



Australian Energy Market Commission

RULE DETERMINATION

NATIONAL ELECTRICITY AMENDMENT (RECOVERING THE COST OF AEMO'S PARTICIPANT FEES) RULE 2022

PROPONENT

Energy Networks Australia

20 OCTOBER 2022

RULE

INQUIRIES

Australian Energy Market Commission
GPO Box 2603
Sydney NSW 2000

E aemc@aemc.gov.au

T (02) 8296 7800

Reference: ERC0335

CITATION

AEMC, Recovering the cost of AEMO's participant fees, Rule determination, 20 October 2022

ABOUT THE AEMC

The AEMC reports to the Energy Ministers' Meeting (formerly the Council of Australian Governments Energy Council). We have two functions. We make and amend the national electricity, gas and energy retail rules and conduct independent reviews for the Energy Ministers' Meeting.

This work is copyright. The Copyright Act 1968 permits fair dealing for study, research, news reporting, criticism and review. Selected passages, tables or diagrams may be reproduced for such purposes provided acknowledgement of the source is included.

SUMMARY

- 1 The pace and scale of the energy market transition have increased the importance of appropriately allocating the costs of the Australian Energy Market Operator (AEMO), which is playing a crucial role in the transition.
- 2 On 24 June 2021, Energy Networks Australia (ENA) submitted a rule change request to the Australian Energy Market Commission (AEMC or Commission). The rule change request sought to establish a new mechanism to allow Transmission network service providers (TNSPs) to directly pass on the cost of AEMO participant fees (excluding National Transmission Planner (NTP) function fees), which will be charged to TNSPs from 1 July 2023.
- 3 The Commission has determined that it is both in the long-term interests of consumers and consistent with the revenue and pricing principles in the National Electricity Law (NEL) to make a more preferable rule allowing TNSPs to recover their allocated shares of AEMO's participant fees (excluding NTP function fees):
- initially by passing them directly through to consumers (as the ENA proposed), as a transitional measure; and
 - through existing mechanisms under the incentive-based revenue determination framework, after the transitional period.
- 4 The more preferable final rule also includes minor amendments to clarify existing rules, so that they work as intended.

The Commission's final rule is a more preferable rule

- 5 In 2021, AEMO decided to allocate TNSPs a share of its participant fees (excluding NTP fees) for the first time. In response to this change, ENA proposed to allow TNSPs to directly pass through those fees to consumers, in the same way that TNSPs are allowed to directly recover the cost of AEMO's NTP function fees from consumers, on the basis that participant fees are uncontrollable, material and difficult for TNSPs to forecast. However, the Commission considered that there was not a substantive issue with the current arrangements to warrant making the rule change proposed by ENA on a permanent basis.
- 6 Our final rule is a more preferable rule that:
- includes transitional rules to support cost recovery for TNSPs as they transition to incurring the cost of AEMO's participant fees (excluding NTP function fees) for the first time;
 - amends the definitions of over-recovery amount and under-recovery amount so TNSPs are able to recover the cost of AEMO's National Transmission Planner (NTP) function fees; and
 - amends the definition of Co-ordinating Network Service Provider (CNSP) to clarify that the role of CNSPs is broader than only allocating Adjusted Annual Revenue Requirements (AARR).

The Commission considered there was not a substantive issue with the current arrangements that warranted ENA's proposed rule change.

The Commission considered that:

- Existing mechanisms in the NER will provide TNSPs with a reasonable opportunity to recover the efficient costs of AEMO's participant fees (excluding NTP function fees), in accordance with the NEL revenue and pricing principles. TNSPs can apply to recover the cost of AEMO participant fees (excluding NTP function fees) through their operating expenditure (opex) allowance in a revenue determination, and as nominated cost pass through applications if cost changes meet the materiality threshold.
- It is preferable that AEMO's participant fees (excluding NTP function fees) are subject to incentive regulation through TNSPs' total opex allowance, as opposed to being passed through directly to consumers, as consumers are likely to have no ability to assist AEMO in minimising its costs.
- Under incentive regulation, TNSPs have some ability to manage the inevitable ups and downs in individual operating cost components over time and within their total opex allowance, as a non-regulated business would do in a competitive market.
- The Efficiency Benefit Sharing Scheme (EBSS) provides TNSPs with an incentive to minimise operating expenditure. The EBSS is symmetrical, so TNSPs face the same incentive to minimise costs regardless of whether they have underspent or overspent their operating expenditure allowance. Under the EBSS we expect that TNSPs will always seek to maximise savings, subject to statutory and social licence obligations.
- While TNSPs have a level of risk associated with the volatility in participant fees (excluding NTP function fees), this risk is reduced by the EBSS. Where the actual cost of participant fees (excluding NTP fees) are higher than forecast and the TNSP's actual spend exceeds its total opex allowance, TNSPs will incur around 30% of this efficiency loss and customers will pay the balance.
- AEMO's participant fees (excluding NTP function fees) have similar characteristics to some other categories of TNSP operating costs that are subject to incentive regulation, such as the AEMC levy and licence fees.
- While TNSPs' control over AEMO's costs is limited, they have some ability to assist AEMO to minimise costs and reduce cost volatility. TNSPs can engage with and assist AEMO through a suite of industry forums and working groups, as well as AEMO's recently formed Financial Consultation Committee, and through their AEMO membership.

Our final rule includes transitional rules to support TNSPs as they start to incur the cost of AEMO's participant fees (excluding NTP function fees) for the first time.

7

While we consider that TNSPs should be subject to incentive-based regulation in relation to the cost of AEMO's participant fees (excluding NTP function fees), we do not think this is necessarily consistent with the revenue and pricing principles during the transitional periods when TNSPs incur this new category of operating costs for the first time. This is because TNSPs either:

- did not have an opportunity to apply to recover the cost of AEMO's participant fees (excluding NTP function fees) in their current regulatory control period;
- did have an opportunity to apply to recover the cost of AEMO's participant fees (excluding NTP function fees) in their current regulatory control period but had insufficient history and information to enable a reasonable cost forecast to be included; or
- will not have sufficient time to gain a clearer understanding of the likely amounts of AEMO's participant fees or try to better align how AEMO sets its participant fees with TNSP forecasting processes, prior to submission of their revised proposals for their next regulatory control period.

8 The transitional period provides time to develop the level of expertise and engagement processes for TNSPs to discuss fees with AEMO.

9 Our transitional rules allow TNSPs to directly recover the cost of AEMO's participant fees (excluding NTP function fees) for the following transitional periods:

- **AusNet Services and Powerlink** - four years from 2023-24 to 2026-27
- **ElectraNet and Transgrid** - five years from 2023-24 to 2027-28
- **TasNetworks** - six years from 2023-24 to 2028-29.

10 We are satisfied that our final rule will contribute to the achievement of the national electricity objective (NEO)

- **Incentives and efficiency of costs:** We consider it preferable that, in recovering the cost of AEMO's participant fees (excluding NTP function fees), TNSPs should be subject to incentive-based regulation, rather than directly passing through these costs. While AEMO's costs and participant fees (excluding NTP function fees) are determined by AEMO, TNSPs have at least some ability to engage with AEMO and assist it in managing costs, so it is preferable that TNSPs have an incentive to try to minimise AEMO's costs. Providing TNSPs with an incentive to try to minimise AEMO's costs was a key consideration in this final determination.
- **Appropriate risk allocation:** We consider that allowing TNSPs to directly recover the cost of AEMO's participant fees (excluding NTP function fees) on an ongoing basis would allocate the cost risk to customers, who are unable to assist in minimising these costs. While TNSPs have a limited ability to manage the cost risk associated with AEMO's participant fees (excluding NTP fees), we would expect them to have opportunity to engage with AEMO on the fees that are set.
- **Principles of good regulatory practice - Simplicity and transparency:** ENA's proposal may provide a simple, transparent and timely mechanism for AEMO to notify TNSPs of, and TNSPs to recover, the cost of AEMO's participant fees (excluding NTP function fees). However, revenue determination processes are also transparent and using an existing process is arguably simpler than introducing an additional one.
- **Implementation considerations - Cost and complexity:** ENA's proposal could provide an administratively efficient process for TNSPs to recover the full amount of AEMO's participant fees (excluding NTP function fees) allocated to them, compared to the use of existing mechanisms. However, we consider that this administrative efficiency

benefit may be minimal for the AER and TNSPs, and needs to be balanced against the impact on incentives.

- **NEL revenue and pricing principles:** Existing mechanisms in the NER provide TNSPs with a reasonable opportunity to recover their efficient costs, in accordance with the NEL revenue and pricing principles.

We considered stakeholder feedback in making this decision

11 We appreciate the significant input provided by stakeholders in this rule change process. We considered stakeholder feedback from the two rounds of public submissions, two public webinars and other individual meetings and communications with stakeholders.

Implementation

12 The more preferable final rule commences on 27 October 2022, one week after the publication of this final determination. To enable the transitional cost recovery arrangements, which start in 2023-24, AEMO must amend its pricing methodology and revenue methodology before 15 February 2023. As these are simple changes, AEMO is not required to consult with the public in making the amendments.

CONTENTS

1	ENA's rule change request and the rule making process	1
1.1	ENA's rule change request	1
1.2	Consultation on this rule change	2
2	How the final rule provides TNSPs with a reasonable opportunity to recover the cost of AEMO's participant fees (excluding NTP function fees)	4
2.1	Outcomes for TNSPs	4
2.2	Outcomes for other stakeholders	5
2.3	The final rule includes transitional rules that address transitional cost recovery issues for TNSPs	7
2.4	The final rule amends the definitions of over-recovery amount, under-recovery amount and CNSP	9
2.5	The rule commences on 27 October 2022	10
3	Why the final rule contributes to achieving the National Electricity Objective	11
3.1	We must consider the NEO and the revenue and pricing principles	11
3.2	The assessment framework for this rule change	12
3.3	Why the Commission did not consider there was a substantive issue that warrants ENA's proposed solution	13
3.4	Our transitional rules address issues for TNSPs as they transition to incurring the cost of AEMO's participant fees (excluding NTP function fees) for the first time	22
3.5	Our final rule amends the definitions of under-recover and over-recovery amount consistently with the NEL revenue and pricing principles	26
3.6	Our final rule amends the definition of CNSP for clarity	27
3.7	Why the Commission did not make the rule proposed by NICE	27

Abbreviations	29
----------------------	-----------

APPENDICES

A	Legal requirements under the NEL	30
A.1	Final rule determination	30
A.2	Power to make the rule	30
A.3	Commission's considerations	30
A.4	Civil penalties and conduct provisions	31
A.5	Making electricity rules in the Northern Territory	31
A.6	Review of operation of final rule	32
B	Summary of other issues raised in submissions	33

TABLES

Table 3.1:	AEMO participant fees are similar to other categories of operating costs that are subject to incentive regulation	17
Table B.1:	Summary of issues raised in submissions to the consultation paper	33
Table B.2:	Summary of issues raised in submissions to the directions paper	34

1 ENA'S RULE CHANGE REQUEST AND THE RULE MAKING PROCESS

This chapter outlines:

- the consolidated rule change request, and
- the rule making process.

1.1 ENA's rule change request

Under the National Electricity Rules (NER), AEMO must publish:

- an annual budget of its revenue requirements by the start of each financial year,¹ and
- a structure setting out how its budgeted revenue is to be recovered through participant fees.²

AEMO's Electricity fee structure for 2021-26 set nine categories of fees, which included the category of AEMO's core NEM fees.³ AEMO allocated a portion of core NEM fees to relevant TNSPs⁴ between 1 July 2023 and 30 June 2026.⁵

In 2022-23, AEMO's core NEM fees recovered the largest amount of AEMO's budgeted revenue out of all AEMO's fee categories.⁶ TNSP's are not subject to pay core NEM fees until 1 July 2023.

ENA's rule change request proposed a mechanism that would allow TNSPs to directly recover the cost of AEMO's participant fees (excluding NTP function fees) that AEMO recently decided to allocate to TNSPs for the first time.

Key features of the proposed rule were:

- amendments to revenue and pricing methodologies to allow for direct cost recovery, rather than recovery through an AER revenue determination,
- alignment of AEMO's budgeting process and TNSPs' publication of transmission charges, and
- clarifying transfer payment arrangements between a Co-ordinating Network Service Provider (CNSP) and a TNSP.

Further information on the issues and proposed solution are set out in ENA's rule change request⁷ and the consultation paper.⁸

1 Clause 2.11.3(a) of the NER.

2 Clause 2.11.1(a) of the NER.

3 AEMO, Electricity Fee Structures 2021-26, Final report and determination, March 2021

4 The relevant TNSPs are all TNSPs other than Murraylink and Directlink, which have no direct involvement with AEMO's revenue requirements. AEMO, *Electricity fee structures - Final report and determination*, March 2021, p. 16.

5 For more information, refer to the consultation paper.

6 AEMO, 2022-23 Budget and fees, 9 June 2022, p. 36

7 ENA, rule change proposal, 24 June 2021.

8 AEMC, Recovering the cost of AEMO's participant fees, Consultation paper, 28 April 2022.

1.1.1 Network of Illawarra Consumers' (NICE) rule change request

NICE considered that if TNSPs are unable to influence AEMO's costs then charging participant fees to TNSPs is administratively inefficient, and could increase costs to consumers through unnecessary billing of charges.⁹

NICE's proposed rule sought to prevent AEMO from being able to charge participant fees to market network service providers,¹⁰ such that direct cost recovery by TNSPs is unnecessary.

NICE's request related to issues that were similar to those raised in ENA's rule change request. The Commission therefore decided to treat NICE's rule change request as a submission to the ENA rule change request.¹¹

1.2 Consultation on this rule change

On 28 April 2022, the Commission published a notice advising of its commencement of the rule making process and consultation in respect of the rule change request.¹² We also published a consultation paper identifying specific issues for consultation. Submissions closed on 26 May 2022.

The Commission considered that the rule change request was a request for a non-controversial rule as defined in s. 87 of the NEL. Accordingly, the Commission commenced an expedited rule change process, subject to any written requests not to do so. The closing date for receipt of written requests was 12 May 2022.

The Commission received one written request not to expedite the rule change request.¹³ However, the Commission determined that, in its opinion,¹⁴ the request did not meet the statutory threshold for the Commission to revert to the standard rule change process.¹⁵ Accordingly, we continued to assess the rule change request under the expedited rule making process.¹⁶

On 16 May 2022 we held a public forum on the issues raised in the Consultation paper.

The Commission received 10 submissions to the Consultation paper containing highly divergent views. The Commission notes that while the rule change remains non-controversial (as defined by the NEL), in that it is unlikely to have a significant effect on the national electricity market, the level of stakeholder feedback suggested that there was benefit to be gained from further consultation.

9 NICE, rule change proposal, p. 1.

10 NICE proposed to amend NER clause 2.11.1A by adding "and Market Network Service Providers are deemed not to be Market Participants." NICE, rule change proposal, p. 1.

11 NEL s.93(1)(b). The rule change request is attached to NICE's submission as published on the Commission's project page for the ENA's rule change.

12 This notice was published under s. 95 of the National Electricity Law (NEL).

13 Network of Illawarra Consumers of Energy (NICE), Objection to use of expedited process, May 2022.

14 Section 96(3) of the NEL.

15 For more information, refer to: AEMC, *Letter to NICE - Response to objection to the use of an expedited process for the rule change request on Recovering the cost of AEMO's participant fees*, 25 May 2022.

16 Section 96 of the NEL.

On 21 July 2022 we published a Directions paper. This purpose of the Directions paper was to test the option of not making the core element of the rule change proposal, and to seek additional stakeholder feedback on making other elements of the rule change proposal.

On 4 August 2022 we held a public forum on the issues raised in the Directions paper.

The Commission received 12 submissions to the Directions paper. Stakeholder views on the Directions paper were again divided, along similar lines to submissions to the Consultation paper. Stakeholders raised additional points in support of their views in response to the Directions paper.

All submissions, and other documents referred to above, are available on the Commission's website on the project page for this rule change.

2 HOW THE FINAL RULE PROVIDES TNSPS WITH A REASONABLE OPPORTUNITY TO RECOVER THE COST OF AEMO'S PARTICIPANT FEES (EXCLUDING NTP FUNCTION FEES)

This chapter describes how our more preferable final rule clarifies arrangements and provides TNSPs with a reasonable opportunity to recover the cost of AEMO's participant fees (excluding NTP function fees). This chapter outlines:

- outcomes for TNSPs and other stakeholders
- transitional rules we have made to address transitional cost recovery issues for TNSPs; and
- amendments to definitions to clarify arrangements in a way that is consistent with the NEL revenue and pricing principles.

2.1 Outcomes for TNSPs

AEMO has allocated a portion of core NEM fees to relevant TNSPs starting from 1 July 2023. ENA's rule change request proposed a mechanism that would allow TNSPs to directly recover the cost of participant fees (excluding NTP function fees). The revenue and pricing principles in the NEL require that a regulated network service provider should have a reasonable opportunity to recover at least the efficient costs of complying with a regulatory obligation.¹⁷ ENA noted that it is a regulatory obligation to pay participant fees, so the NER should allow relevant TNSPs to recover these costs.¹⁸

2.1.1 **During the transitional period TNSPs will be able to directly recover the cost of AEMO's participant fees (excluding NTP function fees)**

Our final rule includes transitional rules that allow TNSPs to directly recover the cost of AEMO's participant fees (excluding NTP function fees) as they transition to incurring these costs for the first time.

The transitional arrangements support cost recovery for all TNSPs during the specific transitional periods that apply to each TNSP, as detailed in section 2.3. This supports TNSPs as they start to incur the cost of AEMO's participant fees (excluding NTP function fees) for the first time. This would include direct recovery of new participant fees that AEMO may allocate to TNSPs over the transitional period, for example relating to the NEM 2025 declared NEM project.¹⁹

¹⁷ NEL section 7A(2).

¹⁸ ENA, rule change proposal, p. 4.

¹⁹ On 29 September 2022, AEMO determined that the NEM 2025 project was a declared NEM project. AEMO intends to commence consultation in October 2022 over the structure for an additional Participant fee for recovery of the NEM 2025 Reform Project. For more information see: AEMO, *Final report and determination, Declared NEM project - NEM 2025 Reform Program*, September 2022.

2.1.2

After the transitional period TNSPs will have a reasonable opportunity to recover the cost of AEMO's participant fees (excluding NTP function fees) using existing mechanisms

We consider that existing mechanisms provide TNSPs with a reasonable opportunity to recover the efficient cost of AEMO's participant fees (excluding NTP function fees) allocated to TNSPs, in accordance with the revenue and pricing principles. Under the standard NER arrangements, relevant TNSPs to which AEMO has allocated participant fees (excluding NTP function fees) can apply to recover those fees through either or both of the following two mechanisms (if they meet the criteria to do so):

- **Five year revenue determination (opex):** TNSPs may propose to the AER that AEMO's participant fees (excluding NTP function fees) are classified as operating expenditure (opex) and included in five yearly revenue determinations. TNSPs could propose that the revealed costs of AEMO's participant fees (excluding NTP function fees), which apply from 1 July 2023 and are initially subject to various transitional rule arrangements as outlined in section 2.3, could be incorporated into opex either as a step change or in base opex, after transitional arrangements have been completed. The AER would assess applications to include forecasts of AEMO's participant fees (excluding NTP function fees) in opex in accordance with the Base-Step-Trend approach for operating expenditure. The AER must generally accept the forecast of required operating expenditure of a TNSP that reflects efficient operating costs, or substitute its own estimate.²⁰
- **Cost pass through application**
 - TNSPs may nominate AEMO's participant fees (excluding NTP function fees) as a pass through event of the kind noted in clause 6A.7.3(a1)(5) in their next five year revenue determination, under clause 6A.6.9. The AER would assess this application, with reference to the nominated pass through event considerations.²¹
 - After the AER has made a revenue determination, a TNSP may apply for a positive pass through amount under NER clause 6A.7.3 if a change to the amount of AEMO's participant fees (excluding NTP function fees) allocated to the TNSP exceeds the materiality threshold of one per cent of the TNSP's Maximum Allowed Revenue (MAR) in the regulatory year.²² The AER would then assess this application.

Section 3.3 sets out the other reasons why the Commission does not consider there is a substantive issue with the current arrangements that warrants the solution proposed by ENA.

2.2

Outcomes for other stakeholders

This section outlines the outcomes of our more preferable rule for AEMO, the AER, consumers, and other participants that are allocated AEMO's core NEM fees (wholesale participants and market customers).

²⁰ Clauses 6A.6.6 and 6A.13.2(b)(3) of the NER.

²¹ NER clause 6A.6.9(b) and Chapter 10, definition of "nominated pass through event considerations".

²² Chapter 10 definitions of "positive change event" and "materiality".

2.2.1 Outcomes for AEMO

During the relevant transitional periods that apply for each TNSP, AEMO must calculate and advise each TNSP, by 15 February prior to the relevant financial year, of the amount of AEMO participant fees (excluding NTP function fees) that have been allocated to each TNSP.²³ More detail on this process, including the relevant transitional periods, is set out in section 2.3.

Ongoing: In accordance with the current NER (rule 2.11), AEMO must calculate and publish its budgeted revenue requirements and participant fee structure (including any fees allocated to TNSPs) to recover those requirements. This rule does not change those requirements.

2.2.2 Outcomes for the AER

During the relevant transitional periods the AER must allow TNSPs to directly recover the cost of AEMO's participant fees (excluding NTP function fees) in their annual transmission prices. This would occur by adding the amount of participant fees (excluding NTP function fees) advised by AEMO for the relevant financial year to the pre-adjusted non-locational component for each TNSP.²⁴

After the relevant transitional periods have been completed, the AER may receive, and if so must assess, applications from TNSPs:

- to include the cost of AEMO participant fees (excluding NTP function fees) in their five yearly revenue determinations;
- to include a pass through event for AEMO's participant fees (excluding NTP function fees) in their revenue determinations under clause 6A.6.9; and
- for a positive pass through amount for AEMO's participant fees (excluding NTP function fees) if the AER has previously approved AEMO's participant fees (excluding NTP function fees) as a pass through event and changes to these fees meet the materiality threshold in a regulatory year.

2.2.3 Outcomes for consumers

During the relevant transitional periods, when the cost of AEMO's participant fees (excluding NTP function fees) will be directly recovered by TNSPs, consumers are expected to pay no more and no less than the actual cost of AEMO's participant fees (excluding NTP function fees) that have been allocated to TNSPs.²⁵

After the relevant transitional periods TNSPs will be subject to incentive-based regulation over AEMO's participant fees (excluding NTP function fees), so TNSPs will have an incentive to assist AEMO to minimise AEMO's costs that eventually flow through to consumers.²⁶

²³ Final rule, clause 11.153.2.

²⁴ A slightly different approach applies for AusNet Services, given AEMO's additional role in Victoria. Final rule, clauses 11.153.2 and 11.153.3.

²⁵ This assumes that DNSPs pass on to retailers, and retailers to customers, the full cost of AEMO's participant fees (excluding NTP function fees) that TNSPs pass on to DNSPs.

²⁶ As discussed in chapter 3.

2.2.4 Outcomes for market customers and wholesale participants

This rule does not affect the allocation of AEMO's fees between different categories of participants. AEMO is required to allocate participant fees to participants in a way that reflects the extent to which the budgeted revenue requirements for AEMO involve that participant.²⁷ AEMO's 2021-26 Electricity Fee Structure allocated AEMO's core NEM fees to market customers (retailers and large loads), wholesale participants and TNSPs from 1 July 2023 to 30 June 2026,²⁸ in the following proportions:

- 70% of budgeted revenue requirements were allocated direct costs:
 - 26.6% to market customers
 - 55.9% to wholesale participants
 - 17.5% to TNSPs
- 30% of budgeted revenue requirements were unallocated costs, all of which were allocated to market customers.

Given that AEMO's core NEM fees have been allocated to market customers, wholesale participants and TNSPs, all of these participants have an interest in minimising AEMO's core NEM fees, to the extent practical. The final rule provides TNSPs with an incentive to assist AEMO to minimise their costs as AEMO's participant fees (excluding NTP function fees) will be subject to incentive-based regulation after the end of the transitional period.

2.3 The final rule includes transitional rules that address transitional cost recovery issues for TNSPs

Transitional rules address cost recovery issues for TNSPs as they transition to incurring the cost of AEMO's participant fees (excluding NTP function fees) for the first time. The reasons why we have applied transitional rules for each TNSP are explained in section 3.4.

The transitional rules apply for transitional periods that are specific to each TNSP.

The transitional rules allow TNSPs to directly pass on AEMO's participant fees (excluding NTP function fees) for these periods:

- **Powerlink** for the four remaining years (2023-24 to 2026-27) of its current regulatory control period
- **AusNet Services** for the four remaining years (2023-24 to 2026-27) of its current regulatory control period
- **ElectraNet and Transgrid** for the five years of their upcoming 2023-28 regulatory control periods
- **TasNetworks** for six years from 2023-24 to 2028-29, covering the remainder of its current regulatory control period and the whole of its next regulatory control period.

²⁷ Clause 2.11.1(b)(3) of the NER.

²⁸ AEMO, Electricity Fee Structures, Final report and determination, March 2021, p. 6.

The transitional rules involve the calculation and notification of AEMO's fees and inclusion in annual transmission prices. The transitional rules involve the steps outlined below.

- **Calculation:** In recovering its projected revenue requirements under clause 2.11.3(b), AEMO must calculate the amount of participant fees (excluding NTP function fees) to be recovered from a specified TNSP²⁹ for a relevant financial year.³⁰
- **Notification:** By 15 February each year, AEMO must advise each specified TNSP of the fee amounts calculated above³¹ for the next relevant financial year.
- **Inclusion in published annual transmission prices:**
 - Each specified TNSP may reflect its allocation of AEMO's participant fees (excluding NTP function fees) in its prices that it publishes for the next relevant financial year in accordance with clause 6A.24.2(c).³²
 - The allocation of AEMO's participant fees (excluding NTP function fees) is to be recovered through adjusted annual revenue requirements, by adding it to the pre-adjusted non-locational component for each specified TNSP (other than AusNet Services) for the relevant financial year. This is for the purposes of clause 6A.23.3(e).³³

The calculations for AusNet Services are more complex given it included a forecast of AEMO's fees in its revised revenue proposal for its 2022-27 regulatory period, and given the role of AEMO in Victoria.³⁴ In summary, during AusNet Service's transitional period:³⁵

1. AEMO will advise AusNet Services of its share of participant fees (excluding NTP function fees) annually, as for the other TNSPs.
2. AEMO will calculate the amount of participant fees (excluding NTP function fees) that AusNet Services has received under its revenue determination, escalating the specified annual amounts by CPI. The specified amounts (listed in a table in clause 11.153.3(b)(2)) were included in AusNet Services' transmission determination for its 2022-27 regulatory control period.³⁶
3. AEMO will take the difference between the amounts in steps 1 and 2 above, add it to its pre-adjusted non-locational component of pricing in accordance with the transitional rule and AEMO's pricing methodology and revenue methodology,³⁷ and publish its pricing.

29 Specified TNSP means each of the entities (TasNetworks, Powerlink, AusNet, Transgrid and ElectraNet) in their capacity as a TNSP.

30 Final rule, clause 11.153.2(a).

31 Final rule, clause 11.153.2(b).

32 Final rule, clause 11.153.2(b).

33 Final rule, clause 11.153.3(a).

34 The Victorian transmission arrangements are different to other regions in the NEM. AEMO has a substantial planning role under the Victorian transmission arrangements, as it forecasts demand for prescribed transmission services, identifies network constraints and commissions network augmentations. AER, *AEMO Final transmission determination 2022-27*, April 2022, p. 6.

35 Final rule, clause 11.153.3(b).

36 See AER - Final decision - AusNet Services transmission 2022-27 - PTRM - 28 January 2022, available at <https://www.aer.gov.au/networks-pipelines/determinations-access-arrangements/ausnet-services-determination-2022%E2%80%9327/final-decision>. The forecast amounts are expressed in real 2021-22 dollars, and therefore need to be converted to nominal dollar amounts by escalating them by CPI.

37 AEMO must amend its pricing methodology and revenue methodology to reflect this. Final rule, clause 11.153.4.

4. AEMO will pay the difference to AusNet Services.³⁸

2.4 The final rule amends the definitions of over-recovery amount, under-recovery amount and CNSP

2.4.1 Amending the definitions of over-recovery amount and under-recovery amount

Our final rule amends the definitions of over-recovery amount and under-recovery amount to exclude NTP function fees

Under the existing cost recovery arrangements for NTP function fees, NTP function fees are not included in a TNSP's revenue allowance for the regulatory control period.

Revenue that a TNSP receives, that is not included in a TNSP's revenue allowance, may be calculated as an over-recovery amount and be given back to customers through reduced transmission prices the following year.³⁹

Therefore, revenue recovered for NTP function fees would be given back to customers under the previous definitions of over-recovery amount and under-recovery amount.

To address this issue, our final rule⁴⁰ amends the definitions of over-recovery amount and under-recovery amount to exclude revenue that is attributable to NTP function fees from the calculation of these amounts.⁴¹

Our final rule includes transitional rules that amend the definitions of over-recovery amount and under-recovery amount to exclude AEMO's participant fees

As explained in section 2.3, our final rule includes transitional rules that allow all TNSPs to directly recover the cost of AEMO's participant fees (excluding NTP function fees, which are recovered under existing provisions) for relevant transitional periods.

During the relevant transitional years that apply to each TNSP, the amount of revenue recovered by TNSPs for AEMO's participant fees (other than NTP fees, which are addressed in the permanent changes to those definitions)⁴² would be treated as an over-recovery amount and returned to customers. To address this, our final rule excludes AEMO's participant fees from the definitions of under- and over-recovery amount during the transitional period, so TNSPs are able to recover the cost of AEMO's participant fees during this period.⁴³

2.4.2 Amending the definition of CNSP to avoid inappropriately limiting the role of CNSPs

The rule change request proposed some changes to the CNSP provisions in the NER, to reflect the broader role of CNSPs (currently, AEMO). While the final rule does not include these changes, for the reasons set out in section 3.6, we considered that a small change to the definition of CNSP would be helpful.

38 Final rule, clause 11.153.3(c).

39 Clause 6A.23.3(e)(5) of the NER.

40 This definitional rule change is the same as proposed by ENA in its rule change request.

41 Final rule, amendments to Chapter 10 definitions of over-recovery amount and under-recovery amount.

42 Final rule, schedule 1, amendments to glossary definitions.

43 Final rule, clause 11.153.5.

The current definition of CNSP is a "Network service provider appointed by multiple TNSPs to allocate AARR in accordance with rule 6A.29".

We amended this definition to clarify that a CNSP's role is not limited to allocating AARR. A CNSP's role may be broader than this as it may calculate and allocate other revenue, specifically modified load export charges, in addition to its role in relation to NTP function fees.⁴⁴

Therefore, our more preferable rule amends the definition of CNSP by removing the reference to the CNSP's role being only to allocate AARR. The new definition of CNSP in the more preferable rule is a "Network service provider appointed by multiple TNSPs pursuant to rule 6A.29".

2.5 The rule commences on 27 October 2022

The final rule, including the transitional rules, will commence on 27 October 2022. This is one week after the publication of the final rule. The Commission does not consider a longer implementation period is necessary given that the final rule does not require stakeholders to immediately implement any process or system changes.

To enable the transitional cost recovery arrangements for AusNet Services, which start in 2023, AEMO must review and if necessary amend its pricing methodology and revenue methodology to take into account clause 11.153.3. AEMO must do this before 15 February 2023. As this is a simple, mechanical change, AEMO is not required to consult with the public in making the amendments.

⁴⁴ NER rule 2.11, clause 6A.29.1 and related provisions.

3 WHY THE FINAL RULE CONTRIBUTES TO ACHIEVING THE NATIONAL ELECTRICITY OBJECTIVE

This chapter sets out:

- why we must consider the NEO and the revenue and pricing principles
- the assessment framework for this rule change
- why the final rule is likely to contribute to the NEO
- why the Commission did not consider there was a substantive issue with the current arrangements
- why the Commission did not make the rule proposed by NICE.

Further information on the legal requirements for making this final rule determination is set out in Appendix B.

3.1 We must consider the NEO and the revenue and pricing principles

3.1.1 The Commission may only make a rule if it is in the long-term interests of consumers

Under the NEL the Commission may only make a rule if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national electricity objective (NEO).⁴⁵

The NEO is:⁴⁶

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.

3.1.2 The Commission must also take into account the revenue and pricing principles

The Commission must take into account the revenue and pricing principles set out in section 7A of the NEL in making certain rules.⁴⁷ Relevantly for this rule change request, we must take those principles into account in making rules with respect to the regulation of revenues earned, or prices charged, by owners, controllers or operators of transmission systems, for the provision by them of services that are the subject of a transmission determination.⁴⁸

The revenue and pricing principles provide that a regulated network service provider should be provided with a reasonable opportunity to recover at least the efficient costs the operator

⁴⁵ Section 88 of the NEL.

⁴⁶ Section 7 of the NEL.

⁴⁷ Section 88 of the NEL.

⁴⁸ Schedule 1 items 15 and 16 of the NEL.

incurs in complying with a regulatory obligation or requirement, or making a regulatory payment.⁴⁹

3.1.3 We have made a more preferable rule

Under s. 91A of the NEL, the Commission may make a rule that is different (including materially different) to a proposed rule (a more preferable rule) if it is satisfied that, having regard to the issue or issues raised in the rule change request, the more preferable rule will or is likely to better contribute to the achievement of the NEO.

In this instance, the Commission has made a more preferable rule, for the reasons set out in section 3.3 through section 3.6.

3.1.4 We have made a uniform rule in the Northern Territory

The NER, as amended from time to time, apply in the Northern Territory, subject to modifications set out in regulations made under the Northern Territory legislation adopting the NEL.⁵⁰

As the rule relates to parts of the NER that apply in the Northern Territory (changes to definitions in chapter 10 of the NER), the Commission has assessed the final rule against additional elements required by the Northern Territory legislation, as outlined below.⁵¹

- *Should the rule be different in the Northern Territory?* No. The Commission decided to make a uniform rule. The final rule amends the definitions of under-recovery amount and over-recovery amount in Chapter 10 of the NER, relating specifically to NER clause 6A.23.3(e). As NER Chapter 6A does not apply in the Northern Territory, and the TNSPs affected by the transitional rules do not operate in the Northern Territory, the final rule does not have any effect in the Northern Territory. As such, a differential rule will not better contribute to the NEO than a uniform rule. (The definitions of uniform and differential rule are set out in Appendix A.).
- *Should the NEO test include the Northern Territory electricity system?* No. As the impact of the changes to definitions is limited to chapter 6A, which does not apply in the Northern Territory, and the impact of the transitional rules is limited to TNSPs that do not operate in the Northern Territory, it is not relevant to consider the Northern Territory electricity systems in applying the NEO.

3.2 The assessment framework for this rule change

In determining whether the rule change request is likely to contribute to achieving the NEO, and to take into account the relevant revenue and pricing principle and the issues raised in

⁴⁹ Section 7A(2) of the NEL.

⁵⁰ *National Electricity (Northern Territory) (National Uniform Legislation) Act 2015 (NT Act)*. The regulations under the NT Act are the National Electricity (Northern Territory) (National Uniform Legislation) (Modification) Regulations 2016.

⁵¹ Under the NT Act and its regulations, only certain parts of the NER have been adopted in the Northern Territory. The version of the NER that applies in the Northern Territory is available on the AEMC website at <https://energy-rules.aemc.gov.au/ntner>. See [here](#) for more information.

the rule change request, the Commission assessed the rule change request using the following assessment criteria:

- **Efficiency of costs** - applying incentive-based regulation where practicable, including the extent to which TNSPs involvement with AEMO may lower costs associated with participant fees.
- **Risk allocation** - whether risk has been allocated to parties that are best placed to manage the cost risk associated with AEMO's participant fees.
- **Implementation considerations - Cost and complexity** - Whether the proposal provides efficient administrative processes that, in accordance with the NEL revenue and pricing principles, provides TNSPs with a reasonable opportunity to recover the efficient costs of complying with a regulatory obligation to pay the participant fees that AEMO allocates to them (excluding NTP fees).
- **Principles of good regulatory practice - Simplicity and transparency:** Whether the proposal provides a simple, transparent and timely mechanism for AEMO to notify TNSPs of, and TNSPs to recover, the relevant participant fees.

3.3 Why the Commission did not consider there was a substantive issue that warrants ENA's proposed solution

Our final determination is that there is not a substantive issue with the current arrangements that warrants ENA's proposal to allow TNSPs to directly recover the cost of AEMO's participant fees (excluding NTP function fees), on an ongoing basis. This section explains why the Commission has made this decision against the NEO assessment criteria.

3.3.1 Incentives and efficiency of costs

NEL revenue and pricing principles should be satisfied under the existing cost recovery mechanisms

TNSPs can apply to recover the cost of AEMO's participant fees (excluding NTP function fees) through revenue determinations (opex) and/or a cost pass through, as explained in section 2.1.2.

The Commission agrees with the AER, who considered that, given the likely magnitude and characteristics of AEMO's participant fees (excluding NTP function fees), the current arrangements are appropriate and provide TNSPs with a reasonable opportunity to recover their efficient costs.⁵²

Stakeholder views on the existing mechanisms are outlined below.

- **Revenue determination (opex)** - The AER noted that when first incurred, AEMO's participant fees could be incorporated as an opex step change.⁵³ The AER also noted that if costs are incurred within a regulatory period, their impact will be captured by the EBSS⁵⁴ and incorporated into base opex in the TNSP's next revenue determination.⁵⁵

⁵² AER, submission on directions paper, p. 2.

⁵³ AER, submission on Directions paper, p. 2.

- **Cost pass through application** - EnergyAustralia noted that current arrangements appropriately provide for the AER to consider when costs incurred by TNSPs are deemed to be uncontrollable, including eligibility for cost pass through events.⁵⁶ EUAA considered that the cost pass through threshold of one per cent of maximum allowed revenue (MAR) was designed to require the TNSP to accept some of the risk of cost changes below this threshold.⁵⁷ ENA considered that the magnitude of AEMO's participant fees is unlikely to meet the cost pass through threshold of one per cent of MAR.⁵⁸

We consider that the existing mechanisms provide TNSPs with a reasonable opportunity to recover at least the efficient costs of AEMO's participant fees (excluding NTP function fees), in accordance with the NEL revenue and pricing principles, as explained in section 2.1.2.

In response to ENA's issue about whether AEMO's participant fees would meet the materiality threshold for a cost pass through, we note that this is a risk that TNSPs face with all categories of operating costs. The purpose of the materiality threshold is to allow for the recovery of operating costs that are higher than forecast by a sufficiently large magnitude as to materially increase the risk profile of a monopoly network business. Where a category of operating costs is higher than forecast, but less than the materiality threshold, it is expected that TNSPs will manage these costs along with the ups and downs in other operating costs. We agree with the AER,⁵⁹ that TNSPs can manage this including, in some cases by re-prioritising or re-phasing their work program, as a non-regulated business would.

While TNSPs have limited control over AEMO's costs, they have some ability to engage with AEMO and assist AEMO in minimising costs

Stakeholders had mixed views on the ability of TNSPs to assist AEMO in minimising costs:

- The AER, EUAA and EnergyAustralia considered that while TNSPs do not have direct control over participant fees levied by AEMO, they can identify inefficiencies to minimise cost burdens on AEMO, or influence the structure and magnitude of these fees through engagement with AEMO.⁶⁰ The AEC and ECA considered that TNSPs can influence AEMO costs in the boundary of activities carried out by TNSPs and AEMO and through regulatory engagement with AEMO via governance oversight of its budgeting and expenditure.⁶¹
- The AEC noted that NEMMCO (now AEMO) engaged Allens Consulting Group in relation to determining NEMMCO/AEMO's fees in 2005, 2010 and 2016. In 2005, Allens Consulting

54 The EBSS provides for a fair sharing between NSPs and consumers of efficiency gains and losses made during a regulatory control period. An efficiency gain is where actual opex incurred by a NSP in a regulatory control period is less than the forecast opex set by the AER, while an efficiency loss is where a NSP's actual opex in a regulatory control period is more than the forecast opex set by the AER. The NSP keeps the benefit (or incurs the cost) of delivering actual opex lower (higher) than forecast opex in each year of a regulatory control period. The EBSS carries forward a NSP's incremental efficiency gains for the length of the carryover period. AER, *Efficiency benefit sharing scheme for Electricity Network Service Providers*, November 2013, pp. 4-5.

55 Ibid.

56 EnergyAustralia submission on consultation paper, p.2

57 EUAA, submission on consultation paper, p. 3.

58 ENA, submission on consultation paper, p. 2.

59 AER, submission on directions paper, p. 2.

60 Submissions on consultation paper: AER pp. 1-2; EnergyAustralia, p.1.; EUAA, p. 2.

61 Submissions on directions paper: AEC, pp. 1-2. and ECA, p. 2.

Group noted that "A fee structure that promotes productive efficiency is one that places some discipline on NEMMCO's costs. A fee structure that Participants are not simply able to pass on to their customers would create such a discipline, since Participants would be motivated to ensure that NEMMCO operates at minimum cost (for a given level of service)."⁶²

- ENA and AusNet Services⁶³ considered that TNSPs are unable to control or forecast AEMO's fees, which may result in TNSPs being left out of pocket and increasing TNSPs risk profile.⁶⁴

We consider that while TNSPs only have limited control over AEMO's costs, they have some ability to assist AEMO in minimising costs. TNSPs have the ability to engage with AEMO in relation to its participant fees (excluding NTP fees) in a number of ways, including those outlined below.

- **TNSPs can engage with AEMO on how it sets its electricity fee structure**
 - In developing its participant fee structure, AEMO must publish and consult with registered participants and interested parties on the structure of participant fees.⁶⁵ In developing its 2021-26 electricity fee structure, AEMO published a Consultation paper and Draft determination, and received submissions on both.
 - TNSPs can work with AEMO so that the participant fees that AEMO charges best meet the principles set out in clause 2.11.1 of the NER. For example, fee components should be reflective of the extent to which AEMO's budgeted revenue requirements involve TNSPs.⁶⁶
 - TNSPs can work with AEMO to help AEMO provide longer and more accurate electricity fee forecasts. Under clause 2.11.1(a) AEMO has the ability to determine fee structures for such periods of time that AEMO considers appropriate. TNSPs have the ability to ask AEMO to set participant fees that are aligned with the five year regulatory control periods for each specific TNSP, to support cost forecasting by each TNSP.
- **TNSPs can engage with AEMO on how it sets its annual budget and fees.** Transgrid is a member of AEMO's Financial Consultative Committee (FCC), which is a committee comprised of industry, consumer and government representatives. The FCC seeks to improve the transparency and rigour of AEMO's budget fee processes by enabling early engagement and opportunities for deeper and more timely engagement on AEMO's draft budget and fees.⁶⁷ In addition, AEMO runs a one week public consultation period on its annual budget and fees.
- **TNSPs can participate in working groups that influence industry reforms and associated costs.** It is important that parties exposed to AEMO's fees are incentivised to

62 AEC, additional submission on Directions paper, 30 August 2022, p. 1.

63 Submissions on consultation paper: AusNet Services, p. 2; ENA, p. 2.

64 Submissions on directions paper: AusNet Services, pp. 1-2; ENA, p. 2.

65 Clause 2.11.1(a) of the NER

66 Clause 2.11.1(b)(3).

67 AEMO, *Terms of reference Financial Consultative Committee (FCC)*, version 2, 4 February 2022.

work with AEMO to reduce combined costs. In addition to the FCC, TNSPs have the ability to influence AEMO's total costs through their participation in a wide range of forums and working groups, including the:

- National Electricity Market Operations Committee (NEMOC);
- Reform Delivery Committee (RDC);
- Connection Reform Initiative (CRI);
- Integrating Energy Storage Systems working group,

and many others.⁶⁸

We note that TNSPs are active participants that have been heavily engaged in the above consultations, working groups and industry reforms, and have made valuable contributions to these. We anticipate this to continue.

AEMO's participant fees have similar characteristics to other categories of TNSP operating costs that are subject to incentive regulation

Stakeholders had diverging views on how AEMO's fees compared to other costs that TNSPs can or cannot pass on directly:

- ENA considered that AEMO's participant fees should be fully passed through, as full pass through is appropriate for other operating costs that are non-controllable, material, volatile and difficult to forecast (e.g. Victorian easement land tax).⁶⁹
- The AER noted that network businesses incur a number of diverse costs which have similar characteristics to AEMO's fees and these are classified as operating expenditure. For example, Powerlink is required to pay an annual levy for the AEMC's costs⁷⁰ and most jurisdictions impose licence fees on TNSPs which are recovered through revenue determinations, such as the Essential Services Commission of South Australia's (ESCoSA) 2022-23 annual licence fee for ElectraNet.⁷¹

We consider that AEMO's participant fees have similar characteristics to other categories of TNSP operating costs, including the AEMC levy and licence fees, as set out in Table 3.1.

68 See AEMO's list of industry forums and working groups at <https://www.aemo.com.au/consultations/industry-forums-and-working-groups/list-of-industry-forums-and-working-groups>

69 ENA, submission on direction paper, pp. 8-9.

70 AER, submission on consultation paper, p. 2.

71 AER information provided to AEMC staff, September 2022.

Table 3.1: AEMO participant fees are similar to other categories of operating costs that are subject to incentive regulation

OPERATING COST CATEGORY	LEVEL OF CONTROL BY TNSP	PROPORTION OF TNSPS MAR IN 2022-23	ABILITY TO FORECAST	HOW RECOVERED?
AEMO participant fees (excluding NTP function fees)	Low	0.6 to 1.7%*	Large cost increase between 2021-22 and 2022-23, however revealed costs during transitional years to support forecasting after transitional period.	Incentive regulation through total opex and cost pass through application.
AEMC levy	Low	Powerlink 0.8%**	Relatively stable cost	
Licence fees	Low	Transgrid 0.1% and ElectraNet 0.2%***	Relatively stable cost	

Source: AEMC

Note: ***AEMO participant fees (excluding NTP function fees)** based on AEMO, 2022-2023 AEMO Budget and Fees, p.35; AEMO, Electricity Fee structures – final report and determination, March 2021, p.18; and TNSP's allowed revenue in 2022-23.

Note: ****AEMC levy for Powerlink:** AER, Attachment 6: Operating expenditure - Draft decision – Powerlink Queensland transmission determination 2022–27; p.23.

Note: *****Licence fees:** Transgrid cost for Compliance with licence conditions (revised conditions) based on AER, *Final decision - Transgrid Transmission Determination - Opex Model*, Input - Step changes sheet, May 2018. ElectraNet's transmission licence fee is part of ElectraNet's opex allowance. 2022-23 cost based on ESCoSA, Schedule outlining 2022-23 electricity licence fees: <https://www.escosa.sa.gov.au/industry/electricity/licensing/licence-fees>.

ENA mentioned other categories of operating costs which are fully passed through and suggested that the same approach should apply for AEMO's participant fees.⁷² In most cases we do not consider that these other categories of operating costs are comparable with AEMO's participant fees, for the reasons outlined below:

- **Victorian easement land tax** - this cost is levied by the Victorian government and is significantly more material than the cost of AEMO's participant fees. The AER's final decision for AusNet Services' 2022-27 revenue determination was to approve a Victoria easement land tax amount of \$868.2m in total over five years, compared with \$6.5m for AEMO's core NEM fees in total over four years.⁷³

⁷² ENA, submission on directions paper, pp. 8-9.

⁷³ AER, *Final decision - AusNet Services Transmission 2022-27 - Attachment 6 - Operating expenditure*, 28 January 2022, pp. 6-32.

- **AEMO NTP fees** - NTP fees relate to a specific new function (ISP) conferred on AEMO, that does not directly substitute for historical TNSP activities. Cost recovery therefore differs for AEMO's NTP function fees and other participant fees.
- **Victorian DNSPs Energy Safe Victoria (ESV) levy** - this cost only applies to DNSPs and not TNSPs. It is different as it is a fee imposed to cover the cost of regulating and assessing compliance of the DNSPs, so any incentive to reduce it would be perverse.
- **Settlement residues** - We consider that it is appropriate that settlement residues are directly passed through, as these are market driven. It would also be a perverse outcome if settlement residues were not passed through, as TNSPs could be rewarded for making inter-regional constraints worse, where they could benefit from regional wholesale price differences.
- **Inter-regional charges** - as these charges are part of locational TUOS, they do not impact the total amount of revenue received by a TNSP, only which customers revenues are recovered from.

We expect that TNSPs will be able to manage uncertainty around the cost of AEMO's participant fees within their total opex allowances and meet service levels

ENA noted that TNSPs operate under revenue caps and are subject to cost allowances over five year regulatory periods, and must offset any cost increases through savings elsewhere, impacting service levels.⁷⁴ On the other hand, the AER considered that TNSPs are incentivised to manage the inevitable 'ups and downs' in opex components, by continually re-prioritising their work programs, as a business would in a competitive market.⁷⁵

We consider that under incentive regulation, TNSPs have some ability to manage the inevitable ups and downs in individual operating cost components over time and within their total opex allowance, as a non-regulated business would do in a competitive market.

The EBSS provides TNSPs with an incentive to minimise operating expenditure. The EBSS is symmetrical, so TNSPs face the same incentive to minimise costs regardless of whether they have underspent or overspent their operating expenditure allowance. We do not accept the ENA's proposition that, because TNSPs are subject to cost allowances, they must offset any cost increases through savings elsewhere, impacting service levels. Under the EBSS we expect that TNSPs will always seek to maximise savings, subject to statutory and social licence obligations. It may also not be in a TNSP's interests to forgo the benefits available to them from the Service Target Performance Incentive Scheme (STPIS) simply because they had overspent their operating expenditure allowance.

While TNSPs have a level of risk associated with the volatility in participant fees (excluding NTP function fees), this risk is reduced by the EBSS. Where the actual cost of participant fees (excluding NTP fees) are higher than forecast and the TNSP's actual spend exceeds its total

74 ENA, submission on directions paper, p. 3.

75 AER, submission on directions paper, p. 2.

opex allowance, TNSPs will effectively incur 30% of this efficiency loss and customers will pay the balance as a result of the application of the EBSS.⁷⁶

Incentive regulation is preferable over direct recovery of the cost of AEMO's participant fees

Stakeholders held diverging views on the benefits of incentive regulation in this context:

- The AER considered that allowing TNSPs to directly recover the cost of AEMO's participant fees would promote the NEO to a lesser extent than incentive-based regulation.⁷⁷ According to the AER, "Allowing these types of costs to be recovered directly through an annual pricing adjustment on the basis that they are largely uncontrollable erodes incentive-based regulation, reducing the incentives for network businesses to manage their total operating costs".⁷⁸
- EUAA, PIAC, AEC, EnergyAustralia and AGL noted that TNSPs should be incentivised to engage with AEMO to assist in reducing their costs. TNSPs should manage the cost of AEMO's participant fees through the incentive-based regulatory framework.⁷⁹
- The AEC noted that over the past two decades, participants (previously generators) have repeatedly argued that NEMMCO/AEMO should employ fee structures that assist them in passing through fees, however this has been rejected in all of those determinations. Instead, AEMO fees have been designed to discourage participants from being able to pass them through, which is appropriate.⁸⁰
- The AEC, EUAA and ECA considered that allowing TNSPs to directly recover the cost of AEMO's participant fees may create perverse incentives for TNSPs to hand over more functions to AEMO as it would reduce the level of scrutiny a TNSP faces on such costs.⁸¹

Incentive based regulation aims to facilitate the NEO and the revenue and pricing principles by providing that TNSPs are appropriately incentivised to provide electricity services efficiently so that customers receive the level of service they expect at the lowest long run cost.

In recovering the cost of AEMO's participant fees (excluding NTP function fees), we consider it preferable that TNSPs are subject to incentive-based regulation, rather than directly passing through these costs, for the following reasons:

- AEMO's fee structure must, to the extent practicable, be consistent with clause 2.11.1(b)(3): "fees charged to each registered participant should be reflective of the extent to which the budgeted revenue requirements for AEMO involve that Registered Participant".

76 AER, Better Regulation Explanatory Statement, Efficiency Benefit Sharing Scheme for Electricity Network Service Providers, November 2013, p.7

77 AER, submission on directions paper, p. 2.

78 AER, submission on consultation paper, p. 6.

79 Submissions on consultation paper: AEC, pp.1-2; AER, p. 2.; EnergyAustralia, p.1, EUAA, p.1; Energy Consumers Australia, pp. 1-2.

80 AEC, submission on directions paper, p. 3.

81 Submissions on consultation paper: AEC, p. 2; EUAA p. 2; ECA, p. 2.

- Parties exposed to AEMO's fees are incentivised to work with AEMO to reduce combined costs. For example, TNSPs may be able to assist AEMO to minimise its costs through the quality of their engagement, analysis and information provision.
- ENA's proposal guarantees full cost recovery for AEMO's participant fees (excluding NTP function fees), and may create a perverse incentive for TNSPs to move more functions and associated costs onto AEMO if this allowed TNSPs to reduce their own opex.
- Direct recovery of the cost of AEMO's participant fees (excluding NTP function fees) erodes incentive-based regulation by increasing the portion of costs based on cost of service, and takes away incentives for TNSPs to engage with AEMO in trying to minimise AEMO's costs.

While it may have been difficult to forecast the cost of AEMO's fees in recent years, revealed costs over transitional periods may support future cost forecasting

Stakeholders held diverging views on the risk of changes in AEMO's fees:

- ENA considered that it was difficult for TNSPs to forecast the cost of AEMO's participant fees (excluding NTP function fees) given that:⁸²
 - AEMO's five year electricity fee structure may not align with TNSP's five year regulatory control periods, and
 - AEMO's annual budget is variable and has increased significantly, making it uncertain for TNSPs to forecast the cost of AEMO's participant fees (excluding NTP function fees).
- AusNet Services noted that AEMO's budget increased significantly between 2021-22 and 2022-23, so the actual cost of participant fees (excluding NTP function fees) allocated to AusNet Services' from 2023-24 to 2026-27 may be significantly higher than its category-specific forecast allowance of \$6.5m.
- EUAA noted that forecasting risk exists for all parts of a TNSP revenue proposal and it is a standard risk accepted by TNSPs for all other costs.⁸³

We note that AEMO's fees have increased significantly in recent years, with an 89% increase in estimated participant fees (excluding NTP function fees) between 2021-22 and 2022-23.⁸⁴ However, TNSPs will not be allocated any of AEMO's participant fees (excluding NTP function fees) until 2023-24. Our final rule includes transitional rules which mean that TNSPs will not need to forecast AEMO's participant fees allocated to them until 2027-28 at the earliest, as explained in section 2.3 and section 3.4. This will provide each TNSP and the AER with a number of years of revealed costs of AEMO participant fees (excluding NTP function fees) as the basis upon which to forecast the cost of AEMO's participant fees (excluding NTP function fees) after the relevant transitional periods, when these costs will be subject to incentive-based regulation.

82 ENA, submission on directions paper, pp. 4-5.

83 EUAA, submission on directions paper, p. 2.

84 AEMO's total core NEM fees increased from \$103.5m in 2021-22 to \$195.8m in 2022-23. AEMO *Electricity Revenue Requirement and Fee Schedule 2021-22*, 14 October 2021, p. 1; and AEMO, *2022-23 AEMO Budget and Fees*, p. 13.

AEMO's participant fees should become more stable over time as AEMO's processes for implementing market reforms mature, and as engagement processes mature between AEMO and new participants that are allocated AEMO's participant fees.

Once AEMO's participant fees (excluding NTP function fees) are subject to incentive-based regulation, we expect TNSPs to manage the inevitable ups and downs in these operating costs as part of their total opex allowance, as they do for other operating costs.

We also note that TNSPs have the ability to work with AEMO to set fees in a way that makes it easier for TNSPs to forecast the cost of AEMO participant fees (excluding NTP function fees). For example, TNSPs could encourage AEMO to:

- set participant fees (excluding NTP function fees) to align with the five year regulatory control periods of each individual TNSP; and/or
- limit the variation in AEMO's participant fees (excluding NTP function fees) allocated to each individual TNSP to be within a specified range for the duration of its five year regulatory control period; and/or
- implement other measures to support cost forecasting by TNSPs.

3.3.2 **Appropriate risk allocation**

Stakeholders held diverging views on appropriate risk allocation:

- AusNet Services and ENA considered that TNSPs do not have an ability to influence AEMO's costs. They suggested that TNSPs are unable to control or forecast AEMO's fees, which may result in TNSPs being left out of pocket and increasing TNSPs risk profile, so direct recovery of the cost of AEMO's participant fees cost was appropriate.⁸⁵
- EUAA considered that allowing TNSPs to directly recover the cost of AEMO's participant fees would allocate risk to consumers when consumers have little or no influence over AEMO's costs.⁸⁶

We consider that allowing TNSPs to directly recover the cost of AEMO's participant fees (excluding NTP function fees) on an ongoing basis would allocate the cost risk to customers, who are unable to assist in minimising these costs. While TNSPs have limited ability to manage these risks, we would expect them to engage with and assist AEMO, and apply appropriate influence on the fees that are set.

3.3.3 **Principles of good regulatory practice – simplicity and transparency**

ENA considered that its proposal would provide a simple and transparent method for recovering the cost of AEMO's participant fees (excluding NTP function fees).⁸⁷

We consider that ENA's proposal to allow TNSPs to directly recover the cost of AEMO's participant fees (excluding NTP function fees) may provide a simple, transparent and timely mechanism for AEMO to notify TNSPs of, and TNSPs to recover, the cost of AEMO's

⁸⁵ Submissions on consultation paper: AusNet Services, pp. 1-2; ENA, p. 2.

⁸⁶ EUAA, submission on directions paper, p. 2.

⁸⁷ ENA, Rule change request - Recovering the cost of AEMO's participant fees, 24 June 2021, p. 10.

participant fees (excluding NTP function fees). However, revenue determination processes are also transparent and using an existing process is arguably simpler than introducing an additional one.

3.3.4 Implementation considerations - cost and complexity

AEMO and the ENA considered that it would be more administratively efficient for TNSPs to recover the cost of AEMO's participant fees, compared to the use of existing mechanisms in the NER.⁸⁸

We consider that ENA's proposal could provide an administratively efficient process for TNSPs to recover the full amount of AEMO's participant fees allocated to them, compared to the use of existing mechanisms. However, this administrative efficiency benefit may be minimal for the AER and TNSPs, and needs to be balanced against the impact on incentives, as explained above.

We consider that existing mechanisms in the NER:

- provide sufficiently efficient administrative process that, in accordance with the NEL revenue and pricing principles, provide TNSPs with a reasonable opportunity to recover the costs of complying with a regulatory obligation to pay AEMO participant fees (excluding NTP function fees) that are allocated to them;
- are used regularly by TNSPs to try to recover the cost of other categories of operating expenditure, such as the AEMC levy and Licence fees, that have similar characteristics to AEMO's participant fees (excluding NTP function fees).

3.4 Our transitional rules address issues for TNSPs as they transition to incurring the cost of AEMO's participant fees (excluding NTP function fees) for the first time

The transitional rules allow TNSPs to directly recover the cost of AEMO's participant fees (excluding NTP function fees) for set transitional periods, as explained in section 2.3. This section explains:

- the reasons why transitional rules apply to each TNSP, as set out in section 3.4.1, and
- the reasons why we made transitional rules against the NEO assessment criteria, as set out in section 3.4.2.

3.4.1 Transitional rules that apply to each TNSP and why these transitional rules were made **Powerlink**

The transitional rules allow Powerlink to directly pass on the cost of AEMO's participant fee (excluding NTP fees) for the four years from 2023-24 to 2026-27.

Powerlink decided not to apply to recover AEMO's participant fees (excluding NTP function fees) in their 2022-27 regulatory control period, as they noted that ENA were proposing this

⁸⁸ Submissions on the consultation paper: AEMO, p.1; ENA, p. 2.

rule change which, if made, would allow them to directly pass on the cost of participant fees (excluding NTP function fees).⁸⁹ Powerlink made a submission to this rule change noting that it would not be able to recover the cost of AEMO's participant fees (excluding NTP function fees) in its 2022-27 regulatory control period if ENA's proposed rule was not made.

We decided to not make ENA's proposed rule. Therefore, transitional rules are required to provide Powerlink with a reasonable opportunity to recover the efficient cost of AEMO's participant fees (excluding NTP function fees) over the four years from 2023-24 to 2026-27.

AusNet Services

The transitional rules allow AusNet Services to directly pass on the cost of AEMO's participant fee (excluding NTP fees) for the four years from 2023-24 to 2026-27.

AusNet Services included a category specific allowance of \$6.5m in total for AEMO's participant fees (excluding NTP function fees) for the four years from 2023-24 to 2026-27, using an estimate based on 2021-22 cost. However, AusNet Services had insufficient history and information to enable a reasonable cost forecast to be included and their forecast is likely to be significantly less than the actual cost of participant fees (excluding NTP function fees) allocated to it over these years. There was a subsequent 89% increase in AEMO's participant fees (excluding NTP function fees) between 2021-22 and 2022-23.⁹⁰ AusNet Services made submissions to this rule change noting this issue.

ElectraNet and Transgrid

The transitional rules allow ElectraNet and Transgrid to directly pass on the cost of AEMO's participant fee (excluding NTP fees) for the five years from 2023-24 to 2027-28.

There is a short period of time between the publication of this final determination (20 October 2022) and ElectraNet and Transgrid revised submission (due in November 2022). It is unrealistic to expect meaningful engagement between these TNSPs and AEMO in this short period of time. There is insufficient time for ElectraNet and Transgrid to meaningfully engage with AEMO to:

- assist in minimising costs and forecast volatility
- gain a clearer understanding of the likely amounts of AEMO's participant fees (excluding NTP function fees) over these years; or
- better align how AEMO sets its participant fees with TNSP forecasting processes for their five yearly regulatory periods.

TasNetworks

The transitional rules allow TasNetworks to directly pass on the cost of AEMO's participant fee (excluding NTP fees) for the six years from 2023-24 to 2028-29.

⁸⁹ Powerlink, 2023-27 Revised Revenue Proposal, p. 16.

⁹⁰ AEMO's total core NEM fees increased 89% from 2021-22 (\$103.5m) to 2022-23 (\$195.8m). In these years AEMO's core NEM fees are only allocated to market customers and wholesale participants, and not TNSPs. TNSPs are first allocated AEMO's core NEM fees from 2023-24, when 17.5% of core NEM fees are allocated to TNSPs, of which a portion is allocated to AusNet Services.

TasNetworks has no opportunity to recover AEMO's participant fees (excluding NTP function fees) in the last year (2023-24) of its current 2019-24 regulatory control period. When TasNetworks submitted its revised proposal in November 2018 it could not include AEMO's participant fees in opex or as a cost pass through event as it was not aware that it would be allocated participant fees (excluding NTP function fees) until AEMO made this decision in March 2021.

Direct recovery of AEMO's participant fees (excluding NTP function fees) has also been allowed for TasNetworks for 2024-29 for similar reasons to Transgrid and ElectraNet above, and also:

- to be more consistent with the transitional periods for other TNSPs (four to six years); and
- so that all TNSPs start to be exposed to incentive regulation for AEMO's participant fees (excluding NTP function fees) around the same time, so they have an incentive to collectively assist in minimising AEMO's costs and may be more effective in doing so.

3.4.2

The reasons why we made transitional rules against the NEO assessment criteria

Incentives and efficiency of costs

As set out in section 3.3.1, the Commission considers that incentive-based regulation should be applied where appropriate. While we consider that TNSPs should eventually be subject to incentive-based regulation in relation to recovering the cost of AEMO's participant fees (excluding NTP function fees), we do not think this is appropriate during the transitional periods when TNSPs start to incur this new category of operating costs for the first time. This is because TNSPs either:

- did not have an opportunity to apply to recover the cost of AEMO's participant fees (excluding NTP function fees) in their current regulatory control period;
- did have an opportunity to apply to recover the cost of AEMO's participant fees (excluding NTP function fees) in their current regulatory control period but had insufficient history and information to enable a reasonable cost forecast to be included; or
- will not have sufficient time to gain a clearer understanding of the likely amounts of AEMO's participant fees or try to better align how AEMO sets its participant fees with TNSP forecasting processes, prior to submission of their revised proposals for their next regulatory control period.

Appropriate risk allocation

We acknowledge that the transitional rules will temporarily allocate the cost risk of AEMO's participant fees (excluding NTP function fees) from TNSPs to consumers - and consumers are unable to assist in minimising these costs. However, we consider that on balance this is appropriate given:

- the reasons set out above under "efficiency of costs" and the revenue and pricing principles; and

- AEMO has already determined that TNSPs will be allocated 17.5% of core NEM fees from 2021 until 2026 and has established processes and a program of work, which limits the ability of TNSPs to engage with AEMO to assist in minimising total costs and supporting the efficient allocation of AEMO's core NEM fees in the short term.

Implementation considerations – cost and complexity

The transitional rules are not inconsistent with the NEO as they provide efficient administrative processes. Also, in accordance with the NEL revenue and pricing principles, they provide TNSPs with a reasonable opportunity to recover the efficient costs of participant fees (excluding NTP function fees) that AEMO allocates to them.

For the transitional periods that apply for each TNSP, direct recovery of the cost AEMO's participant fees (excluding NTP function fees) is more administratively efficient for TNSPs and the AER than alternative less direct options of:

- **Alternative transitional option 1: Cost pass through application** - this would involve additional administrative steps for:
 - TNSP's to nominate a new cost pass through event for AEMO's participant fees (excluding NTP function fees).
 - The AER to assess whether to allow AEMO's participant fees (excluding NTP function fees) to be a cost pass through event. ENA considered that cost pass through provisions would not be available during TNSPs current regulatory control periods if TNSPs had not nominated AEMO's participant fees (excluding NTP function fees) as cost pass through event.⁹¹ We decided to not make transitional rules based on cost pass through applications, however we expect that TNSPs will be able to nominate AEMO's participant fees (excluding NTP function fees) a cost pass through event in their revenue proposals under clause 6A.7.3(a1)(5) for future regulatory control periods after the relevant transitional periods.
 - If the AER allows AEMO's participant fees (excluding NTP function fees) to be a new cost pass through event, TNSPs could submit cost pass through application for AEMO's participant fees (excluding NTP function fees), if it met the relevant requirements under clause 6A.7.3, such as meeting the materiality threshold of 1% of MAR.
 - The AER would assess these cost pass through applications under clause 6A.7.3
- **Alternative transitional optional 2: Reopening revenue determination.** While reopening existing revenue determination would provide TNSPs with a reasonable opportunity to recover the cost of AEMO's participant fees (excluding NTP function fees), and meet the NEL revenue and pricing principles, it is likely to have a high administrative burden for TNSPs, the AER and other interested parties. It would likely require TNSPs entire opex allowance to be re-proposed, consulted on, and determined by the AER, as opposed to only re-determining the cost of AEMO's participant fees (excluding NTP function fees). This is because AEMO's participant fees (excluding NTP function fees)

⁹¹ ENA, submission on directions paper, p. 5.

would need to be considered in the context of TNSPs total opex allowance and any new information which may impact other parts of TNSPs total opex allowance.

Principles of good regulatory practice – simplicity and transparency

The transitional rules provide a simple, transparent and timely mechanism for AEMO to notify TNSPs of, and TNSPs to recover, the cost of AEMO's participant fees (excluding NTP function fees).

3.5 Our final rule amends the definitions of under-recover and over-recovery amount consistently with the NEL revenue and pricing principles

Section 2.4.1 explains how the final rule amends the definitions of over-recovery amount and under-recovery amount to exclude:

- AEMO's NTP function fees in an ongoing basis
- AEMO's NTP function fees and other participant fees⁹² during the relevant transitional periods that apply to each TNSP.

Stakeholders supported amending the definitions of under- and over-recovery amount to exclude NTP function fees

- ENA considered that the existing definitions of over- and under-recovery amount prevent AEMO's participant fees from being recovered. ENA considered that if these definitions are not amended, amounts collected in respect of AEMO's NTP function fees and other participant fees would be treated as an over-recovery amount and returned to customers, so TNSPs do not recover AEMO's fees.⁹³
- The AER supported the proposed amendments to the definitions of under- and over-recovery amount.⁹⁴

The Commission considers that definitions of over- and under-recovery amount need to be amended to satisfy the NEL revenue and pricing principles

We agree with ENA and the AER that the definitions of under- and over-recovery amounts need to be amended. If we did not amend these definitions, TNSP would not be able to recover the efficient cost of AEMO's fees because TNSPs would:

- recover the cost of AEMO's NTP function fees each year, but this amount would be treated as an over-recovery amount, and returned to customers in the following year;
- also recover the cost of other AEMO participant fees during the transitional periods that apply to each TNSP, but this amount would be treated as an over-recovery amount, and returned to customers in the following year.⁹⁵

92 This may include core NEM fees or other new fees allocated to TNSPs.

93 ENA, rule change proposal, p. 6.

94 AER, submission to the Directions paper, p.3.

95 As we did not make the rule proposed by ENA, we did not need to consider whether to permanently amend the definitions of under- and over-recovery amount to exclude AEMO's participant fees (excluding NTP function fees).

This is because revenue that a TNSP receives, that is not included in a TNSP's revenue allowance,⁹⁶ will be calculated as an over-recovery amount and be given back to customers through reduced transmission prices.⁹⁷

3.6 Our final rule amends the definition of CNSP for clarity

We have amended the definition of CNSP as explained in section 2.4.2.

Under the current rules, CNSP is defined as: "A *Network Service Provider* appointed by multiple *Transmission Network Service Providers* to allocate AARR in accordance with rule 6A.29."⁹⁸

However, under the current rules a CNSP's functions are broader than allocating AARR - for example, CNSPs also have a role in relation to NTP function fees and modified load export charges.⁹⁹ The current definition of CNSP does not reflect these activities, and may cause uncertainty.

To clarify the role of the CNSP, we amended the definition of CNSP by removing the reference to the CNSP's role being only to allocate the AARR, increasing clarity by leaving the role of the CNSP to be set out in existing substantive provisions of the NER (rather than in a definition which was inconsistent with those provisions). We considered that it was important to make this clarification, given the potential for CNSPs to play a greater role in the NEM in future.

This is a more preferable amendment to that proposed by ENA to clarify arrangements between CNSPs and TNSPs. ENA proposed amendments to clarify that a CNSP is responsible for recovering the cost of AEMO's participant fees on behalf of a TNSP, and that financial transfers between a CNSP and a TNSP should include amounts relating to the recovery of AEMO's participant fees that have been recovered by a CNSP on behalf of a TNSP.¹⁰⁰ We considered ENA's proposed changes, which were more extensive, were not strictly necessary in light of the final rule we made, and could have introduced an unnecessary level of complexity and potential uncertainty to the rules. Therefore we consider that the more preferable rule on CNSPs better meets the assessment criterion on principles of good regulatory practice - simplicity and transparency.

3.7 Why the Commission did not make the rule proposed by NICE

Implementation considerations - Cost and complexity

NICE considered that charging participant fees to TNSPs is administratively inefficient, as it only has the effect of increasing costs to consumers through unnecessary billing of charges.

⁹⁶ The costs of NTP function fees are not included in a TNSP's revenue allowance but is part of the revenue a TNSP receives.

⁹⁷ Clause 6A 23.3(e)(5) of the NER.

⁹⁸ Chapter 10 of the NER.

⁹⁹ See for example NER rule 2.11 and clause 6A.24.1.

¹⁰⁰ ENA rule change proposal, p. 6. AEMO supported these amendments in its submission to the consultation paper, p. 1.

While we agree that ENA's proposal is likely to result in somewhat higher administrative costs compared to NICE's proposal to prevent AEMO allocating fees to TNSPs, we disagree with the key premise of NICE's rule change request that TNSPs are unable to assist AEMO in minimising the costs they receive from AEMO. Therefore, it is not appropriate to make the rule proposed by NICE.

Risk allocation

NICE's proposal to prevent AEMO allocating fees to TNSPs is not consistent with principles of appropriate risk allocation, as it would not allocate the risk to a set of parties (TNSPs) that have a level of influence over AEMO's participant fees. This proposal would result in all of AEMO's core NEM fees being allocated to other participants, such as wholesale market participants and market customers, that have a similar level of influence over AEMO's participant fees (excluding NTP function fees) as TNSPs.

ABBREVIATIONS

AARR	Aggregate Annual Revenue Requirement
ABS	Australian Bureau of Statistics
AEC	Australian Energy Council
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
CNSP	Co-ordinating Network Service Provider
Commission	See AEMC
CPI	Consumer Price Index
EBSS	Efficiency Benefit Sharing Scheme
ECA	Energy Consumers Australia
ENA	Energy Networks Australia
EUAA	Energy Users Association of Australia
ESCoSA	Essential Services Commission of South Australia
ESV	Energy Safe Victoria
ISP	Integrated System Plan
FCC	Financial Consultation Committee
MAR	Maximum allowed revenue
NEL	National Electricity Law
NEMMCO	NEM Management Company Limited
NEMOC	NEM Operations Committee
NEO	National electricity objective
NER	National electricity rules
NEM	National electricity market
NICE	Network of Illawarra Consumers of Energy
NTP	National transmission planner
PIAC	Public Interest Advocacy Centre
PTRM	Post Tax Revenue Model
RDC	Reform Delivery Committee
STPIS	Service Target Performance Incentive Scheme
TNSP	Transmission network service provider

A LEGAL REQUIREMENTS UNDER THE NEL

This appendix sets out the relevant legal requirements under the NEL for the Commission to make this final rule determination.

A.1 Final rule determination

In accordance with s. 102 and 103 of the NEL the Commission has made this final rule determination, and more preferable final rule, in relation to the rule proposed by ENA. The Commission's reasons for making this final rule determination are set out in Chapter 3. A copy of the more preferable final rule is attached to and published with this final rule determination. Its key features are described in Chapter 2.

A.2 Power to make the rule

The Commission is satisfied that the more preferable final rule falls within the subject matter about which the Commission may make rules. The more preferable final rule falls within s. 34 of the NEL as it relates to regulating the activities of persons (including Registered participants) participating in the national electricity market or involved in the operation of the national electricity system.¹⁰¹ It also falls within schedule 1 items 15-24 of the NEL as it relates to transmission system revenue and pricing.

A.3 Commission's considerations

In assessing the rule change request the Commission considered:

- its powers under the NEL to make the rule
- the rule change request
- submissions received during consultation on the consultation paper and the directions paper
- the Commission's analysis as to the ways in which the proposed rule and the more preferable rule will or are likely to contribute to the NEO
- the revenue and pricing principles.

There is no relevant Ministerial Council on Energy (MCE) statement of policy principles for this rule change request.¹⁰²

The Commission may only make a rule that has effect with respect to an adoptive jurisdiction if satisfied that the proposed rule is compatible with the proper performance of AEMO's declared network functions.¹⁰³ The more preferable final rule is compatible with AEMO's declared network functions because it allows for the appropriate treatment of NTP function fees (by excluding them from the definitions of over-recovery and under-recovery).

¹⁰¹ NEL section 34(1)(a)(iii).

¹⁰² Under s. 33 of the NEL the Commission must have regard to any relevant MCE statement of policy principles in making a rule. The MCE is referenced in the Commission's governing legislation and is a legally enduring body comprising the Federal, State and Territory Ministers responsible for energy.

¹⁰³ Section 91(8) of the NEL.

A.4 Civil penalties and conduct provisions

The Commission cannot create new civil penalty provisions or conduct provisions. However, it may, jointly with the AER, recommend to the Energy Ministers Meeting that new or existing provisions of the NER be classified as civil penalty provisions or conduct provisions.

The final rule does not amend any clauses that are currently classified as civil penalty provisions or conduct provisions under the NER or the National Electricity (South Australia) Regulations. The Commission does not propose to recommend to the Energy Ministers Meeting that any of the amendments made by the final rule be classified as civil penalty provisions or conduct provisions.

A.5 Making electricity rules in the Northern Territory

Test for scope of "national electricity system" in the NEO

Under the NT Act, the Commission must regard the reference in the NEO to the "national electricity system" as a reference to whichever of the following the Commission considers appropriate in the circumstances having regard to the nature, scope or operation of the proposed rule:¹⁰⁴

- (a) the national electricity system
- (b) one or more, or all, of the local electricity systems¹⁰⁵
- (c) all of the electricity systems referred to above.

Test for differential rule

Under the NT Act, the Commission may make a differential rule if, having regard to any relevant MCE statement of policy principles, a different rule will, or is likely to, better contribute to the achievement of the NEO than a uniform rule.¹⁰⁶ A differential rule is a rule that:

- varies in its terms as between:
 - the national electricity system, and
 - one or more, or all, of the local electricity systems, or
- does not have effect with respect of one or more of those systems

but is not a jurisdictional derogation, participant derogation or rule that has effect with respect to an adoptive jurisdiction for the purpose of s. 91(8) of the NEL.

A uniform rule is a rule that does not vary in its terms between the national electricity system and one or more, or all, of the local electricity systems, and has effect with respect to all of those systems.¹⁰⁷

¹⁰⁴ Clause 14A of Schedule 1 to the NT Act, inserting section 88(2a) into the NEL as it applies in the Northern Territory.

¹⁰⁵ These are specified Northern Territory systems, listed in schedule 2 of the NT Act.

¹⁰⁶ Clause 14B of Schedule 1 to the NT Act, inserting section 88AA into the NEL as it applies in the Northern Territory.

¹⁰⁷ Clause 14 of Schedule 1 to the NT Act, inserting the definitions of "differential Rule" and "uniform Rule" into section 87 of the NEL as it applies in the Northern Territory.

The Commission's final determinations in relation to the meaning of the "national electricity system" and whether to make a uniform or differential rule are set out in chapter 3.

A.6 Review of operation of final rule

The more preferable final rule does not require the Commission to conduct a formal review of the operation of the rule. The Commission may however self-initiate a review of the operation of the rule at any time if it considers such a review would be appropriate, pursuant to section 45 of the NEL.

B SUMMARY OF OTHER ISSUES RAISED IN SUBMISSIONS

This appendix sets out the issues raised in consultation on this rule change request and the Commission's response to each issue. If an issue raised in a submission has been discussed in the main body of this document, it has not been included in this table.

Table B.1: Summary of issues raised in submissions to the consultation paper

STAKEHOLDER(S)	ISSUE	STAKEHOLDER COMMENT(S)	AEMC RESPONSE
AEC (pp. 1-2), EUAA (p. 2), ENA (p. 2)	Gaps in the assessment criteria.	Stakeholders suggested including additional assessment criteria relating to the efficiency of costs, the principle of participant involvement with AEMO relating to its costs, the revenue and pricing principles, and risk sharing between industry and consumers.	We considered stakeholders' suggestions and included additional assessment criteria for efficiency of costs and appropriate risk allocation. The revenue and pricing principles were already included in the assessment criteria.
NICE (p. 4)	Economic regulation of AEMO's revenue allowance.	The NEL can be, and should be, amended to subject AEMO's revenue allowance and fee structures to regulation by the AER.	Under section 52 of the NEL, AEMO may determine fees and charges for services provided by it under the NEL or NER, and the fees and charges are to provide for full recovery of AEMO's costs. This limits the Commission's ability to make rules that may affect the extent of recovery of AEMO's costs.
ECA (p. 2), EUAA (p. 2/3), PIAC (p. 1)	Prudence and efficiency of AEMO fees.	Stakeholders consider that the potential increasing scale of AEMO fees may warrant further consideration around ways to improve transparency and efficiency of AEMO fees. EUAA and PIAC did not support the process	We considered that the prudence and efficiency of AEMO fees is outside the scope of this rule change. See also comments above regarding the impact of s. 52 of the NEL.

Rule determination

Recovering the cost of AEMO's participant fees
20 October 2022

STAKEHOLDER(S)	ISSUE	STAKEHOLDER COMMENT(S)	AEMC RESPONSE
		whereby AEMO determines its fees without independent review of whether the costs are prudent and efficient.	
AEC (p. 4), EUAA (p. 3), ECA (p. 1), Energy Australia (p. 2), NICE (p. 5)	Cost recovery of AEMO's NTP fees.	Stakeholders suggested that TNSPs should not be able to directly recover the cost of NTP fees, as they should be subject to incentive-based regulation.	Unlike participant fees (excluding NTP function fees), NTP fees relate to a specific new function (ISP) conferred on AEMO, that does not directly substitute for historical TNSP activities.

Table B.2: Summary of issues raised in submissions to the directions paper

STAKEHOLDER(S)	ISSUE	STAKEHOLDER COMMENT(S)	AEMC RESPONSE
Ausnet (p. 1), ENA (p.10)	Recovery of AEMO's participant fees from NSPs	In response to NICE's submission, stakeholders support the option of amending clause 2.11 of the NER to prohibit the recovery of costs for AEMO's fees from NSPs.	NICE's submission was predicated on the assumption that fees would be allocated from TNSPs directly to their customers as proposed by ENA. The Commission did not make that rule.
EUAA (p. 2) and PIAC (p. 1)	Cost recovery of AEMO's NTP fees	Recommended that AEMO's NTP fees be brought under incentive regulation.	As above in Table B.1. NTP fees relate to a specific new function (ISP) conferred on AEMO, that does not directly substitute for historical TNSP activities.
ENA, p. 8.	AEMO fee recovery process	The structure of AEMO's fee recovery process under the Rules was not designed with incentive regulation in mind. It is not a fit for purpose framework to hold TNSPs to account for AEMO's costs.	As explained in section 3.4, we consider it reasonable that AEMO's participant fees (excluding NTP function fees) allocated to TNSPs are subject to incentive regulation.