
Australian Energy Market Commission

DRAFT RULE DETERMINATION

NATIONAL ELECTRICITY AMENDMENT (EXTENSION OF TIME AND REDUCTION IN SCOPE OF THE 2022 RELIABILITY STANDARD AND SETTINGS REVIEW) RULE 2021

Dr Kerry Schott AO, former Chair of the Energy Security Board

23 DECEMBER 2021

DETERMINATION

INQUIRIES

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ABOUT THE AEMC

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

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SUMMARY

- 1 The Australian Energy Market Commission has made a draft determination on the extension of time and reduction in scope of the 2022 reliability standard and settings review rule change. The Commission's draft determination is to make a more preferable draft rule that requires the Reliability Panel to, for the 2022 reliability standard and settings review:
 - consider the reliability standard and settings of an energy-only market that it recommends should apply for 1 July 2025 to 30 June 2028^{1, 2} and
 - provide its final report to the Australian Energy Market Commission, with any recommendations for change to the reliability standard and settings by 30 August 2022.³
- 2 On 13 October 2021, Dr Kerry Schott, former chair of the Energy Security Board, requested a rule change to reduce the scope of the Reliability Panel's 2022 reliability standard and settings review to only review the reliability standard. The request also sought to extend the time for the review to be completed from April to June 2022.
- 3 The rule change request stated objectives are to:
 - Align the requirements and interdependencies to design a capacity mechanism⁴ with the need to consider the optimal settings required for a transitioning power system.
 - Provide the Reliability Panel with adequate time to consider the outcomes of the Energy Security Board final advice and recommendations in its review of the standard.
- 4 The Commission has considered the rule change proposal and has had regard to the 12 stakeholder submissions and feedback. The Commission considers the more preferable draft rule is likely to promote the national electricity objective. In particular:
 - The Reliability Panel retaining its role of reviewing the reliability settings is likely to promote transparency and predictability. The Reliability Panel has an important and significant role and undertakes its work in accordance with well-established guidelines and stakeholder consultation processes.⁵ Stakeholders' expressed confidence in the Reliability Panel's processes and its ability to take into account a wide range of views due to its diverse make up of industry representatives and expertise.
 - The change to the timing of the final review and the exclusion of 2024 from the review are likely to minimise uncertainty and market changes. Excluding 2024 from the review will mean that there is adequate time for the market and participants to know and adjust

1 Currently, the market price cap and cumulative price threshold as subject to indexation each year under the national electricity rules. Absent of a rule change, the reliability settings will be indexed by the consumer price index. The market floor price and administered price cap are not indexed and so would stay the same for the period of 1 July 2024 to 30 June 2025.

2 The Reliability Panel is required to complete the next standard and settings review by 30 April 2026. It is required to consider the standard and settings that should apply from 1 July 2028 to 30 June 2032.

3 The Reliability Panel must submit to the Australian Energy Market Commission any rule change proposal that results from a review as soon as practicable after the review is completed.

4 The Commission notes that National Cabinet has tasked the Energy Security Board to provide further advice on designing a capacity mechanism. Energy Security Board, Final advice July 2-21, available [here](#). Any consideration of the merits of a capacity mechanism are outside this rule change's scope.

5 national electricity rules clause 3.9.3A(e)(1).

to any potential changes to the reliability standard and settings that may be put in place following the Reliability Panel's final report⁶. Requiring the Reliability Panel to provide appropriately timed standard and settings recommendations will also enable the Reliability Panel's analysis and recommendations to be used and provide input to the Energy Security Board's process in designing a capacity mechanism.

- The timing changes will also likely reduce regulatory and administrative burden through facilitating appropriate collaboration by the Reliability Panel and the Energy Security Board so that the processes can align and dove-tail where possible.

5

The Commission invites submissions on this draft rule determination by **3 February 2022**.

⁶ The Reliability Panel is required, as soon as practicable after providing its final report submit a rule change to the Australian Energy Market Commission for any recommended changes to the reliability standard and settings

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1 DR KERRY SCHOTT, FORMER CHAIR OF THE ENERGY SECURITY BOARD'S RULE CHANGE REQUEST

On 13 October 2021, Dr Kerry Schott AO, former Chair of the Energy Security Board (ESB), submitted a rule change request to the Australian Energy Market Commission (Commission). Dr Schott sought to amend the National Electricity Rules (NER) requirements on the Reliability Panel (Panel) for the 2022 reliability standard and settings review (2022 RSS Review). Specifically, the request sought to:

- Reduce the scope of the 2022 RSS Review by removing the requirement for the Panel to undertake the review of the reliability settings (settings). The Panel would only review and report on the reliability standard (standard).
- Extend the date of the Panel's review and publication of the final report on the standard from 30 April 2022 to 30 June 2022.

The proponent states the objective of the rule change request is to:

- align the requirements and interdependencies to design a capacity mechanism with the need to consider the optimal settings required for a transitioning power system, and
- provide the Panel with adequate time to consider the outcomes of the ESB final advice and recommendations in its review of the standard.

The rule change request proposed these changes take effect through a transitional arrangement in the NER and would only apply to the 2022 RSS Review.

The merits and design of a capacity mechanism, including the settings with a capacity mechanism and in transition toward a capacity mechanism in the National Electricity Market (NEM), are not in the scope of this rule change request. The Commission has therefore not considered these issues in this rule change.

1.1 Commencement of the rule change request

On 28 October 2021, the Commission published a notice advising of its commencement of the rule making process and consultation regarding the rule change request.⁷ A consultation paper identifying specific issues for consultation was also published. Submissions closed on 25 November 2021.

The Commission received 12 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 throughout this draft rule determination.

⁷ The Commission published this notice under s. 95 of the National Electricity Law (NEL).

1.1.1

Objections to the non-controversial rule making process

The Commission initially considered that the proposed rule met the definition of a non-controversial Rule under section 87 of the NEL and should be subject to the expedited rule making process under s. 96 of the National Electricity Law (NEL). This was because it considered the rule change request non-controversial and unlikely to impact the national electricity market significantly.⁸

The Commission received five objections to this rule change process proceeding on a non-controversial and therefore expedited basis.⁹ Summary of reasons as they relate to the rule change proponent's request include:

- The Commission should consider that reallocating responsibility for reviewing the settings as having a significant impact on the NEM.¹⁰
- The responsibility of reviewing the settings impacts large amounts of investment in the NEM. This rule should not be considered non-controversial.¹¹

The Commission considered the reasons outlined in the five objections submitted and determined that there were reasons provided in the objections were not misconceived or lacking in substance. Consequently, the rule change request is proceeding through the standard rule-making process rather than expedited.

1.2

Further consultation on the more preferable draft rule determination

The Commission invites submissions on this draft rule determination, including the more preferable draft rule, by **3 February 2022**.

Any person or body may request that the Commission hold a hearing concerning the draft rule determination. Any request for a hearing must be made in writing and must be received by the Commission no later than **6 January 2022**.¹²

Submissions and requests for a hearing should quote project number **ERC0336** and may be lodged online at www.aemc.gov.au.

⁸ s. 87 of the NEL.

⁹ Stakeholders can view these in full on our website, available [here](#).

¹⁰ Objections to the expedited rule making process: Smart Energy Council, p. 1; Iberdrola, pp. 1-2; Snowy Hydro, p. 2; Public Interest Advocacy Centre, p. 1.

¹¹ Objections to the expedited rule making process: Smart Energy Council, p. 1; Snowy Hydro, p. 1; Public Interest Advocacy Centre, p. 1

¹² Under section 101(1a) of the NEL, a request for a hearing in relation to a draft rule determination must be made within one week of publication of the draft determination. As the date one week after publication of this draft determination falls within the Christmas and New Year holiday period, the Commission has determined to extend this date by one week.

2 RULE MAKING PROCESS

The Commission's draft rule determination is to make a more preferable draft rule. This Chapter outlines:

- the rule making test for changes to the NEL, including the more preferable rule test
- the assessment framework for considering the rule change request, and
- summary of reasons for the Commission's more preferable draft rule.

Further information on legal requirements under the NEL for making this draft rule determination is in appendix A.

2.1 Rule making test — 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 achieving the national electricity objective (NEO).¹³ This is the decision-making framework that the Commission must apply.

The NEO is:¹⁴

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.

2.1.1 Making a more preferable rule test

Under s. 91A of the NEL, the Commission may make a different rule (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.

2.1.2 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

¹³ S. 88 of the NEL.

¹⁴ S. 7 of the NEL.

- 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 more preferable draft rule relates to parts of the NER that currently do not apply in the Northern Territory, the Commission has not assessed the more preferable draft rule against the additional elements required by the Northern Territory legislation.

2.2 Assessment framework

In determining whether the rule change request promotes the NEO, the Commission has considered the following criteria:

- **Promoting transparency and flexibility.** Does the proposed rule change promote transparency and flexibility for reviewing the standard and settings? Providing clear and transparent processes for how the standard and settings will be considered in conjunction with the work to design a capacity mechanism enables participants to understand how the standard and settings will be assessed and recommendations coordinated with the post-2025 market reform recommendations. The Commission has considered the extent the proposed changes promote transparency and flexibility.
- **Minimising uncertainty and market changes.** Does the rule change promote greater certainty and predictability for the parameters for reliability in the NEM and allow for adequate price signals and price risk to be managed by market participants? The Commission has had regard to the proposed arrangements and whether they provide adequate time for participants to know potential changes to the settings and standard.
- **Reducing regulatory and administrative burden.** To the extent there are overlaps between multiple projects concerning resource adequacy, are the costs to market participants and market bodies minimised and proportional to the benefits? Does the rule change reduce regulatory burden by avoiding multiple reviews of the settings under different governance structures? Reducing the number of separate processes to review the settings would reduce costs for participants and contribute to cost savings being passed on to consumers. The Commission has considered the extent the proposed changes support administrative and regulatory processes.

Snowy Hydro submitted that additional criteria – due process and governance – should be added to the Commission’s assessment framework.¹⁵ The Commission recognises and agrees with Snowy Hydro’s proposal that due process and governance are relevant considerations in the Commission’s assessment framework. In determining the more preferable draft rule, the Commission has had regard of the Panel’s establishment under the NER and role in consideration of the standard and settings. However, we do not consider it is necessary to add this as a specific assessment criterion as it is largely covered by the transparency criteria.

2.3 Key features of the more preferable draft rule

The key features of the more preferable draft rule are to introduce a transitional rule that requires the Panel to, for the 2022 RSS Review:

¹⁵ Snowy Hydro submission to the consultation paper, p. 4.

- consider the standard and settings that it recommends should apply for the period 1 July 2025 to 30 June 2028
- publish its final report, with any recommendations for changes to the standard and settings, by 30 August 2022.

The Commission proposes that the more preferable draft rule commence on 3 March 2022 and expire on 28 October 2022 (approximately two months after the conclusion of the 2022 RSS Review). This will allow the Panel to submit a rule change request to the extent any changes to the standard or settings are recommended.

2.4 Commission's reasons for making a more preferable draft rule

The more preferable draft rule made by the Commission is attached to and published with this draft rule determination. The key benefits from the more preferable draft rule are that the rule:

- **will, or is likely to, contribute to achieving the NEO because it:**
 - Promotes transparency and predictability given the Panel's important and significant role and requirements for reviewing and considering the standard and settings that should apply for the NEM.
 - Minimises uncertainty and market change related to the current electricity system and market structure in requiring the Panel to provide appropriately timed standard and settings recommendations for use and input to the ESB's process as a comparison to a capacity mechanism and in the event a capacity mechanism is not agreed. It will provide market participants with adequate time to know and adjust to any changes in the reliability standard and settings.
 - Reduces regulatory and administrative burden regarding the modelling required and collaboration by the Panel and the ESB so that the processes can align and dove-tail where possible.
- **is more preferable than the proposed rule in meeting the NEO because it:**
 - Does not reduce the scope of the Panel's consideration and review to the standard only as proposed. The Commission finds that this approach is more likely to promote the NEO concerning efficient investment in the reliability of electricity supply and the system.
 - Provides the Panel with sufficient time to review and recommend the standard and settings by 30 August 2022 instead of the proposed 30 June 2022. The Commission recognises the value that stakeholders place on the Panel processes for its RSS Review. This more preferable rule should signal more clarity and responsiveness to the Panel's usual engagement on future reliability.
 - Removes consideration of the financial year 2024 from the Panel's review of the standard and settings. The Commission's more preferable rule provides the market with more certainty in knowing the reliability standard and settings and prevents impacts of market change in processes or timing.

The Commission's reasons for this more preferable draft rule are also in chapter 3

3 THE COMMISSION'S DRAFT DETERMINATION IS TO MAKE A MORE PREFERABLE DRAFT RULE

The Commission's draft determination is to make a more preferable draft rule. The more preferable draft rule would require that the Panel:

- provide its final report with any recommendations for change to the standard and settings to the Commission by 30 August 2022, and
- consider the standard and settings that it recommends should apply for the period 1 July 2025 to 30 June 2028.

This chapter outlines:

- the rule change proponent's proposals
- stakeholder responses to the request and consultation paper
- the Commission's more preferable draft rule determination in response to the scope, extension, and period of the 2022 RSS Review.

3.1 Scope of the 2022 RSS Review

3.1.1 **The rule change request proposed reducing the scope of the 2022 RSS Review to report on the standards only**

The rule change request proposed amendments to the Panel's NER requirements for the 2022 RSS Review. The amendments would require the Panel to only review and report on the standard (not the settings) that it recommends should apply on and from 1 July 2024 to 30 June 2028.

The proponent considered it important that the reliability framework be designed holistically. The amendment to the Panel's NER requirement would allow the consideration of the settings as part of the design of the capacity mechanism by the ESB. Considering the settings with the capacity mechanism design would align different aspects of the framework, managing the impacts of a transitioning power system to maintain the optimal reliability framework.¹⁶

The proponent considered this is necessary because of the:¹⁷

- Inter-relationship between the design of a capacity mechanism and the required settings (i.e., the design of a capacity mechanism will affect the level of settings required), and
- Value in one coordinated process rather than separate considerations (i.e., by the Panel and then again by the ESB in the design of a capacity mechanism).
- Overlap between the timing and work of the Panel and ESB. The Panel must consider the standard and settings that would apply from 1 July 2024 to 30 June 2028 and provide its recommendations and final report for review by 30 April 2022. The ESB is expected to deliver its final advice by the end of 2022.

¹⁶ Dr Kerry Schott, *Extension of time and scope Reliability Panel's 2022 RSS Review*, rule change request, p. 5.

¹⁷ Dr Kerry Schott, *Extension of time and scope Reliability Panel's 2022 RSS Review*, rule change request, pp. 5-6.

- Potential risk of inconsistency and misalignment between the capacity mechanism design and the review of the standard and settings could affect investment and certainty in the market: ultimately affecting the reliability of the power system and costs to consumers.

3.1.2

All but one submission opposed reducing the scope of the 2022 RSS Review

Other than the Australian Energy Regulator (AER)¹⁸, all stakeholders opposed the proposal to remove the Panel's responsibility for reviewing the settings, especially if a capacity mechanism is not implemented.¹⁹ Submissions key reasons for preferring the Panel retain the responsibility to review the settings were stakeholders' confidence in the Panel's governance structures and processes surrounding their review of the standard and settings. In particular:²⁰

- stakeholders support the Panel's requirements to undertake its work in line with an agreed set of guidelines on consultation, principles and assumptions used when conducting its review.
- the important role of the Panel, diverse perspectives and views through its make up of different sectors within the industry.

3.1.3

The Commission's draft determination is that the scope of the 2022 RSS Review should not be reduced

The Commission's draft determination is to make a more preferable rule that does not reduce the scope of the 2022 RSS Review. This determination confirms the Panel will undertake the review of the standard and the settings required by the NER.²¹

On 1 October 2021, National Cabinet endorsed the final package of reforms for the post-2025 market design work, as agreed by Energy Ministers.²² As a result, the ESB is responsible for progressing detailed design work on an instrument that specifically values capacity in the NEM.²³

The rule change proponent requested a one-off amendment to the 2022 RSS Review requirements. The proposed amendments would require the Panel to consider the standard while the ESB considers a holistic capacity mechanism design, which includes the necessary settings for the market. As part of this work, the ESB would consider:²⁴

1. What settings should be in place with any recommended capacity mechanism

¹⁸ The AER supported the reduction in scope for the 2022 RSS Review as they consider the energy-only market and a future capacity mechanism to operate effectively together. The ESB will need to consider key settings, including the market price cap and cumulative price threshold. AER submission to the consultation paper, p. 1.

¹⁹ Submissions to the consultation paper: Shell, p. 3; CS Energy, p. 2; Hydro Tasmania, pp. 1-3; Australian Energy Council, p. 1; Smart Energy Council, pp. 1-2; Flow Power, p. 1; Alinta Energy, p. 1; Iberdrola, pp. 1-2; Origin, p. 1; Snowy Hydro pp. 1-3; CEC, p. 1; AER, p. 1.

²⁰ Submissions to the consultation paper: Shell, p. 2; CS Energy, p. 2; Hydro Tasmania, p. 2; Australian Energy Council, p. 1; Smart Energy Council, p. 2; Flow Power, p. 2; Alinta Energy, pp. 1-2; Iberdrola, p. 1; Origin, p. 2; Snowy Hydro pp. 1-3; CEC, p. 1.

²¹ NER clause 3.9.3A(d).

²² Prime Minister of Australia, Media Statement 1 October 2021, available [here](#). A copy of the principles for the development of a capacity mechanism can be found [here](#).

²³ Energy Ministers, *Summary of the final reform package and corresponding Energy Security Board recommendations*, October 2021, p. 2, available [here](#).

²⁴ Dr. Kerry Schott, Extension of time and scope Reliability Panel's 2022 RSS Review, rule change request, p. 5.

2. What settings should be in place in the event Energy Ministers/ National Cabinet does not consider that a capacity mechanism is required, and
3. If Energy Ministers/ National Cabinet agrees to implement a proposed capacity mechanism, what settings, if any, should be in place for the interim period. Also, considering the impact of the timing of any changes on the contract market, and the potential to freeze the settings before the mechanism is implemented.

In any case, the Panel would be required to review the standard.

This draft determination focuses on who will review the second scenario — the settings if a capacity mechanism is not implemented.

The Commission, having regard to the proposal and stakeholder feedback, has determined that the Panel should undertake the review of the standard and settings. This is because:

- Likely to promote transparency and predictability. The Panel has an important and significant role in the RSS Reviews and undertakes its work in accordance with well-established guidelines and processes for stakeholder consultation.²⁵ Stakeholders' expressed confidence in the Panel's processes and its ability to take into account a wide range of views due to its diverse make up of industry representatives and expertise.
- More likely to minimise uncertainty and market changes. In requiring the Panel to provide appropriately timed standard and settings recommendations for use and input to the ESB's process as a comparison to a capacity mechanism and in the event a capacity mechanism is not agreed.
- Likely to reduce regulatory and administrative burden. Through appropriate collaboration by the Panel and the ESB, the processes can align and dove-tail where possible. The Commission acknowledges that the more preferable draft rule will result in the:
 - The Panel and the ESB performing closely related but separate functions in consideration of the settings. The Panel will provide its 2022 RSS Review on the current market arrangements while the ESB determines future settings with a capacity mechanism. These closely related functions will result in coordination and collaboration challenges that will need to be resolved for both processes to be undertaken effectively. For instance, appropriate sequencing of decisions and consultation could minimise any issues with inter-relationship or overlap or inconsistency.
 - Need for stakeholder engagement on each of the above scenarios for the price settings. The ESB and the Panel are working to determine the best way that the ESB can leverage the Panel's expertise and industry representation in the design process.
 - The Commission will be working to facilitate this coordination and collaboration throughout 2022.

²⁵ NER clause 3.9.3A(e)(1).

3.2 Extension of the 2022 RSS Review final report

3.2.1 **The rule change request proposed an extension of the 2022 RSS Review final report from 30 April to 30 June 2022**

The rule change request proposes extending the Panel's review of the standard and final report from 30 April 2022 to 30 June 2022.²⁶ The proponent's reason for extending the 2022 RSS Review was to allow sufficient time for consideration of ESB recommendations and work in the review of the standard without infringing on the Panel's requirements under the NER.

3.2.2 **Most stakeholders found the extension of the 2022 RSS Review final report appropriate**

Most stakeholders supported the proposed extension of time for the Reliability Panel's final report from 30 April to 30 June.²⁷ Furthermore, many stakeholders suggested that the extension may need to be longer than proposed.²⁸

3.2.3 **The Commission's draft determination is that the extension of the 2022 RSS Review final report should be longer**

The Commission's draft decision is to make a more preferable rule to extend the date for the Panel's review and final report on the standard and settings from 30 April 2022 to 30 August 2022.

The Commission considers that the decision to maintain the requirement for the Panel to review the settings (in addition to the standard) means that the proposed extension to 30 June 2022 would likely be insufficient. In particular, for the Panel to complete its review will require additional modelling and engagement on the settings. The Commission considers a delay to August will be sufficient time for the Panel to undertake its review, while still providing the Panel's recommendations in time for it to be taken into account by the ESB when considering the capacity mechanism design. It is important that the 2022 RSS Review is appropriately timed so that it can be used as a comparison and input, as noted, into the ESB's work to design a capacity mechanism.

3.3 Removing consideration of the financial year 2024 from the 2022 RSS Review and final report

The Commission's more preferable draft rule determination delays the final report of the 2022 RSS Review on the current energy-only market until 30 August 2022. The Commission has deliberated on the impacts of this delay on the time market participants have to adjust to changes proposed changes in the settings.

Stakeholders considered that despite most contracts being traded within twelve months of being struck, less than twelve months of notice of changes in the reliability settings could still

²⁶ Dr Kerry Schott, *Extension of time and scope Reliability Panel's 2022 RSS Review*, rule change request, p. 6.

²⁷ Submission to the consultation paper: Shell, p. 2; Showy Hydro, p. 3; Alinta Energy, p. 2; Flower Power, p. 3; Smart Energy Council, p. 1; Iberdrola, p. 3.

²⁸ Submission to the consultation paper: Shell, p. 3; Australian Energy Council, p. 2; CS Energy, p. 2; Origin, p. 1; Hydro Tasmania, p. 1; Iberdrola, p. 2.

cause significant disruption to the market.²⁹ Snowy Hydro specifically suggested that if there is a delay to the Review, the Commission should make a corresponding delay to their implementation.³⁰

Having considered this potential impact, the Commission considers a change is necessary to continue to provide market participants with adequate time to know and adjust to any potential changes to the reliability settings. The two main options to provide this time are to:

1. Exclude 2024 from the 2022 RSS Review. This means the Panel would only review the standard and settings for 2025-2028.
2. Shift the cycle of the Panel's reviews permanently back a year. The Panel would therefore review the period 2025-2029 in the 2022 RSS Review.

The Commission does not consider changing the well-established cycle of the Panel's review is appropriate in the case of this largely transitional rule change request. The draft rule, therefore, removes 2024 from the 2022 RSS Review³¹.

29 Submission to the consultation paper: Shell, p. 2; Australian Energy Council, p. 2.

30 Snowy Hydro submission to the consultation paper, p. 3.

31 Currently, the market price cap and cumulative price threshold are subject to indexation each year under NER. The market floor price and administered price cap are not indexed and hence would not change for the 1 July 2024 to 30 June 2025 period.

ABBREVIATIONS

2022 RSS Review

AEMC (or Commission)

AEMO

AER

ESB

MCE

NEL

NEO

2022 reliability standard and settings review

Australian Energy Market Commission

Australian Energy Market Operator

Australian Energy Regulator

Energy Security Board

Ministerial Council on Energy

National Electricity Law

National Electricity 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 Kerry Schott, former Chair of the ESB.

The Commission's reasons for making this draft rule determination are set out in Chapter 2.

A copy of the more preferable draft rule is attached to and published with this draft rule determination. Its key features are described in Chapter 2.

A.2 Power to make the rule

The Commission is satisfied that the more preferable draft rule falls within the subject matter about which the Commission may make rules. The more preferable draft rule falls within s. 34 of the NEL as it relates to the regulation of the operation of the national electricity market³² and the operation of the national electricity system for the purposes of the safety, security and reliability of that system.³³

A.3 Commission's considerations

In assessing the rule change request the Commission considered:

- it's powers under the NEL to make the rule
- the rule change request
- stakeholder submissions and feedback received during first round consultation, and
- 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.³⁴

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 system functions.³⁵ The more preferable draft rule is compatible with AEMO's declared system functions because it does not amend or affect those.

³² Section 34(1)(a)(i) NEL.

³³ Section 34(1)(a)(ii) of the NEL.

³⁴ Under s. 33 of the NEL, the AEMC must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the AEMC's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy. On 1 July 2011, the MCE was amalgamated with the Ministerial Council on Mineral and Petroleum Resources. The amalgamated council is now called the Energy Ministers Meeting.

³⁵ Section 91(8) of the NEL.

A.4 Civil penalties

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

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

A.5 Conduct provisions

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

The more preferable 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 Energy Ministers Meeting that any of the proposed amendments made by the more preferable draft rule be classified as conduct provisions.