

Greg Williams  
Australian Energy Market Commission  
PO Box A2449  
SYDNEY SOUTH NSW 1235

7<sup>th</sup> June 2018

Submitted online to: <https://www.aemc.gov.au/rule-changes/generator-three-year-notice-closure>

Dear Mr Williams,

**Generator Three Year Notice of Closure**  
**Reference: ERC0239**

The Australian Energy Council (the “**Energy Council**”) welcomes the opportunity to make a submission in response to the Australian Energy Market Commission’s (“**AEMC’s**”) *Generator Three Year Notice of Closure Consultation Paper*.

The Energy Council is the industry body representing 21 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over ten million homes and businesses.

**Discussion**

Generators are subject to unforeseeable events which affect their ongoing operability. The Energy Council acknowledges that Clause 2.10.1(c3) within the proposed rule allows a generator to terminate its registration should an unforeseen event beyond the reasonable control of the generator occur. The Energy Council supports this provision, however there appear to be three matters which require clarification, as outlined below.

Conflict with other Acts

Firstly, the Energy Council is concerned about the apparent conflict between the proposed rule’s obligation for three years’ notice to be given of an expected closure,<sup>1</sup> and the duties of directors under the *Corporations Act 2001* (Cth), and other acts such as occupational health and safety and environmental protection acts. The drafting should clarify, for the avoidance of doubt, that those acts should take priority over this National Electricity Rule.

Directors’ Duties

Secondly, while the proposed rule considers events which may occur at specific times, such as a catastrophic plant failure, directors will also become aware of progressive changes in circumstance that will require them to act pursuant to other obligations. The Energy Council therefore recommends that the definition of unforeseen events beyond the reasonable control of the generator in Clause 2.10.1(c3) be expanded to include changes in circumstances which might not be able to be linked to a specific event, and consider directors’ responsibilities under other acts.

Expected Closure Date

Thirdly, the rule change request specifies that, “The expected closure date should be no later than the expiry date of a generator’s licence or authority to generate”.<sup>2</sup>

It is not uncommon that various licences or other authorities may have an expiry date well within the technical and economic lifetime of the generator, and that the generator may form a reasonable view that these will be extended or replaced prior to their expiry. For example, this is known to occur with environmental licences and network connection agreements. Unfortunately the proposed rule is silent as to the date to be advised to

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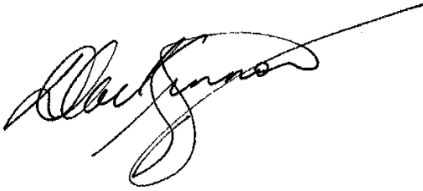
<sup>1</sup> Proposed rule 2.10.1(c2)

<sup>2</sup> p.12

the Australian Energy Market Operator in these instances. To ensure that AEMO has the best information available, the Energy Council recommends that the closure date should not be unconditionally limited in this manner.

Any questions about this submission should be addressed to the writer, by e-mail to [Duncan.MacKinnon@energycouncil.com.au](mailto:Duncan.MacKinnon@energycouncil.com.au) or by telephone on (03) 9205 3103.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Duncan MacKinnon', with a long horizontal flourish extending to the right.

**Duncan MacKinnon**  
Wholesale Policy Manager  
Australian Energy Council