



Australian Energy Market Commission

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Mr David Havyatt
Network of Illawarra Consumers of Energy

25 May 2022

Our ref: ERC0335

Dear Mr Havyatt

Response to objection to the use of an expedited process for the rule change request on *Recovering the cost of AEMO's participant fees*

We refer to the objection from the Network of Illawarra Consumers of Energy (NICE)¹ to the Australian Energy Market Commission (Commission) in relation to the use of an expedited process for the rule change on *Recovering the cost of AEMO's participant fees*.

The Commission has carefully considered NICE's objection in light of the relevant test for the use of the expedited process in the National Electricity Law. The Commission has decided that the reasons given by NICE in the request for the Commission not to use the expedited process do not meet the criteria under the law for the Commission to switch to the standard rule making process, for the reasons set out in the Appendix to this letter.

The Commission thanks NICE for your interest in this project and would welcome a submission from NICE to the issues raised in the consultation paper.

Yours sincerely

Benn Barr
Chief Executive
Australian Energy Market Commission

¹ Network of Illawarra Consumers of Energy, *Recovering the cost of TNSP Market participant fees*, May 2022: https://www.aemc.gov.au/sites/default/files/2022-05/erc0335_tnsp_charging.pdf

Appendix

Relevant provisions of the National Electricity Law

The AEMC's decision to use an expedited process for the rule change on *Recovering the cost of AEMO's participant fees* was on the basis that the rule change request was a request for a non-controversial rule. That is, a rule that is unlikely to have a significant effect on the national electricity market (defined to include the wholesale exchange and the national electricity system).²

Under the National Electricity Law the AEMC must not use the expedited process for a rule change if:³

- (a) the AEMC receives a written request not to do so; and
- (b) the reasons set out in that request are not, in its opinion, misconceived or lacking in substance.

If the AEMC is of the opinion that the reasons given in a request not to use the expedited process are misconceived or lacking in substance, the AEMC must make a decision to that effect and give the person its reasons, in writing, for that decision without delay.⁴

The AEMC has come to this opinion, after considering the reasons in the NICE objection in the context of the test for a non-controversial rule. Our reasons are set out below, with reference to each of the reasons in the NICE objection. (The subheadings below use the wording of the subheadings in the objection.)

AEMC handling to date

NICE considered that the AEMC's handling of the rule change request has not itself been expeditious. The objection noted that the rule change was received in June 2021, and stated that "If the change were genuinely not controversial, the AEMC could have already completed consideration of the rule change under a standard rule change process."⁵

The Commission is of the opinion that this issue is lacking in substance as the time taken by the Commission to commence the rule making process is not a relevant consideration. The question is whether the rule change request is a request for a non-controversial rule, i.e. a rule that is unlikely to have a significant effect on the national electricity market or national electricity system.

The AEMC's criterion

NICE disputed the characterisation of the requirement as only applying to market participants. The objection stated that "the question is not whether the proposed Rule is unlikely to have a significant effect on participants but whether it has a significant effect on any part of the interconnected national electricity system, including Distribution Network Service Providers (DNSPs) and consumers."⁶

² National Electricity Law, section 87, section 2.

³ National Electricity Law, section 96(3).

⁴ National Electricity Law, section 96(4).

⁵ NICE objection, page 3.

⁶ NICE objection, page 4.

The Commission is of the opinion that the assertion that the Commission has only considered the impacts on market participants is misconceived. The Commission considered whether the proposed rule is unlikely to have a significant effect on various parties, including consumers.

The Commission determined the rule was a request for a non-controversial rule on the grounds that:⁷

- market participants are not affected as the proposal only relates to how (not whether) TNSPs can recover AEMO's fees;
- customers are not affected because the total costs to be recovered are unchanged and ultimately feed through to electricity prices; and
- if the rule were not made, TNSPs would still have avenues to recover the relevant fees, albeit using more cumbersome processes,

and that therefore the rule is unlikely to have a significant effect on the NEM.

The consultation paper also noted that DNSPs would pass the fees on to retailers, meaning that DNSPs would be unaffected.⁸

Finally, the Commission notes the assertion that the test is whether the proposed rule has a significant effect on "any part" of the interconnected national electricity system. The test does not refer to "any part" of the NEM or the system; it refers to the NEM (defined to include the system) as a whole and any assessment must occur within that context.

Consequences of the proposed rule

The objection posed the question: if the charges levied on TNSPs merely get transferred directly through to retailers, what is the point of allocating AEMO's participant fees to TNSPs? It noted: "The retailer will see the same costs; just be billed for them through two more steps." The objection noted that direct recovery gives TNSPs no incentive to care about (and try to reduce) how much costs they cause AEMO.⁹

The objection also noted that the rule change has direct financial consequences for consumers, as additional costs will have been introduced in handling the charging regime to deal with the participant fees.¹⁰

The Commission is of the opinion that these arguments are lacking in substance as they do not explain why the potential consequences of the rule change are likely (or at least, not unlikely) to have a significant effect on the NEM.

Firstly, the arguments that refer to the reasons for and potential consequences of AEMO's decision to allocate participant fees to TNSPs are lacking in substance, as this fee allocation decision has already been made. It is not in question in (and could not be changed by) this rule change.

⁷ AEMC, *National Electricity Amendment (Recovering the cost of AEMO's participant fees) Rule*, Consultation paper, 28 April 2022, pp. 3, 8 and 9.

⁸ AEMC, *National Electricity Amendment (Recovering the cost of AEMO's participant fees) Rule*, Consultation paper, 28 April 2022, p. 1.

⁹ NICE objection, page 4.

¹⁰ NICE objection, page 5.

Under clause 2.11.1(c) of the NER, AEMO has discretion over the components of participant fees that it may include in its participant fee structure. In March 2021, AEMO decided on its new Electricity Fee structure for the 2021-26 period, which allocated a portion of AEMO's core NEM fees to TNSPs for the first time. Given this, the rule change is considering the most efficient way for TNSPs to recover those costs.

The consequences that should be considered in the test for a non-controversial rule are the consequences of the rule change itself, compared to the status quo, rather than consequences of previous decisions by other parties.

Secondly, the arguments that refer to the potential impacts of direct recovery on TNSP incentives, and on costs for customers, are lacking in substance as they do not show that these impacts (if they were to eventuate) would constitute a significant impact on the NEM.

We have further assessed the potential consequences of the proposed rule, and the Commission remains of the opinion that it is unlikely to have a significant impact on either TNSPs or consumers, let alone on the NEM as a whole.

While the proposed direct cost recovery method may not give incentives for TNSPs to reduce transmission-related costs incurred by AEMO, these costs are incurred by AEMO and TNSPs have a limited ability to control them. Further, any difference in incentives for TNSPs that may arise from the difference between direct recovery (under the proposed rule) and the status quo, in which TNSPs will seek to recover the participant fees in other ways, would not lead to a significant impact on the NEM or consumers (given the scale of the participant fees in TNSP expenditure).

Consumers will ultimately pay for AEMO's fees allocated to TNSPs, regardless of whether or not the AEMC makes this rule. The proportion (17.5%) of AEMO's core NEM fees allocated to TNSPs from 1 July 2023 is immaterial for consumers, as it is likely to be a trivial proportion (less than 1%) of a typical customer's total electricity bill.

The possibility of preferable or other alternate rules

The objection stated that an expedited process will not allow the AEMC to consider appropriate, more preferable rules. For example, the Rules can be, and NICE argues should be, amended to subject AEMO's revenue allowance and fee structures to regulation by the AER. NICE also considers that transmission costs should be recovered from generators, not retailers.¹¹

In the Commission's opinion this argument is misconceived as the Commission can make a more preferable rule even for expedited rule changes. More pertinently, the substantial reforms NICE is proposing are not within the scope of the rule change request submitted by the ENA, and therefore the AEMC could not consider them in this rule change.

¹¹ NICE objection, page 5.