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RULE

Australian Energy Market Commission

**CONSULTATION PAPER**

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

**PROPOSER**

AEMO

3 SEPTEMBER 2020

## 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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# 1 INTRODUCTION

On 21 August 2020, the Australian Energy Market Operator (AEMO) submitted a rule change request to the Australian Energy Market Commission (AEMC or Commission) which seeks to address a number of issues relating to timing and uncertainty in administrative arrangements for the budgeting and charging of AEMO's national transmission planner (NTP) costs to transmission network service providers (TNSPs). AEMO also requested that the AEMC consider the proposal as a non-controversial rule under section 96 of the National Electricity Law (NEL).

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

This consultation paper has been prepared to facilitate public consultation on the rule change request and to seek stakeholder submissions.

This paper:

- provides background to the rule change request
- summarises the issues and solutions outlined in the rule change request and identifies a number of questions related to these
- outlines the process for making submissions.

## 1.1 Background

At the COAG Energy Council meeting on 20 March 2020, the Energy Security Board (ESB) presented a set of changes to the National Electricity Rules (NER or Rules) to convert the Integrated System Plan (ISP) into an actionable strategic plan. Ministers agreed to these rule changes — referred to as the Integrated System Planning Rule (ISP Rules)<sup>1</sup> — on the same day. The ISP Rules were subsequently made by the South Australian Energy Minister on 9 April 2020 and commenced on 1 July 2020.<sup>2</sup>

Prior to the ISP Rules commencing, the costs incurred by AEMO in providing NTP services (referred to in the Rules as 'NTP function fees') were recovered from Market Customers (retailers) under AEMO's existing participant fee determination.<sup>3</sup> However, the actionable ISP framework recommended by the ESB (and reflected in the ISP Rules) changed this arrangement such that NTP function fees would be allocated to TNSPs (rather than Market Customers) from 1 July 2020.<sup>4</sup> The intention was that AEMO would also undertake a

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<sup>1</sup> The National Electricity Amendment (Integrated System Planning) Rule 2020.

<sup>2</sup> The ESB undertook this Rule change process in accordance with section 90F of the NEL.

<sup>3</sup> The current structure of participant fees related to AEMO's electricity market functions, including in relation to its NTP functions, was applied from 1 July 2016. The duration of the current fee determination is five years.

<sup>4</sup> This change was captured through an amendment to clause 2.11.1(c)(5A) of the NER to allocate the NTP function fees incurred by AEMO to TNSPs. Amendments were also made to Chapter 6A to permit TNSPs to recover these costs from end use customers through transmission prices. We note that the amendment to clause 6A.23.3(e)(6) refers to the 'NTP functions fees advised to the Coordinating Network Service Provider in accordance with clause 2.11.'

consultation process to determine how the NTP function fees would be allocated to individual TNSPs and that this new arrangement would be reflected in AEMO's participant fee determination.<sup>5</sup>

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

Energy Networks Australia (ENA) and its TNSP members have been working with AEMO to find a solution to the implementation gap that was not addressed in the ISP Rules. The ENA has provided a letter of support for this rule change request which can be found on the project page for the rule change request.<sup>6</sup>

## 1.2

### Treatment as a non-controversial rule

AEMO has requested that the rule change request be treated as a non-controversial Rule in accordance with section 96 of the NEL. AEMO considers that the proposed changes will not have a significant effect on the NEM and are of a non-controversial nature.<sup>7</sup>

The Commission considers that the proposed rule meets the definition of a non-controversial Rule under section 87 of the NEL. The rule change request is narrow in scope and does not seek to change existing policy or to introduce new policy relating to the ISP Rule. In addition, the proposed changes are largely of an administrative nature, designed to facilitate the original policy intent of the ISP Rule. Further, if implemented, the Rule would be unlikely to result in material additional costs being recovered from TNSPs (and ultimately consumers).

Rule change requests that are considered to be non-controversial may be processed under an expedited (faster) process under which there is only one round of consultation and the AEMC is required to publish its final rule determination within eight weeks of commencing the rule change process.<sup>8</sup>

The Commission has decided to use an expedited process to consider this rule change request provided that it does not receive any valid written requests not to use the expedited process by 17 September 2020. To be valid, a written request not to use the expedited process should set out the reasons why the rule change request will have a significant impact on the national electricity market.

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5 See: Energy Security Board, COAG Energy Council Converting the integrated system plan into action, Decision paper, March 2020, p.17.

6 See: [www.aemc.gov.au](http://www.aemc.gov.au)

7 AEMO considers the proposed changes are consequential to the changes made in the ISP Rule and are required to fully implement its intent. AEMO also notes that the necessary financing and carry costs provided for in the amendments are negligible on a per customer basis. See: AEMO rule change request, pp. 2-3, 9.

8 The AEMC has published a notice under sections 95 and 96 of the NEL to commence and assess this rule change request as a non-controversial rule.

## 1.3

### Key dates

Given the tightly defined scope of the rule change request and the background information provided by AEMO, this consultation paper is brief. Nevertheless, in order to assess the rule change request, we are seeking feedback from stakeholders on the specific issues and solutions identified by AEMO in relation to the arrangements for allocating NTP function fees to TNSPs. The issues, solutions and related questions are set out in the next chapter.

The key dates for stakeholders in this process are as follows:

- Commencement of this rule change process and publication of this consultation paper: 3 September 2020
- Written requests not to use the expedited process to be received by: 17 September 2020
- Submissions to the consultation paper to be received by: 1 October 2020
- Publication of the final rule determination and final rule (if made): 29 October 2020

## 2 ISSUES FOR CONSULTATION

This chapter provides an overview of the issues and solutions identified in the rule change request in relation to the arrangement supporting the allocation of NTP function fees to TNSPs. It aims to facilitate stakeholder feedback so that the Commission can assess the rule change request against its assessment criteria. This chapter sets out:

- a summary of the key issues, including the solutions proposed by AEMO to address the key issues, as set out in the rule change request, and
- our proposed framework for assessing the rule change request.

This chapter also includes a number of questions which stakeholders may wish to consider when preparing their submissions to this consultation paper.

### 2.1 Summary of issues and solutions identified by AEMO in the rule change request

The rule change request identifies a number of omissions and gaps in the Rules which are preventing the intended policy intent of the ISP Rules in relation to the recovery of NTP function fees from being realised.

Specifically, the rule change request identifies four key issues related to the budgeting and charging of NTP function fees by AEMO to TNSPs:<sup>9</sup>

1. The Rules do not provide for AEMO to recover in 2020-2021 the NTP function fees it expects to incur in 2020-21 (or which AEMO has already incurred in 2020-21 or in previous financial years but not yet recovered).
2. The Rules do not provide for TNSPs to include any NTP function fees in their 2020-21 transmission prices in Queensland, New South Wales, South Australia and Tasmania.
3. There is a misalignment in the timing of AEMO's budgeting process and the publication of TNSPs' transmission pricing.
4. There is uncertainty in the administrative arrangements around the recovery of NTP function fees in Victoria due to AEMO acting as both national transmission planner and TNSP.

The rule change request also proposes that NTP function fees be allocated to Co-ordinating Network Service Providers (CNSPs), rather than TNSPs, given the current role performed by CNSPs in allocating the aggregate annual revenue requirement and setting and publishing transmission prices for TNSPs in the relevant region.<sup>10</sup>

The issues and associated solutions are grouped into the following three areas, each discussed in turn below:

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

<sup>9</sup> AEMO rule change request, p. 3.

<sup>10</sup> If prescribed transmission services within a region are provided by more than one TNSP, the appointing TNSP within that region must appoint a Co-ordinating Network Service Provider for that region. See NER clause 6A.29.1.

- Alignment of AEMO budgeting process and TNSPs' transmission pricing processes.
- Recovery of NTP function fees in Victoria.

### 2.1.1

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

##### Background

The ISP Rules commenced on 1 July 2020. The final Rule included an amendment to clause 2.11.1(c)(5A) which requires AEMO to allocate any costs associated with its NTP functions to TNSPs (rather than to Market Customers). No date was included in the new clause and there was no transitional rule, which means that NTP function fees must be allocated to TNSPs from 1 July 2020 (the date the Rule commenced).

However, to achieve this outcome, several corresponding actions are needed:

- AEMO must amend its existing Participant Fee Structure to reflect this amended clause (that is, the reallocation of NTP function fees from Market Customers to TNSPs), and
- AEMO must notify TNSPs of the budgeted NTP function fees expected to be incurred in a given financial year in time for TNSPs to include those estimated fees in their transmission prices for that financial year.

##### Issue

Given that the ISP Rules were presented to and approved by the former COAG Energy Council on 20 March 2020,<sup>11</sup> and subsequently made by the South Australian Minister on 9 April 2020, there was insufficient time for AEMO and TNSPs to achieve the necessary corresponding actions in respect of the 2020-21 financial year (noting that Queensland, New South Wales, South Australia and Tasmania published their transmission prices for the 2020-21 financial year on 15 March 2020). The implication is that AEMO is currently unable to recover in 2020-21 from either Market Customers or TNSPs the NTP function fees it expects to incur in 2020-21 (or has already incurred in 2020-21 or in previous financial years but not yet recovered).

##### Proposed solution

AEMO proposes to address this issue by implementing a transitional rule in Chapter 11 of the NER. The proposed transitional rule would enable:

- part of the published NTP function fees for 2020-21 to be levied on CNSPs rather than Market Customers in 2020-21
- the remainder of the published NTP function fees for 2020-21 to be levied on CNSPs in 2021-22, together with any NTP function fees incurred in previous years which AEMO has not yet recovered (plus AEMO's financing of these amounts), and

<sup>11</sup> On 29 May 2020, the Prime Minister announced the establishment of the National Federation Reform Council and the disbanding of COAG. New arrangements for the former COAG Energy Council will be finalised following the National Cabinet Review of COAG Councils and Ministerial Forums which is due to provide recommendations to National Cabinet by September 2020. The Prime Minister has advised that, while this change is being implemented, former Councils may continue meeting as a Ministerial Forum to progress critical and/or well developed work.

- CNSPs to recover through transmission prices for the 2021-22 financial year any NTP function fees charged to them during the 2020-21 financial year which they were not able to reflect in their transmission prices for the 2021-22 financial year (plus a gross up for the time cost of money based on the CNSP's applicable allowed rate of return).

### Comments

In effect, the proposed transitional rule would override the existing fee structure set out in AEMO's Participant Fee Determination (due to end on 30 June 2021) and enable AEMO to recover NTP function fees from CNSPs during the 2020-21 financial year.

In the rule change request, AEMO has indicated that it intends to start the consultation for its next Participant Fee Determination shortly, with any changes to fee structure to apply from 1 July 2021. However, to ensure the NTP function fees expected to be incurred by AEMO in 2021-22 (which will be notified to CNSPs by 15 February 2021 if this rule is made) are not impacted by any potential changes to the NTP function fee structure resulting from that consultation, the proposed transitional rule defers the application of the revised participant fee structure to NTP function fees until 1 July 2022.<sup>12</sup>

As set out above, the proposed transitional rule enables AEMO to recover from CNSPs the NTP function fees it expects to incur in carrying out NTP functions in 2020-21 across both the 2020-21 and 2021-22 financial years. Given that AEMO has not formally set out a fee in its current budget for 2020-21, the proposed transitional rule includes an obligation on AEMO to publish the NTP function fees to be recovered from CNSPs from 1 January 2021 to 30 June 2021, on its website by 1 January 2021.

In requiring AEMO to delay its recovery of the remaining portion of its 2020-21 NTP function fees from CNSPs until the 2021-22 financial year (together with any NTP function fees incurred in previous financial years which AEMO has not yet recovered), the proposed transitional rule also provides for AEMO to recover the financing costs for that amount. The proposed rule does not, however, provide a definition of, or boundary around, those financing costs.

Finally, as noted above, the proposed transitional rule clarifies that CNSPs can add the unrecovered share of the NTP function fees that were not recovered in transmission prices in 2020-21 to the amount of NTP function fees to be recovered through transmission prices in 2021-22. The proposed transitional rule also clarifies that TNSPs may also recover the carrying costs (as distinct from "financing costs") for those unrecovered fees for that period. The proposed transitional rule clarifies that the carrying costs are to be based on the allowed rate of return for the relevant CNSP.

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<sup>12</sup> The implication of this is that NTP fees will be allocated between CNSPs based on GWh consumed in the year commencing 1 July 2019, and that this won't be updated until 1 July 2022.

## 2.1.2

### Alignment of AEMO budgeting process and transmission prices

#### Background

As stated in the rule change request, the intent of the ISP Rules is that AEMO will notify TNSPs of the budgeted NTP function fees to be recovered in the next financial year before TNSPs publish their transmission prices for that financial year to allow TNSPs to factor in those budgeted NTP function fees into their transmission prices which must be published by 15 March each year.<sup>13</sup> Where a TNSP is also a CNSP, it must publish details of all modified load export charges to apply for the following financial year in accordance with the pricing methodology guidelines by 15 February each year.<sup>14</sup>

#### Issue

The timing of AEMO's budgeting process currently does not align with the publication of TNSP's transmission prices. AEMO's budget is generally published before the end of the financial year but after TNSPs have set and published transmission prices for the following financial year (which are published by TNSPs on 15 March or 15 May). The implication of this misalignment is that TNSPs will be unable to use AEMO's budgeted NTP function fees to set their transmission prices for the following year.

#### Proposed solution

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

#### Comments

As noted in the rule change request, AEMO publishes its budget in June each year. This means that, if this rule is made, there could be movements in the budgeted NTP function fees advised to CNSPs by 15 February, and the final budget published in June.

However, it is intended that any changes to the budgeted amount between 15 February and the final budget (or actual expenditure) will be dealt with as an "under or over" in the next year (consistent with existing clause 2.11.1(b)(2)(i) of the NER). In other words, it is the intention of the proposed rule that the budgeted number provided to CNSPs by 15 February will be invoiced to CNSPs over the course of the following financial year.

## 2.1.3

### Recovery of NTP function fees in Victoria

#### Background

<sup>13</sup> See clause 6A.24.2(c) of the NER. It may also be the 15 May where the regulatory year does not begin on the commencement of a financial year.

<sup>14</sup> See clause 6A.24.2(b) of the NER.

In Victoria, AEMO acts as both the national transmission planner and TNSP. The intent of the ISP Rules is that in Victoria, AEMO would allocate an amount of NTP function fees to itself in its role as TNSP and that these fees would be recovered through transmission use of system charges.

### **Issue**

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

### **Proposed solution**

AEMO proposes to address this issue by clarifying that budgeted NTP function fees will also be recovered by AEMO in its capacity as a CNSP in Victoria for the declared shared network, and that AEMO in its capacity as a CNSP will subsequently recover these fees from Victorian distributors and other transmission connected customers through transmission use of system charges, and not participant fees.

### **Comments**

As noted above, AEMO is also proposing a consequential change to the Rules to clarify that NTP function fees will be recovered from “CNSPs” rather than from “TNSPs”. In addition, AEMO also proposes to clarify that in regions where a CNSP has not been formally appointed, references to CNSPs should be read as referring to the TNSP for that region.

## **2.2**

### **AEMC’s proposed assessment framework**

#### **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).<sup>15</sup> This is the decision-making framework that the Commission must apply.

The NEO is:<sup>16</sup>

- to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to -
  - (a) price, quality, safety, reliability and security of supply of electricity; and
  - (b) the reliability, safety and security of the national electricity system.

#### **2.2.2**

##### **Proposed assessment framework**

In determining whether the rule change request promotes the NEO, the Commission will assess the rule change request having regard to the following two principles:

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<sup>15</sup> Section 88 of the NEL.

<sup>16</sup> Section 7 of the NEL.

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

#### 2.2.3

#### Making a more preferable rule

Under s. 91A of the NEL, the Commission may make a rule that is different (including materially different) to a proposed rule (a more preferable rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule will or is likely to better contribute to the achievement of the NEO.

#### 2.2.4

#### Making a differential rule

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

- varies in its term as between:
  - the national electricity system, and
  - one or more, or all, of the local electricity systems, or
- does not have effect with respect to one or more of those systems

but is not a jurisdictional derogation, participant derogation or rule that has effect with respect to an adoptive jurisdiction for the purpose of s. 91(8) of the NEL.

As the proposed rule related to parts of the NER that currently do not apply in the Northern Territory (i.e. Chapters 2 and 6A of the NER), the Commission does not propose to assess the proposed rule against the additional elements required by the Northern Territory legislation.<sup>17</sup>

### 2.3

### Questions for stakeholders in relation to the rule change request

In order to assess the rule change request, we are seeking feedback from stakeholders on the issues and solutions identified by AEMO in the rule change request in relation to the arrangements for allocating NTP function to TNSPs. We are also seeking feedback on our proposed framework for assessing the rule change request.

Stakeholders are invited to consider the following questions, and any other aspect of the rule change request, when preparing submissions to this consultation paper.

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<sup>17</sup> From 1 July 2016, the NER, as amended from time to time, apply in the NT, subject to derogations set out in regulations made under the NT legislation adopting the NEL. Under those regulations, only certain parts of the NER have been adopted in the NT. (See the AEMC website for the NER that applies in the NT.) National Electricity (Northern Territory) (National Uniform Legislation) Act 2015.

#### **QUESTION 1: CATEGORISATION OF THE ISSUES**

Do stakeholders agree with the categorisation of the issues identified by AEMO in the rule change request? Are these issues material enough to warrant the proposed changes?

#### **QUESTION 2: ASSESSMENT OF SOLUTIONS**

Do the proposed changes effectively and efficiently address the issues identified by AEMO in the rule change request? If not, are there any better alternative solutions? Are the changes likely to affect any party other than AEMO and TNSPs? If so, which party and how?

#### **QUESTION 3: IDENTIFICATION OF ADDITIONAL ISSUES**

Are there any additional issues within the scope of the rule change request which have not been identified by AEMO in the rule change request? If so, how could these additional issues be addressed?

#### **QUESTION 4: IDENTIFICATION OF ADDITIONAL CONSEQUENTIAL AMENDMENTS**

Are there any additional consequential changes to the Rules required to implement the proposed changes which have not been identified by AEMO in the rule change request? If so, what are these?

#### **QUESTION 5: PROPOSED ASSESSMENT FRAMEWORK**

Do you agree with the proposed assessment framework and/or are there any additional assessment criteria the Commission should use when assessing identified issues and associated solutions?

## 3 LODGING A SUBMISSION

The Commission invites both:

- requests not to make a rule under the expedited process, and
- written submissions on the rule change request.

All enquiries on this project should be addressed to Andrew Splatt on (02) 8296 0623 or [andrew.splatt@aemc.gov.au](mailto:andrew.splatt@aemc.gov.au).

### 3.1 Lodging a request not to make a rule under an expedited process

Written requests not to make a rule under the expedited process in s. 96 of the NEL must include reasons for the request, and must be lodged with the Commission by **17 September 2020**. Requests must be submitted online in accordance with the process specified below.

### 3.2 Lodging a submission to this rule change request

Written submissions on the rule change request must be lodged with Commission by **1 October 2020**. Submissions must be lodged online in accordance with the process specified below.

Where practicable, submissions should be prepared in accordance with the Commission's guidelines for making written submissions on rule change requests.<sup>18</sup> The Commission publishes all submissions on its website, subject to a claim of confidentiality.

### 3.3 Lodging online

Submissions, or requests not to make a rule under the expedited process, must be lodged online via the Commission's website, [www.aemc.gov.au](http://www.aemc.gov.au), using the "lodge a submission" function and selecting the project reference code ERC0316.

The request or submission must be on letterhead (if submitted on behalf of an organisation), signed and dated.

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<sup>18</sup> This guideline is available on the Commission's website [www.aemc.gov.au](http://www.aemc.gov.au).

## ABBREVIATIONS

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