



Material change in network infrastructure project costs final rule

The Australian Energy Market Commission (AEMC or Commission) has made a final rule to amend the National Electricity rules in relation to the 'material change in circumstances' provisions for the Regulatory Investment Test (RIT). The final rule provides clarity as to what a material change in circumstances (MCC) is, and provides for better cost estimate accuracy to help address uncertainty in the current process.

Overview of the final rule

The Commission's final determination is to make a more preferable final rule that seeks to add clarity to the process for determining whether an MCC has occurred. It does this by requiring certain regulatory investment test (RIT) proponents to develop reopening triggers which, if met, would require the RIT proponent to consider if and how to reconsider the extent to which the previously identified preferred option is likely to remain the most net beneficial option in light of the changed circumstances. The final rule also seeks to improve cost estimate accuracy by supporting strengthened guidelines.

The key features of the final rule are that it:

- requires all RIT proponents to consider whether there has been an MCC for the project subsequent to the completion of the RIT
- requires RIT proponents (other than the Australian Energy Market Operator where it is the sole RIT proponent) of projects with an estimated cost of greater than \$100 million to develop reopening triggers which would clearly indicate whether there was subsequently an MCC
- requires RIT proponents, if they consider there has been an MCC (which would include the activating of a reopening trigger), to notify the Australian Energy Regulator and propose a course of action (backed by supporting analysis) to identify if the preferred option previously identified through the RIT remains the most net beneficial option in light of the changed circumstances
- requires the AER to approve or reject and modify the RIT proponent's proposed course of action
- requires proponents of contingent projects, at the time of submitting the contingent project application, to provide a separate statement to the AER confirming whether or not there has been an MCC, including supporting analysis, and (if relevant) confirming that the AER was notified of any MCC and outlining the course of action that was undertaken
- clarifies the rules governing the AER guidelines for RITs to support strengthened guidelines for cost estimate development.

Benefits of the final rule

- **Promotes efficient outcomes for consumers by balancing the timely and economic delivery of network projects** by providing that reapplication of the RIT is a last resort
- **Promotes economic efficiency** by providing RIT proponents with guidance on what is a 'material change in circumstances', to inform decision-making as to when the RIT should be reapplied or further analysis undertaken
- **Minimises practical implementation and compliance costs** as it is already common practice for RIT proponents to conduct sensitivity testing and outline boundary values at which the preferred option changes, although there may be some additional work required the Commission has tried to minimise implementation costs
- **Provides flexibility and facilitates decarbonisation** through the way it balances the

timely and economic delivery of network projects, which is likely to be consistent with the substantial investment in, and build of, transmission infrastructure associated with the decarbonisation of the energy market.

Implementation

The commencement date for the final rule is **9 October 2023**. Under transitional arrangements (which take immediate effect), the AER is required to update and publish the RIT-T and RIT-D application guidelines and CBA guidelines prior to the commencement date.

The new rule requirements relating to reopening triggers would not apply to projects for which a Project Assessment Draft Report or Draft Project Assessment Report had already been published by the commencement date.

Context and rule change request

On 15 February 2021, the AEMC received a rule change request from Energy Users Association of Australia, Delta Electricity, Major Energy Users, Inc, ERM Power Limited (now Shell Energy Operations Pty Ltd) and AGL Energy Limited to amend the National Electricity Rules. The request proposes that, unless an exemption is granted by the AER, a proponent must reapply the rRIT if, following completion of the RIT, project costs were to increase by more than a fixed percentage, unless an exemption was granted by the AER.

Under the current MCC provisions, the RIT must be reapplied where, in the reasonable opinion of the RIT proponent, there has subsequently been a material change in circumstances which means that the preferred option identified through the RIT is no longer the preferred option.

For information contact:

Advisor , **Patrick Loughrey** 02 8296 0659

Acting Director, **Alisa Toomey** 02 8296 0633

Media enquiries: media@aemc.gov.au

27 October 2022