

RULE DETERMINATION

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

PROPONENT

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03 MARCH 2022

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 (AEMC or Commission) has made a final determination on the *Extension of time and reduction in scope of the 2022 reliability standard and settings review* rule change. The final determination primarily reflects the draft determination and rule. A minor change has been made to the Reliability Panel's date to complete its review and provide a final report to the AEMC. The reason for this minor change is to align with the AEMC's administrative processes regarding publication.
- 2 The Commission's final determination is to make a more preferable final rule that requires the Reliability Panel to, for the 2022 reliability standard and settings review (2022 RSS Review):
 - consider the reliability standard and settings that it recommends should apply for the period from 1 July 2025 to 30 June 2028¹, and
 - provide its final report to the AEMC, with any recommendations for change to the reliability standard and settings under the current market arrangements by 1 September 2022.² The draft determination and rule had proposed the 30 August 2022.
- 3 On 13 October 2021, Dr Kerry Schott, former chair of the Energy Security Board, submitted a rule change, which proposed to reduce the scope of the 2022 RSS Review so that the Reliability Panel would only review the reliability standard. The request also sought to extend the time for the review to be completed from April to June 2022.
- 4 The rule change request's stated objectives were to:
 - Align the requirements and interdependencies to design a capacity mechanism³ 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.
- 5 The Commission has considered the rule change proposal and has had regard to the twelve stakeholder submissions to the consultation paper, the four submissions to the draft determination and stakeholder feedback. Following the draft determination, the Commission considers the more preferable final rule will, or is likely to, contribute to the achievement of 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

1 Currently, the market price cap and cumulative price threshold are subject to indexation each year under the National Electricity Rules. Absent 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. 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.

2 The Reliability Panel must submit to the AEMC any rule change proposal that results from a review as soon as practicable after the review is completed.

3 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 is outside the scope of this rule change.

significant role and undertakes its work per well-established guidelines and stakeholder consultation processes.⁴ Stakeholders' expressed confidence in the Reliability Panel's processes and its ability to consider a wide range of views due to its diverse make up of industry representatives and experts.

- The change to the timing for publication of the final report for the 2022 RSS 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 any potential changes to the reliability standard and settings that may be implemented following the Reliability Panel's final report. The Reliability Panel is required, as soon as practicable, to submit a rule change to the AEMC where it recommends any changes to the reliability standard and settings. 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 where appropriate and provide input to the Energy Security Board's process in designing a capacity mechanism.
- The timing changes will assist in reducing regulatory and administrative burden with the Reliability Panel and the Energy Security Board collaborating so that the two processes can align and dove-tail where possible. The Commission notes that the Reliability Panel and the Energy Security Board have had a number of initial meetings about the opportunities for collaboration, particularly obtaining relevant input into the modelling approach for the 2022 RSS Review. It is expected that the Reliability Panel and the Energy Security Board will continue to have an ongoing dialogue and work together where opportunities arise during the 2022 RSS Review.

⁴ National Electricity Rules (NER) clause 3.9.3A(d)-(e).

CONTENTS

1	Rule change request and rule making process	1
1.1	Dr Kerry Schott, former chair of the Energy Security Board's rule change request	1
1.2	Rule making process	1
2	Final rule determination	2
2.1	The Commission's final rule determination	2
2.2	Rule making test	2
2.3	Assessment framework	3
3	The Commission's final determination is to make a more preferable final rule	5
3.1	Scope of the 2022 RSS Review	5
3.2	Extension of the 2022 RSS Review final report	8
3.3	Removing consideration of the financial year 2024 from the 2022 RSS Review and final report	9
	Abbreviations	11

APPENDICES

A	Legal requirements under the NEL	12
A.1	Final rule determination	12
A.2	Power to make the rule	12
A.3	Commission's considerations	12
A.4	Civil penalties	13
A.5	Conduct provisions	13

1 RULE CHANGE REQUEST AND RULE MAKING PROCESS

1.1 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 stated the objective of the rule change request were 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), were not in the scope of this rule change request. Therefore, the Commission has not considered these issues in the draft and final determination.

1.2 Rule making process

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.⁵ A consultation paper identifying specific issues for consultation was also published. Twelve submissions were received, which were considered in the draft rule determination.

On 23 December 2021, the Commission published a draft determination and rule. The Commission's draft determination was to make a more preferable rule to resolve the issues identified by stakeholders. The Commission invited submissions from stakeholders on the draft rule determination by 3 February 2022. Four submissions were received, which were considered in the final rule determination.

⁵ This notice was published under s.95 of the National Electricity Law (NEL).

2 FINAL RULE DETERMINATION

This chapter outlines the:

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

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

2.1 The Commission's final rule determination

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

- provide its final report for the 2022 RSS Review to the Commission by 1 September 2022, and
- consider the standard and settings that it recommends should apply for the period 1 July 2025 to 30 June 2028.

The Commission proposes that the more preferable final rule commence on 10 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.⁶

2.2 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). ⁷This is the decision making framework that the Commission must apply.

The NEO is:⁸

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.

⁶ In accordance with clause 3.9.3A(i) of the NEL, the Panel is required to submit to the AEMC any rule change proposal that results from a review as soon as practicable after the RSS Review is completed.

⁷ Section 88 of the NEL.

⁸ Section 7 of the NEL.

2.2.2 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.

In this instance, the Commission has made a more preferable final rule. The reasons are summarised in section 2.3.1.

2.2.3 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 rule relates to parts of the NER that currently do not apply in the Northern Territory, (Chapter 4) or will have no practical effect in the Northern Territory (Chapter 10), the Commission has not assessed the rule against the additional elements required by the Northern Territory legislation.

2.3 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.

2.3.1

The Commission's reasons for making a more preferable final rule

Having regard to the issues raised in the rule change request and during consultation, the Commission is satisfied that the more preferable final rule will, or is likely to, contribute to the achievement of the NEO because the more preferable final rule:

- 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 concerning the modelling work required and collaboration by the Panel and the ESB so that the processes can align and dovetail where possible.

The more preferable final rule will, or is likely to, better contribute to the achievement of the NEO than the proposed rule because it:

- Does not reduce the scope of the Panel's review to the standard only. The Commission considers that enabling the Panel to review the standard and settings together 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 1 September 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 final 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 final rule provides the market with more certainty in knowing the reliability standard and settings before commencing (to the extent changes are recommended) and prevents impacts of market change in processes or timing.

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

The more preferable final rule made by the Commission is attached to and published with this final rule determination. The key features of the more preferable final rule are that it requires the Panel to:

- provide its final report with any recommendations for change to the standard and settings to the Commission by 1 September 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 draft determination
- the Commission's more preferable final rule determination in regard to the scope, timing, 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 reliability standard 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 amendment to the Panel's NER requirement was to allow the consideration of the settings as part of the design of the capacity mechanism by the ESB. The proponent considered that reviewing the settings with the capacity mechanism design would align different aspects of the optimal reliability framework and assist in managing the impacts of a transitioning power system.⁹

The proponent considered this was necessary because of the:¹⁰

- 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).
- Value in one coordinated process rather than separate considerations (i.e., by the Panel and then again by the ESB in designing 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.

⁹ Dr Kerry Schott, *Extension of time and scope Reliability Panel's 2022 RSS Review*, rule change request, p. 5.

¹⁰ 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 four submissions supported the draft decision not to reduce the scope of the 2022 RSS Review

Stakeholders supported the Commission's draft determination not to reduce the scope of the Panel's requirements to review both the standard and the settings.¹¹

However, all four stakeholder submissions to the draft considered that this rule should broaden the remit of the Reliability Panel to include a review of any changes to the reliability settings that are recommended as an outcome of the ESB's capacity mechanism design process.¹² Two submissions considered that the Panel should undertake the review because it is the body best suited to decide on the settings for a capacity mechanism.¹³ CS Energy considered the Panel's involvement would also maintain the integrity of the NEM frameworks.¹⁴ EUAA and Shell noted that it was important to have greater clarity on the Panel's role in forming the standard and settings if a capacity mechanism is introduced and whether the AEMC will put the Panel's recommendation on the standard in place irrespective of whether an energy only or capacity mechanism is in place.¹⁵

The Commission's draft determination summarises stakeholder submissions to the consultation paper and the Commission's responses to that paper.¹⁶

3.1.3

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

The Commission's final determination is to make a more preferable final rule that does not reduce the scope of the 2022 RSS Review. This determination confirms that the Panel will undertake the review of the standard and settings required by the NER.¹⁷

The rule change proponent requested that the Panel consider the standard while the ESB considers, as directed by National Cabinet, a holistic capacity mechanism design, which includes the necessary settings for the market.¹⁸ The rule change request indicated that as part of this work, the ESB would consider:¹⁹

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

11 Submissions to the draft determination: CS Energy, p. 1; EUAA, p. 1; Shell, p.1; Snowy Hydro, p.1.

12 Submissions to the draft determination: CS Energy, p. 2; EUAA, p. 1; Shell, p.2; Snowy Hydro, p.2.

13 Submissions to the draft determination: CS Energy, p.2 and EUAA, p. 1.

14 Submission to the draft determination: CS Energy, p. 2.

15 Submissions to the draft determination: EUAA, p. 1; Shell, p. 2.

16 AEMC, *Extension of time and reduction in scope of the 2022 Reliability Standard and Settings Review*, Draft rule determination, 23 December 2021.

17 NER clause 3.9.3A(d).

18 On 1 October 2021, National Cabinet endorsed the final package of reforms for the post-2025 market design work, as agreed by Energy Ministers.; Prime Minister of Australia, Media Statement 1 October 2021, available [here](#). A copy of the principles for developing a capacity mechanism can be found [here](#).

19 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.

The draft and final determination focused on who would review the second scenario — the settings without implementation of a capacity mechanism.

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

- Likely 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.²⁰ Stakeholders' expressed confidence in the Panel's processes and its ability to consider a wide range of views due to its diverse make up of industry representatives and expertise.
- More likely 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 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 final rule will result in 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. The Commission noted in its draft determination that 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 on modelling approaches could minimise inter-relationship issues, 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 has not expanded the Panel's remit to include in the 2022 RSS review (as suggested by stakeholder submissions) a review of the ESB's design of a capacity mechanism or potential reliability thresholds. As noted, the merits and design of a capacity mechanism, including the settings with a capacity mechanism and in transition toward a capacity mechanism in the NEM were not in the scope of this rule change request. The Commission notes some stakeholders' concerns about the Panel's role in the context of a capacity mechanism and associated settings. Any decision on a capacity mechanism and associated

²⁰ NER clause 3.9.3A(e)(1).

will be a matter for National Cabinet in response to the ESB's final report regarding the design of a capacity mechanism.

As noted in the draft determination, when the Panel undertakes an assessment of the reliability standard and settings in a review, it must set out its conclusions and recommendations as part of its Final Report. Where the Panel recommends that the current standard or settings should change as part of its RSS Reviews, then it is required to submit a rule change request to the AEMC to implement these changes.²¹ The AEMC would undertake this rule change per its requirements under the NER.²²

The Commission supports ongoing collaboration between the Panel and the ESB so that there is alignment between the two processes and that the Panel's work can effectively feed, where possible, into the work of the ESB to design a capacity mechanism and associated settings. The Commission understands that the ESB and Reliability Panel have now met on two occasions and plan to meet further to discuss the modelling approach and other key considerations as the review progresses.

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 2022.²³ The proponent's reason for extending the 2022 RSS Review was to allow sufficient time to consider ESB recommendations and work in the review of the standard without infringing on the Panel's requirements under the NER.

3.2.2 **Most submissions to the draft rule found the extension of the 2022 RSS Review final report appropriate and that it could be longer**

Stakeholders supported extending the time for the Reliability Panel's final report beyond 30 April 2022.²⁴ However, some considered that the Panel should be granted a further twelve-month extension to 30 April 2023 rather than the draft rule's 30 August 2022 to facilitate the Panel's consideration of the ESB capacity mechanism and minimise uncertainty and market change.²⁵

3.2.3 **The Commission's final determination is that the extension of the 2022 RSS Review's final report should be longer than proposed in the rule change request**

The Commission's draft decision was 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. This was because 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

²¹ Clause 3.9.3A(i) of the NER.

²² Reliability Panel, *Final guidelines: review of the reliability standard and settings guidelines*, Sydney, 1 July 2021, available [here](#).

²³ Dr Kerry Schott, *Extension of time and scope Reliability Panel's 2022 RSS Review*, rule change request, p. 6.

²⁴ Submission to the draft determination: Shell, p. 2; EUAA, p. 1; Snowy Hydro, p. 1; CS Energy, p. 1.

²⁵ Submission to the draft determination: CS Energy, p. 2; EUAA, p. 2; Shell, p. 2.

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 considered that a delay to August 2022 would 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 considered by the ESB in its work to design a capacity mechanism.

The Commission has not proposed to extend the timeframe another 12 months as proposed in stakeholder submissions due to the reasons outlined above, specifically that the consideration of any outcome of a capacity mechanism was not in scope for this rule change and any decision on it is a matter for National Cabinet. However, the Commission has made a minor change to the date for the Panel to complete its review and for the final report to be provided to the AEMC from 30 August 2022 to 1 September 2022. This date change aligns the Panel's requirements with the administrative processes of the AEMC, specifically the publication cycle of AEMC and Reliability Panel documents.

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

The Commission's more preferable final rule delays the final report of the 2022 RSS Review on the current energy-only market to 1 September 2022. The Commission deliberated on the impacts of the delay on the time market participants have to adjust to changes proposed changes in the settings.

Stakeholder submissions to the consultation paper 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 cause significant disruption to the market.²⁶ Snowy Hydro specifically suggested that if there is a delay to the review, the Commission should make a corresponding delay to its implementation.²⁷

Having considered this potential impact in the draft rule determination, the Commission maintains a change is necessary to provide market participants with adequate time to know and adjust to any potential changes to the reliability settings. The two main options considered were to:

1. Exclude 2024 from the 2022 RSS Review. 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. Therefore, the Panel would review the period 2025-2029 in the 2022 RSS Review.

As per its reasoning in the draft determination, the Commission does not consider changing the well-established cycle of the Panel's review is appropriate in the case of this essentially

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

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

transitional rule change request. Therefore, the final rule removes 2024 from the 2022 RSS Review.²⁸

²⁸ The market price cap and cumulative price threshold are currently 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 final rule determination.

A.1 Final rule determination

In accordance with s. 102 of the NEL the Commission has made this final rule determination in relation to the rule proposed by Dr. Kerry Schott, former Chair of the ESB.

The Commission's reasons for making this final rule determination are set out in section 2.4.

A copy of the more preferable final rule is attached to and published with this final rule determination. Its key features are described in Chapter 2 and 3.

A.2 Power to make the rule

The Commission is satisfied that the more preferable final rule falls within the subject matter about which the Commission may make rules. The more preferable final rule falls within s. 34 of the NEL as it relates to the regulation of the operation of the national electricity market²⁹ and the operation of the national electricity system for the purposes of the safety, security and reliability of that system.³⁰

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 and second 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.³¹

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.³² The more preferable final rule is compatible with AEMO's declared system functions because it does not amend or affect those.

²⁹ Section 34(1)(a)(i) NEL.

³⁰ Section 34(1)(a)(ii) of the NEL.

³¹ 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.

³² 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 final 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 final 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 that new or existing provisions of the NER be classified as conduct provisions.

The more preferable final rule does not amend any rules that are currently classified as conduct provisions under the NEL. The Commission does not propose to recommend to the Energy Ministers that any of the proposed amendments made by the more preferable final rule be classified as conduct provisions.