



Australian Energy Market Commission

RULE DETERMINATION

National Electricity Amendment
(Implementation of Demand Management
Incentive Scheme) Rule 2018

Rule Proponent
AER

3 April 2018

**RULE
CHANGE**

Inquiries

Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

E: aemc@aemc.gov.au

T: (02) 8296 7800

F: (02) 8296 7899

Reference: ERC0230

Citation

AEMC, Implementation of Demand Management Incentive Scheme, Rule Determination, 3 April 2018.

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.

This work is copyright. The Copyright Act 1968 permits fair dealing for study, research, news reporting, criticism and review. Selected passages, tables or diagrams may be reproduced for such purposes provided acknowledgement of the source is included.

Contents

1	AER's Rule Change Request	4
1.1	Relevant background.....	4
1.2	Rationale for the rule change request.....	5
1.3	Solution proposed in the rule change request.....	5
1.4	The rule making process	6
2	Final Rule Determination	7
2.1	The Commission's final rule determination.....	7
2.2	Details of the final rule	7
2.3	Rule making test.....	8
2.4	Assessment framework	10
2.5	Summary of reasons	10
3	Assessment of the rule change request	11
3.1	Comparison of costs and benefits of early application of the Scheme.....	11
3.2	Minor drafting changes to the proposed rule	13
3.3	Stakeholder concern regarding early application of the Scheme under the current ring-fencing frameworks.....	14
	Abbreviations	15
A	Legal requirements under the NEL	16
A.1	Final rule determination.....	16
A.2	Power to make the rule	16
A.3	Commission's considerations.....	16
A.4	Declared network functions	17
A.5	Revenue and pricing principles	17
A.6	Civil penalties.....	18

1 AER's Rule Change Request

On 14 December 2017, the Australian Energy Regulator (AER) submitted a rule change request to the Australian Energy Market Commission (Commission) seeking to allow distribution network service providers (DNSPs) to apply to the AER for early application of the revised Demand Management Incentive Scheme (Scheme) published on 14 December 2017.

1.1 Relevant background

In 2015, the Commission made the *Demand management incentive scheme* rule change in response to rule change requests submitted by the Council of Australian Governments (COAG) Energy Council and the Total Environment Centre.¹ The rule change proponents had raised concerns that the previous demand management incentive scheme was not effective in providing DNSPs with incentives to undertake efficient demand management projects.²

The aim of the Demand management incentive scheme rule change was to help balance the incentives for DNSPs to undertake demand management projects as alternatives to implementing network options. The Commission considered that this would be best achieved by providing greater clarity to the AER and stakeholders in respect of how demand management incentive mechanisms should be developed and applied.³ The rule change included requirements on the AER to develop a Demand management incentive scheme in line with the scheme objective of providing DNSPs with an incentive to undertake efficient expenditure on relevant non-network options relating to demand management.

As part of the Demand management incentive scheme rule change process, the Commission did consider the possibility of early application of the Scheme. However at that stage, the Scheme design had not been determined and taking into account the AER's concern at the time that application of the Scheme midway through a regulatory period may require reopening of the relevant distribution determinations, the Commission did not consider it appropriate to provide for application of the Scheme midway through a regulatory control period.⁴

Taking into account stakeholder views, the AER developed the Scheme and published it on 14 December 2017.

1 AEMC, *Demand Management Incentive Scheme*, final determination, 20 August 2015, p. 1.

2 AEMC, *New rules for a demand management incentive scheme*, Information Sheet, 20 August 2015.

3 AEMC, *Demand Management Incentive Scheme*, final determination, 20 August 2015, p (i) (Summary).

4 *Ibid*, pp. 78-79.

1.2 Rationale for the rule change request

The AER's rule change request outlined that the current National Electricity Rules (NER) do not allow for application of the Scheme until the commencement of the next regulatory control period.⁵ Waiting until the next regulatory control period would result in customers having to forgo the opportunity to benefit promptly from the Scheme particularly because the next regulatory control period for some jurisdictions is two to three years away.

Application of the Scheme mid-way through a regulatory control period was previously considered to require a reopening of current distribution determinations, imposing considerable costs on distributors and the AER.⁶ The rule change request highlights that the design of the Scheme means that the Scheme may be applied earlier without requiring a reopening of the current distribution determinations.⁷

1.3 Solution proposed in the rule change request

The AER sought to resolve the issues discussed above by proposing a rule (the proposed rule) that seeks to allow DNSPs to apply to the AER for early application of the Scheme.

The proposed rule would amend chapter 11 of the NER to allow a DNSP to apply to the AER for application of the Scheme during its current regulatory control period. Under the proposed rule, a DNSP may seek application of the Scheme during the current regulatory control period by submitting a proposal to the AER which includes:⁸

- the proposed start date for the application of the Scheme
- a description of how the early application of the Scheme will assist the DNSP in undertaking efficient expenditure on relevant non-network options relating to demand management
- such other information that the DNSP considers relevant.

The proposed rule included obligations on the AER in relation to publication and consultation on a DNSP's proposal, making of the final decision and notice of the final decision.⁹ The proposed rule also provided discretion to the AER in permitting early application for a DNSP and the date from which the Scheme applies for a DNSP.¹⁰

5 Rule change request, p. 3.

6 Rule change request, p. 11.

7 Rule change request, p. 9.

8 Rule change request, pp. 13-14.

9 Rule change request, p. 14.

10 Rule change request, p. 14.

The provisions proposed would be a 'one-off' and would only apply to the Scheme published in December 2017, not any future revision of the Scheme.¹¹ The proposed rule did not include any proposed changes to the NER provisions in relation to other incentive schemes or regulatory mechanisms.¹² The rule change proposal did not seek early application of the Demand Management Innovation Allowance Mechanism which was developed and published by the AER in conjunction with the Scheme.¹³ Similarly, it did not involve exemptions or amendments for the efficiency benefit sharing scheme (EBSS), capital expenditure sharing scheme (CESS) or service target performance incentive scheme (STPIS).¹⁴

Copies of the rule change request may be found on the AEMC website, <http://www.aemc.gov.au/Rule-Changes/Implementation-of-Demand-Management-Incentive-Sche#>

1.4 The rule making process

On 20 February 2018, the Commission published a notice advising of its commencement of the rule making process and consultation in respect of the rule change request.¹⁵ A consultation paper identifying specific issues for consultation was also published. Submissions closed on 20 March 2018.

The Commission considered that the rule change request was a request for a non-controversial rule.¹⁶ Accordingly, the Commission commenced an expedited rule change process under s. 96 of the NEL, subject to any written requests not to do so. The closing date for receipt of written requests was 6 March 2018. No requests to not carry out an expedited rule change process were received. Accordingly, the rule change request was considered under an expedited process.¹⁷

The Commission received six submissions in response to the consultation paper. Four of the submissions supported the rule change to allow early application of the Scheme whereas two submissions opposed it.¹⁸ Where relevant, the Commission has summarised the issues raised in the submissions as part of its analysis in chapter 3. The submissions are available on the Commission's website.

11 Rule change request, p. 13, p. 1 and p. 9.

12 Rule change request, p. 9.

13 AER, *Demand management incentive scheme early implementation rule change*, Consultation paper, August 2017, p. 18.

14 Rule change request, p. 9.

15 This notice was published under s.95 of the National Electricity Law (NEL).

16 Sections 87 and 96 of the NEL.

17 Section 96 of the NEL.

18 Submissions to the consultation paper: supporting - AusNet Services, p.1; ENA, p.2; CitiPower, Powercor and United Energy, p.1; Ergon Energy and Energex, p.1; opposing- AEC, pp.1-3; AGL, p.1.

2 Final Rule Determination

This chapter outlines:

- the Commission's final rule determination
- details of the final rule
- the rule making test
- the Commission's assessment framework for considering the rule change request
- summary of reasons for making the final rule.

2.1 The Commission's final rule determination

The Commission's final rule determination is to make the final rule as proposed by the AER, with minor adjustments to the proposed drafting. The final rule allows a DNSP to seek application of the Scheme during its current regulatory control period by applying to the AER.

The final rule made by the Commission is attached to, and published with, this final rule determination. It will commence on 10 April 2018.

2.2 Details of the final rule

The Commission made some minor drafting adjustments to the proposed rule to arrive at the final rule. The Commission has adopted the process for early application of the Scheme put forward by the AER in its proposed rule.

The final rule is only applicable for the version of the Scheme published on 14 December 2017.¹⁹ The final rule allows a DNSP to seek application of the Scheme in its current regulatory control period by submitting a proposal to the AER which sets out:²⁰

- The proposed start date for the application of the Scheme. This can be no earlier than 60 business days after the proposal is submitted or 24 months before the end of the DNSP's current regulatory control period, whichever occurs later.
- A description of how the early application of the Scheme will assist the DNSP in undertaking efficient expenditure on relevant non-network options relating to demand management.
- Other information considered relevant by the DNSP.

¹⁹ See clause 11.106.1 under the final rule.

²⁰ See clause 11.106.3(b) under the final rule.

Subsequent to the submission of a proposal by a DNSP, the rule requires the AER to undertake consultation on the proposal, which involves publishing the received proposal and inviting written submissions on the proposal.²¹

The final rule requires the AER to make a decision but provides discretion to the AER in deciding whether and how to apply the Scheme to the DNSP during its current regulatory control period.²² In making this final decision the AER is required to consider the proposal submitted by the DNSP, any written submissions made on the proposal and the factors in clause 6.6.3(c) of the NER which are the factors the AER is required to consider in developing and applying any demand management incentive scheme.²³

The AER's final decision is required to include a decision on the start date for the application of the Scheme, reasons for the decision and any amendments to the Scheme necessary to give effect to the application of the Scheme during the DNSP's current regulatory control period.²⁴

Further information on the legal requirements for making this final rule determination is set out in Appendix A.

2.3 Rule making test

2.3.1 Achieving the national electricity objective

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).²⁵ This is the decision making framework that the Commission must apply.

The NEO is:²⁶

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.

The framework used for assessing whether the proposed rule will, or is likely to, contribute to the achievement of the NEO is set out in section 2.4.

²¹ See clause 11.106.3(c) under the final rule.

²² See clause 11.106.3(e) under the final rule.

²³ See clause 11.106.3(h) under the final rule.

²⁴ See clause 11.106.3(f) under the final rule.

²⁵ Section 88 of the NEL.

2.3.2 Northern Territory legislative considerations

Under the Northern Territory legislation adopting the NEL, the Commission must regard the reference in the national electricity objective to the “national electricity system” as a reference to whichever of the following the Commission considers appropriate in the circumstances having regard to the nature, scope or operation of the proposed rule:²⁷

- (a) the national electricity system
- (b) one or more, or all, of the local electricity systems
- (c) all the electricity systems referred to above.

The Commission considers it appropriate in the context of the proposed rule to regard the reference in the national electricity objective to the “national electricity system” as a reference to (c) above.

The Commission may make a differential rule if, having regard to any relevant Ministerial Council on Energy (MCE) statement of policy principles, a different rule will, or is likely to, better contribute to the achievement of the NEO than a uniform rule.²⁸

This final rule relates to parts of the NER that apply in the Northern Territory. In making the final rule, the Commission has considered whether a uniform or differential rule should apply to the Northern Territory. The final rule determination is to make a uniform rule because the NER and the Northern Territory NER are sufficiently similar in their approach to the Scheme, which has allowed the AER to develop the single revised Scheme which is applicable in the Northern Territory as well as other participating jurisdictions. As this rule change concerns the application of a Scheme applicable in all participating jurisdictions and the Northern Territory, a differential rule for the Northern Territory is not required.

2.3.3 Revenue and pricing principles

In applying the rule making test, the Commission has taken into account the revenue and pricing principles as required under s. 88B of the NEL as the rule change request

²⁶ Section 7 of the NEL.

²⁷ Section 14A of Schedule 1 to the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015*, inserting section 88(2a) into the NEL as it applies in the Northern Territory.

²⁸ Section 14B of Schedule 1 to the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015*, inserting section 88AA into the NEL as it applies in the Northern Territory. Section 14 of Schedule 1 to the *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015*, inserts definitions for *differential Rule* and *uniform Rule* into section 87 of the NEL as it applies in the Northern Territory.

relates to matters specified in items 25, 26D and 26G of Schedule 1 to the NEL relating to distribution system revenue and pricing- see Appendix A for detailed discussion.

2.4 Assessment framework

In assessing the rule change proposal against the NEO, the Commission considered the following principles to guide the assessment of the rule change request:

- whether early application of the Scheme is likely to promote efficient investment in electricity services for the long term interests of consumers with respect to price and reliability
- the administrative costs of early application of the Scheme.

2.5 Summary of reasons

The final rule is largely the same as the proposed rule. The differences between the final rule and the proposed rule are limited to drafting changes to provide clarity and certainty to stakeholders that are considering early application of the Scheme. Further details on the minor drafting changes can be found in section 3.2.

Having regard to the issues raised in the rule change request and during consultation, the Commission is satisfied that the final rule is likely to contribute to the achievement of the NEO. This is because the Commission considers that the Scheme promotes efficient investment with respect to price and reliability, and its earlier application is likely to promote efficient investment from an earlier timeframe whilst incurring minor administrative costs associated with the Scheme's earlier application.

Further details on how the final rule will, or is likely to, contribute to the achievement of the NEO can be found in section 3.1.

3 Assessment of the rule change request

This chapter discusses the key issues considered by the Commission in making its determination. It sets out the proponent's views, stakeholder views and the Commission's analysis in relation to:

- how benefits of the early application of the Scheme compare against its associated costs
- minor changes to the drafting of the proposed rule
- stakeholder concerns regarding early application of the Scheme under the current ring-fencing framework.

3.1 Comparison of costs and benefits of early application of the Scheme

The following section outlines the Commission's assessment comparing the potential benefits of early application of the Scheme against its associated costs.

3.1.1 Whether early application promotes efficient investment

AER's view

The AER's rule change request stated that early implementation of the Scheme is expected to promote efficient investment and ultimately reduce costs to consumers.²⁹ The AER also considers that the rule change will allow greater certainty for DNSPs when committing projects and increase the timeliness of the benefits of the Scheme to electricity consumers.³⁰

Stakeholder views

DNSPs supported the rule change and highlighted the Scheme's potential to deliver benefits to electricity consumers through incentivising efficient demand management.³¹ The DNSPs expected this to lead to lower prices for electricity consumers in the longer term.³² They considered that allowing early application of the Scheme will allow the benefits of the Scheme to be realised sooner.³³

For example, Energy Networks Australia (ENA) highlighted that "Early implementation will avoid a three-year delay in some cases (e.g. in Victoria), which is

²⁹ Rule change request, p. 11.

³⁰ Rule change request, p. 1.

³¹ AusNet Services, submission to the consultation paper, p.1; Energy Network Australia submission to the consultation paper, p.1; CitiPower, Powercor and United Energy, submission to the consultation paper, p.1; Ergon Energy and Energex, submission to the consultation paper, p1.

³² CitiPower, Powercor and United Energy, submission to the consultation paper, p.1; Ergon Energy and Energex, submission to the consultation paper, p1.

³³ AusNet Services, submission to the consultation paper, p.1; Energy Network Australia submission to the consultation paper, p.1; CitiPower, Powercor and United Energy, submission to the consultation paper, p.1; Ergon Energy and Energex, submission to the consultation paper, p1.

significant in terms of potential benefits that can be realised to customers through providing them access to efficient demand management projects on an earlier timetable.”³⁴ AusNet services added that the early application of the Scheme will enable benefits of the Scheme to be realised as soon as practicable.³⁵

AEMC’s final position

The AER has developed the Scheme in line with the Scheme objective of providing DNSPs an incentive to undertake efficient expenditure on relevant non-network options relating to demand management.³⁶ The Scheme rewards DNSPs for implementing relevant non-network options that deliver net cost savings to retail customers, where it is efficient to do so. It does so by allowing DNSPs to access a cost uplift on efficient demand management projects that deliver a net benefit to electricity consumers. The project incentive payment is subject to a cap that limits it to be no higher than the project’s expected net benefit.³⁷

As the Commission considers that the Scheme promotes efficient investment, its earlier application is likely to promote efficient investment from an earlier timeframe. In the long run, the efficient investment is expected to reduce costs to electricity consumers.

3.1.2 Administrative costs of early application of the Scheme

AER’s view

The AER considers that the Scheme’s design combined with the scope and timing of this rule change request means that a reopening of current distribution determinations will not be required for early application of the Scheme. This will avoid the considerable costs to the DNSPs and AER of reopening the current distributor determinations.³⁸

The AER considers that earlier application of the Scheme should not create material administrative costs and considers its own administrative costs to be relatively minor.³⁹ The AER expects its own additional administrative costs would be limited to earlier commencement of their ongoing compliance work under the Scheme.⁴⁰

Stakeholder views

The Commission received no submissions regarding the administrative costs of early application of the Scheme.

³⁴ Energy Network Australia submission to the consultation paper, p.1.

³⁵ AusNet Services, submission to the consultation paper, p.1.

³⁶ Clause 6.6.3(b) of the NER.

³⁷ Demand Management Incentive Scheme (version 1), clause 2.2 and equation 1.

³⁸ Rule change request, pp.9-11.

³⁹ Rule change request, p.12.

⁴⁰ Ibid.

AEMC's final position

The Commission notes that the design of the Scheme (which involves a two year lag between when incentives are accrued and paid), combined with the scope and timing of this rule change request, means that a reopening of distribution determinations will not be required for early application of the Scheme. This results in considerable administrative costs to DNSPs and the AER being avoided.

The early application under the final rule does require the DNSP to submit a proposal to the AER, however the Commission is of view that the administrative costs associated with this proposal are likely to be low. The remaining administrative requirements and their associated costs will not materially differ based on when the Scheme is applied. The Commission therefore considers that the administrative costs associated with the earlier application of the Scheme are likely to be minor.

3.2 Minor drafting changes to the proposed rule

The AER's rule change request included drafting for a proposed rule. As part of the consultation paper, the Commission published a potential alternative drafting approach which suggested minor changes to the AER's proposed rule in order to provide greater clarity and certainty.⁴¹ These potential changes were marked up against the AER's proposed rule. The Commission sought stakeholder input on the drafting of the Rule and appropriateness of the potential alternative drafting in achieving the purpose of the rule change request.

Stakeholder views

CitiPower, Powercor and United Energy suggested that the some parts of the early application process may not be needed. They considered that the requirement for distributors and the AER to describe how the early application of the Scheme will assist in undertaking efficient expenditure on demand management alternatives appears unnecessary.⁴²

AEMC's final position

The Commission considers the requirement to describe how the early application of the Scheme will assist in undertaking efficient expenditure on demand management alternatives to be necessary. The Commission considers that this requirement will provide context to the AER for its assessment of the early application proposal. Under the application of the Scheme at the beginning of a control period, the AER can gain the context necessary for the application of the Scheme through the broader details contained in the regulatory proposal, which is not feasible under early application.

In the final rule, the Commission has retained the drafting adjustments which were highlighted in the consultation paper as potential alternative drafting without any further changes. The Commission considers that these adjustments provide further clarity and certainty to stakeholders that are considering early application of the Scheme.

⁴¹ Consultation paper, pp. 18-20.

⁴² CitiPower, Powercor and United Energy, submission to the consultation paper, p. 1.

3.3 Stakeholder concern regarding early application of the Scheme under the current ring-fencing frameworks

Stakeholder views

The Australian Energy Council (AEC) and AGL lodged submissions opposing the rule change request.⁴³ The AEC and AGL consider that the current ring-fencing frameworks have not proven to be sufficiently robust and enforceable to mitigate the risk of inefficient market outcomes and that these may be exacerbated if the Scheme is implemented early.⁴⁴ For example, the AEC considered it possible for a DNSP to cross subsidise a ring-fenced affiliate in relation to demand management and that this could lead to lower competition in the competitive demand side market.⁴⁵ The AEC considered that funding demand management through early application of the Scheme would increase the potential for DNSPs to undertake such actions.⁴⁶

AEMC's final position

The Commission considers a robust and enforceable ring-fencing framework to be a necessary component of the electricity network regulatory framework.

The Commission notes that the AER created the distribution ring-fencing guideline through a thorough and open process over the course of eleven months. The process involved multiple rounds of consultation with industry across a preliminary positions paper, a draft guideline and a final guideline. The AER received and took into account over 80 submissions throughout the process.⁴⁷

The Commission therefore considers that the rule to provide for the earlier application of the Scheme should be made.

⁴³ AGL, submission to the consultation paper, p.1; AEC, submission to the consultation paper, p.1..

⁴⁴ AGL, submission to the consultation paper, p.1; AEC, submission to the consultation paper, p.1..

⁴⁵ AEC, submission to the consultation paper, p.2.

⁴⁶ AEC, submission to the consultation paper, pp.1-3.

⁴⁷ AER, *Ring-fencing guideline Factsheet*, p.1.

Abbreviations

AEC	Australian Energy Council
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
Commission	See AEMC
COAG	Council of Australian Governments
DMIS	Demand Management Incentive Scheme
DNSP	Distribution Network Service Provider
MCE	Ministerial Council on Energy
NEL	National Electricity Law
NEM	National Electricity Market
NEO	National Electricity Objective
NER	National Electricity Rules

A Legal requirements under the NEL

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

A.1 Final rule determination

In accordance with s.102 and s.103 of the NEL the Commission has made this final rule determination and final rule in relation to the rule proposed by the AER.

The Commission's reasons for making this final rule determination are set out in section 2.5. A copy of the final rule is attached to and 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 of the NEL, as it relates to the operation of the National Electricity Market (NEM) (s. 34(1)(a)(i)), and the activities of persons (including registered participants) participating in the NEM or involved in the operation of the national electricity system (s. 34(1)(a)(iii)). Further, the final rule falls within the matters set out in Schedule 1 to the NEL as it relates to items 25, 26D and 26G:

- Item 25 – the regulation of revenues earned or that may be earned by owners, controllers or operators of distribution systems from the provision by them of services that are the subject of a distribution determination.
- Item 26D – the economic framework, mechanisms or methodologies to be applied or determined by the AER for the purposes of items 25 and 26 including (without limitation) the economic framework, mechanisms or methodologies to be applied or determined by the AER for the derivation of the revenue (whether maximum allowable revenue or otherwise) or prices to be applied by the AER in making a distribution determination.
- Item 26G – incentives for regulated distribution system operators to make efficient operating and investment decisions including, where applicable, service performance incentive schemes.

The final rule relates to these items because it impacts the regulation of revenue that may be earned by DNSPs, the economic framework to be applied by the AER and the incentives for DNSPs to make efficient operating and investment decisions.

A.3 Commission's considerations

In assessing the rule change request, the Commission considered:

- the Commission's powers under the NEL to make the rule
- the rule change request
- submissions received during consultation

- the revenue and pricing principles
- 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 MCE statement of policy principles for this rule change request.⁴⁸

A.4 Declared network functions

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.⁴⁹ The Commission considers that the final rule is compatible with AEMO's declared network functions because it is unrelated to them and therefore it does not affect the performance of these functions.

A.5 Revenue and pricing principles

In applying the rule making test, the Commission has taken into account the revenue and pricing principles as required under s. 88B of the NEL as the rule change request relates to matters specified in items 25, 26D and 26G of Schedule 1 to the NEL relating to distribution system revenue and pricing. The Commission has concluded that the final rule is consistent with the revenue and pricing principles for the reasons set out below.

The revenue and pricing principle in s. 7A(3) of the NEL states that network service providers should be provided with effective incentives in order to promote economic efficiency with respect to the direct control network services they provide. The economic efficiency that should be promoted includes:

- efficient investment in a distribution system with which the operator provides direct control network services
- the efficient provision of electricity network services
- the efficient use of the distribution system with which the operator provides direct control network services.

Under the final rule DNSPs have the potential to be provided with effective incentives under the Scheme from an earlier timeframe to undertake efficient investment in relevant non-network options, relating to demand management. This will facilitate the efficient provision of electricity network services to retail customers.

⁴⁸ 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 is now called the COAG Energy Council.

⁴⁹ Section 91(8) of the NEL.

A.6 Civil penalties

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