

Australian Energy Market Commission

DRAFT RULE DETERMINATION

NATIONAL ELECTRICITY AMENDMENT (GENERATOR THREE YEAR NOTICE OF CLOSURE) RULE

PROONENT

Dr Kerry Schott AO

16 AUGUST 2018

RULE

INQUIRIES

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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 On 6 March 2018, Dr Kerry Schott AO (proponent),¹ made a request to the Australian Energy Market Commission (AEMC or Commission) to change the National Electricity Rules (NER) to assist in managing the retirement of the existing coal-fired generators as they reach the end of their economic lives (rule change request). The rule change request is based on one of the recommendations of the Independent Review into the Future Security of the National Electricity Market (Finkel Review).
- 2 On 10 May 2018, the Commission published a notice advising of its commencement of the rule making process and consultation in respect of the rule change request.² A consultation paper identifying specific issues for consultation was also published. Submissions closed on 7 June 2018 and the Commission received 17 submissions on the issues raised in the consultation paper.
- 3 After considering submissions, the Commission is proposing to make a draft rule, which is attached to and published with this draft rule determination. The draft rule would require scheduled and semi-scheduled generators to provide AEMO at least three years notice of their intention to close a generating unit by notifying a date for terminating the classification of the generating unit and for ceasing generating or trading (if they are a market generator). It would also require them to notify AEMO of the expected closure year for every scheduled and semi-scheduled generating unit registered and regularly update AEMO of any changes to it as part of the ESOO and PASA reporting processes. AEMO would be required to publish the "expected closure year" and "closure date" for relevant generating units. Finally, it would provide the Reliability Panel the discretion to identify specific energy constraint scenarios to be included for study for the purposes of preparing the EAAP. This would broaden the nature of input AEMO receives in considering possible energy constraint scenarios.
- 4 We are recommending the COAG Energy Council agree to make the requirement for scheduled and semi-scheduled generators to specify the closure date be classified as a civil penalty provision.
- 5 The draft rule is largely the same as the proposed rule. The differences between the draft rule and the proposed rule are limited to:
 - The obligation on scheduled generators and semi-scheduled generators to notify AEMO in writing if they wish to terminate any of their classifications of generating units has been changed from 'may' to 'must'.
 - Closure dates may be amended, and if amended, must still provide at least three years notice commencing from the date the first notice of closure is provided by the scheduled or semi-scheduled generator.
- 6 Having regard to the issues raised in the rule change request and during consultation, the Commission is satisfied that the draft rule will, or is likely to, contribute to the achievement of

¹ Dr. Kerry Schott AO is Chair of the Energy Security Board.

² This notice was published under [s.95 of the National Electricity Law (NEL) / 308 of the National Gas Law (NGL) / 251 of the National Energy Retail Law (NERL)].

the NEO for the following reasons:

- The draft rule would improve the provision of information in the NEM in a manner that is clear and supports accountability and confidence in the system. In particular, the reporting requirements clearly define obligations and the parties that these obligations attach to. The scope of the rule is also tailored to balance the desire for greater information provision with the commercial and operational realities and costs of providing the information.
- The draft rule would provide transparency and predictability of information provided to market participants and potential market participants regarding the closure of generation capacity. This information would, in turn, promote efficiency in the investment in and operation of generation capacity and demand response in the NEM because it would provide market participants a clearer expectation of future generation capacity and how best to respond/adapt to changes. The draft rule, with amendments, is therefore likely to improve the price, reliability and security of supply of electricity and the reliability and security of the national electricity system in the long term interests of consumers.

CONTENTS

1	The rule change request and rule making process	1
1.1	The rule change request	1
1.2	Background and context	1
1.3	Current arrangements	3
1.4	Rationale for the rule change request	3
1.5	Solution proposed in the rule change request	3
1.6	The rule making process	4
1.7	How to make a submission on this draft rule determination	5
2	Draft rule determination	6
2.1	The Commission's draft rule determination	6
2.2	The rule making test	6
2.3	The assessment framework	6
2.4	Summary of reasons for making the draft rule with amendments	7
3	Consideration of the draft rule	9
3.1	Nature of the obligations	9
3.2	Size threshold	11
3.3	Appropriate notice period	13
3.4	Definition of closure	16
3.5	Compliance and penalties	19
3.6	Provision to exempt generators from providing three years notice	20
3.7	Proposed change to EAAP	22
3.8	Implementation and transitional arrangements	23
	Abbreviations	25
	APPENDICES	
A	Legal requirements under the NEL	26
A.1	Draft rule determination	26
A.2	Power to make the rule	26
A.3	Commission's considerations	26
A.4	Civil penalties	27
A.5	Conduct provisions	27
B	Figures examining effect of varying the size threshold	28
	FIGURES	
Figure B.1:	Dispatch units by size, fuel type and region	29
Figure B.2:	Dispatch units by size, fuel type and region (units below 300 MW)	30

1 THE RULE CHANGE REQUEST AND RULE MAKING PROCESS

This chapter sets out:

- The rule change request (section 1.1)
- Background and context (section 1.2)
- Current arrangements (section 1.3)
- Rationale for the rule change request (section 1.4)
- Solution proposed in the rule change request (section 1.5)
- The rule making process (section 1.6)
- How to make a submission (section 1.7).

1.1 The rule change request

On 6 March 2018, the Chair of the Energy Security Board, Dr Kerry Schott AO (proponent), made a request to the Australian Energy Market Commission (AEMC or Commission) to change the National Electricity Rules (NER) to assist in managing the retirement of the existing coal-fired generators as they reach the end of their economic lives (rule change request).

Specifically, the rule change request seeks to:

- require scheduled and semi-scheduled generators to provide the Australian Energy Market Operator (AEMO) with the expected closure year of each of their generating units and at least three years notice of any cessation of registration of a Generator³ or termination of classification of a generating unit as scheduled or semi-scheduled
- enhance AEMO reporting through the medium term (MT) projected assessment of system adequacy (PASA) reporting process and Electricity Statement of Opportunities (ESOO)
- give the Reliability Panel the discretion to identify specific energy constraint scenarios for the focus of study under the Energy Adequacy Assessment Projection (EAAP).

The rule change request can be found on the Commission's website.⁴

1.2 Background and context

The rule change request is based on one of the recommendations of the Independent Review into the Future Security of the National Electricity Market (Finkel Review).

The Finkel Review identified managing the retirement of the existing coal-fired generators as they reach their end of life as a key challenge facing the NEM. In its report,⁵ the Finkel Panel

³ This is a reference to the person owning, controlling or operating the generating system, rather than the generating asset itself.

⁴ AEMC, *Rule change request*, Generator three year notice of closure webpage, <https://www.aemc.gov.au/rule-changes/generator-three-year-notice-closure>.

⁵ Commonwealth of Australia, *Independent Review into the Future Security of the National Electricity Market - Blueprint for the Future*, <https://www.energy.gov.au/publications/independent-review-future-security-national-electricity-market-blueprint-future>, June 2017.

noted that “generators retire with much shorter notice to the market than the time it takes for new capacity to be planned, financed and constructed”.⁶ According to the report, the Northern and Playford B generators gave only eleven months’ notice of closure, while Hazelwood gave only five months. The report suggested that short notice of such closures is not atypical but is well below the notice required for replacement generation assets to come online.

Therefore, the Finkel Panel felt it would be desirable for there to be a period of overlap between the entry of new capacity and the exit of old capacity. The report argued that, “(f)or this to be possible, the operator and the market must have better visibility over when existing large generators will exit the market”.⁷ Also, while some information about expected closure dates is currently made public, the Finkel Panel suggested AEMO should do more to gather and publicise informed and up-to-date estimates of closure and that this should involve more active discussion with generator owners and operators.

In its report, the Finkel Review recommended:⁸

- a requirement for all large generators to provide at least three years’ notice prior to closure
- AEMO should maintain and publish a register of long-term expected closure dates for large generators.

The report recommended all types of large-scale generation should be covered, including coal, gas, hydro, wind and solar and suggested this would provide sufficient time for replacement capacity to be built and for affected communities to plan for change.

The Commission notes that since the publication of the Finkel Panel’s report, the reliability and security of the NEM has attracted considerable attention from policy makers.

Given this increase in focus, the AEMC’s *Reliability Frameworks Review* has considered and recommended possible changes so that regulatory and market arrangements continue to deliver long-term reliability at least cost. In addition, the Commission has completed a rule change to reinstate long notice RERT⁹ and initiated consultation on a rule change from AEMO seeking enhancements to the RERT.¹⁰

The Energy Security Board has proposed a National Energy Guarantee (Guarantee) that seeks to integrate energy and climate change policy instruments in the NEM to provide investors with the certainty they need to make long-term investments. The Guarantee is a foundational component of a broader work program to support the transition of Australia’s energy system.

6 Ibid. p. 87.

7 Ibid.

8 See recommendation 3.2 of the Finkel Review report.

9 AEMC, Reinstatement of the long notice Reliability and Emergency Reserve Trader, Rule changes webpage, <https://www.aemc.gov.au/rule-changes/reinstatement-long-notice-reliability-and-emergency-reserve-trader>.

10 AEMC, *Reinstatement of long notice Reliability and Emergency Reserve Trader*, Rule changes webpage, <https://www.aemc.gov.au/rule-changes/reinstatement-long-notice-reliability-and-emergency-reserve-trader>

It is within this context that the Commission has considered the rule change request. It means that the proposal to require AEMO to maintain and publish a register of long-term expected closure dates for large generators (i.e. the subject of this rule change) is related to information requirements about reliability.

1.3 Current arrangements

Clause 2.10.1 of the NER states that a generator may notify AEMO in writing that it wishes to cease to be registered in any category of Registered Participant or that it wishes to terminate any of its classifications of loads, generating units or network services. This is not a civil penalty provision and the rules do not contain an expectation that a participant should provide the market a period of notice of its intention to close a generating station or unit.

Scheduled and semi-scheduled generators have to update their availability / outages as part of the MT PASA process in section 3.7 of the NER (this is a civil penalty provision) but there is no requirement to identify temporary from permanent changes in availability.

1.4 Rationale for the rule change request

In the rule change request, the proponent states that the proposed rule “is focussed on the provision of additional, specific information to AEMO on expected closure dates and includes a requirement that scheduled and semi-scheduled generators provide at least three years’ notice of when it will cease to supply electricity or trade directly in the market”.¹¹

The proponent suggests the proposed rule change would assist in managing the retirement of the existing coal-fired generators by augmenting the existing reporting requirements on generators to provide additional information to AEMO relating to expected closure dates. This information would give AEMO and market participants (through AEMO’s reporting) a better outlook of generator availability into the future.¹²

1.5 Solution proposed in the rule change request

The proponent has sought to provide an expectation that participants will provide appropriate notice of closure by proposing the following changes to the rules:¹³

- A requirement for scheduled or semi-scheduled generators to provide to AEMO three years notice of cessation of registration as a Generator or termination of classification.
- A requirement for scheduled and semi-scheduled generators to notify AEMO on registration, and regularly update through the MT PASA reporting process, the year they expect a generating unit to cease supplying electricity (the “expected closure year”). The expected closure date should be no later than the expiry date of a generator’s licence or authority to generate.

¹¹ AEMC website, *Rule change request*, Generator three year notice of closure project webpage, <https://www.aemc.gov.au/rule-changes/generator-three-year-notice-closure>, p.11

¹² Ibid, p. 12.

¹³ Ibid.

- A requirement that a date must be specified for when a generating unit classification is to be terminated, and in the case of a Market Generator, the date it will cease supplying electricity or trading directly into the market¹⁴ in relation to one or more connection points (the “closure date”).
- A requirement that the expected closure date for scheduled or semi-scheduled generators be no earlier than three years from the date the notice is provided in writing to AEMO. The closure date can only be earlier because of an event beyond the reasonable control of the generator, and where the occurrence of the event could not reasonably have been foreseen by the relevant generator.
- A requirement for AEMO to report through the MT PASA and ESOO the “expected closure year” for generating units.
- A proposed change to the current Energy Adequacy Assessment Projection (EAAP) process to give the Reliability Panel the discretion to identify specific energy constraint scenarios for the focus of study under the EAAP. This would require AEMO to consider a broader range of energy constraint scenarios than the conditions it currently considers.

BOX 1: ESOO, PASA, AND EAAP PROCESSES

AEMO is required by the NER to publish various materials which provide additional information to market participants – and any other interested parties – on matters pertaining to the reliability standard; that is, over and above the information contained in contract and spot market prices. This information is provided in several formats and considers various time-frames. It helps guide market participants’ expectations of the future, enabling more efficient investment and operational decisions. These publications include:

- Electricity Statement of Opportunities (ESO) – this document is published annually and projects generation adequacy under a number of scenarios over a ten-year-period
- Projected Assessment of System Adequacy (PASA) – this publication assesses generation adequacy over various forward intervals (for example, over the next two years, six days or over the next day)
- Energy Adequacy Assessment Projection (EAAP) – this document provides information on the impact of potential energy constraints, particularly those relating to inputs to production, for example, water shortages or constraints on fuel supply.

1.6 The rule making process

On 10 May 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

¹⁴ NER, Chapter 10 definition of ‘market’ includes all markets or exchanges described in the NER as conducted by AEMO (which includes the NEM)

¹⁵ This notice was published under [s.95 of the National Electricity Law (NEL) / 308 of the National Gas Law (NGL) / 251 of the National Energy Retail Law (NERL)].

paper identifying specific issues for consultation was also published. Submissions closed on 7 June 2018.

The Commission received 17 submissions as part of the first round of consultation. The Commission considered all issues raised by stakeholders in submissions. Issues raised in submissions are discussed and responded to in the relevant section of this draft rule determination.

1.7 **How to make a submission on this draft rule determination**

The Commission invites submissions on this draft rule determination, including amendments, by 5pm, 27 September 2018. If stakeholders wish to discuss this draft rule determination, please contact Greg Williams at greg.williams@aemc.gov.au or call 02 8296 7800.

Any person or body may request that the Commission hold a hearing in relation to the draft rule determination. Any request for a hearing must be made in writing and must be received by the Commission no later than 23 August 2018.

Submissions and requests for a hearing should quote project number ERC0239 and be lodged online at www.aemc.gov.au.

2 DRAFT RULE DETERMINATION

This chapter sets out:

- the Commission’s draft rule determination (section 2.1)
- the rule making test for changes to the NER (section 2.2)
- the assessment framework for considering the rule change request (section 2.3)
- the Commission’s consideration of the more preferable draft rule against the NEO (section 2.4).

2.1 The Commission’s draft rule determination

The Commission’s draft rule determination is to make the draft rule proposed by the Chair of the Energy Security Board, Dr Kerry Schott AO, with minor amendments.

The Commission’s reasons for making this draft determination are set out in Chapter 3.

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

2.2 The rule making test

2.2.1

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).¹⁶ This is the decision making framework that the Commission must apply.

The NEO is:¹⁷

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 below.

2.3 The assessment framework

In assessing the rule change request against the NEO the Commission has considered the following principles:

- **Improve the provision of information:** The arrangements for registration and any additional reporting requirements in the NER should be clear, consistent and understandable to all participants. The inclusion of clear reporting requirements around

¹⁶ Section 88 of the NEL.

¹⁷ Section 7 of the NEL.

expected closure dates of generators should support accountability and confidence in the system.

- **Enhance transparency and predictability:** The transparency of information is a key feature of the efficient operation of the NEM. Market participants need access to clear, timely and accurate information in order to allow them to make efficient commercial and operational decisions. Greater transparency resulting from additional reporting requirements should make it easier for market participants to examine trends and plan for the future, thereby contributing to more informed and efficient decision making.
- **Efficiency of investment in and operation of generation capacity and demand response:** Improving the provision of information, transparency and predictability of information in the NEM can assist in promoting efficiency of investment in, and operation of generation capacity and demand response decisions. By publicly disclosing, at the same time, to all interested parties information that is, or has the potential to be, market-sensitive, this can potentially help energy market participants to make more efficient decisions. The Commission has considered how the provision of this information could assist in market participants making more efficient investment and operational decisions.
- **Administrative costs:** The disclosure and maintenance of a register providing notice may increase administrative costs for market participants and AEMO. Furthermore, requiring market participants to decide on tentative closure dates could also result in an increase in administrative costs. The Commission has assessed how the proposed rule affects administrative costs and considered these costs against the benefits the rule change may provide.

2.4 Summary of reasons for making the draft rule with amendments

The draft rule made by the Commission as attached to and published with this draft rule determination, contains the following key features:

- A requirement for scheduled and semi-scheduled generators to notify AEMO on registration, and regularly update through the PASA reporting process, the year they expect a generating unit to cease supplying electricity (the “expected closure year”).
- A requirement that a date must be specified for when a generating unit classification is to be terminated, and in the case of a Market Generator, the date it will cease supplying electricity or trading directly into the market¹⁸ in relation to one or more connection points (the “closure date”).
- A requirement that Scheduled or Semi-Scheduled Generators provide AEMO at least three years notice of closure. The closure date can only be earlier because of an event beyond the reasonable control of the Generator, and where the occurrence of the event could not reasonably have been foreseen by the relevant Generator.

¹⁸ NER, Chapter 10 definition of ‘market’ includes all markets or exchanges described in the NER as conducted by AEMO (which includes the NEM).

- A requirement that AEMO report the “expected closure year” and “closure date” for generating units, keeping that information up to date via the MT PASA and ES00 processes.
- A change to the current Energy Adequacy Assessment Projection (EAAP) process to give the Reliability Panel the discretion to identify specific energy constraint scenarios to be included for study for the purposes of preparing the EAAP. This may require AEMO to consider a broader range of energy constraint scenarios than the conditions it currently considers.

The draft rule is largely the same as the proposed rule. The differences between the draft rule and the proposed rule are limited to:

- The obligation on scheduled generators and semi-scheduled generators to notify AEMO in writing if they wish to terminate any of their classifications of generating units has been changed from ‘may’ to ‘must’.
- Closure dates may be amended, and if amended, the closure date must still be required to comply with the three year notice period commencing from the date the first notice of closure is provided by the scheduled or semi-scheduled generator.
- the recommendation of a civil penalty provision for the obligation on scheduled and semi-scheduled generators to specify a closure date.

The Commission’s consideration of the draft rule can be found in the next chapter (Chapter 3).

Having regard to the issues raised in the rule change request and during consultation, the Commission is satisfied that the draft rule will, or is likely to, contribute to the achievement of the NEO for the following reasons:

- The draft rule would improve the provision of information in the NEM in a manner that is clear and supports accountability and confidence in the system. In particular, the reporting requirements clearly define obligations and the parties attached. The scope of the rule is also appropriately tailored to balance the desire for greater information provision and the administrative cost associated with the mandating of information provision.
- The draft rule would provide transparency and predictability of information provided to market participants and potential market participants regarding the closure of generation capacity. This information would, in turn, promote efficiency in the investment in and operation of generation capacity and demand response in the NEM because it would provide market participants a clearer expectation of future generation capacity and how best to respond/adapt to changes. The draft rule, with amendments, is therefore likely to improve the price, reliability and security of supply of electricity and the reliability and security of the national electricity system in the long term interests of consumers.

3 CONSIDERATION OF THE DRAFT RULE

This chapter outlines issues raised in the rule change. There is a section on each issue that outlines the proponent's view of the issue, the views of stakeholders in submissions, and the Commission's assessment of the issue:

- Nature of the obligations (section 3.1)
- Size threshold (section 3.2)
- Appropriate notice period (section 3.3)
- Definition of closure (section 3.4)
- Compliance and penalties (section 3.5)
- Provision to waive notice (section 3.6)
- Proposed change to EAAP (section 3.7)
- Implementation and transitional arrangements (section 3.8).

3.1 Nature of the obligations

3.1.1

Proponent's view

The proponent references Finkel's approach, which was to require:

- large generators (that pose issues for reliability) to provide at least three years notice of their intention to close
- AEMO to maintain and publish long term expected closure dates for large generators.

To implement it, the rule change focusses on providing more *information* to market participants about each participant's decisions to close generating stations and units. The rule change request would require scheduled generators and semi-scheduled generators to provide AEMO with:

- expected closure years when they register (new) generating units
- information about closure dates as part of the MT PASA process
- at least three years notice of a decision to terminate the registration of a generating unit.

In addition, AEMO would be required to maintain and publish a list of expected closure dates for all scheduled and semi-scheduled generating units and take account of them as part of the MT PASA and ESOO processes.

3.1.2

Stakeholders' views

In the consultation paper, stakeholders were asked about the processes under which participants should notify AEMO of their closure intentions and on the enhancements to AEMO's reporting requirements. Six stakeholders commented on this subject. All of them supported increasing the information being provided to the market about closure decisions by generators.

Snowy Hydro queried whether large loads should also be required to provide notice of closure.¹⁹

AGL raised the complication of the interaction of expiry dates, built into various other licenses and authorities, with the initial notice of a generator's intended closure upon registration and the requirement to provide three years notice of closure.²⁰ It wanted the rule drafting to ensure that, despite these interactions, the closure date notified to AEMO would still accurately reflect the actual closure date of the generator.

Also, the unions (ETU, ASU, ACTU, and CFMEU) noted the examples of sudden closure (Northern and Hazelwood power stations) that demonstrated to them the disruptive impacts on workers and the community. The ACTU urged the AEMC to use the rule change as a vehicle "to engage in urgent actions to start to plan to address just transition within the energy sector".²¹ Similarly, the ETU recommended the AEMC ensure any rule change incorporate provision for a "Just Transition" for energy industry workers and their communities.²²

3.1.3

Draft assessment

The Commission agrees with stakeholders that it would be useful for generators to provide information to the market about their intention to close generating units or stations. This is because information about the exit of sources of supply is important information for any well-functioning market. Greater transparency resulting from additional reporting requirements should make it easier for market participants to examine trends and plan for the future, thereby contributing to more informed and efficient decision making.

The Commission acknowledges the difficulty in being precise when it comes time to move from the window provided by the expected closure year to a specific closure date three years in advance.

The Commission has considered Snowy Hydro's suggestion to include loads in the rule change. However, the rule change request was focussed on requiring only generators to provide notice of their closure and so the scope of the rule change does not extend to load. The Commission also believes that if the rule was extended to include loads, it would have little effect as the only large loads on AEMO's register of participants are one aluminium smelter, three hydro pumps and two battery reserves.

The Commission acknowledges AGL's concern about the interaction of licence dates. Despite the expiry dates of their various licences, the Commission expects a closure date notified by generators to be based on their reasonable expectation of when they expect to permanently cease generating electricity from a generating unit or station. Therefore, there is no need for the rule drafting to stipulate that the closure date be no later than the expiry of a generator's licence or authority to generate.

19 Snowy Hydro, Submission to the consultation paper, p. 3.

20 AGL, Submission to the consultation paper, pp. 1-2.

21 ACTU, Submission to the consultation paper, p. 4.

22 ETU, Submission to the consultation paper, p. 6.

The Commission does not consider it would be reasonable for generators to specify closure dates to match the expiry of licences if there is a reasonable expectation that an extension of a licence (or a new licence) will be granted.

However, the circumstances of each generating unit and station may change over time. For instance, toward the end of a station's life, while it may be reasonably outside of its control, it may be reasonably foreseeable that a generating unit or station will be refused a new licence or be subject to expensive conditions, which could force its closure.

On the other hand, if a licensing condition is the catalyst for bringing the closure date of a generator forward, necessitating notice to be given within the required three year period, early closure may be permitted if the event was beyond the generator's reasonable control and was reasonably unforeseeable.

In relation to the submissions from the unions, the Commission acknowledges the importance of the unions' concern regarding providing a satisfactory transition for communities and employees when generators decide to close a power station. While these matters are outside the Commission's remit, the Commission considers the provision of three year notices of closure to the market will provide Governments and other stakeholders advance notice to address transitional issues of concern to employees and affected communities.

3.2 Size threshold

3.2.1 Proponent's view

The proponent proposed that the obligations should apply to scheduled and semi-scheduled generators. This means the proposed obligations would not apply to non-scheduled generators as defined in clause 2.2.3 - that is, generating units with a nameplate rating less than 30 MW, and which is primarily for local use or unable to participate in central dispatch per rule 3.8 (the AEMO dispatch process).

3.2.2 Stakeholders' views

In the consultation paper, stakeholders were asked what size threshold should apply to the requirement to provide AEMO three years notice of closure. Six stakeholders commented.

Energy Networks Australia²³ and the Investor Group on Climate Change (IGCC) agreed with the size threshold implied in the drafting of the rule change. The IGCC said:²⁴

The definition of a 'scheduled' and 'semi-scheduled' generator units [are] already contained within the National Electricity Rules, and as recommended by the proposed rule, provides a suitable, and readily understood threshold for requirements for providing notice of closure. IGCC supports the application of these categories as a suitable threshold for notice of closure requirements.

²³ Energy Networks Australia, Submission to the consultation paper, p. 4.

²⁴ IGCC, Submission to the consultation paper, p. 5.

AEMO suggested an explicit threshold of 30 MW be adopted to extend the obligation to non-scheduled generators above that threshold. It argued that this “is a well understood and accepted threshold in the existing registration framework”.²⁵

Meridian Energy proposed the requirement apply to generators making decisions to close generating units that have a capacity in excess of 250 MW. According to Meridian Energy:²⁶

This level would ensure that notice is provided by large generators whose closure without notice would have the potential to cause significant impacts on the market and the achievement of system reliability objectives while avoiding imposing unnecessary cost and burdens on smaller generators whose unexpected closure is unlikely to have such impacts.

In contrast, the Department of the Environment and Energy of the Commonwealth Government (DoEE) noted that generators are required to be scheduled or semi-scheduled because they are large enough to have a significant impact on the security and reliability of the electricity system and on outcomes in the wholesale market.²⁷ It argued that, since rapid retirement of scheduled and semi-scheduled generators may have similar impacts, a minimum notification period for closure of these generators is appropriate.

Similarly, the Department of the Premier and Cabinet of the South Australian Government noted that the generation fleet in South Australia ranged in capacity from 21 - 800 MW, while new developments tend to be in the lower half of this range.²⁸ It suggested the proponent’s size threshold may be appropriate so it could cover several generators being retired in close succession and for the simplicity and comprehensiveness it provides for forecasting purposes.

3.2.3

Draft assessment

The Commission has considered the appropriate size threshold to apply to the notice of closure.

The Finkel Panel did not define how large a generator should be to be captured by its recommendation. However, it indicated that a large generator was one “whose retirement could pose an issue for reliability”. It went on to note that all types of large-scale generation should be covered, including coal, gas, hydro, wind and solar.

The proponent has selected a size threshold that is defined by reference to the registration categories of scheduled and semi-scheduled generation. As noted above, the threshold defined in clauses 2.2.2 and 2.2.7 of the NER is 30 MW. Linking the size threshold to these registration categories is administratively simple and seamlessly fits into existing obligations on generators with regard to registration and the PASA process. The proponent and the DoEE support the argument that the obligation should be applied to all scheduled or semi-scheduled generators because they have been deemed to be of a size that it is possible they

²⁵ AEMO, Submission to the consultation paper, p. 3.

²⁶ Meridian Energy, Submission to the consultation paper, p. 1.

²⁷ DoEE, Submission to the consultation paper, p. 2.

²⁸ Department of Premier and Cabinet of the South Australian Government, Submission to the consultation paper, p. 2.

can have a significant impact on the security and reliability of the electricity system and on outcomes in the wholesale market.

AEMO's suggestion to specify an explicit 30 MW threshold is less administratively simple as it would impose new obligations on non-scheduled generators to provide information to AEMO as part of the MT PASA process, something they do not do currently. Therefore, the Commission prefers to link the size threshold to registration categories, rather than hard-wiring a particular size threshold in the NER. This allows more flexibility in the use of this mechanism as the market transitions.

The Commission has also considered Meridian Energy's suggestion as whether or not to impose the obligation only on those generators that are over 250 MW in size. The Commission is of the view that this size threshold would not capture all closures that would pose a "threat" to reliability.

The Commission has undertaken some analysis on the size of units and stations in each region of the NEM (see Appendix B). The charts indicate which and how many stations or units would be required to comply with the notice of closure obligation depending on the size threshold set. They show that it is not only difficult to determine the appropriate size threshold, they also illustrate the difficulty in setting one threshold for the NEM. The threshold that might prompt reliability concerns in New South Wales is likely be significantly higher than the threshold that might be appropriate in South Australia.

Also, a particular size threshold appropriate now may not be appropriate as the market transitions in the future.

On balance, the Commission has decided to require scheduled and semi-scheduled generators to provide AEMO three years notice of closure. The requirement would capture the closure of generating units:

- with a generating capacity of 30 MW or more
- with generating capacities below 30 MW if there are multiple generating units at a connection point and the sum of their individual capacities is 30 MW or more.

As the Department of Premier and Cabinet of South Australia noted, the requirement to provide notice for each generating unit of a scheduled generator is necessary to prevent a generator circumventing the notice of closure requirement by notifying AEMO of consecutive closure of multiple generating units, perhaps as little as days apart.

3.3

Appropriate notice period

3.3.1

Proponent's view

The rule change request follows the Finkel Review recommendation for a minimum three years notice of closure.

In determining the length of notice required, the Finkel Panel suggested that three years provided an appropriate trade-off between providing additional certainty for new investors and decision making flexibility for generators. It considered a longer period might provide better planning information for those looking to enter the market, but may place an

unrealistic expectation of foresight on existing generators. At a minimum, the Finkel Panel considered the notice period should give enough time for new generation capacity to enter the market.

3.3.2

Stakeholders' views

In the consultation paper, the Commission asked for stakeholder views on:

- if three years notice strikes the right balance between providing investors with enough notice and generators enough decision making flexibility
- if not three years, what should the appropriate minimum notice period be and why.

Ten stakeholders responded. While some had reservations, all but one accepted the Finkel Panel's recommended notice period of three years.

The IGCC²⁹, Origin³⁰ and the DoEE³¹ all supported three years as an appropriate notice period without reservation.

AGL said:³²

As noted in the consultation paper, AGL has provided 7 years notice of the closure of Liddell Power Station. Additionally, as part of seeking an extension to the relevant mining license for Loy Yang A Power Station, we provided a 5-year notice of closure to the Victorian Government. We note that these decisions to provide notice were based on broader considerations than those posed in this rule change and thus we would view a 3-year minimum as being sufficient for the purpose of providing certainty to the market.

The ACTU was concerned that the practice of generators providing notice of closure may not result in the result contemplated by the rule change.³³ The ETU had similar concerns.³⁴ The ACTU provided the example of a generator that notifies AEMO of an intended closure date of three years from today. Subsequent to this notification, at the end of year two, the generator notifies new closure date of one year later (four years from original notification). The ACTU suggested this might be compliant with the proposed rule change as the notification is greater than three years.

Energy Networks Australia³⁵ and Ausnet Services³⁶ noted that three years notice may not always be enough for any new interconnectors or significant infrastructure development, which could be precipitated by the closure of a generating station.

29 IGCC, Submission to the consultation paper, pp. 4-5.

30 Origin, Submission to the consultation paper, p. 2.

31 DoEE, Submission to the consultation paper, p. 2.

32 AGL, Submission to the consultation paper, p. 1.

33 ACTU, Submission to the consultation paper, p. 2.

34 ETU, Submission to the consultation paper, p. 5.

35 Energy Networks Australia, Submission to the consultation paper, p. 4.

36 Ausnet Services, Submission to the consultation paper, p. 2.

The Australian Energy Council (AEC) and ERM Power³⁷ did not support the condition in the proposed rule that expected that a closure date should be no later than the expiry date of a generator's licence or authority to generate. The AEC said:³⁸

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 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.

ERM Power also suggested there was a strong case to extend the minimum notice of closure requirement to four years in order to complement the proposed National Energy Guarantee's Procurer of Last Resort function.³⁹ It felt that doubling the current MT PASA timeframe to a four year period, as opposed to the three year period as proposed in the rule change, would provide enduring benefits to the NEM compared to existing information provisions. On the subject of costs, ERM Power said:

From a generator's perspective, the requirement to extend data submissions to the MT PASA to 4 years as opposed to the current 2 year, or proposed 3 year period, will not be onerous. Maintenance of generating plant is planned over a long time horizon, generally in excess of ERM Power's proposed 4 year period. As such, the initial requirement to advise an additional 12 months of outage plans compared to the 3 years proposed in the rule change request represents an incremental one-off change to the data submission process and an incremental change to maintain changes in outage timing when and if this occurs. As the MT PASA submission and assessment IT systems would require a change to implement the proposed rule change's shift to 3 years, extending this to 4 years would result in minimal, if any, additional costs.

3.3.3

Draft assessment

The feedback from the majority of stakeholders that specifically commented on the notice period all supported the proponent's proposal that generators should provide at least three years notice of closure. The Commission agrees with this assessment and so generators will be required to provide at least three years notice of their intention to close. This will provide market participants with sufficient notice to invest in new generation to replace closing generation. This timeframe is also consistent with the trigger period for the reliability obligation under the proposed National Energy Guarantee (Guarantee).⁴⁰

³⁷ ERM Power, Submission to the consultation paper, p. 2.

³⁸ AEC, Submission to the consultation paper, pp. 1-2.

³⁹ ERM Power, Submission to the consultation paper, pp. 1-2.

⁴⁰ COAG Energy Council website, Energy Security Board – Draft Detailed Design of the National Energy Guarantee: Consultation Paper, <https://prod-energycouncil.energy.slicedtech.com.au/publications/energy-security-board-%E2%80%93-draft-detailed-design-national-energy-guarantee-consultation>.

We agree with the ACTU's suggestion that the drafting be clarified so that three years notice applies to initial notice if the generator wishes to alter its previously notified closure date.

The Commission's view is that extending MT PASA, as suggested by ERM Power, is outside the scope of the rule change and is convinced by other submissions that three years notice is sufficient time for the market to respond.

3.4 Definition of closure

3.4.1 Proponent's view

The rule change request did not define closure but tied the notice of closure obligation to the requirement in rule 2.10.1(a) for a person to notify AEMO in writing that "it wishes to cease to be registered in any category of *Registered Participant* or that it wishes to terminate any of its classifications of *loads, generating units, or network services*".

The proposed rule change would tie the notice of closure obligation to any request from a scheduled or semi-scheduled generator for an existing classification of a generating unit to be terminated.

3.4.2 Stakeholders' views

Ten stakeholders commented on this subject and they expressed a range of views.

AEMO was interested in the Commission exploring the definition of closure and obligations that should apply in respect of other decisions such as mothballing or partial retirement.⁴¹ The ACTU felt this was particularly important with respect to the scenario of mothballing:⁴²

As you would be aware, Swanbank E Power Station closed in 2014 and was re-commissioned for operation in late 2017, after three years being mothballed. How the three-year closure rule applies in these types of circumstances, both prior to any mothballing or temporary closure, and afterwards must be clearly understood.

The ASU was also concerned about the treatment of mothballing but also wanted to know what would happen if a generator gave notice of closure due to market indicators only to find itself operating profitably when it was supposed to close.⁴³

Some stakeholders defined closure as having a particular permanence:

- AusNet Services considered closure should be defined to mean an intended strategy of non-participation in the energy market on an enduring basis.⁴⁴
- The DoEE suggested "the normal understanding of the term 'closure' should be used in the context of this rule change, that is, capacity that will be entirely withdrawn from the

41 AEMO, Submission to the consultation paper, p. 3.

42 ACTU, Submission to the consultation paper, pp. 2-3.

43 ASU, Submission to the consultation paper, p. 2.

44 Ausnet Services, Submission to the consultation paper, p. 2.

market and not able to return in the event of market changes, directions from AEMO or other circumstances.”⁴⁵

- In Origin’s view, “closed” should describe a generating unit/station that is unable to be recalled and operate.⁴⁶

Similarly, AGL felt the main element the definition should capture is a measure of certainty:⁴⁷

In order to provide the market with appropriate incentives to replace lost capacity, an accurate reflection of the withdrawal of plant is necessary. It would be a sub-optimal outcome if a closure would potentially trigger new investment, only for uncertainty over the actual exit of that generator to exist.

Energy Networks Australia asked for clear guidance on some specific circumstance, such as, a generator that had provided three years notice of closure that limited or stopped making generation bids entirely for a significant period of time before the closure date to avoid bringing a closure date forward.⁴⁸ The ETU raised similar questions.⁴⁹ Snowy Hydro asked if the rule change was equivalent to a mandatory supply requirement.⁵⁰

The Department of the Premier and Cabinet of the South Australian Government suggested the Commission may wish to consider how mothballing might be incorporated or whether the plant availability reporting obligations were sufficient.⁵¹ On the other hand, Energy Networks Australia did not want the rules to be prescribed in fashion that would obligate generators to continue generating until the expected closure date if it is making losses and early closure is the best option.

Finally, AGL was concerned accountability could be confused where the registering entity and operator may not necessarily be the owner of the relevant plant. For instance, a registered participant operating a generator on behalf of the owner of that facility may be informed with less than the required notice about that owner deciding to close that station.

3.4.3

Draft assessment

The Commission has decided to adopt the drafting provided in the rule change request because it agrees with the views of stakeholders and the proponent that closure is about permanently withdrawing the ability to supply electricity to the market from a registered generating unit. However, on the suggestion of AEMO, the proposed drafting has been altered to remove any impression that the requirement to terminate registration of a generating unit is voluntary. Under clause 2.10.1(a)(2), a person who is a scheduled generator or semi-scheduled *must* (not may) notify AEMO in writing if it wishes to terminate any of its classifications of generating units.

⁴⁵ DoEE, Submission to the consultation paper, p. 3.

⁴⁶ Origin, Submission to the consultation paper, p. 2.

⁴⁷ AGL, Submission to the consultation paper, p. 2.

⁴⁸ Energy Networks Australia, Submission to the consultation paper, p. 3.

⁴⁹ ETU, Submission to the consultation paper, p. 5.

⁵⁰ Snowy Hydro, Submission to the consultation paper, pp. 2-3.

⁵¹ Department of the Premier and Cabinet of the South Australian Government, Submission to the consultation paper, p. 2.

The rule drafting ties the decision to close a generating unit or station to a requirement for a generator to notify AEMO of the date it wishes to terminate the classification of a generating unit and (in the case of a market generator) cease to supply electricity or trade directly in the market. After discussions with AEMO, the Commission understands that AEMO currently becomes aware a generating unit or station is unavailable from the information disclosure obligations under the ESOO and PASA provisions in the rules. Generators do not normally notify AEMO of an intention to terminate a classification if there is a chance the generating unit might resume generating at a later date. Doing so would require the generator to restart the classification process, which might require retesting and would revoke any grandfathering of technical requirements/performance standards.

The Commission has decided not to expand the obligation to provide notice of decisions to mothball or otherwise temporarily withdraw generating units for two reasons:

1. it would change the voluntary nature of generator engagement with the market
2. decisions to temporarily withdraw generating capacity are reversible if market conditions become more favourable.

While the Commission expects market participants to continue to notify the market of these decisions through the ESOO and PASA provisions in the rules, the Commission agrees with the proponent and the Finkel Panel that the focus of the rule change is to provide market participants with an expectation of three years notice of decisions to permanently close large generating units.

The rule makes such a distinction because a decision by a generator to permanently close a power station or generating unit is generally based on major engineering considerations related to the end of life of the assets and so provides a distinctly more significant reliability threat, signal and expectation of action than a decision by a generator to temporarily withdraw. The rule change is designed not to discourage but to supplement the existing requirements for generators to continually notify AEMO of changes in generation availability.

When a generator withdraws generation temporarily, it is still obliged to provide AEMO with three years notice of closure. Other existing frameworks, like the PASA provisions in the rules, and AEMO's forecasting of necessary reserves, allow the reliability implications of such temporary withdrawals of capacity to be addressed.

For these reasons, the Commission is satisfied that the draft rule should concern itself with providing clear market expectations of the notice period expected when generators are considering only permanently withdrawing generation from the market.

We note AGL's concern about confusion of accountability when there are multiple parties (e.g. operator, owner, registered participant). The Commission is satisfied that the registered participant, (which includes registered intermediaries) is the correct party on which to place the obligation to provide notice of closure, and the expected closure year. Just as it is for other obligations in the rules, how notice of closure is handled between the parties in their commercial arrangements is a matter for them. Circumstances may transpire which could force the registered participant to provide AEMO less than three years notice of closure as a result of multiple party ownership or related issues. Such a notice would be permitted under

the draft rule if the circumstances causing an early notice were beyond the registered participant's reasonable control and where it could not have reasonably foreseen the occurrence of the event.

3.5 Compliance and penalties

3.5.1 Proponent's view

As noted in the first section of this chapter, the rule change request focusses on enhancing the information available to AEMO and the market in relation to generator closures.

The proposed rule (clause 2.10.1(c3)) would allow generators to notify AEMO of a closure date earlier than three years from the date of the notification date because "an event that is beyond the reasonable control of the relevant Generator has occurred and the occurrence of the event (or of an event of a similar kind) could not reasonably have been foreseen by the relevant Generator". The requirement for generators to notify AEMO of their intention to close would not be a civil penalty provision in the National Electricity (South Australia) Regulations. However, the rule change proposal for scheduled and semi-scheduled generator to notify AEMO of expected closure dates amend provisions of the Project Assessment of System Adequacy (rule 3.7), which already contain civil penalty provisions.

3.5.2 Stakeholders' views

In the consultation paper, we asked stakeholders if civil penalties should apply in relation to the proposed changes.

Five stakeholders responded and they held a range of views.

AGL suggested the imposition of a penalty based on an assessment of whether an unforeseen event is beyond the reasonable control of a generator would be problematic and could potentially deter investment.⁵² It argued that, once the provisions were in place, significant reputational damage would likely occur in the instance that a generator closed without providing the required notice.

AEMO suggested the notice obligation be distinct from registration provisions and could be subject to civil penalties, consistent with the Finkel Review recommendation that generators should provide a "binding notice of closure".⁵³

AusNet Services was uncertain the reporting obligation was readily enforceable.⁵⁴

The DoEE felt that civil penalties should apply where there is the potential for significant detriment to consumers, the operation of the market or the operation of the electricity system arising from a breach of a provision.⁵⁵ Given the potential for detriment from rapid retirement of generation, it suggested civil penalties were appropriate for breaches of these new provisions.

52 AGL, Submission to the consultation paper, p. 1.

53 AGL, Submission to the consultation paper, p. 1.

54 Ausnet Services, Submission to the consultation paper, p. 2.

55 DoEE, Submission to the consultation paper, p. 2.

Origin felt the existing compliance provisions should apply to the new rules.⁵⁶

3.5.3 Draft assessment

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

The Commission considers the obligation on the scheduled and semi-scheduled generators to provide three years notice of closure is important for the transparency, predictability, efficiency of investment in and reliability of generation capacity in the NEM. The Commission agrees with the DoEE that a civil penalty is appropriate to make up for the detriment that flows from generators providing inadequate notice of closure.

Therefore, in this draft rule, the Commission recommends that:

- proposed new clause 2.10.1(c1) in the NER requiring scheduled and semi-scheduled generators to specify the closure date, be classified as a civil penalty provision; and
- clause 3.7.2(d) of the rules to be amended by the draft rule, which is currently classified as a civil penalty provision under NER Schedule 1 of the National Electricity (South Australia) Regulations, continue to be classified as a civil penalty provision.

3.6 Provision to exempt generators from providing three years notice

3.6.1 Proponent's view

The rule change request provides that a closure date can be earlier than three years from the date the notice is given under proposed clause 2.10.1(c2), where an event beyond the reasonable control of the generator has occurred, and where the occurrence of the event could not reasonably have been foreseen by the generator.

3.6.2 Stakeholders' views

In the consultation paper, the Commission asked stakeholders if it was appropriate to provide exceptions to the requirement for a generator to provide three years notice in response to unforeseeable events beyond the reasonable control of the generator.

Eight stakeholders commented on this provision and all except the ETU supported it. The ETU felt the "beyond the reasonable control" exemption provisions of the rule change would create even greater uncertainty as to when a generator would actually close.⁵⁷

Several stakeholders suggested a greater degree of prescription but for opposing reasons. These stakeholders wanted more prescription to reduce the chance of ambiguity or manipulation of generators:

- The DoEE argued it was important for the provision to tightly define exceptions to prevent manipulation or gaming.⁵⁸ It suggested additional provisions could be added

⁵⁶ Origin, Submission to the consultation paper, p. 2.

⁵⁷ ETU, Submission to the consultation paper, p. 5.

⁵⁸ DoEE, Submission to the consultation paper, p. 2.

similar to the rebidding civil penalty provision (r. 3.8.22A), such that information about closure dates, including closure notifications, must not be false, misleading or likely to mislead. Breaches of these requirements should be subject to a civil penalty, with the AER using its powers to investigate a potential breach.

- The ACTU said it would like to see a definition of 'could not reasonably be foreseen' included.⁵⁹ For example, if that were meant to apply to a generator ceasing to function and closing due to a catastrophic weather event, act of war or similar, that would be very different to unforeseen changes in the financial circumstances of the generator owner or owners, as has occurred with Northern and Hazelwood power stations.

These stakeholders wanted more prescription to ensure generators were not unreasonably hamstrung from making commercial decisions:

- Origin Energy felt that, should the rule be applied in this form, "there is a significant risk that a generator may be required to operate even in circumstances where it is not commercially prudent to do so".⁶⁰ It felt it was "essential that Rule 2.10.1(c3) is revised to provide a greater level of prescription around how the phrases 'beyond the reasonable control' and 'not reasonably have been foreseen' could be interpreted". It supported the inclusion of the range of circumstances under which a closure notification date could be brought forward.
- The provision was welcomed by Snowy Hydro.⁶¹ However, it was concerned that the rule change clause does not go far enough to prevent generators incurring unnecessary costs because they could not bring a closure date forward.
- The AEC suggested the drafting should clarify, for the avoidance of doubt, that duties of directors under the Corporations Act 2001 (Cth) and other acts such as occupational health and safety and environmental protection acts should take priority over this National Electricity Rule.⁶²
- Similarly, ERM Power suggested that, 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.⁶³ Therefore, it recommended expanding the definition of unforeseen events beyond the reasonable control of the generator in Clause 2.10.1(c3) to include changes in circumstances which might not be able to be linked to a specific event, and consider directors' responsibilities under other Acts.

3.6.3

Draft assessment

The Commission acknowledges the concerns of these two opposing sets of stakeholders: those that wish to ensure the provision is tightly defined to prevent "manipulation or gaming"

59 ACTU, Submission to the consultation paper, p. 2.

60 Origin, Submission to the consultation paper, pp. 1-2.

61 Snowy Hydro, Submission to the consultation paper, p. 3.

62 AEC, Submission to the consultation paper, p. 1.

63 ERM Power, Submission to the consultation paper, p. 2.

and those that are concerned it is too tight to allow generators to provide less notice in appropriate circumstances where this is warranted.

Having considered both points of view, the Commission is of the view that the provision should remain as drafted for two reasons:

1. It is unlikely a list of exceptions could be complete or tightly defined such that it would have a better chance of eliminating manipulation
2. Consideration of directors' responsibilities under other Acts should be accommodated under the existing drafting of the provision. If it is reasonable to expect directors' other responsibilities and obligations will continue to keep the stations operationally and financially viable then the provision should apply after events cause directors to reach an expectation (reasonably held) that closure is necessary within three years.

In regard to ERM Power's concerns about progressive changes, the Commission's position is similar to its position on the interaction with other licences (see section 3.1.3). It acknowledges the circumstances of each generating unit and station may change over time. Generators will have to monitor those circumstances and events likely to bring forward the end of its life.

3.7 Proposed change to EAAP

3.7.1

Proponent's view

The proponent included a proposed change to the EAAP process (clause 3.7C(k)) to give the Reliability Panel the discretion to identify its own specific energy constraint scenarios for AEMO to study under the EAAP. This would broaden the nature of input AEMO receives in considering possible energy constraint scenarios.

3.7.2

Stakeholders' views

In the consultation paper, the Commission asked stakeholders to comment on this provision. Two stakeholders commented on the rule change proposal:

- Energy Networks Australia supported the change.⁶⁴ No reasoning was provided.
- AEMO recommended the proposed amendment to clause 3.7C(k) be modified to have AEMO consult with the Reliability Panel when developing scenarios.⁶⁵ This would be consistent with the approach specified in clause 3.9.3D(c) of the Rules, which AEMO is required to follow to obtain input from the Reliability Panel when developing the Reliability Standard Implementation Guidelines (RSIG) – that approach has proven to be both practical and beneficial to outcomes, while clearly leaving accountability for managing the RSIG (and in this case, EAAP) with AEMO.

⁶⁴ Energy Networks Australia, Submission to the consultation paper, p. 5.

⁶⁵ AEMO, Submission to the consultation paper, p. 3.

3.7.3 **Draft assessment**

The Commission's view is that AEMO should be required to include any scenarios the Reliability Panel identifies at the time when AEMO is defining scenarios for study in preparing the EAAP. This provides AEMO the benefit of the Reliability Panel's input without forcing it to be included as part of the formal consultation procedures.

3.8 **Implementation and transitional arrangements**

If the draft rule were to be made, AEMO and the scheduled and semi-scheduled generators will need time to implement processes to be able to comply with the new provisions of the NER. This is likely to require a final rule, if made, to include specific clauses on the deadline for meeting obligations in the rule.

3.8.1 **Proponent's view**

The proponent did not include any commentary on implementation and transitional arrangements in its proposed rule change request or rule drafting.

3.8.2 **Stakeholders' views**

Two stakeholders commented on implementation or transitional arrangements for existing generators.

AEMO also considered how best to store expected closure years and closure dates and suggested maintaining the register of expected closure dates through generating unit bid and offer validation data.⁶⁶ It reasoned that this would minimise implementation and administrative costs by avoiding the need for modifications to PASA and associated processes for intermittent generators, noting that the MT PASA process only covers a two-year horizon, which is shorter than the proposed minimum three year notice required. However, after considering this further, AEMO have since indicated to us that MT PASA may not be the best platform for storing expected closure years and closure dates.

AEMO suggested the requirement on new generators at the time of registration (proposed new clause 2.2.1(e)(2A)) could be supplemented by a transitional provision to require the provision of anticipated closure dates for existing generating units.⁶⁷

The Department of the Premier and Cabinet for the South Australian Government also supported a transition provision to capture all existing generation so the drafting requiring generators to notify AEMO only if the expected closure year changes could fulfil its intention.

3.8.3 **Draft assessment**

The draft rule does not include draft transitional provisions. However, the Commission acknowledges that stakeholders will require some time to prepare for the introduction of new requirements, and the application of the draft rule requirements to new activities and

⁶⁶ Ibid.

⁶⁷ AEMO, Submission to the consultation paper, pg. 3.

information. AEMO will also be required to update its registration and ESOO/PASA administration processes to reflect the new requirements in the draft rule.

Consequently, the Commission, if a rule is made in November 2018, is considering allowing scheduled and semi-scheduled generators a period of six months, from the date the rule is implemented, for generators to notify AEMO of:

- expected closure years for existing scheduled and semi-scheduled generating units
- closure dates for those scheduled and semi-scheduled generating units that are to be closed within 3 years of the end of the 6 month period, without requiring the closure to comply with the beyond reasonable doubt/foreseeable requirement.

ABBREVIATIONS

AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
Commission	See AEMC
Guarantee	National Energy Guarantee
MCE	Ministerial Council on Energy
NEL	National Electricity Law
NEO	National electricity objective
NERL	National Energy Retail Law
NER	National Electricity Rules
NERO	National energy retail objective
NGL	National Gas Law
NGO	National gas objective

A LEGAL REQUIREMENTS UNDER THE NEL

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

A.1 Draft rule determination

In accordance with s. 99 of the NEL the Commission has made this draft rule determination in relation to the rule proposed by the Chair of the Energy Security Board, Dr Kerry Schott AO.

The Commission's reasons for making this draft rule determination are set out in sections 2 and 3 of this draft rule determination.

A copy of the draft rule is attached to and published with this draft rule determination. Its key features are described in sections 2.4 and 3.

A.2 Power to make the rule

The Commission is satisfied that the draft rule falls within the subject matter about which the Commission may make rules. The draft rule falls within s. 34 of the NEL as it relates to:

- regulating the operation of the national electricity system for the purposes of the safety, security and reliability of that system (s. 34(1)(a)(ii))
- the activities of persons (including registered participants) participating in the national electricity market or involved in the operation of the national electricity market (s. 34(1)(a)(iii)).

Further, the draft rule falls within the matters set out in Schedule 1, Item 11 to the NEL as it relates to the operation of generating systems in the NEM

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.⁶⁸

⁶⁸ Under s. [33 of the NEL/ 73 of the NGL/ 225 of the NERL] 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.

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.⁶⁹ The draft rule is compatible with AEMO's declared network functions because it does not affect the performance of the functions.

A.4 Civil penalties

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

The Commission's draft rule amends clause 3.7.2(d) of the NER, which is currently classified as a civil penalty provision under NER Schedule 1 of the National Electricity (South Australia) Regulations. The Commission considers that this clause should continue to be classified as a civil penalty provision and therefore does not propose to recommend any change to their classification to the COAG Energy Council.

The Commission's draft rule includes the addition of clause 2.10.1(c1) and (c2) into the NER, requiring scheduled and semi-scheduled generators to specify the closure date, being a date no earlier than three years from the date the closure date is provided. The Commission considers that these new provisions should be classified as a civil penalty provision for the reasons presented in the draft assessment in section 3.5.

A.5 Conduct provisions

The draft 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 COAG Energy Council that any of the proposed amendments made by the draft rule be classified as conduct provisions.

⁶⁹ Section 91(8) of the NEL/ 295(4) of the NGL.

B FIGURES EXAMINING EFFECT OF VARYING THE SIZE THRESHOLD

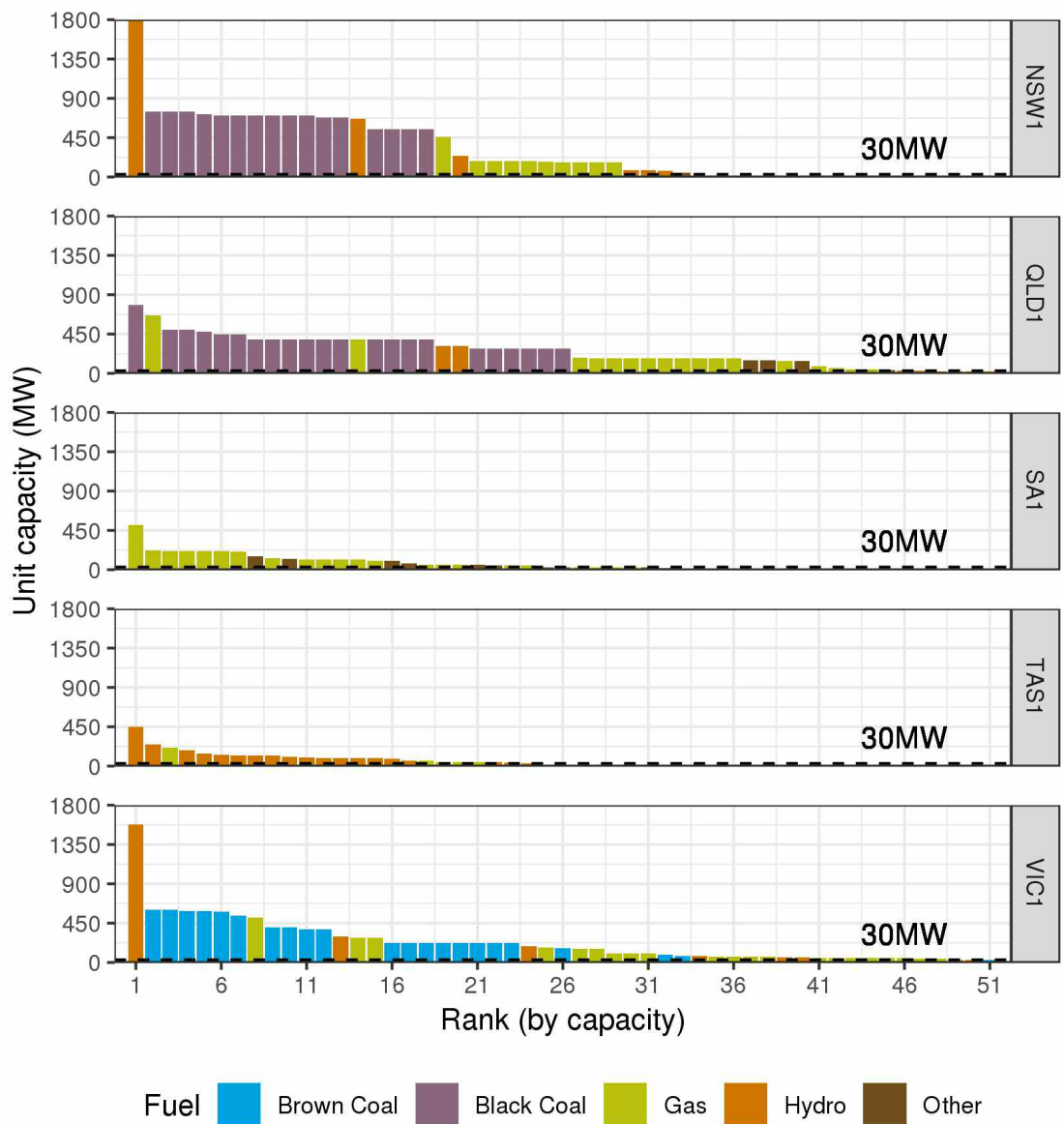
In this section, we provide an indication of the number and size of scheduled and semi-scheduled units in the NEM.

In particular, we are interested in highlighting how a particular capacity threshold affects the number and type of generating units caught by the draft rule change. In the charts below, we have indicated a threshold of 30MW, which corresponds to a nominal threshold in the rules for being scheduled or semi-scheduled.

In Figure C.1, we show scheduled and semi-scheduled dispatch units in each region, in order of decreasing generating capacity. The colour of each bar indicates the fuel used by that dispatch unit.

A dispatch unit is equal either to the generating capacity of a generating unit or station. The largest dispatch unit in New South Wales, for instance, is Tumut 3 power station.

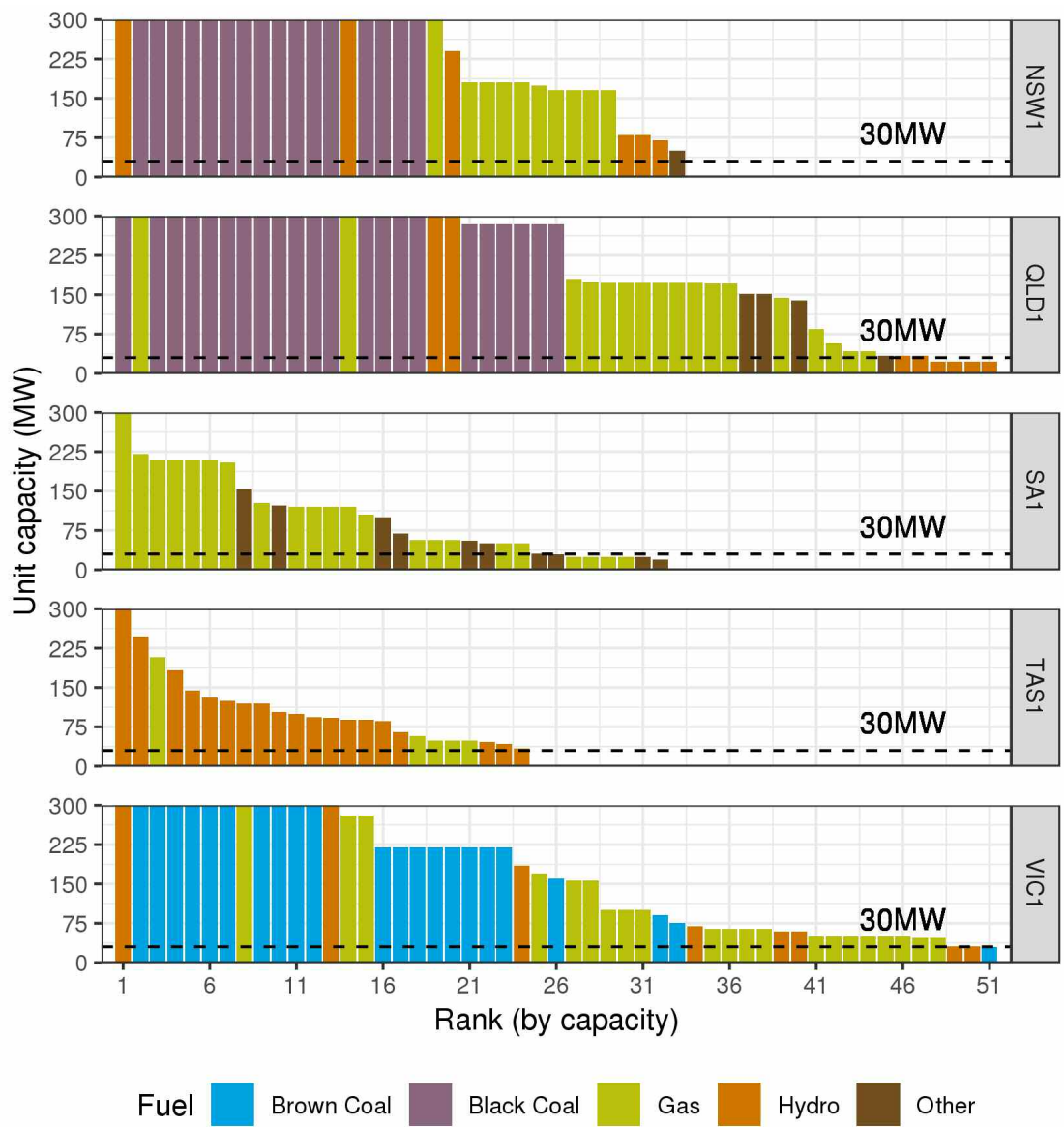
Figure B.1: Dispatch units by size, fuel type and region



Source: AEMC analysis based on MMS data

Due to the size of some units, it is worthwhile highlighting detail from the chart above that shows unit sizes 300 MW or lower.

Figure B.2: Dispatch units by size, fuel type and region (units below 300 MW)



Source: AEMC analysis based on MMS data