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Australian Energy Market Commission

## **RULE DETERMINATION**

# **NATIONAL ELECTRICITY AMENDMENT (REALLOCATION OF NATIONAL TRANSMISSION PLANNER COSTS) RULE 2020**

### **PROPONENT**

Australian Energy Market Operator

29 OCTOBER 2020

**RULE**

**Rule determination**

Reallocation of national transmission planner costs  
29 October 2020

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## ABOUT THE AEMC

The AEMC reports to the Council of Australian Governments (COAG) through the COAG Energy Council. We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the COAG Energy Council.

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## SUMMARY

- 1 The Australian Energy Market Commission (AEMC or Commission) has made a rule that clarifies and addresses missing administrative and transitional mechanisms to facilitate the original policy intent of the Rules to implement the actionable Integrated System Planning (ISP) framework, which commenced on 1 July 2020.
- 2 Specifically, these changes will provide the correct transitional and administrative mechanisms within the national electricity rules (NER or Rules) so that:
  - the Australian Energy Market Operator (AEMO) is able to recover its national transmission planner (NTP) function fees for the 2020-21 financial year from co-ordinating network service providers (CNSPs), and CNSPs can include these fees in their transmission pricing,
  - there is alignment between AEMO's budgeting process and CNSP's transmission pricing processes, and
  - there is clarity with regard to the recovery of NTP function fees in Victoria, where AEMO is the CNSP.
- 3 The Commission assessed and concluded that these changes would improve overall administrative efficiency while improving clarity, accuracy and consistency of the Rules as originally intended which would in turn promote confidence in, and efficiency of, the framework governing the national electricity market.
- 4 The Commission assessed the rule change request under an expedited rule change process on the basis that it was a request for a non-controversial rule.
- 5 The final rule commences on 29 October 2020.

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# 1 AEMO'S RULE CHANGE REQUEST

## 1.1 The rule change request

On 21 August 2020, the Australian Energy Market Operator (AEMO) submitted a rule change request to the Commission to make a rule to address a number of issues relating to timing and uncertainty in administrative arrangements for the allocation of AEMO's national transmission planner (NTP) fees to CNSPs.

The rule change request sought to clarify and address missing administrative and transitional mechanisms in the Rules to facilitate the policy intent of the recent changes to the Rules to implement the Integrated System Planning framework, which commenced on 1 July 2020.

AEMO also requested that the Commission consider the rule change request as a non-controversial<sup>1</sup> rule change request and, as a result, be assessed under an expedited rule change process.

## 1.2 Rationale for the rule change request

The Rules in their current form have created timing issues and ambiguity within the transitional and administrative arrangements for the allocation of AEMO's NTP function fees to CNSPs, namely:

1. the Rules do not provide for AEMO to recover in 2020-21 the NTP function fees it expects to incur in 2020-21 (or which AEMO has already incurred in 2020-21 or in previous financial years but not yet recovered);
2. the Rules do not provide for CNSPs to include any NTP function fees in their 2020-21 transmission prices in Queensland, New South Wales, South Australia and Tasmania;
3. there is a misalignment in the timing of AEMO's budgeting process and the publication of CNSP transmission pricing; and
4. there is uncertainty in the administrative arrangements around the recovery of NTP function fees in Victoria where AEMO is both the National Transmission Planner and the CNSP providing shared transmission services.

These omissions and gaps in the Rules are preventing the realisation of the intended policy intent of the actionable ISP framework in relation to the recovery of NTP function fees.

## 1.3 Solution proposed in the rule change request

AEMO sought to resolve the issues discussed above by proposing a rule (the proposed rule) that would allow the policy intention of the actionable ISP framework to be fully implemented. The proposed rule was limited in scope and sought consequential changes of a transitional and mechanical nature to enable:<sup>2</sup>

- NTP function fees to be recovered from CNSPs;

<sup>1</sup> Section 96 of the National Electricity Law (NEL).

<sup>2</sup> AEMO rule change request, p. 2.

- CNSPs to include NTP function fees in their transmission prices in the same year as AEMO allocates those fees to CNSPs;
- transitional arrangements to be in place for the 2020-21 and 2021-22 financial years; and
- the arrangements in Victoria, where AEMO is the CNSP, to be clarified.

The rule change request also proposed that NTP function fees be allocated to CNSPs, rather than TNSPs, given the current role performed by CNSPs in allocating the aggregate annual revenue requirement and setting and publishing transmission prices for TNSPs in the relevant region.

The issues and solutions set out by AEMO in its rule change request, and Commission's analysis and conclusions, are discussed further in Chapters 2 and 3.

## 1.4 Relevant background

At the COAG Energy Council meeting on 20 March 2020, the Energy Security Board (ESB) presented a set of changes to the Rules to convert the ISP into an actionable strategic plan. Ministers agreed to these rule changes — referred to as the Integrated System Planning Rule (ISP Rules)<sup>3</sup> — on the same day. The ISP Rules were subsequently made by the South Australian Energy Minister on 9 April 2020 and commenced on 1 July 2020.<sup>4</sup>

Prior to the ISP Rules commencing, the costs incurred by AEMO in providing NTP services (referred to in the Rules as 'NTP function fees') were recovered from Market Customers (retailers) under AEMO's existing participant fee determination.<sup>5</sup> However, the actionable ISP framework recommended by the ESB (and reflected in the ISP Rules) changed this arrangement such that NTP function fees would be allocated to TNSPs (rather than Market Customers) from 1 July 2020.<sup>6</sup> The intention was that AEMO would also undertake a consultation process to determine how the NTP function fees would be allocated to individual TNSPs and that this new arrangement would be reflected in AEMO's participant fee determination.<sup>7</sup>

In the process of implementing the ISP Rules, AEMO and the TNSPs identified a number of administrative and transitional issues related to the budgeting and charging of NTP function fees to TNSPs. Importantly, the changes proposed by AEMO in the rule change request are limited in scope to consequential changes necessitated by the ISP Rules, and transitional arrangements for the 2020-21 and 2021-22 financial years — that is, only changes needed to enable realisation of the policy intent of the ISP Rules in relation to the recovery of NTP function fees.

<sup>3</sup> The National Electricity Amendment (Integrated System Planning) Rule 2020.

<sup>4</sup> The ESB undertook this Rule change process in accordance with section 90F of the NEL.

<sup>5</sup> The current structure of participant fees related to AEMO's electricity market functions, including in relation to its NTP functions, was applied from 1 July 2016. The duration of the current fee determination is five years.

<sup>6</sup> This change was captured through an amendment to clause 2.11.1(c)(5A) of the NER to allocate the NTP function fees incurred by AEMO to TNSPs. Amendments were also made to Chapter 6A to permit TNSPs to recover these costs from end use customers through transmission prices. We note that the proposed amendment to clause 6A.23.3(e)(6) refers to the 'NTP functions fees advised to the Coordinating Network Service Provider in accordance with clause 2.11.1'.

<sup>7</sup> See: Energy Security Board, COAG Energy Council Converting the integrated system plan into action, Decision paper, March 2020, p.17.

Energy Networks Australia (ENA) and its TNSP members have been working with AEMO to find a solution to the implementation gap that was not addressed in the ISP Rules. The ENA has provided a letter of support for this rule change request which can be found on the project page for the rule change request.<sup>8</sup>

## 1.5 The rule making process

On 3 September 2020, the Commission published a notice advising of its commencement of the rule making process and consultation in respect of the rule change request.<sup>9</sup> A consultation paper identifying specific issues for consultation was also published. Submissions closed on 1 October 2020.

The Commission received one submission from the Energy Users Association of Australia (EUAA). This submission is available on the Commission's website.

The Commission considered that the rule change request was a request for a non-controversial rule as defined in s. 96 of the NEL. Accordingly, the Commission commenced an expedited rule change process, subject to any written requests not to do so. The closing date for receipt of written requests was 17 September 2020.

No requests to not carry out an expedited rule change process were received. Accordingly, the rule change request was considered under an expedited process.<sup>10</sup>

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<sup>8</sup> See: [www.aemc.gov.au](http://www.aemc.gov.au)

<sup>9</sup> This notice was published under section 95 of the National Electricity Law (NEL).

<sup>10</sup> Section 96 of the NEL.

## 2 FINAL RULE DETERMINATION

### 2.1 Summary

This chapter outlines:

- the Commission's final rule determination on the rule change request
- the rule making test for changes to the Rules
- the assessment framework for considering the rule change request
- the Commission's consideration of the final rule against the national electricity objective and summary of reasons for making this final rule determination.

### 2.2 The Commission's final rule determination

The Commission's final rule determination is to make the final rule consistent with the proposed rule submitted by AEMO in its rule change request. The final rule is published with this final rule determination. A description of the final rule is set out in this section 2.2 and further detail is provided in chapter 3. A summary of the Commission's reasons for making this final rule determination is set out in section 2.5 and further detail is also provided in chapter 3.

The final rule is largely the same as the proposed rule, subject to several minor amendments to the legal drafting for minor corrections and to improve clarity. As discussed further in chapter 3, the final rule clarifies and addresses missing administrative and transitional mechanisms in the Rules to facilitate the policy intent of the recent changes to the Rules to implement the actionable ISP framework.

The key features of the final rule are:

- amendments to existing provisions to impose a new obligation on AEMO to allocate NTP function fees between CNSPs, and to advise each CNSP by 15 February each year of the NTP function fees payable by that CNSP in the next financial year, to enable the CNSP to include those fees in the transmission prices it publishes by 15 March or 15 May under clause 6A.24.2(c),
- amendments to existing provisions to clarify that NTP function fees will also be recovered by AEMO in its capacity as a CNSP in Victoria for the declared shared network, and that AEMO in its capacity as a CNSP will subsequently recover these fees from Victorian distribution businesses and other transmission connected customers through transmission use of system (TUOS) charges and not participant fees,
- new transitional provisions which enable part of the published NTP function fees for 2020-21 to be levied on CNSPs, and the remainder to be levied on CNSPs in 2021-22, together with any NTP function fees incurred in previous years which AEMO has not yet recovered (plus AEMO's cost of financing these amounts), and
- transitional provisions to enable CNSPs to recover through transmission prices for the 2021-22 financial year any NTP function fees charged to them during the 2020-21 financial year which they were not able to reflect in their transmission prices for the 2020-21 financial year (plus a gross-up for the time cost of money based on the CNSP's



applicable allowed rate of return, or in AEMO's case, its obligations under the NEL, the Rules and its revenue methodology).

The final rule commences on 29 October 2020.

## 2.3

## Rule making test

### 2.3.1

### Achieving the NEO

Under the NEL the Commission 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 objective (NEO).<sup>11</sup> This is the decision making framework that the Commission must apply.

The NEO is:<sup>12</sup>

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, safety, reliability and security of supply of electricity; and
- (b) the reliability, safety and security of the national electricity system.

### 2.3.2

### Revenue and pricing principles

Under section 88B of the NEL, the Commission must take into account the revenue and pricing principles in making a Rule for, or with respect to, any matter or thing specified in items 15 to 24 and 25 to 26J of Schedule 1 to the NEL. As the final rule relates to items 15 and 16 of Schedule 1 to the NEL (transmission system revenue and pricing), the Commission has considered the revenue and pricing principles in making the final rule.

Specifically:

- Item 15 is the regulation of revenues earned or that may be earned by owners, controllers or operators of transmission systems from the provision by them of services that are the subject of a transmission determination.
- Item 16 (1) is the regulation of prices charged or that may be charged by owners, controllers or operators of transmission systems for the provision by them of services that are the subject of a transmission determination.
- Item 16(2) is the regulation of prices that AEMO charges or may charge for the provision of shared transmission services.

The revenue and pricing principles are set out in subsections (2) to (7) of section 7A of the NEL. The Commission considers the principles most relevant for this final rule determination are:

- A regulated network service provider should be provided with a reasonable opportunity to recover at least the efficient costs the operator incurs in providing direct control network

<sup>11</sup> Section 88 of the NEL.

<sup>12</sup> Section 7 of the NEL.

services, and complying with a regulatory obligation or requirement or making a regulatory payment.<sup>13</sup>

- A price or charge for the provision of a direct control network service should allow for a return commensurate with the regulatory and commercial risks involved in providing the direct control network service to which that price or charge relates.<sup>14</sup>

The Commission considers the final rule is consistent with these principles. The final rule includes transitional provisions to enable CNSPs to recover through transmission prices for the 2021-22 financial year, any NTP function fees charged to them during the 2020-21 financial year which they were not able to reflect in their transmission prices for the 2020-21 financial year. These provisions also provide for a gross-up for the time cost of money based on the CNSP's applicable allowed rate of return, or in AEMO's case, its obligations under the NEL, the Rules and its revenue methodology. These provisions are consistent with CNSPs being provided with an opportunity to recover at least their efficient costs of providing prescribed transmission services and ensure they are able to receive a return commensurate with the risks involved in providing these services.

### 2.3.3

#### Rule making in the Northern Territory

The NER, as amended from time to time, apply in the Northern Territory, subject to derogations set out in regulations made under the Northern Territory legislation adopting the NEL.<sup>15</sup> Under those regulations, only certain parts of the NER have been adopted in the Northern Territory.<sup>16</sup>

Under the Northern Territory legislation adopting the NEL, the Commission may make a "differential rule" if, having regard to any relevant MCE statement of policy principles, a different rule will, or is likely to, better contribute to the achievement of the national electricity objective than a uniform rule. A differential rule is a rule that:

- varies in its terms as between:
  - the national electricity system
  - one or more, or all, of the local electricity systems, or
- does not have effect with respect to one or more of those systems, but is not a jurisdictional derogation, participant derogation or rule that has effect with respect to an adoptive jurisdiction for the purpose of s 91(8) of the NEL.

As the rule relates to parts of the NER that currently do not apply in the Northern Territory (Chapters 2 and 6A), the Commission has not assessed the rule against the additional elements required by the Northern Territory legislation.

Further details on the rule making tests applicable to this final rule determination are set out in Appendix A.

<sup>13</sup> Section 7A(2) of the NEL.

<sup>14</sup> Section 7A(5) of the NEL.

<sup>15</sup> The regulations under the NT Act are the National Electricity (Northern Territory) (Uniform Legislation) (Modifications) Regulations.

<sup>16</sup> The version of the NER that applies in the Northern Territory is available on the AEMC's website.

## 2.4 Assessment framework

In assessing the rule change request against the NEO, the Commission has had regard to the following principles:

- **Improving administrative efficiency:** Improving the effectiveness and efficiency of administrative processes can reduce costs for participants and contribute to cost savings being passed on to customers.
- **Improving clarity, accuracy and consistency of the rules:** The provision of clear, accurate and consistent rules is important as it enables participants to understand what theirs and others' intended obligations are with respect to the transactions they undertake. This will promote confidence in, and efficiency of, the market.

## 2.5 Summary of reasons

The Commission considers that the final rule will improve the effectiveness and efficiency of the administrative processes associated with the recovery of NTP function fees from CNSPs, potentially reducing costs for participants and contributing to cost savings being passed on to customers.

The final rule will also improve clarity, accuracy and consistency of the Rules by ensuring the Rules reflect their policy intent. Clear, accurate and consistent Rules will enable participants to understand what theirs and others' intended obligations are with respect to the transactions they undertake. This will promote confidence in, and efficiency of, the market.

Further detail on the reasons for making this final rule determination are set out in chapter 3.

## 3 ISSUES RAISED AND COMMISSION'S CONCLUSIONS

This chapter provides an overview of the issues raised in the rule change request, the solutions proposed by AEMO to address these issues and the Commission's analysis and conclusions, having regard to the assessment criteria outlined in Chapter 2.

Specifically:

- Section 3.1 considers the recovery of NTP function fees in the 2020-21 financial year
- Section 3.2 considers the alignment and timing of AEMO's budgeting process and the publication of CNSP's transmission prices
- Section 3.3 considers the recovery of NTP function fees in Victoria, where AEMO is the CNSP.

The Energy Users Association of Australia (EUAA) was the only stakeholder to provide a submission to the consultation paper for this rule change request.<sup>17</sup> The issues raised by the EUAA in its submission are discussed in section 3.1.

### 3.1 Recovery of NTP function fees in the 2020-21 financial year

#### 3.1.1 **Issue: AEMO is currently unable to recover its expected 2020-21 NTP function fees**

##### **Background**

The ISP Rules included an amendment which require AEMO to allocate NTP function fees to TNSPs (rather than to Market Customers).<sup>18</sup> This amendment, together with the other provisions in the ISP Rules, took effect on 1 July 2020. However, in practice, in order for AEMO to allocate its NTP function fees, AEMO first needs to:

- amend its existing Participant Fee Structure to reflect the reallocation of NTP function fees from Market Customers to TNSPs; and
- notify TNSPs of the NTP function fees expected to be incurred in a given financial year (for example, the 2020-21 financial year) with time for TNSPs to include those estimated fees in their transmission prices for that financial year.

##### **Issue**

Given that the ISP Rules were presented to, and approved by, the former COAG Energy Council on 20 March 2020<sup>19</sup> and subsequently made by the South Australian Minister on 9 April 2020, there was insufficient time for AEMO and TNSPs to achieve the necessary corresponding actions in respect of the 2020-21 financial year.<sup>20</sup>

<sup>17</sup> Available at [www.aemc.gov.au](http://www.aemc.gov.au).

<sup>18</sup> Clause 2.11.1(c)(5A) of the NER.

<sup>19</sup> On 29 May 2020, the Prime Minister announced the establishment of the National Federation Reform Council and the disbanding of COAG. New arrangements for the former COAG Energy Council will be finalised following the National Cabinet Review of COAG Councils and Ministerial Forums which is due to provide recommendations to National Cabinet by September 2020. The Prime Minister has advised that, while this change is being implemented, former Councils may continue meeting as a Ministerial Forum to progress critical and/or well developed work.

<sup>20</sup> Note that Queensland, New South Wales, South Australia and Tasmania published their transmission prices for the 2020-21

As a result, AEMO has been unable to recover the NTP function fees it expected to incur for 2020-21 (or had already incurred in 2020-21 or in previous financial years but not yet recovered) from either Market Customers or TNSPs.

### 3.1.2

#### **AEMO's proposed solution: a transitional rule clarifying the cost recovery arrangements for its expected 2020-21 NTP function fees**

In its rule change request, AEMO proposed to address this issue by implementing a transitional rule in Chapter 11 of the NER.<sup>21</sup> The proposed transitional rule would enable:

- part of the published NTP function fees for 2020-21 to be levied on CNSPs rather than Market Customers in 2020-21,
- the remainder of the published NTP function fees for 2020-21 to be levied on CNSPs in 2021-22, together with any NTP function fees incurred in previous years which AEMO has not yet recovered (plus AEMO's financing of these amounts), and
- CNSPs to recover through transmission prices for the 2021-22 financial year any NTP function fees charged to them during the 2020-21 financial year which they were not able to reflect in their transmission prices for the 202-21 financial year (plus a gross up for the time cost of money based on the CNSP's applicable allowed rate of return).

### 3.1.3

#### **The Commission's final determination: to make the transitional rule proposed by AEMO**

The Commission recognises that the Rules do not currently provide a mechanism to enable AEMO to recover the published NTP function fees for the 2020-21 financial year from either CNSPs or Market Customers despite this being the policy intent of the ISP Rules.

Therefore, having had regard to stakeholder views<sup>22</sup> and its own analysis, the Commission has determined to make the transitional rule proposed by AEMO, subject to a few minor corrections to AEMO's proposed legal drafting.

The transitional provisions in the final rule<sup>23</sup> provides that for the period from 1 January 2021 to 30 June 2022, AEMO may allocate to CNSPs its NTP function fees for 2020-21 in accordance with the mechanism in the transitional rule (based on 2019 consumption levels), rather than in accordance with the existing fee structure for NTP function fees set out in AEMO's Participant Fee Determination.

The mechanism in the transitional provisions of the final rule enables AEMO to levy part of the published NTP function fees for 2020-21 on CNSPs in 2020-21,<sup>24</sup> and to levy the remainder of these fees (together with any NTP function fees incurred in previous years which AEMO has not yet recovered plus AEMO's financing of these amounts) on CNSPs in 2021-22.<sup>25</sup>

financial year on 15 March 2020.

21 AEMO, Rule change request, pp. 4-5.

22 In addition to the EUAA, the Commission has had regard to the views of the ENA set out in its letter of support for the rule change request. This letter of support is available on the Commission's website.

23 Rule 11.130 of the Amending Rule.

24 Clause 11.130.1(b) of the Amending Rule requires AEMO to publish the NTP function fees to be allocated to each CNSP for the period 1 January 2021 to 30 June 2021, by 1 January 2021.

25 Clauses 11.130.1(b) and (c) of the Amending Rule.

The final rule also enables CNSPs to recover through their transmission prices for the 2021-22 financial year any NTP function fees charged to them during the 2020-21 financial year which they were not able to reflect in their transmission prices for the 2020-21 financial year.<sup>26</sup> This recovery also includes a gross up for the time cost of money which is based on the CNSP's applicable allowed rate of return or, in the case of AEMO, in accordance with AEMO's obligations under the NEL, the Rules and AEMO's revenue methodology.<sup>27</sup>

In reaching its decision, the Commission considered four potential issues arising from AEMO's proposed rule. The Commission also had regard to the issues raised by the EUAA in its submission to the consultation paper. These matters are discussed below.

***Should AEMO be able to recover its financing costs without any prescriptive limitation mechanism in the Rules?***

The rule proposed by AEMO did not place any limitation on the financing costs to be recovered by AEMO as a result of its inability to recover published NTP function fees from CNSPs from 1 July 2020. The Commission has considered whether AEMO should be able to recover its financing costs without any prescriptive limitation in the Rules.

The Commission notes that section 52 of the NEL requires AEMO to recover its costs on a non-profit basis and in accordance with the NEL and the Rules. Clause S6A.4.2(c)(7) of the Rules require AEMO to recover its cost in accordance with its revenue methodology. As such, there are already sufficient measures in place across the NEL, the Rules and the revenue methodology which limit AEMO's ability to recover its costs.

The Commission also understands that AEMO's financing costs are objectively verifiable. The Commission therefore considers that it is unnecessary for the final rule to impose further limitation with respect to AEMO's recovery of its financing costs.

***What is the implication of extending the existing fee structure for NTP function fees until 30 June 2022 and basing the allocation of NTP function fees to CNSPs over this period on 2019 consumption levels?***

As noted above, the effect of the final rule is that allocation of NTP function fees to CNSPs over the period from 1 January 2021 to 30 June 2022 will be based on 2019 consumption levels. This outcome is a consequence of the timing of AEMO's consultation on the next Participant Fee Determination, which is currently underway.<sup>28</sup>

As explained in the rule change request, deferring any changes to fee structure for NTP function fees until 30 June 2022 will ensure that the NTP function fees expected to be incurred by AEMO in 2021-22 (and notified to CNSPs by 15 February 2021) are not impacted by any potential changes to the NTP function fee structure resulting from the current consultation. In the absence of any concerns from CNSPs or other stakeholders on this matter, the final rule reflects the proposed rule.

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<sup>26</sup> Clause 11.130.1(d)(1) of the Amending Rule.

<sup>27</sup> Clause 11.130.1(d)(2) of the Amending Rule.

<sup>28</sup> AEMO's Electricity Market Participant Fee Structure Review was initiated on 18 August 2020. See [www.aemo.com.au](http://www.aemo.com.au).

***How can AEMO, in its capacity as CNSP in Victoria, recover the time cost of money in the absence of a regulated rate of return?***

The rule proposed by AEMO allows for CNSPs (including AEMO as CNSP in Victoria) to recover their time cost of money (limited to the weighted average cost of capital, or WACC, applied in their respective transmission determinations). However, the proposed rule in the rule change request did not make clear how the mechanism would apply in Victoria where the TNSP (AEMO) does not have a regulated rate of return.

As noted above, the Commission considers there are already sufficient measures in place across the NEL, the Rules and AEMO's revenue methodology requirements that limit AEMO's ability to recover its costs, including its costs as CNSP in Victoria. Therefore, the Commission has determined that it is appropriate to bound AEMO's recovery of the time cost of money by reference to AEMO's existing obligations under the NEL, the Rules and its revenue methodology.<sup>29</sup>

***Should AEMO have to consult with the public when making amendments to its revenue methodology to take into account the final rule?***

The rules currently require AEMO to conduct formal consultation under the Rules when amending its revenue methodology.<sup>30</sup> In its rule change request, AEMO proposed to waive this requirement when updating its revenue methodology to reflect the proposed rule.

On the basis that the change to the revenue methodology is largely procedural and the proposed rule has already been subject to consultation during this rule change process, the Commission agrees that any further consultation is not warranted.<sup>31</sup>

***The EUAA holds concerns around the level of transparency and scrutiny over NTP function fees***

The EUAA was the only stakeholder to provide a submission to the consultation paper. While supportive of the rationale for the rule change request, the EUAA was concerned about the level of transparency around, and scrutiny over, AEMO NTP function fees. Specifically, the EUAA expressed concern in relation to:<sup>32</sup>

- a lack of scrutiny being applied to AEMO's ISP-related costs before they are allocated to TNSPs, and
- the ability for TNSPs to pass through these costs to DNSPs in transmission pricing without any scrutiny from the AER.

The Commission considers that both of these concerns are out of scope for the purposes of this rule change request. The ISP Rules already allow the allocation of AEMO's NTP function fees to TNSPs. In addition, it would not be reasonable or practicable to limit the ability of TNSPs to pass through these costs to DNSPs because they are costs which the TNSP did not incur and over which the TNSP has no control. As such, both of the EUAA's concerns go

<sup>29</sup> Clause 11.130.1(d)(2)(i) of the Amending Rule.

<sup>30</sup> See clause S6A.4.2(c)(3) of the NER.

<sup>31</sup> Clause 11.130.1(e) of the Amending Rule.

<sup>32</sup> EUAA, submission to consultation paper, p. 1.

directly to the previous policy decision of the ESB and Energy Ministers to reallocate AEMO's NTP function fees to TNSPs instead of market participants, which was implemented by the ISP Rules.

### Conclusion

Overall, having regard to the issues raised in the rule change request, and the assessment criteria for this rule change request, the Commission considers this aspect of the final rule promotes the NEO for the following reasons:

- the final rule improves administrative efficiency as it clarifies the administrative arrangements for the recovery of NTP function fees for the 2020-21 financial year, and
- the final rule provides clarity, accuracy and consistency within the Rules, noting that it was the original policy intent for AEMO to be able to recover from TNSPs its NTP function fees for the 2020-21 financial year.

The Commission also considers this aspect of the final rules is consistent with the revenue and pricing principles set out in the NEL.<sup>33</sup> Specifically, this aspect of the final rule supports CNSPs in being able to recover at least their efficient costs of providing prescribed transmission services while also supporting their ability to receive a return commensurate with the risks involved in providing these services.

## 3.2

### Alignment of AEMO budgeting process and transmission prices

#### 3.2.1

#### **Issue: the timing of AEMO's budgeting process currently does not align with the publication of TNSP's transmission prices**

##### **Background**

As stated in the rule change request,<sup>34</sup> the intent of the ISP Rules is that AEMO will notify TNSPs of the NTP function fees to be recovered in the next financial year before TNSPs publish their transmission prices for that financial year to allow TNSPs sufficient time to factor in those NTP function fees into their transmission prices (which must be published by 15 March or 15 May each year).<sup>35</sup>

##### **Issue**

AEMO's budget is generally published before the end of the financial year but after CNSPs have set and published transmission prices for the following financial year. This misalignment in timing means that CNSPs will be unable to use AEMO's NTP function fees for a forthcoming financial year to set their transmission prices for that year.

<sup>33</sup> The revenue and pricing principles are set out in subsections (2) to (7) of section 7A of the NEL.

<sup>34</sup> AEMO, Rule change request, p. 4.

<sup>35</sup> See clause 6A.24.2(c) of the NER. It may be the 15 May where the regulatory year does not begin on the commencement of a financial year.



### 3.2.2 **AEMO's proposed solution: an obligation on AEMO to advise CNSPs of expected NTP function fees in time for their transmission prices**

AEMO proposed to address this issue by establishing a new obligation on AEMO to advise each CNSP by 15 February each year of the NTP function fees payable by that CNSP in the next financial year.<sup>36</sup> The 15 February date for advising of NTP function fees enables those fees to be included by CNSPs in transmission prices published by 15 March (or 15 May) under clause 6A.24.2(c) of the Rules. This proposed change is intended to provide increased transparency to TNSPs and the market more generally, and better align with CNSPs' transmission price setting processes.

### 3.2.3 **The Commission's final determination: to make the change proposed by AEMO**

The Commission recognises that there is currently a timing misalignment in the Rules between when AEMO publishes its budget and when the Rules require CNSPs to have set and published their transmission prices for the following financial year.

The Commission also acknowledges that it is the intent of the ISP Rules that AEMO will notify TNSPs of the NTP function fees to be recovered in the next financial year before TNSPs publish their transmission prices for that financial year.

On this basis, the Commission has determined to make the change proposed by AEMO to align AEMO's budgeting process and transmission prices, subject to a few minor amendments to AEMO's proposed legal drafting.<sup>37</sup>

In reaching its decision, the Commission considered the implication of possible movements in the NTP function fees advised to CNSPs by 15 February (as proposed by AEMO), and the final budget published in June. The Commission notes that any changes to the amount between 15 February and the final budget (or actual expenditure) will be dealt with as an "under or over" in the next year (consistent with the existing mechanism for over- and under-recovery in clause 2.11.1(b)(2)(i) of the NER).

#### **Conclusion**

Overall, having regard to the issues raised in the rule change request and the assessment criteria for this rule change request, the Commission considers this aspect of the final rule promotes the NEO. The final rule promotes administrative efficiency by aligning the practical timing of budgeting and pricing publications as between AEMO and CNSPs. This will result in costs passed through to consumers that are consistent and transparent with the published annual budgeting and pricing for AEMO and CNSPs respectively.

## 3.3 **Recovery of NTP function fees in Victoria**

### 3.3.1 **Issue: the Rules do not enable AEMO to allocate NTP function fees to itself in its capacity as the CNSP in Victoria**

#### **Background**

<sup>36</sup> AEMO, Rule change request, p. 5.

<sup>37</sup> Clause 2.11.3(ba) of the Amending Rule.

As outlined by AEMO in the rule change request,<sup>38</sup> in Victoria, AEMO is both the national transmission planner and CNSP. The policy intent of the ISP Rules is that in Victoria, AEMO would allocate an amount of NTP function fees to itself in its role as CNSP and that these fees would be recovered through transmission use of system charges.

### **Issue**

The Rules do not specifically provide for a situation where AEMO is allocating NTP function fees to itself in its capacity as the CNSP in Victoria. As such, there is uncertainty in the Rules regarding the administrative arrangements around the recovery of NTP function fees in Victoria.

#### **3.3.2**

#### **AEMO's proposed solution: to clarify the cost recovery arrangements for itself in its capacity as a CNSP in Victoria**

AEMO proposed to address this issue by amending the Rules to clarify that NTP function fees will also be recovered by AEMO in its capacity as a CNSP in Victoria for the declared shared network. The rule change request also proposed that AEMO, in its capacity as a CNSP, would subsequently recover these fees from Victorian distribution businesses and other transmission connected customers through TUOS charges, and not participant fees.<sup>39</sup>

#### **3.3.3**

#### **The Commission's final determination: to make the change proposed by AEMO**

The Commission recognises that the existing rules do not reflect the original policy intent of the ISP Rules and that AEMO, in its capacity as a CNSP in Victoria, should be able to recover NTP function fees.

On this basis, the Commission has determined to make the change proposed by AEMO in respect of the recovery of NTP function fees in Victoria, subject to a few minor amendments to AEMO's proposed legal drafting.

The final rule clarifies that NTP function fees will be recovered by AEMO in its capacity as a CNSP in Victoria for the declared shared network, and that AEMO in its capacity as a CNSP will subsequently recover these fees from Victorian distribution businesses and other transmission connected customers through TUOS charges.<sup>40</sup>

The final rule also clarifies that:

- NTP function fees will be recovered from "CNSPs" rather than from "TNSPs",<sup>41</sup> and
- in regions where a CNSP has not been formally appointed, references to CNSPs should be read as referring to the TNSP for that region.<sup>42</sup>

### **Conclusion**

<sup>38</sup> AEMO, Rule change request, p. 4.

<sup>39</sup> AEMO, Rule change request, p. 5.

<sup>40</sup> Clause 2.11.1(c)(5A) of the Amending Rule and clause 2.11.3(d) of the Rules.

<sup>41</sup> Clause 2.11.1(c)(5A) of the Amending Rule.

<sup>42</sup> Clause 6A.29.1(g) of the Amending Rule.

Overall, having regard to the issues raised in the rule change request and the assessment criteria for this rule change request, the Commission considers this aspect of the final rule promotes the NEO by clarifying that NTP function fees will be recovered by AEMO in its capacity as a CNSP in Victoria, thereby providing consistency with the policy intent of the ISP Rules.

## ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AARR	Aggregate annual revenue requirement
Commission	See AEMC
CNSP	Coordinating network service provider
COAG	Council of Australian Governments
ENA	Energy Networks Association
ESB	Energy Security Board
EUAA	Energy Users Association of Australia
MCE	Ministerial Council on Energy
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National electricity objective
NER	National Energy Rules
Rules	See NER
TNSP	Transmission network service provider

## A LEGAL REQUIREMENTS UNDER THE NEL

This appendix sets out the relevant legal requirements under the NEL for the Commission to make this final rule determination.

### A.1 Final rule determination

In accordance with s. 102 of the NEL the Commission has made this final rule determination in relation to the rule proposed by AEMO.

The Commission's reasons for making this final rule determination are set out in chapters 2 and 3.

A copy of the final rule is published with this final rule determination. Its key features are described in section 2.2.

### A.2 Power to make the rule

The Commission is satisfied that the final rule falls within the subject matter about which the Commission may make rules. The final rule falls within s. 34(1)(a)(iii) of the NEL as it relates to the activities of persons (including Registered participants) participating in the national electricity market or involved in the operation of the national electricity system.

Further, the final rule falls within the matters set out in Schedule 1 to the NEL under items 15, 16, 30F, 30G-30J and 34(c) because it relates to transmission system revenue and pricing, AEMO, national transmission planning and payment of money.

### A.3 Commission's considerations

In assessing the rule change request, the Commission considered:

- its powers under the NEL to make the rule
- the rule change request
- submissions received during first round consultation
- the Commission's analysis as to the ways in which the proposed rule will or is likely to, contribute to the NEO.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.<sup>43</sup>

The Commission may only make a rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed rule is compatible with the proper performance of Australian Energy Market Operator (AEMO)'s declared network functions.<sup>44</sup> The final rule is compatible

<sup>43</sup> Under s. 33 of the NEL the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy. On 1 July 2011, the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. The amalgamated council was then called the COAG Energy Council. On 29 May 2020, the Prime Minister announced the establishment of the National Federation Reform Council and the disbanding of COAG. New arrangements for the former COAG Energy Council will be finalised following the National Cabinet Review.

<sup>44</sup> Section 91(8) of the NEL.

with AEMO's declared network functions because it clarifies how AEMO is to recover NTP function fees in Victoria where AEMO is CNSP for the declared shared network.

## A.4 Civil penalties

The Commission cannot create new civil penalty provisions. However, it may recommend to the Energy Ministers that new or existing provisions of the NER be classified as civil penalty provisions.

The final rule does not amend any clauses that are currently classified as civil penalty provisions under the NEL or National Electricity (South Australia) Regulations. The Commission does not propose to recommend to the Energy Ministers that any of the proposed amendments made by the final rule be classified as civil penalty provisions.

## A.5 Conduct provisions

The Commission cannot create new conduct provisions. However, it may recommend to the Energy Ministers that new or existing provisions of the NER be classified as conduct provisions.

The final rule does not amend any rules that are currently classified as conduct provisions under the NEL or National Electricity (South Australia) Regulations. The Commission does not propose to recommend to the Energy Ministers that any of the proposed amendments made by the final rule be classified as conduct provisions.