

**Network of Illawarra Consumers of Energy**

**Recovering the Cost of TNSP Market  
Participant Fees**

**May 2022**

## Introduction

### NICE

The Network of Illawarra Consumers of Energy (NICE) is a recently formed informal network advocating for the energy transition to a net-zero carbon future to be managed with the interests of consumers at heart.<sup>1</sup> This necessary transition needs to occur at the least cost to consumers while maintaining reliability and security of energy services, appropriate consumer protections for essential services and a just transition for affected workforces.

We believe there is a role for regionally based advocacy within the context of nationally consistent energy policy. The choice and options for energy supply do differ by geographic region regarding different climatic conditions affecting demand and supply options and different risk factors impacting resilience planning. David Havyatt is the sole author of this submission.<sup>2</sup>

This short submission is made to the Australian Energy Market Commission (AEMC) to oppose the AEMC's intention to use the expedited rule process for considering the rule change requested by Energy Networks Australia (ENA) covering the pass through of market participant fees levied by the Australian Energy Market Operator (AEMO) on Transmission Network Service Providers (TNSPs).

### Background

On 28 April 2022, the AEMC published a Consultation Paper on the proposed *National Electricity Amendment (Recovering the Cost of AEMO's Participant Fees) Rule*. Energy Networks Australia has proposed the rule in response to revisions by AEMO in its fees and fee structures. However, the title of the consultation paper and rule change is misleading. The rule change does not cover the recovery of the cost of AEMO's participant fees; it only covers those costs allocated to TNSPs.

The rule change request arose because an AEMO review of its fees and fee structures in March 2021 determined that participant fees should be charged to TNSPs. As a result, ENA made the rule change request in June 2021. The rule change proposes that TNSPs can recover the fees through direct cost recovery rather than as part of a revenue determination process. The rationale for this approach is that participant fees are "outside TNSPs' control."

This submission only goes to whether this rule change is non-controversial and whether applying the expedited rule change process is appropriate. Accordingly, we will not in this submission make the detailed arguments opposing the rule change in its current form in this submission.

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<sup>1</sup> The network has not yet started actively recruiting participants.

<sup>2</sup> Mr Havyatt was employed as Senior Economist at Energy Consumers Australia from October 2015 to August 2020. For the avoidance of doubt, nothing in this submission is the position of Energy Consumers Australia.

## Reasons for not applying the expedited rule change process

We submit there are four reasons not to use the expedited rule change process.

1. The AEMC's handling of the rule change has not itself been expeditious.
2. The AEMC's interpretation of the criterion is wrong.
3. An expedited process will not allow the AEMC to consider the obvious consequences of the rule change.
4. An expedited process will not allow the AEMC to consider appropriate, more preferable rules.

### AEMC handling to date

The AEMC received the rule change request in June 2021. If the change were genuinely not controversial, the AEMC could already have completed consideration of the request under the standard rule change processes.

We appreciate the combined effects on the AEMC's workload of work disruption through the early phases of the pandemic and the mostly pointless work program emerging from the ESBs Post 2025 review. We note this resulted in the AEMC deferring consideration of some rule changes; the triage for that process should not have resulted in important rule changes being afforded less consideration.

### The AEMC's criterion

In the Paper, the AEMC has described the Rule as non-controversial because "The rule change does not impact the market and market participants as the proposal only relates to improving the processes for TNSPs to pass on to their customers AEMO's fees that are allocated to TNSPs." We dispute this characterisation of the requirement as only applying to market participants.

The definition of a non-controversial Rule in the National Electricity Law (NEL s87) is "a Rule that is unlikely to have a significant effect on the national electricity market." Two definitions from NEL s2 are relevant:

***national electricity market** means— (a) the wholesale exchange operated and administered by AEMO under this Law and the Rules; and (b) the national electricity system;*

***national electricity system** means— (a) the generating systems and other facilities owned, controlled or operated in the participating jurisdictions connected to the interconnected national electricity system; and (b) the interconnected national electricity system; and (c) regulated stand-alone power systems;*

Further, the objective of the NEL (s7 the NEO) is specified as:

*The objective of this Law is 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.*

We submit 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.

The likely effect on DNSPs and consumers constitute the following sub-section.

## Consequences of the Proposed Rule

The proposed Rule allows TNSPs to charge for their participant fees through direct cost recovery as they are outside the control of the TNSPs. This begs the question of who the recipient of these costs is once included as direct costs. We understand that, although the TNSP bills DNSPs for DNSP connection points, the DNSP issues a bill to their customers (retailers) that separately includes the charge for distribution services and transmission services.

While the Consultation Paper argued that irrespective of whether TNSPs recovered the charges as direct costs rather than through the revenue determination process are paid by the consumer, this is relatively trite as all expenditure in the system is paid for by consumers. The question is how that process incentivises innovation to reduce consumers' prices. If the charges levied on TNSPs merely get transferred directly through to retailers, then the question emerges of precisely what the point is of creating the participant fees for transmission networks. The retailer will see the same costs; just be billed for them through two more steps.

This brings us ultimately to AEMO's reasoning for introducing the TNSP charge. AEMO's final report and determination<sup>3</sup> stated that "an increasing amount of AEMO's activities involve TNSPs and DNSPs in the management of power system security and power system reliability and operations. Correspondingly, the cost allocation survey indicated the level of involvement with both TNSPs (17.5%) and DNSPs (3.0%) has increased since the previous fee determination."

The principle of charging a party that causes cost is sound when it creates an incentive for the party being charged to change their behaviour to reduce the causes of those costs. However, if the TNSPs get to charge for the cost of their AEMO participant fees as direct cost recovery, there is no incentive for the TNSP to care about how much cost they cause. If the basis for preferring direct cost recovery is that the TNSP can do nothing to affect the future cost level, then there is no reason to charge the TNSP.

## The possibility of preferable or other alternate rules

The whole exercise of AEMO deciding, at its volition, to start charging TNSPs has highlighted a severe deficiency of the regulatory framework. The underlying principles of the framework are the facilitation of competition where possible (retail and generation) and best practice economic regulation of structurally separated monopolies (transmission and distribution). In that

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<sup>3</sup> [https://aemo.com.au/-/media/files/stakeholder\\_consultation/consultations/nem-consultations/2020/electricity-market-participant-fee-structure-review/final-report/aemo-electricity-fee-structure-final-report-and-determination-260321.pdf?la=en](https://aemo.com.au/-/media/files/stakeholder_consultation/consultations/nem-consultations/2020/electricity-market-participant-fee-structure-review/final-report/aemo-electricity-fee-structure-final-report-and-determination-260321.pdf?la=en)

framework, AEMO is a monopoly. Yet, it is granted the power to set its revenue allowance and determine how it will recover that and from which participants.

The fact that AEMO is a not-for-profit partially owned by Governments is insufficient to restrain the economic inefficiencies of monopoly. The NEL merely specifies that AEMO may charge fees in accordance with the Rules. The Rules can be, and we argue should be, amended to subject AEMO's revenue allowance and fee structures to regulation by the AER. This point should be considered as part of this Rule change because the decision to move to regulation would make implementing the 2021 report unnecessary.

A related rule change that should be considered in the context of transmission charging reform is that the transmission cost should be recovered from generators, not retailers. In this structure, the transmission charges would be time varying and relate to how close to congested transmission lines are at any point in time. In this way, the market clearing price for dispatch would incorporate the cost of getting the electricity to the interconnection point with the DNSP.

## Conclusion

The proposed Rule is not non-controversial. Furthermore, it has direct financial consequences for consumers, as additional costs will have been introduced in handling the charging regime to deal with the participant fees. If there is any justification for charging TNSPs participation fees, it has to be based on the ability of the TNSPs to affect the future levels of costs AEMO bears as a consequence of working with TNSPs. If the TNSP simply gets to recover the fees through direct cost recovery, the TNSP has no incentive to exercise this cost reduction effort. So the net outcome of AEMO's decision and ENA's proposed Rule is to increase administrative costs with no offsetting benefit.