

Our ref: ERC0347

7 September 2022

Pacific Energy Trading

By email: tomwaye@pacificenergytrading.com

Dear My Waye,

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 Pacific Energy Trading (Pacific Energy) 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 Pacific Energy'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 Pacific Energy 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 Pacific Energy for your interest in this project and would welcome a submission from Pacific Energy to the issues raised in the directions paper.

Yours sincerely



Anna Collyer
Chair
Australian Energy Market Commission

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 rule¹ 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.²

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.³

The AEMC has come to this opinion, after considering the reasons in the Pacific Energy 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 Pacific Energy objection. (The subheadings below reflect the main points in the objection.)

Insufficient time to consider issues and not addressing underlying issue

Pacific Energy state that it is clear there is insufficient time to consider all the elements of the issues in the rule change request, and there is a danger of pushing through a rule change which adds uncertainty to the market without addressing the underlying issue. Pacific Energy note that at the very least, any decision on the rule change should be delayed until a proper picture can be formed on the amount of compensation claims stemming from the APP and market suspension events in June and the legality of generator bidding behaviour during the event.

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 stakeholders 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. This will provide an opportunity for further stakeholder submissions prior to the final determination.

The Commission welcomes submissions from all participants including Pacific Energy during the additional opportunity for consultation on the directions paper.

² National Electricity Law, section 87.

³ National Electricity Law, section 96(4).

Changes to the CPT should be separated from any changes considered to the APC

Pacific Energy states that it would be preferable if changes to the APC are separated from changes to the CPT. Pacific Energy further notes that relative to the APC, out of cycle changes to the MPC/CPT will have a “very large” impact on the level of contracts and liquidity in the contract market. Pacific Energy state that given there is no clear relationship between the MPC/CPT and the urgent issues that spurred Alinta’s rule change request, it would be better, according to Pacific Energy, to treat these mechanisms separately and consider them in the context of the Reliability Panel’s review or outside of the expedited rule change process.

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 and reliability of the national electricity system. Matters going to the substance of the rule change request will be considered in the rule change process itself.

As noted above, an additional consultation period on the directions paper will provide an opportunity for further stakeholder submissions prior to the final determination, including in relation to the treatment of the CPT.

Conflating cause and effect

Pacific Energy state that the withdrawal of capacity from the market threatened security in the NEM, not the APC itself. According to Pacific Energy, this behaviour put the system at risk and is a contravention of the existing rules. Pacific Energy therefore state the real matter of urgency is properly enforcing compliance with existing rules and preventing further withdrawals of capacity, regardless of the circumstances. Pacific Energy state that examining and potentially adjusting generator incentives is not nearly as pressing and requires careful analysis. Pacific Energy cites AEMO’s Q2 quarterly dynamics report as evidence that the majority of generation capacity to withdraw after the APC came into effect did not have fuel costs in excess or even close to \$300/MWh suggesting the matter is “not nearly as clear cut as the rule change request makes it out to be”.

The Commission is of the opinion that this argument 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 and reliability of the national electricity system. The Commission recognises the importance of enforcing compliance with existing rules and notes that this is a matter for the Australian Energy Regulator.