed Participant* in respect of that *scheduled generating unit*, *semi-scheduled generating unit*, *market generating unit*, *ancillary service generating unit*, *scheduled load*, *ancillary service load*, or *scheduled network services*, as the case may be, as a result of the provision of the *non-market service* under *direction* including without limitation:
    - (i) fuel costs in connection with the relevant *generating unit* or *scheduled network services*;
    - (ii) incremental maintenance costs in connection with the relevant *generating unit*, *load* or *scheduled network services*;
    - (iii) incremental manning costs in connection with the relevant *generating unit*, *load* or *scheduled network services*;
    - (iv) acceleration costs of maintenance work in connection with the relevant *generating unit*, *load* or *scheduled network services*, where such acceleration costs are incurred to enable the *generating unit*, *load* or *scheduled network services* to comply with the *direction*;
    - (v) delay costs for maintenance work in connection with the relevant *generating unit*, *load* or *scheduled network services*, where such delay costs are incurred to enable the

*generating unit, load or scheduled network services* to comply with the *direction*; and

- (vi) other costs incurred in connection with the relevant *generating unit, load or scheduled network services*, where such costs are incurred to enable the *generating unit, load or scheduled network services* to comply with the *direction*.

**AEMO must refer claims to an independent expert in certain circumstances**

- (j) *AEMO* must, in accordance with the *intervention settlement timetable* refer a claim by a *Directed Participant* pursuant to paragraph (e)(3) or paragraph (h), as the case may be, to an independent expert to determine such claim in accordance with clause 3.12.3 if:
  - (1) the claim is equal to or greater than \$20,000; or
  - (2) *AEMO* considers that the claim is unreasonable; or
  - (3) *AEMO* considers that the assessment of the claim involves issues of complexity or difficulty.
- (k) If *AEMO* considers that either of paragraphs (j)(2) or (j)(3) apply, *AEMO* must, in accordance with the *intervention settlement timetable* advise the *Directed Participant* in writing of its decision, setting out its reasons.
- (l) *AEMO* must include as part of the terms of appointment of an independent expert all the requirements set out in clause 3.12.3(c), and the additional following requirements:
  - (1) that the independent expert must, in determining the fair payment compensation of the relevant *non-market service* for the purposes of this clause 3.15.7A, only take into account:
    - (i) the factors referred to in paragraph (i) and;
    - (ii) the following principles:
      - (A) the disinclination of *Directed Participants* to provide the *non-market service* the subject of the *direction* must be disregarded; and
      - (B) the urgency of the need for the *non-market service* the subject of the *direction* must be disregarded.
  - (2) that the independent expert's draft report must set out a description of the *non-market services* provided in response to the *direction*;



- (3) that the independent expert's final report must set out the description of the *non-market services* provided in response to the *direction*.

**AEMO may determine compensation itself in some circumstances**

- (m) If none of the factors set out in paragraph (j) apply, then subject to paragraph (f), *AEMO* may, after taking into account any submissions received in accordance with paragraph (h), determine in its sole discretion the amount of compensation payable to a *Directed Participant* under this clause 3.15.7A in relation to that *Directed Participant's* claim pursuant to paragraph (e)(3) or paragraph (h), as the case may be.
- (n) Subject to paragraph (j), if a *Directed Participant* entitled to make a written submission pursuant to paragraph (h) has not provided such a submission to *AEMO* within 15 *business days* of receipt of the notice referred to in paragraph (b), then *AEMO* may at its sole discretion determine the amount of compensation payable to that *Directed Participant* under this clause 3.15.7A at the fair payment compensation of the *non-market services* provided pursuant to the relevant *direction*.
- (o) If *AEMO* decides in accordance with either of paragraphs (m) or (n) to determine compensation payable to a *Directed Participant* under this clause 3.15.7A in relation to that *Directed Participant's* claim pursuant to paragraph (e)(3) or paragraph (h), as the case may be, *AEMO* must in accordance with the *intervention settlement timetable*:
  - (1) *publish* and deliver in writing to the relevant *Directed Participant* a draft determination detailing *AEMO's* calculation of the amount of compensation receivable by that party pursuant to clause 3.15.7A, and request submissions from the *Directed Participant* on that draft determination;
  - (2) take into consideration any written submissions made by the relevant *Directed Participant* in relation to the draft determination, if *AEMO* receives those submissions within 15 *business days* of delivering the draft assessment to that *Directed Participant*; and
  - (3) prepare, *publish* and deliver in writing to the relevant *Directed Participant* its final determination of the amount of compensation receivable by that *Directed Participant* pursuant to this clause 3.15.7A.
- (p) The final determination by *AEMO* in accordance with paragraph (o)(3) is final and binding.

**[11] Clause 3.15.7B Claim for additional compensation by Directed Participants**

Omit clause 3.15.7B(a) and substitute:

- (a) Subject to clause 3.15.7B(a4), a *Directed Participant* entitled to compensation pursuant to clause 3.14.5A(d) or clause 3.15.7 may, within 15 *business days* of receipt of the advice referred to in clauses 3.14.5A(g) or 3.15.7(e), make a written submission to *AEMO* claiming an amount equal to the sum of:
- (1) the aggregate of the loss of revenue and additional net direct costs incurred by the *Directed Participant* in respect of a *scheduled generating unit, semi-scheduled generating unit* or *scheduled network services*, as the case may be, as a result of the provision of the service under *direction*; less
  - (2) the amount notified to that *Directed Participant* pursuant to clause 3.14.5A(g) or clause 3.15.7(e); less
  - (3) the aggregate amount the *Directed Participant* is entitled to receive in accordance with clause 3.15.6(c) for the provision of a service rendered as a result of the *direction*.

**[12] Clause 3.15.7B Claim for additional compensation by Directed Participants**

Omit clause 3.15.7B(a1) and substitute "[Deleted]".

**[13] Clause 3.15.7B Claim for additional compensation by Directed Participants**

In clause 3.15.7B(a3), after "pursuant to", omit "paragraphs (a)(1) and (a1)(1)" and substitute "paragraph (a)(1)".

**[14] Clause 3.15.7B Claim for additional compensation by Directed Participants**

In clause 3.15.7B(a4), omit "3.15.7B(a1)".

**[15] Clause 3.15.7B Claim for additional compensation by Directed Participants**

Omit clause 3.15.7B(b) and substitute:

- (b) The submissions pursuant to clauses 3.15.7B(a) and 3.15.7B(a2) must:
- (1) itemise each component of a claim;

- (2) contain sufficient data and information to substantiate each component of a claim for loss of revenue and additional direct costs incurred, as the case may be; and
- (3) be signed by an authorised officer of the applicant certifying that the written submission is true and correct.

**[16] Clause 3.15.7B Claim for additional compensation by Directed Participants**

In clauses 3.15.7B(c)(1) and (2), omit "3.15.7B(a1)".

**[17] Clause 3.15.7B Claim for additional compensation by Directed Participants**

In clause 3.15.7B(d), omit "3.15.7B(a1) or".

**[18] Clause 3.15.10C Intervention and Market Suspension Pricing Schedule Period Settlements**

In clause 3.15.10C(a), omit subparagraph (2) and substitute:

- (2) for each *Directed Participant* in relation to the relevant *AEMO intervention event* the amount calculated pursuant to clause 3.15.7(c) or clause 3.15.7(a1)(2), as the case may be;

**[19] Clause 3.15.10C Intervention and Market Suspension Pricing Schedule Period Settlements**

Omit clause 3.15.10C(a)(3)(iv) and substitute:

- (iv) clause 3.15.8(a)(2)(ii) shall be the sum of the total amount payable by *AEMO* to *Directed Participants* calculated pursuant to clause 3.15.7(c) and 3.15.7(a1)(2); and

**[20] Clause 3.15.10C Intervention and Market Suspension Pricing Schedule Period Settlements**

In clause 3.15.10C(a)(4), after "clause 3.15.7(c)", omit "or clause 3.15.7A(a) by application of clause 3.15.7A(e)" and substitute "or clause 3.15.7(a1)(2)".

**[21] Clause 3.15.10C Intervention and Market Suspension Pricing Schedule Period Settlements**

In clause 3.15.10C(b)(7)(i), after "in accordance with", omit "clause 3.15.7A(a)" and substitute "clause 3.15.7(a1)(2)".

**[22] Chapter 10 New definition**

In Chapter 10, insert the following definition in alphabetical order:

*non-market services*

Has the meaning given to it in clause 3.15.7(a1)(2).

**[23] Chapter 10            Substituted definition**

In Chapter 10, substitute the following definition:

***Referred Directed Participant***

*A Directed Participant* who has a claim referred to an independent expert pursuant to clauses 3.15.7A, 3.15.7B(c) or 3.15.7B(d).

## Schedule 2 Savings and Transitional Amendment to the National Electricity Rules

(Clause 4)

### [1] Chapter 11 Savings and Transitional Amendment to the National Electricity Rules

After Part ZZZZ[X], insert:

#### Part ZZZZ[X] Compensation following directions for services other than energy and market ancillary services

#### 11.[XXX] Rules consequential on the making of the National Electricity Amendment (Compensation following directions for services other than energy and market ancillary services) Rule 2020

##### 11.[XXX].1 Definitions

For the purposes of this rule 11.[XXX]:

**Amending Rule** means the National Electricity Amendment (Compensation following directions for services other than energy and market ancillary services) Rule 2020.

**commencement date** means [date rule is made].

**old Chapter 3** means Chapter 3 of the *Rules* and all related definitions in the *Rules* as in force immediately prior to the commencement date.

**old clause 3.15.7A** means clause 3.15.7A of the *Rules* and all related definitions in the *Rules* as in force immediately prior to the commencement date.

**old clause 3.15.7B** means clause 3.15.7B of the *Rules* and all related definitions in the *Rules* as in force immediately prior to the commencement date.

##### 11.[XXX].2 Compensation process in effect on commencement date

- (a) If, prior to the commencement date:
- (1) *AEMO* has issued a *direction* which, under old chapter 3, is a *direction* for the provision of services other than *energy* or *market ancillary services*; and
  - (2) the process for determining the amount of compensation payable in relation to that *direction* under old clause 3.15.7A or old clause 3.15.7B has commenced and not completed;

then, subject to paragraph (b), the determination of compensation in relation to that *direction* must continue to be conducted and completed under old chapter 3.

- (b) Old clauses 3.15.7A(e) and (e1) do not apply to any determination of compensation under paragraph (a).