

Our ref: ERC0347

7 September 2022

Mr Andrew Richards
Electricity Users Association of Australia
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530 Little Collins Street,
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By email: Andrew.Richards@euaa.com.au

Dear Mr Richards

Response to objection to the use of an expedited process for the rule change request on Amending the administered price cap

We refer to the objection from the Electricity Users Association of Australia (EUAA)¹ to the Australian Energy Market Commission (Commission) in relation to the use of an expedited process for the rule change on Amending the administered price cap.

The Commission has carefully considered EUAA'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 EUAA 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 notes that the extended timeframe for this rule includes a directions paper, proposed to be published on 29 September, with a two-week consultation period, following which a final determination will be published in mid November.

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

Yours sincerely



Anna Collyer
Chair
Australian Energy Market Commission

¹ Energy Users Association of Australia, *Amending the administered price cap*, August 2022:
<https://www.aemc.gov.au/sites/default/files/2022-08/Energy%20Users%20Association%20of%20Australia.pdf>

Appendix

Relevant provisions of the National Electricity Law

The AEMC's decision to use an expedited process for the rule change on *Amending the Administrative Price Cap* was on the basis that the rule change request was a request for an urgent rule. That is, a rule² relating to any matter or thing that, if not made as a matter of urgency, will result in that matter or thing imminently prejudicing or threatening—

- a) the effective operation or administration of the wholesale exchange operated and administered by AEMO; or
- b) the safety, security or reliability of the national electricity system.³

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

- (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 EUAA objection in the context of the test for an urgent rule. Our reasons are set out below, with reference to each of the reasons in the EUAA objection. (The subheadings below use the wording of the subheadings in the objection.)

Imminent prejudice or threat⁵

The EUAA states that the existing level of the administered price cap (APC) does not imminently prejudice or threaten the effective operation or administration of the national electricity market, or the safety, security or reliability in the absence of other extreme conditions. The EUAA considers that the circumstances which arose recently in the market involved the coincidence of a number of matters including restricted coal supply, high gas and coal prices, higher than normal winter demand, significant plant unavailability and confusion on the compensation process.

The EUAA's view is that these conditions are not imminent as capacity has returned to service, coal supplies have recovered, ministerial action has improved confidence in gas supply over the summer period and new renewable projects will further increase supply. The objection also states that even if some of the conditions did recur, they would not necessarily prejudice or threaten the effective operation or administration of the national electricity market, or the safety, security or reliability of the national electricity system as the APC would apply and compensation would be available.

The EUAA cite the Macquarie Dictionary definition of imminent as "likely to occur at any moment; impending". The EUAA further note the definition of impending as "about to happen; imminent".

In summarising, the objection states "the application of the APC is not imminent; the circumstances which would give rise to the application of the APC are not imminent, and the threat to the market or the system from the withdrawal of generating capacity if the APC was applied at \$300/MWh is no longer imminent."

The Commission is of the opinion that this argument is misconceived and lacking in substance as threats to the security or reliability of the national electricity system cannot be predicated solely on whether events

³ National Electricity Law, section 87.

⁴ National Electricity Law, section 96(4).

⁵ EUAA Submission issue (ii) pages 4 to 6

that are difficult to forecast are likely or not likely to occur in the near term. They also need to be assessed against the occurrence of unpredictable events leading to sustained high or volatile prices in the electricity market or fuel markets, to ensure the existing market settings are adequate to achieve secure and reliable operation of the system in the event the market breaches the cumulative price threshold (CPT) and the APC is applied.

The Commission notes that the issue of the level of the APC relative to the cost of generation, and the appropriateness of the level of the APC, is still relevant to the effective operation of the market. It would appear, from recent events, that some participants may consider the current level of the APC may not, in certain circumstances, adequately compensate market participants' costs or provide incentives to continue to participate in the normal market dispatch process and that the application of the APC resulted in generators withdrawing capacity to manage their fuel resources and the threat to market security that prompted the market suspension.

The Commission also considers that the EUAA's focus on the definition of the term imminent as "likely to occur" and "about to happen" is too narrow. The reference to "imminent" needs to be considered in context, namely the matter or thing "imminently prejudicing or threatening" the effective operation of the market or security of the national electricity system. The matter or thing in question is the level of the APC. If the level of the APC is insufficient then that is an existing (not merely imminent) prejudice or threat to the market and security of the national electricity system. The market price settings are designed to manage the risk of difficult to predict and unforeseen events occurring in the context of the security and reliability of the electricity system.

While the EUAA has focused on the conditions leading to the application of the APC in June, the Commission considers that there may be other conditions that could lead to the recurrence of a breach of the CPT and the application of the APC, particularly in circumstances where the APC may not be sufficient to compensate generators. These include events such as international events causing elevated fuel prices, a prolonged or unexpected heatwave in spring and summer months, interconnector outages or extended coal plant outages or failures.

Differences in process⁶

The EUAA raises the additional time and consultation process in a non-expedited (standard) rule change process as valuable steps to ensuring that the rule, as made, will be in accordance with the National Electricity Objective.

The Commission is of the opinion that this reason is misconceived and lacking in substance as it does not address the issue of urgency and whether or not, if the rule was not made, it would result in an imminent prejudicing or threatening of the security or reliability of the national electricity system.

The Commission notes that an expedited rule change process still affords stakeholder input into the rule change process through submissions to the proposed rule. Further, the Commission also notes that under the extended timeframe for this rule, a directions paper is proposed to be published on 29 September, with a two-week consultation period, following which a final determination will be published.

The Commission welcomes submissions from all stakeholders including the EUAA during the additional opportunity for consultation on the directions paper.

\$600/MWh level, and modelling⁷

The EUAA observes in its objection that:

"the proposal bases the \$600/MWh on a \$40/GJ gas price and this is used in the initial AEMC modelling presented in the Consultation Paper. The basis for using this number is that it is the gas

⁶ EUAA Objection issue (i) pages 3 to 4

⁷ EUAA Objection issue (iii) page 6

price cap. Whether or not the \$40/GJ is the appropriate gas price to be used in the modelling is a matter for debate.”

The Commission is of the opinion that this argument is misconceived and lacking in substance as the appropriate gas price to be used in the modelling is not a relevant consideration in determining whether the rule should proceed under an expedited timeframe. The question is whether the rule change request is a request for an urgent rule, i.e. a rule that, if not made as a matter of urgency, will result in imminent prejudice or threat to the national electricity system.

Alternative Rules⁸

The EUAA states that there is a considerable likelihood that the AEMC will need to make an alternative rule in order to meet the National Electricity Objective in all regions of the NEM. The EUAA consider that stakeholders should have the opportunity to consider, and make, submissions upon any alternative Rule determined by the AEMC and that the expedited process will not sufficiently allow for this.

The Commission is of the opinion that this reason is misconceived and lacking in substance as this does not address the issue of urgency of the rule. The Commission also notes that it can make a more preferable rule for an expedited rule change and, as noted above, an additional consultation period on the directions paper will provide an opportunity for further stakeholder submissions prior to the final determination.

What happens at the end of the ‘temporary’ increase in APC?⁹

The EUAA objection raises concern regarding the period of any potential change to the APC and uncertainty on the process for transitioning to the level of the APC recommended by the Reliability Panel’s 2022 Reliability Standard and Settings Review. More specifically, the objection states:

“It is unclear how that would work in practice. Let’s say the AEMC decides on an increase in the APC for a period of 12 months. What happens in the interregnum period, from the end of that 12 months until 1st July 2025 when the rule change resulting from the Reliability Standard Settings Review comes into force?”.

The Commission is of the opinion that this argument is misconceived and lacking in substance as it does not address the issue of urgency. Matters going to the substance of the rule change request will be considered in the rule change process itself.

Other factors impacting on and impacted by the APC¹⁰

Other factors that the EUAA notes should be considered in the determination of the APC include the impact on:

- OTC and ASX swap hedge and cap markets;
- the size of compensation payments and the consequent impact on consumers – is there an optimum level of compensation payments? And how much above zero is it?;
- retailers, their existing hedge book and future hedging strategies;
- direct market customers and others who have spot price exposure;

⁸ EUAA Objection issue (iv) page 6

⁹ EUAA Objection issue (v) page 7

¹⁰ EUAA Objection issue (vi) page 7

- residential and small business consumers of higher hedge prices, that will increase pressure for an inter-period adjustment in the Default Market Offer, with subsequent impacts on unregulated retail market offers; and
- how the APC would operate under different gas price scenarios, different gas plant efficiencies and the gas generator gas contracting strategy;
- how the usage of distillate fuel would be impacted by a change to the APC, or drives the need for a change to the APC;
- coal contract prices and coal plant efficiencies; and
- differences between regions.

While the EUAA recognises the quantitative analysis being performed by the Commission to examine these factors, they consider that these factors require detailed analysis and reiterate the necessity for consultation and stakeholder engagement that they consider is not properly allowed for in an expedited process.

The Commission is of the opinion that this argument is misconceived and lacking in substance as it does not address the urgency of the rule. As noted above, an additional consultation period on the directions paper will provide an opportunity for further stakeholder submissions prior to the final determination.